

## Implementation Of Land Property Rights In The Review Of Islamic Law And Agrarian Law Study In Village Tanambulava District Sigi Regency

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### ARTICLE INFO

### ABSTRACT

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### KEYWORD

Implementation of land Property Rights in the Review of Islamic Law and Agrarian Law Study in Village ,Tanambilava District, Sigi Regency

This article discusses the implementation of land ownership rights in a review of Islamic law and agrarian law. Case Studies in Sibowi Village, Tanambulava District, Sigi Regency. The formulation of the problem in this thesis is: first, what are the rights to land in the review of Islamic law in Sibowi village, Tanambilava sub-district Sigi district? Second, what about property rights in the review of agrarian law in Sibowi Village, Tanambulava District, Sigi Regency?

The research method used is a qualitative research approach by choosing a research location in Sibowi Village, Tanambulava District, Sigi Regency. The data source was obtained from primary data and secondary data that are relevant to the problem under study. The data collection techniques used were observation, interviews and documentation, while the data analysis techniques used were data reduction, data presentation, data verification.

The results showed that the people of sibowi Village, district Tanambulava, Regency Sigi had previously managed the land which was formerly abandoned land, so that based on these findings, when viewed in a review of Islamic law, community ownership of land in Sibowi Village, Tanambulava District, Sigi Regency, is recognized in Islamic law.

Meanwhile, in the view of agrarian law, the recognition of land ownership rights must be recognized in a formal legal manner based on the provisions in force in the law, namely by carrying out a land registration process which then produces legal proof of ownership or in the form of a land certificate. Therefore, the land ownership of the Sibowi village community does not qualify as property rights.

The conclusion obtained is that the ownership rights to the land of the Sibowi Village community in a review of Islamic law are recognized based on the Prophet's hadith about reviving dead land and the opinion of Syafi'i and Ahmad, that abandoned lands do not belong to bayt al-mal but neutral property (permissible) is whoever takes it first (works on it) then he is the owner whereas if it is reviewed in agrarian law it must be recognized in formal legality based on the provisions which then produces proof of ownership valid or in the form of a land certificate.

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## **1. Introduction**

Land is a gift from God Almighty to mankind on earth. Land is a basic human need from birth until he dies, humans need land as a place to live to live.

The existence of land besides having economic value, also religious, and even ideological, land with various contents and functions for mankind is the most important factor of production. Humans as God's creatures are given the mandate to manage the earth and its contents in the capacity as khalifatullah fi al-ardal. The roles of the human caliphate on the face of the earth necessitate the need for the ability to be able to manage it properly and correctly. Normatively, the earth and its contents contained therein were given by Allah to humans as instruments to support human life.

Arrangements regarding land are clearly regulated in article 33 paragraph 3 of the 1945 Constitution which stated :

"Earth and water and the natural wealth contained therein are controlled by the State and used for the greatest prosperity of the people"

Regulation of land issues in the context of the Indonesian state is regulated in law number 5 of 1960 concerning the basic regulations of Agrarian principles. The birth of the loga was actually a product of legislation that functioned to change of a colonial state towards an independent state, as well as abolish forms of colonialism and feudalism that hindered people's progress through land reform programs. The land reform agenda is an effort to realign the structure of land ownership and control aimed at achieving justice, especially for those livelihoods depend on agricultural production.

In Islam, land ownership by a person in an individual context in social relations is legally recognized, the land owner has the authority to use (tasruf) according to his wishes. Human authority over property rights. In Islamic law, it is protected within the framework of hifzu al-mal as one of the principles of al-kulliyat al-khams.

Therefore in Islam it is not permissible to engage in monopoly practices and confiscation of assets as explained in the hadith of the prophet which reads :

"None of you will take an inch of land without rights except that Allah will crush it with seven layers of earth on day of resurrection. (HR. Muslim No. 3024)."

Ownership of person over land, as ownership of other property, in its use, consider aspects that are social in nature, the freedom of a person over his property is limited by the rights of other people, both individually and in groups.

The problem that later occurred in Sibowi village, Tanambulava District, Sigi Regency, namely, the establishment of the Lore Lindu National Park area which took approximately 3,000 hectares of Sibowi community land on the pretext that Sibowi Village was used as a national park buffer zone. Until now the people of Sibowi do not know exactly where the boundaries of the Lore Lindu National park are, because since the establishment of the national park until now the community has never received socialization from the government regarding the expansion of the Lore Lindu National park area. This situation makes the people of Sibowi increasingly uneasy with their limited access to land, plus at any time their land will be confiscated by a national park the form of other conservation forests.

The research method used is a qualitative research approach by choosing a research location in Sibowi Village, Tanambulava District, Sigi Regency. The data source was obtained from primary data and secondary data that are relevant to the problem under study. The data collection techniques used were observation, interviews and documentation, while the data analysis techniques used were data reduction, data presentation, data verification.

## **2. Literature Review**

### **2.1 Definition of Land Ownership Rights**

Article 20 paragraph (1) UUPA states: property rights are hereditary, strongest, fullest right that people can have over land, bearing in mind the provisions in Article 6. Heredity means that ownership right to land can continue as long as the owner is still alive. And if the owner dies, his heirs can continue his property rights as long they meet the requirements as the subject of property rights. Strongest means that land ownership rights are stronger than other land rights, do not have a certain time limit, are easily defended from interference by other parties and are not easily erased. Fulfillment means that the ownership right to land gives authority to the owner more broadly when compared to other land rights.

According to Satjipto Raharjo, rights do not only contain elements of protection and interest, but also will. For example, if a person owns a plot of land, the law gives rights to that person, in the sense that the person's interests in the land are protected. Automatically this protection is not only related to interests but also concerns the will of the person, which is related to his property, such as the right to give or bequeath the land to other people. In every right, there are there important elements, namely the existence of independence, power and immunity.

Land ownership rights in Dutch are called *insslands bezitsrecht*, meaning that the owner has full authority over the land he owns which is often referred to as *eigendom rights* (*eigendom recht*). Property rights, especially land ownership

rights, are part of the law of objects and discussing the issue of property rights cannot be separated from the form of goods or objects with the owner. The right to own land is a natural right, in the sense that it is not a human right that can be released voluntarily, but a natural right that accompanies human beings. Hugo Grotius (1563-1645), stated that human will is the basis for the existence of individual property right. Individual property rights must be protected, this is because land ownership by a person can result in other people losing their property rights to land. Meanwhile, the right to own is natural and is something that cannot be alienated, from this theory it is very clear what is the position of humans in relation to land ownership both at the level of the closeness of human relation with land and the protection of one's property rights over land. Private rights to land can be called a human whose existence must be protected.

Private property rights in a broad sense include the right to life, the right to physical freedom and the right to private property. Private property rights are the forerunner to the development of land property rights. Thus, the basic logic of thinking about private property rights becomes one of the elements of human rights, namely the right to life and freedom, which are the most basic human rights in harmony with dignity and respect as individuals who are honorable and cannot be separated from one another.

## 2.2 Implementation of Land Property Rights Islamic Law in Sibowi Village, Tanambulava District, Sigi Regency

Acquisition of a person's land rights in Islamic law carried out through efforts to open new land (ihya al-mawat) on vacant land, namely land that has no rights on it, and is also unproductive because it is not managed by someone Islamic law terminology in call it deadland (ard al-mawat). The fiqh scholars differ in defining and redacting the meaning of ihya al-mawat. Ibn Hajar al-'Asqalani, defines ihya al-mawat as a person's effort to manage land that is not owned by anyone by planting, irrigating or constructing buildings on that land. Abu Ishaq al-Shirazi argues that the law of ihya al-mawat is a sunnah as an implementation of the prophet's orders. In the opinion of syafi'i and Ahmad, abandoned lands do not belong to bayt al-mal but neutral property (mubah) and for mubah property, whoever takes it first (works on it) is the owner, and the law is the same as a person who hunts an animal that has no owner. If hunting is a way of obtaining property rights without the permission of the priest, then clearing land does not need permit either. The right to open dead land is the right of all Muslims who have the legal ability to manage property as a legal subject. Thus, ownership is born because of a direct mandate from Allah.

In the view of Islam, everything that exists in the heavens and the earth, including land, belongs to Allah only SWT.

As found in the word of Allah Qs. Al-Baqarah (02): 284

"All that is in the heavens and all that is on the earth belongs to God. And if you reveal what is in your heart or you hide it, then God will reckon with you about your actions. So God forgives whom he wills-his and tortures whomever he wills and Allah has power over all things" Qs. Al-Baqarah (02):

Human ownership of their property is solely a mandate from Allah and relative and relative (majazy). It is this syariah limitation on a person's property that is then used as standard for a person's eligibility to be judged capable of using his property. Islamic recognition and respect for property rights based on two arguments. First, Islamic law positions property as one of the main components of the five things that must be protected (al-daruriyah al-khamsah), namely the principle of protecting property (hifz al-mal). Second, actually the syariah prohibits taking other people's property in an illegal way. The protection of property rights can be in the sense of private property rights or collective property rights. Syariah protects individual property rights according to what he wants, as long as the use of his wealth is not redundant and excessive.

In the perspective of Islamic law, the concept of individual or people's ownership including ownership of land is not absolute. Ownership of a person's property must be subject to the limitations of the benefit of others which have a broad dimension, namely the value of the general benefit. Authority holders who make boundaries in the form of regulations are carried out by the government. Thus the limitation of property rights must be based on official boundaries through legal frameworks in the form of laws or qanuns (al-quyud al-qanuniyat). The position of the law as a product of legislation is form of contract to guarantee justice. The regulatory package for limiting land ownership rights by state must be based on the principle of creating public interest.

The ethical framework that forms the basis for the government in making policies must be based on the values of the benefit of its people. In fiqh rules it is stated that “government policies must be based on the benefit of the people”. So that the value of benefit is not an abstract value, basic criteria are made as standards to justify it based on the concept offered by al-Ghazali as cited by al-shaukani that the criteria for problems are:

1. Benefit must be essential (real)
2. Benefit does not conflict with the spirit of religion
3. Maslahah describes the public (kully) and universal interests

### **2.3 Implementation of Land property Rights in Agrarian Law in Sibowi Village, Tanambulava District, Sigi Regency**

Arrangements regarding land are clearly regulated in article 33 paragraph (3) of the 1945 constitution which states: “Earth water and the natural resources contained therein are controlled by the state and used for the greatest property of the people”.

The state’s right to control land is based on the authority of the government as a public institution to regulate the social order of its people. The concept of power and authority as well as physical strength are characteristics possessed by the state in the framework of policy implementation. Power, strength and authority have a relationship with politics. Thus politics has a relationship with law, so that the exercise of power, power, authority is a manifestation of legal sanctions. According to the legal theory of the state, the power of the state is the power of law, so that its validity is determined by law

The process of normalizing Article 33 of the 1945 constitution into the UUPA and its implementing regulations constitutes the legitimacy of the government’s involvement in determining the direction of policy on public land, which is based on article 33 paragraph 3 of the 1945 constitution. Meanwhile, the state’s right to control is the authority to determine the necessary policies in the form of regulating, administering and supervise the use and utilization of land. The substance of the existence of state ownership right over land is the responsibility and obligation of the state to use and utilize land resources for the prosperity of the people. The implementation of this right is that the state has the authority to make various regulatory packages related to the use and utilization of land.

The acknowledgment that land essentially belongs to God almighty is also recognized by Law no. 5 of 1960 concerning the basic regulations on Indonesian Agrarian principles (UUPA) which states that all earth, water and space including the natural wealth contained therein within the territory of the Republic of Indonesia, is a gift from God. In other words, the conception of land in the UUPA has a spiritual-religious dimension whose use must also consider religious ethics, one indicator of which is that someone’s ownership of land must carry out a social function. Regulation of land issues in the context of the Indonesian state is regulated in Law number 5 of 1960 concerning the basic regulations of agrarian principles.

The basic Agrarian Law clearly regulates land and its legal certainty. For example, in article 4 paragraph (2) of the basic Agrarian Law which regulates land rights by giving authority to use the land with the limitations contained in the basic agrarian law and other higher regulations where in matters in this state power is very dominating over land whose rights do not belong to anyone. The goal is that the state can provide land whose rights do not belong to a person or legal entity with a right according to its designation and needs. As a form of legal certainty over the land parcels they own, there is proof of ownership which with legal certainty over this land parcel includes these things, namely legal certainty regarding the object of land rights, the subject of land right and the status of land rights.

With proof of ownership which is a form of legal certainty and has permanent legal force where in article 19 paragraph (1) the basic Agrarian Law has guaranteed legal certainty provided by the government by carrying out land registration activities as stated in article 1 point 1 of the regulation government number 24 of 1997 concerning land registration where the existence of this land registration will later produce a certificate that has permanent legal certainty in order to minimize if later a dispute, conflict and case occurs. In addition, land registration is a very important activity in building and realizing legal certainty and relinquishing the use, control and ownership of land rights. Moreover, if the land is still subject to western law such as eigendom rights, then this land registration is very important with the aim of providing legal certainty as well as proof of ownership of rights in the form of certificates of land rights which have been recorded in the relevant land books stated in article 19 paragraph (2) letter c of the basic Agrarian law.

### **3. Conclusion**

The results showed that the people of Sibowi Village, district Tanambulava, Regency Sigi had previously managed the land which was formerly abandoned land, so that based on these findings, when viewed in a review of Islamic law, community ownership of land in Sibowi Village, Tanambulava District, Sigi Regency, is recognized in Islamic law.

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