

The Implementation of the Basic Agrarian Law in Fulfilling the Principle of Justice from the Islamic Legal Perspective

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Abstract

The Basic Agrarian Law (UUPA) is an important legal foundation that regulates the utilization and management of agrarian resources in Indonesia. The principle of justice is one of the main principles sought in the implementation of the UUPA, aiming to create a fair and equitable distribution for all segments of society. This article analyzes how the implementation of the UUPA fulfills this principle of justice from an Islamic legal perspective. Islamic law emphasizes the importance of distributive justice, wise management of resources, and protection of the rights of vulnerable groups. This study uses a literature review method, examining related literature on the UUPA, agrarian law, and the principles of justice in Islamic law. The findings of the study show that there is alignment between the values of justice in the UUPA and the concept of justice in Islamic law, particularly regarding land rights distribution and the management of agrarian resources. However, challenges remain in implementing these principles, such as disparities in access and agrarian conflicts, which require fair resolutions in line with Islamic guidance. The article concludes that achieving substantive justice in agrarian management requires synergy between national law and the principles of justice in Islamic law.

I. Introduction

One of the best, most monumental, and revolutionary works of the nation is Law No. 5 of 1960 on the Basic Agrarian Law (UUPA), which introduced the concept of state control over land for the first time. Historical records show that the birth of the UUPA resulted from a struggle among various interests during the Old Order era. Land reform was an agrarian political strategy driven by the conflict of interests, especially between landless farmers and landowners (Noer Fauzi, 1999).

The UUPA strives to establish a national foundation that regards Indonesia's land as a divine gift, with the aim of ensuring the welfare of the people as outlined in Article 33 of the 1945 Constitution. This is reflected in Article 2, paragraphs (1), (2), and (3) of the UUPA, which places land under the control of the state, not for ownership, in order to achieve the greatest prosperity for the people and a just and prosperous society. This is in contrast to Western legal principles, such as the doctrine of *domeinverklaring*, which asserts state ownership of land (Sunardi, 2005). The UUPA also recognizes customary law principles with the recognition of *hak ulayat* (customary land rights), as long as these rights still exist in practice and align with national and state interests, as stipulated in Article 3 of the UUPA (Boedi Harsono, 2007).

The Social Function Principle not only governs the interests of landholders but also ensures that land benefits its owners and contributes to the welfare and happiness of the nation and state, as outlined in Article 6 of the UUPA. The National Principle emphasizes that land should be used for the nation, prohibiting ownership by foreigners or foreign legal entities. Only Indonesian citizens can own land, as stated in Articles 9 and 21, paragraph (1).

The Equality of Rights Principle ensures that there is no discrimination between male and female Indonesian citizens in obtaining land rights and benefiting from its use, as explained in Article 9, paragraph (2): "Every Indonesian citizen, both male and female, has the same opportunity to obtain land rights and enjoy its benefits, for themselves and their families." This principle is also reflected in Article 11, paragraph (1), which limits land control to prevent individuals from monopolizing livelihoods and employment, and in paragraph (3), which protects the interests of economically weak groups. Article 13 further states that monopolistic practices in the agrarian sector can only be carried out by the government and in accordance with the law. The framers of the UUPA also laid down the principle of active land management by its owners. Agricultural land must be worked or cultivated by its owner. To achieve this goal, Articles 13 and 17 set minimum and maximum limits on land ownership, further elaborated in Law No. 56 of 1960 (Boedi Harsono, 2007).

Additionally, the principle of planning emphasizes that anything planned properly and correctly will achieve maximal results. Land management requires careful planning, especially in terms of land use, allocation, and the management of the earth, water, and air for various national needs. This is aimed at ensuring that land benefits the prosperity of the people, as mandated by Article 14 of the UUPA. Land management also focuses on enhancing the economy, granting citizens the authority and freedom to manage and utilize land as an object. The term "right" (recht) in Dutch refers to subjective rights (N.E.Algra, 1983), which provide individuals with enjoyment and freedom in their execution. Therefore, Indonesia is called a state governed by law, and matters related to property rights are regulated according to the established provisions. This ensures that Indonesian human rights are upheld, not in an absolute sense, but with respect for the rights of others. Thus, Indonesians not only have rights but also obligations.

The effort to reconcile the mission of the UUPA with the values of Islamic law is seen as essential (Abduh, Isa, Nd), as Islamic law is closely aligned with customary law, especially regarding the recognition of hak ulayat (Boedi Harsono, 2007). Both Islamic law and customary law support the existence of hak ulayat as long as it is recognized in practice and serves the national and state interests. Based on this understanding, the state must recognize customary law, as reflected in Article 3 of the UUPA (Urip Santoso, Nd).

In Islam, land productivity is closely linked to the balance between physical and financial capabilities, thus promoting the creation of a productive and creative economic mechanism. The main objective of land development in Islam is to make use of Earth's resources, which are strategically important and beneficial for human development. As khalifah (stewards), humans are entrusted with managing and utilizing these resources to meet basic needs and create productive goods and services. Among the most important elements of the earth are the land, trees, grass, minerals, and water (Abū Abdullah al-Bukhari, 1420 H). Islam values economic actors who are dedicated, patient, disciplined, and respectful of time, always striving to revive and utilize neglected resources, thus preventing land wastage and ensuring that land contributes to public welfare. Such behavior is highly valued in Islam.

Land managers and business actors are expected to embody and implement the exploration of natural resources based on two foundations: faith and ethics. A Muslim must believe that the environment exists not by chance, but as a creation of Allah SWT, entrusted to humans for management and preservation. This belief leads to the emergence of Islamic laws that guide how humans interact with the environment. The researcher believes that the values of Islamic law, which emphasize justice, equality, anti-discrimination, and the

prohibition of harm, along with customary law that shares similar views on land management, will provide a fundamental foundation for neutralizing land-related laws and regulations in Indonesia (Hamid, et al, 2005). This will ensure the maximization of land functions, not ownership and control, and avoid land price inflation that excludes ordinary people. Such goals can be realized through fair distribution of land as a natural resource to reduce unemployment. Therefore, this research is important in contributing to the nation and the state by offering insights on how to implement the values of social justice in agrarian law from the Islamic legal perspective.

II. Method

This study is library research of a descriptive-analytic nature based on textual analysis. This library research is necessary to uncover data, facts, and theories in the pursuit of logical truth. Descriptive analysis is research conducted to determine the value of independent variables, whether one or more, without making comparisons or relating them to other variables. According to Lexy J. Moleong, descriptive research is research where the data collected are in the form of words, images, and not numbers (Asep Harmawan, 2005).

The approach used in this research is the Historical Approach and the Text-Based Approach to examine the position of the text in relation to the social facts of the Indonesian nation as depicted in the literature. As understood, research essentially aims to obtain objective, valid, and reliable data about something (a specific variable), so to analyze the data in this study, qualitative methods are used. It is known that qualitative data consists of words, sentences, schemes, and images (Sugiono, 2005).

The data analysis method in this research is qualitative analysis using the content analysis method (Sujono and Abdurrahman, 1998) , also known as analisis isi or content study, which is a technique used to draw conclusions by identifying the characteristics of messages in an objective and systematic manner. This method is also defined as a tool for observing and analyzing open communication behavior from a selected communicator. Data analysis using content analysis is based on the assumption in social sciences that studying communication processes and content is the foundation of social science studies. According to Barelzon, Lindzey, and Aronson, content analysis always fulfills three requirements: objectivity, a systematic approach, and generalization. The way this analysis works is that the researcher begins their analysis by using certain symbols and making predictions (data analysis).

III. Result and Discussion

Human Rights to Land in the Perspective of Islamic Law

Land is a key resource in producing what is needed by the surrounding community. It must be maximized to avoid hindrances in its management. Islamic scholars, especially Al-Ghazali, emphasized the importance of orderly land ownership and control as a source of benefits for those involved in managing it and the surrounding community. According to Al-Ghazali, there are two essential things that must be unified: Religion and the State (Power). Religion is the foundation, and power (sultan) is its guardian. Without oversight from the state, vital resources for production would be lost and wasted (Maria SW. Soemarjono, 2008)

Improving the welfare of the people, especially those who do not own land or have capital, requires consideration and implementation of land waqf (charitable endowment) from those who have excess to those who lack (Abu Hamid al-Ghazali, Nd) Waqf comes from the Arabic word "Waqf," meaning "al-Habs." It is a noun that essentially means to hold, stop, or cease. When related to property such as land or animals, it refers to freezing the ownership rights for a specific beneficial purpose (Asyura, K., Bahri, S., Husna, N., & Ghina, F. 2019).

Increased welfare can also be achieved through hibah (gifts) and wasiat (wills) as a means of transferring land or other valuable items that support daily needs. The provisions regarding hibah and wasiat in Islam are based on the Qur'an and Hadith, and all Islamic jurists (Ulama fiqh) agree on their permissibility. The legal provisions for wasiat are mentioned in the Qur'an, such as in Surah Al-Baqarah, verse 180, Surah An-Nisa, verses 12 and 58, and in Hadith as found in Bukhari and Muslim. The provisions for hibah are found in Surah Al-Baqarah, verse 177, and Surah Al-Ma'idah, verse 2, with supporting Hadith narrated by Imam Bukhari and Imam Muslim. Hibah and wasiat are essentially acts of giving from one person to another without expecting a reward from Allah SWT.

Basic Principles of Property Ownership in Islam

When discussing rights in Islam, it is not only about acquiring property rights but also about how to manage the wealth one possesses and how to distribute it among the community. By conducting istiqra' (inductive reasoning) on Islamic economic laws, it can be concluded that the economic system (an-nizham al-iqtishadi) in Islam includes explanations on how to acquire wealth (goods and services), manage (consume and develop) that wealth, and distribute it fairly (Abdullah, 1990).

The Islamic legal system is built on three fundamental principles of acquiring rights: (a) how wealth is acquired, which concerns ownership (al-milkiyyah); (b) how ownership

of wealth is managed (tasharruf fi al-milkiyya); and (c) how wealth is distributed within the community (tauzi'a tsarwah bayna al-nas). Before delving into the classification of land in Islamic law, several ownership principles must be clarified: (Alnabhani, 1990).

Principle of Ownership (al-Milkiyali): Ownership is the permission granted by As-Syari' (Allah SWT) to utilize certain objects (goods). Therefore, ownership is determined by Allah SWT's decree and the reasons for its ownership. Thus, ownership of any object is not merely based on its inherent qualities or benefits but is granted by the will of Allah SWT. However, not all items are permissible for ownership in Islam, such as alcoholic beverages and pigs, even though they may be allowed under capitalist economic systems because they may provide benefits. In Islam, these items cannot be owned because Allah SWT has prohibited them.

The concept of property ownership (Property) in Islam is rooted in the belief that all wealth ultimately belongs to Allah SWT, the true Owner, who grants humans the right to manage and distribute it. As such, when Allah SWT speaks of wealth, He refers to it as "Mal Allah" (the wealth of Allah). When explaining the transfer of wealth to humans, Allah SWT directs ownership to human beings, as stated in His verse: "So give them their property."

Mineral Resources: Islam views minerals in two categories. First, minerals that are scarce and limited, which can be owned by individuals, as these resources are enough for a family or small group. However, the ownership and management of such minerals are governed by the rikaz (treasure found), which requires the payment of khumus (20%) from the find. The second category is vast mineral resources, such as gold, silver, iron, copper, bauxite, marble, and petroleum, which are considered public property (collective property), as they are abundant and cannot be exhausted by a single individual or family. These resources can be enjoyed by the wider community, as indicated in a Hadith narrated by Imam At-Tirmidzi, where the Prophet (PBUH) withdrew the ownership of a large mining resource from an individual, as it was seen as a resource for the community.

Implementation of Legal Certainty in Land Ownership Fairly under Islamic Law

The researcher observes deviations and obstacles in the agrarian arrangement, particularly in the implementation of Article 56 of the Basic Agrarian Law (UUPA), which has not been fully implemented in the regulations governing the rights of old land ownership, a key value in implementation. The concept of land ownership and management is still influenced by Western legal concepts and feudal law concepts, which emphasize individualism, as compared to the principle of balance between individual and societal interests, as outlined in Islamic law and Indonesian customary law. While customary law

respects hereditary ownership, the reality is that administrative proof often invalidates customary ownership rights, whereas Islamic law recognizes private ownership. However, when linked to Article 6 of the UUPA, ownership does not guarantee perpetual use or control by the owner due to its social function.

Islamic land law is known as Ahkam al-Aradi. Generally, Islamic jurists (fuqaha') discuss land law in relation to the management of property (al-amwal) by the state. Islamic land law can be defined as the Islamic law concerning land in relation to ownership rights (milkiyyah), management (tasarruf), and distribution (tauzi) of land. In the study of Islamic law, land law is commonly referred to as Ahkam al-Aradi, and discussions of land are generally incorporated into studies concerning the management of property (al-amwal) by the state (Yaqub bin Ibrahim, Nd).

Article 56 of the UUPA states, "Until laws concerning ownership rights as referred to in Article 50, paragraph (1) are formed, the applicable provisions are those of local customary law and other regulations regarding land rights that grant authority as mentioned in Article 20, provided they do not contradict the spirit and provisions of this law." Article 20 (1) asserts that ownership rights are the strongest and most complete rights that a person can hold over land, and, in accordance with Article 6 (2), ownership can be transferred or assigned to another party.

The researcher has outlined the importance of land, which is a strategic resource and plays a significant role in maintaining the existence of living creatures on earth, including humans, animals, and plants, all of whom depend on land for survival. Land forms an environment that contains social, economic, political, ethical, cultural, and scientific elements (Adrian Sutedi, 2007)

Human development, which can improve welfare through agriculture, plantations, mining, housing, business, and infrastructure, is heavily reliant on land (Abd al-Majid, 1984). This gives rise to complex issues as efforts to own land emerge, including how to control and have authority over its management. Land, being so vital to human life, has seen its economic value increase over time, becoming a contested object that leads to endless disputes and conflicts.

The author has described how land is managed, owned, and utilized under Indonesian land laws and regulations before and after the enactment of the UUPA, including the basic provisions of land control rights (Supriadi, 2007). The Islamic concept of land and the Islamic economic perspective on land have also been discussed. An analysis follows on the achievement of development goals through the UUPA, which was intended to establish balanced justice in land management in Indonesia, especially after legal uncertainties

regarding land in the country. However, the UUPA still leaves many unresolved issues, with many continuing to view land ownership through the lens of capitalism and liberalism, which has fueled feudalism and the dominance of landowners, ultimately displacing powerless individuals from their land and their rights to utilize land as a source of livelihood (Mohammad Amien Rais, 2008).

The current land law still reflects the influence of customary law, but in reality, land ownership is impacted by feudal and Western legal concepts, especially the Agrarische Wet (Agrarian Law) which existed before the UUPA. While the UUPA and related regulations aim to improve societal welfare, there are many indications on the ground that suggest a return to the previous policy of land management and utilization before the UUPA (Mukhtar Wahid, 2008).

Although agrarian law does not stem from the Dutch colonial government's framework, there is a persistent sense of injustice as agrarian law still does not provide legal certainty for the people. Landowners often face obstacles in proving their land rights, despite having spent time, money, effort, and resources, with bureaucratic challenges and external pressures preventing them from fully utilizing their land for housing or economic development. This lack of legal certainty enables individuals or certain groups to forcibly seize land or manipulate the system, which is prohibited under Islamic land law.

The principles of national agrarian law outlined in Law No. 5 of 1960 (UUPA), intended to protect economically weak citizens from more powerful landowners, have not yet been effectively implemented. Article 11, paragraph (1), has not been fully realized. Efforts to prevent the domination of land by others and the growing difficulties faced by the poor in securing land for livelihood and work should have been addressed, but protection for the weak from the ambitions of business actors and conglomerates continues to be inadequate (Sunardi, 2005).

The author will explore philosophical views and the underlying foundations of how individuals and groups perceive economic resources, specifically the role of land, which is crucial for sustaining life on this planet. The author will also highlight the importance of clear land ownership and management, and the need for economic assessments of land. Several factors need to be understood and developed to avoid the misuse of land, which is a divine creation with a strategic role in continuing the human struggle to fulfill noble goals, particularly improving welfare as part of a spiritual approach to God. There are factors to be understood to prevent inflation of the original goals of the 1960 UUPA (Boedi Harsono, 2006).

Misconceptions about the function of land, the concept of development for public

benefit, and unfair land distribution have led to widespread land disputes without resolution. This has given rise to administrative disputes over land registration, resulting in issues like the issuance of fake certificates, abuse of permits, and improper management of land funds. Unjust dispute resolutions have caused social unrest, economic instability, and environmental degradation due to policies that encourage excessive exploitation of natural resources (Adrian Sutedi, 2007).

Land ownership in Islam is crucial as it is also a central part of the economic agenda. In several feudal countries, where land was mostly controlled by landowners, land reform was implemented to address ownership inequality. Countries like South Korea, Japan, and Taiwan were some of the most determined in implementing land reform since World War II. The reform significantly reduced income disparities between urban and rural areas.

Islam does not forbid the search for or ownership of wealth, including land. The Qur'an encourages Muslims to seek wealth through effort, and owning land as a source of economic benefit is not prohibited. In fact, Muslims are encouraged to diligently work and accumulate wealth, including land, as a source of livelihood and a means to serve their faith.

The Islamic economic system views ownership as permissible within Islamic law but emphasizes proper regulation since it significantly impacts production incentives. Islam explicitly rejects the idea of distributing land equally among all members of society, as advocated in land reform agendas. However, Islam also prohibits excessive land ownership beyond one's ability to manage. Islamic law requires agricultural landowners to utilize their land effectively to ensure maximum productivity. To facilitate this, the state provides funding and agricultural facilities to support production.

The Islamic legal system recognizes land as a form of individual ownership unless there are specific factors that preclude it, such as containing mineral resources or being state-controlled. Islamic land law ensures legal certainty based on Sharia principles, granting owners full freedom to manage their land, sell it, inherit it, endow it to others, or transfer it to descendants as inheritance. Economic development through reviving unused land (*ihya' al-mawat*) is permissible when the land is abandoned and lacks any indication of ownership, such as fencing, planting, or management. Once the land is cultivated, it becomes the property of the individual who revives it. This principle aligns with Islamic land law, which values the creativity of individuals by ensuring that their efforts are recognized and protected, encouraging them to cultivate and maintain the land. Subsequently, the government grants them management rights.

The state has the authority to allocate land as state grants (*iqta*) to individuals deemed suitable for managing and safeguarding the land. The government should protect

the underprivileged and landless people, particularly those living on the fringes of plantations. However, policy outcomes, such as legislation prioritizing plantation businesses over small farmers, often result in the criminalization of impoverished farmers. People who should be protected are often instead intimidated, terrorized, arrested, mistreated, or even shot under the pretense of national development interests. Islamic teachings emphasize the need for the government to provide comprehensive protection, ensuring people's rights where they live and safeguarding them from exploitation.

Islam addresses land ownership issues from various perspectives, including theological ones, where humans are believed to originate from and return to the land. Communities like the Kaili of Central Sulawesi consider land akin to a living being, while the Nipah community in Sampang, Madura, views land as an ancestral legacy to be preserved. In Islamic law, landowners are obliged to defend their rights to the land, as it is an honor and a trust that must be upheld. Humans cannot be easily detached from their land, especially through unjust policies. Furthermore, land often holds spiritual and historical significance, functioning as burial grounds, sites for worship, and spaces for livelihood cultivation.

In Indonesia, land policies are framed within the Basic Agrarian Law (UUPA), which is intended as a legal umbrella but is often violated in implementation. Land grabbing, evictions, and speculative land abandonment disadvantage many people. At the macro level, the law frequently favors powerful capital owners, as seen in disputes between indigenous communities and holders of forestry or mining concessions. Islamic land law, with its Sharia-based approach, offers an alternative for equitable land management. Islam's comprehensive framework provides practical solutions to issues such as overlapping ownership and land mismanagement by clearly delineating three types of ownership: individual, state, and public.

Individual ownership is a Sharia-granted right allowing individuals full control over their land, including the ability to gift, endow, or bequeath it. Land can be acquired through several means in Islam, such as reviving unused land or receiving grants from the state. The government can allocate land to those in need, such as farmers affected by landslides, and manage idle land for public benefit (Nasrun Haroen, 2000). Unused land left for three years may be reclaimed by the state for productive purposes, with the proceeds benefiting the public treasury. Land serves various purposes, including agriculture, plantations, housing, economic centers, and infrastructure development, with an emphasis on social utility.

The arrival of colonial powers in the archipelago highlighted the strategic importance of land for business expansion. The forced cultivation system (*cultuurstelsel*)

implemented by Governor-General van den Bosch in 1830 sought to exploit Indonesia's agricultural resources for the benefit of the Dutch colonial government (A.M. Djulianti Suroyo, 2002). Landowners were subordinated, and their efforts were redirected to support the colonial economy through coercive methods such as land rent and forced labor. Islamic land law and its Sharia-based systems aim to offer just and sustainable alternatives to historical and contemporary land management challenges.

Land holds significant importance, necessitating fair policies for its acquisition. This underscores the critical role of land distribution in regulating ownership of production elements and wealth resources. It is vital to prevent behaviors that disregard the rights of others, where individuals exploit their power to claim strategic lands for economic purposes, often disregarding the principles of human decency and dignity. Such behavior mirrors the actions of colonialists who divided lands in Indonesia, displacing indigenous people who had long established peaceful and prosperous lives before their arrival. Colonial policies and legislation stripped away the rights of the native population, exemplifying the historical injustices of agrarian politics under colonial rule (Robert Van Niel, 2003).

Unfortunately, colonial practices seem to persist in Indonesia even after independence. The nation still grapples with remnants of feudalistic and capitalistic behaviors characterized by an insatiable greed to monopolize strategic economic resources, particularly land. These developments are exacerbated by the weaknesses of Indonesia's agrarian laws, which retain feudal and capitalistic influences, enabling monopolistic practices despite the Basic Agrarian Law (UUPA) explicitly prohibiting excessive land ownership. While the UUPA has been implemented, numerous violations occur in practice. Therefore, a comprehensive understanding of equitable and just economic resource distribution is urgently needed.

IV. Conclusion

Based on the analysis of the presented data, this study reveals that the implementation of the Basic Agrarian Law (UUPA) across Indonesia has led to land accumulation by certain individuals or groups. This failure of the UUPA to function as an effective umbrella act has allowed regulations to propagate liberal and capitalistic values, fostering land concentration in the hands of a few. The implementation of the UUPA diverges significantly from the principles of Islamic law, which emphasize an equity-based economic system characterized by stability and balance in land ownership, control, and utilization. Instead, the current policies have empowered large capital holders through investments, further marginalizing the weaker segments of society.

The ideal prospects of Islamic law and economics regarding land ownership and management emphasize that resources should not be controlled by a select few, aligning with the original noble aspirations of the UUPA. However, the derivative regulations related to land policies in Indonesia have resulted in numerous land disputes due to the lack of clarity regarding ownership and control rights. Furthermore, these policies neglect the ethical principles of Islamic business ethics (akhlaq al-islamiyyah), which prioritize sustainable management of resources as a divine trust for the welfare of all.

Wastefulness is contrary to these principles, as ethical business practices strive to safeguard future generations without prioritizing personal or group interests. Upholding responsibility entails mitigating the temptations of greed among business actors to prevent environmental destruction. Violations of Islamic land laws and economic ethics lead to the erosion of ideals and practices aimed at managing natural resources for the benefit of both current and future generations. The strategic potential of land as a source of life must be preserved beyond the needs of the present generation, ensuring its benefits are sustained for posterity.

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