

## **Re-Islamization of Land Law in Global Context: An Approach to Fight Ecological Scarcity**

*Arif Al Anang* 

Universitas Gadjah Mada, Yogyakarta, Indonesia  
*arif.al.anang@mail.ugm.ac.id*

Noorhidayah 

UIN Sunan Kalijaga, Yogyakarta, Indonesia

Mustafa Boukermouche

Ecole Nationale Polytechnique Algeria

Nor Ismah 

Universiteit Leiden Netherlands

### **Abstract**

This research departs from concerns about an environmental crisis that encompasses deforestation, land-use change, habitat loss, land grabbing, water contamination, and soil degradation that we have faced. Meanwhile, the urgency of an Islamic response to fight those conditions should be more than simple actions like a religious lecture, Friday sermon, or green fatwa for around 1.9 billion Muslim communities around the world. Therefore, this study aims to critically analyze the Sharia contribution today to improve environmental protection by re-Islamization of forest and land law in modern ways, ultimately, to prevent the development and utilization of land and forest resources from continuing to fall into the vicious circle of the past. As an Islamic environmental law research, this study used a multi-disciplinary approach, including historical approach, empirical approach, and conceptual approach; it also used a literature review method to synthesize research findings. This paper found that re-Islamized forests and land law could be an ongoing debate due to the differences of national and local legal characteristics that also depend on sharia position if it is an unequivocal discourse. Moreover, accommodating Sharia as an integral part of the state law shown a uniqueness and the flexibilities of Islamic doctrine and an affirmation of Muslim optimism to their faith of course a real contribution to involve in ecological right movement. On the other hand, considering the re-Islamization of forests



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and land law is an alternative source to enforce the ecological behaviours of the Muslim community to more pro-environment.

**KEYWORDS** *Environmental Law, Environmental Protection, Ecological Scarcity, Islamic Law, Sharia*

### **Abstrak**

Penelitian ini berangkat dari keprihatinan tentang krisis lingkungan yang meliputi deforestasi, perubahan penggunaan lahan, hilangnya habitat, perampasan tanah, pencemaran air, dan degradasi tanah yang kita hadapi. Sementara itu, urgensi respon Islam untuk melawan kondisi tersebut seharusnya lebih dari tindakan sederhana seperti ceramah agama, khutbah Jumat, atau fatwa hijau bagi sekitar 1,9 miliar komunitas Muslim di seluruh dunia. Oleh karena itu, penelitian ini bertujuan untuk menganalisis secara kritis kontribusi syariah saat ini untuk meningkatkan perlindungan lingkungan melalui re-islamisasi hukum hutan dan tanah secara modern, pada akhirnya, untuk mencegah pengembangan dan pemanfaatan sumber daya tanah dan hutan agar tidak terus jatuh ke dalam lingkaran setan. dari masa lalu. Sebagai penelitian hukum lingkungan Islam, penelitian ini menggunakan pendekatan multidisiplin, meliputi pendekatan historis, pendekatan empiris, dan pendekatan konseptual; itu juga menggunakan metode tinjauan literatur untuk mensintesis temuan penelitian. Tulisan ini menemukan bahwa re-islamisasi hukum hutan dan tanah dapat menjadi perdebatan yang berkelanjutan karena perbedaan karakteristik hukum nasional dan lokal yang juga bergantung pada posisi syariah jika menjadi wacana tegas. Apalagi, mengakomodasi Syariah sebagai bagian integral dari hukum negara menunjukkan keunikan dan fleksibilitas doktrin Islam dan penegasan optimisme umat Islam terhadap iman mereka tentu saja merupakan kontribusi nyata untuk terlibat dalam gerakan hak ekologis. Di sisi lain, mengingat re-islamisasi hukum hutan dan tanah merupakan sumber alternatif untuk menegakkan perilaku ekologis masyarakat muslim agar lebih pro lingkungan.

**KATA KUNCI** *Hukum Lingkungan, Hukum Islam, Kelangkaan Ekologis, Perlindungan Lingkungan, Syariah*

## **Introduction**

The Land is a commodity that all humans need. Human living needs are mostly obtained from the land. Through the land Human plant various

types of plants, access the water, and actively engage in social interaction on top of it.<sup>1</sup> Increases in human population, human consumption of natural resources, the rapid expansion of food crop, land use, deforestation, and industrialization drive the ecological especially, land scarcity. When land crisis increases, pervasive threat affects cultural diversity and biodiversity following by the losing of social-ecological systems and local cultural knowledge. Short-term cost can be identified but, a long-term effect of restoration is hard to perceive.

This collapse of the ecosystem function addresses the need to account for the progress of land law and its implementation.<sup>2</sup> In addition, the modern conception of land law is widely different in the principal legal systems. Therefore, re-Islamizing the land law is one of the available alternatives and relevant to land management. Islamic land law has a deeply historical context. Even though, not all the Islamic countries succeed in concerning to implement the Islamic value toward land issues but, Islamic principles, mechanisms, and procedures provide legitimacy for certain land interventions as well as long-term solutions.<sup>3</sup>

## Methods

This paper identifies some of the key Islamic principles, norms, and practices to support land law-making and its role in implementing the law. The purpose of this study is not to promote or give a privilege to the particular Islamic land law which exists beyond the world otherwise, to

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<sup>1</sup> Rokhmad, Abu. "Sengketa Tanah Kawasan Hutan dan Resolusinya dalam Perspektif Fiqh." *Walisongo: Jurnal Penelitian Sosial Keagamaan* 21, No. 1 (2013): 141-170.

<sup>2</sup> Rokhmad, Abu. "Sengketa Tanah Kawasan Hutan dan Resolusinya dalam Perspektif Fiqh." *Walisongo: Jurnal Penelitian Sosial Keagamaan* 21.1 (2013): 141-170; Sayın, Yiğit, et al. "Land law and limits on the right to property: historical, comparative and international analysis." *European Property Law Journal* 6, No. 1 (2017): 4-52.

<sup>3</sup> Siraj, Sait, & Britta Peters. *Islamic Principles and Land: Opportunities for Engagement*. (Nairobi: United Nations Human Settlements Programme UN-HABITAT, 2011), p. 6.

elaborate the numerous useful concepts in Islam which compatible for fight ecological scarcity.

## Discussion

### Current Condition of Land Degradation

Land is a fundamental resource for human and all of the living creature in earth. It provides those creatures all of they need and occupies a central place for their interaction. Because of its function, land have a critical role for human society, they access and manage it for their survival.<sup>4</sup> Because of human legacy on the land, their productivity force to the negative consequences.<sup>5</sup> Conflict is often occur in between human, human and animal behalf on their need on land. Land is not just mean as a soil but it contain aquatic basis like river, lake, and swamp, which exist on the land.<sup>6</sup> Therefore, land or soil degradation in this term is synonym. Kind of land degradation could be soil loss, soil erosion, large scale land movement, long term loss of natural vegetation, deterioration of the physical, chemical and biological or economic properties of soil. Land degradation, or the long-term loss of biomass or decline in land productivity, occurs in many parts of the world, with varying effects on ecosystems and human well-being.<sup>7</sup>

Furthermore, because of the broad spectrum of above problem, defining land degradation is necessary. Land degradation imply some of

<sup>4</sup> Ejigu, M. "Land, forests, insecurity and conflict." *International Forestry Review* 8, No. 1 (2006): 72-77.

<sup>5</sup> Nkonya, Ephraim, et al. "The economics of desertification, land degradation, and drought toward an integrated global assessment." *ZEF-Discussion Papers on Development Policy* 150 (2011). <https://doi.org/10.22004/ag.econ.109326>

<sup>6</sup> Jones, Robert J. A., and Luca Montanarella. "Land Degradation." *The JRC Enlargement Action, Contributions to the International Workshop Soil and Waste Unit Institute for Environment & Sustainability Joint Research Centre European Commission ISPRA*. Vol. 21020 (2003). <https://core.ac.uk/download/pdf/38617694.pdf>

<sup>7</sup> Adenle, Ademola A, et. al. "Key dimensions of land users' perceptions of land degradation and sustainable land management in Niger State, Nigeria." *Environmental Challenges* 8 (2022). <https://doi.org/10.1016/j.envc.2022.100544>

understanding of primarily decrease in either the lack of biological productivity or unuseful to human activities.<sup>8</sup> Land degradation also encompasses all negative changes in the capacity of the ecosystem to provide goods and services (including biological, economy, social, and cultural beneficiaries).<sup>9</sup> According to this definition degradation have implication on the how long the degradation could take a time. It can be in short term or long term.<sup>10</sup> The higher rate land degradation, the more dryer and arid the climate, the longer period the degradation happened.<sup>11</sup>

The fundamental factor that changes the condition of land is human action. Human can change land through day to day even week by week. People transform the geography, the function, and magnitude of land into the human landscape, form a annual forest to farm.<sup>12</sup> Human activity that push the degradation also include the over-cultivation of cropland, overgrazing of rangeland, deforestation, pollution and industrial causes, waterlogging and salinization of irrigated land.<sup>13</sup> In northern Pakistan for example, in the Murree Hills, the fatality of deforestation and overgrazing in Murree region has lose 2000 m woodland for the cultivation and its led to the soil degradation, erosion, flood, discontinuity of vegetation cover, and dominance of the plant that unpalatable to grazing animal.<sup>14</sup> Moreover, Canadian farmers which produce high-rate agricultural sector may fear on the unsustain productivity period because of the land degradation. Agricultural activity contain acidification, salinization, heaver

<sup>8</sup> Johnson, Douglas L., and Laurence A. Lewis. *Land Degradation: Creation and Destruction*. (Maryland USA: Rowman & Littlefield, 2007), p. 2.

<sup>9</sup> Wahyunto, Wahyunto & Dariah, Ai. Degradasi Lahan di Indonesia: Kondisi Existing, Karakteristik, dan Penyeragaman Definisi Mendukung Gerakan Menuju Satu Peta. *Jurnal Sumberdaya Lahan* 8. No. 2 (2014): 81-93. <https://doi.org/10.21082/jsdl.v8n2.2014.%p>

<sup>10</sup> Johnson, Douglas L., and Laurence A. Lewis.

<sup>11</sup> Imeson, Anton. *Desertification, Land Degradation and Sustainability*. (New Jersey USA: John Wiley & Sons, 2012), p. 155.

<sup>12</sup> Imeson, Anton, p. 163

<sup>13</sup> Stocking, Michael A., and Niamh Murnaghan. *A Handbook for the Field Assessment of Land Degradation*. (London: Routledge, 2013).

<sup>14</sup> Ellis, Stephen, David Taylor, and Khan Rass Masood. "Land Degradation in Northern Pakistan." *Geography* 78, No. 1 (1993): 84-87.

fertilization, and plant nutrient depletion has increased the wind erosion, water-borne, soil structural breakdown.<sup>15</sup>

In specific, Ian Coxhead and Sisira Jayasuriya arguing the rapid land degradation in the third world state primarily caused by soil erosion under the agricultural and socio-economy development spirit. Meanwhile, they claiming the hidden factor contributed to create serious land degradation is an absence of well-defined and enforced property right and law.<sup>16</sup> Southgate justify environmental degradation in the developing country is a complex and complicated problem to identify either to evaluate. Likewise, he acknowledge that agricultural holder (farmers, agricultural colonist, government, or public sector) work in the cycle of excessive deforestation with removing trees and other vegetation.<sup>17</sup>

As though land used of the people, for the people, by the people, the degradation land caused human life directly. The economic impacts of land degradation also still uncertain. Farmer have faced the loss agricultural productivity. Indeed, generally more human has losses of productive land.<sup>18</sup>

## Land and Forest Conflict

Today, Natural resources are major conflict drivers all over the world, particularly when they are poorly managed, distributed, or controlled.<sup>19</sup> Social distribution of resource access for the society extensively contested.

<sup>15</sup> Stonehouse, D. Peter, and Martin Bohl. "Land degradation issues in Canadian agriculture." *Canadian Public Policy/Analyse de Politiques* 16, No. 4 (1990): 418-431.

<sup>16</sup> Coxhead, Ian, and Sisira Jayasuriya. "Technical change in agriculture and land degradation in developing countries: a general equilibrium analysis." *Land Economics* 70, No. 1 (1994): 20-37.

<sup>17</sup> Southgate, Douglas. "The causes of land degradation along" spontaneously" expanding agricultural frontiers in the Third World." *Land Economics* 66, No. 1 (1990): 93-101.

<sup>18</sup> Zdruli, Pandi, et al., eds. *Land degradation and desertification: Assessment, mitigation and remediation*. (Dordrecht: Springer Netherlands, 2010).

<sup>19</sup> Halla, Tuulikki., and Laine, Jaana. "To cut or not to cut – emotions and forest conflicts in digital media." *Journal of Rural Studies* 94, (2022): 439-453. <https://doi.org/10.1016/j.jrurstud.2022.07.019>

The land and forest inequality of ownership<sup>20</sup> and acquisition is one of the central influence into a conflict. Cotula and Toulmin arguing competition on the land and forest essentially also linked into the high pressure of the population that increase the scarcity of the land and deforestation. It shall signed by the necessity of the food production including agricultural intensification and commodification.<sup>21</sup> Moreover, Boone state the political economy of the distributive politic in land and forest right of the people also potentially creates conflict more complicated.<sup>22</sup> In this case, Dixon explicitly stated that natural change in land and forest may contribute to acute conflict such terrorism, war, and trade rivalry.<sup>23</sup> Even, in recent time, in the global context, forest and land struggle persists.<sup>24</sup>

To solve the conflict, the international community give attention unless declare the importantly of the role of law within the society itself particularly, among the minority and victims to ensure the justice is accessible.<sup>25</sup> Furthermore, almost all of resolution came from the peace agreement and state commitment to establish the relevant law to ordinary people then they can collectively enfold the right to the land and forest also protecting them. The policies and strategies also come out to unsure sustainability, equitable use and secure resources to conserve land and

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<sup>20</sup> Coomes, Oliver T., Yoshito Takasaki, and Jeanine M. Rhemtulla. "Forests as landscapes of social inequality: tropical forest cover and land distribution among shifting cultivators." *Ecology and Society* 21, No. 3 (2016). <http://dx.doi.org/10.5751/ES-08684-210320>

<sup>21</sup> Cotula, Lorenzo, Camilla Toulmin, and Ced Hesse. *Land Tenure and Administration in Africa: Lessons of Experience and Emerging Issues*. (London: International Institute for Environment and Development, 2004), p. 14.

<sup>22</sup> Boone, Catherine. "Land Conflict and Distributive Politics in Kenya." *African Studies Review* 55, No. 1 (2012): 75-103.

<sup>23</sup> Homer-Dixon, Thomas F. "On the Threshold: Environmental Changes as Causes of Acute Conflict." *International Security* 16, No. 2 (1991): 76-116. <https://doi.org/10.2307/2539061>

<sup>24</sup> Simmons, Cynthia S. "The Political Economy of Land Conflict in the Eastern Brazilian Amazon." *Annals of the Association of American Geographers* 94, No. 1 (2004): 183-206.

<sup>25</sup> Carter, Jimmy. "Reconstructing the Rule of Law: Post-conflict Liberia". *Harvard International Review* 30, No. 3 (2008): 14-18. <https://www.jstor.org/stable/42763593>

people.<sup>26</sup> In fact, this ideal ideology is not perfectly implemented in the field.<sup>27</sup> The conflict resulted the winner and loser its means in a common knowledge that the competing actor usually came from people who have a big power to the people that have small scale power for example peasant, trans-boundary communities, corporate, and government.<sup>28</sup> Over the last decade, we have witnessed that the violation of the citizen on their right to the land and forest came from the political structure of power and obligation between government, elites, and rich.<sup>29</sup> A huge number of this political environment controlling the rule of law in the bias of law access of the people. This conflict become more numerous, deeper, and violent.

## **Witnessing Ecological Problem: Power and Hegemony through the Land Law**

Many legal positivists believe that law is major features of the nation-building history. In fact, the history of a nation's legal system can depict the story of its development over many years in what extend the function of law within community.<sup>30</sup> Ideally law and society are viewed as a continuum with equal interaction. For this dimension, law is a dependent variable alongside other social norms and cultural identities which also create mutual constitutive relations between state law and other normative orders.<sup>31</sup> Kinghan on his lifetime of commitment writing argue that law is important tool to create social justice especially in practice. He asserts that

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<sup>26</sup> Mongi, Hector John. "Addressing Land Degradation in Tanzania: Contemporary Issues Related to Policies and Strategies". *SSRN* September 23 (2012). <http://dx.doi.org/10.2139/ssrn.2150752>

<sup>27</sup> Jimmy Carter, p. 15.

<sup>28</sup> Zambakari, Christopher. "Land grab and institutional legacy of colonialism: The case of Sudan." *Consilience* 18 (2017): 193-204.

<sup>29</sup> Koopman, Jeanne. "Land grabs, government, peasant and civil society activism in the Senegal River Valley." *Review of African Political Economy* 39, No. 134 (2012): 655-664.

<sup>30</sup> Lukito, Ratno. *Legal Pluralism in Indonesia: Bridging the Unbridgeable*. (London: Routledge, 2012).

<sup>31</sup> Lukito, 2012.



law play a role in social justice legal practice if it has suitable connection between action, belief, and system.<sup>32</sup>

In recent story of dynamic Indonesian law making and enforcement could not separate either between political agenda, economic interaction, and bureaucratic elite influence.<sup>33</sup> Rosser and Curnow in their research for example reveal that much of academic research in forming access to justice in Indonesian court as one of legal resource to the people justice is highly characterized by corruption and political intervention.<sup>34</sup> In the same context, Eve Warbuton in his observation also found since the Indonesia's reform, political parties and public office has frequently controlled by the formal relationship with wealthy donors and business tycoons.<sup>35</sup> This patronage and clientelism framework positioning the rule of law, legal certainty, and justice at the disposal of political authority power.<sup>36</sup>

The UUPA (Undang-Undang Pokok Agraria/The Main Agrarian Law) is a general guideline as well as a policy principle in the framework of agrarian reform in Indonesia. Meanwhile, in terms of policy principles, UUPA has developed at least nine policy principles that can be used to provide operational guidance in agrarian reform. Nationalism, legal certainty and protection, anti-monopoly and anti-accumulation, distribution and redistribution, anti-extortion, productivity, sustainability, welfare, and affirmation are among these principles.<sup>37</sup>

Existing power and hegemony explicitly through the land role in explicit is far from a new phenomenon. This power can lead the hegemony

<sup>32</sup> Gordon, Faith, and Daniel Newman, eds. *Leading Works in Law and Social Justice*. (London, Routledge, 2021).

<sup>33</sup> McWilliam, Andrew. "Historical reflections on customary land rights in Indonesia." *The Asia Pacific Journal of Anthropology* 7, No. 1 (2006): 45-64.

<sup>34</sup> Rosser, Andrew, and Jayne Curnow. "Legal mobilisation and justice: Insights from the Constitutional Court case on international standard schools in Indonesia." *The Asia Pacific Journal of Anthropology* 15, No. 4 (2014): 302-318.

<sup>35</sup> Warburton, Eve. "The Business of Politics in Indonesia." *Inside Indonesia* 117 (2014).

<sup>36</sup> Bakker, Laurens, and Jaap Timmer. "Justice in Indonesia: The social life of a momentous concept." *The Asia Pacific Journal of Anthropology* 15, No. 4 (2014): 293-301.

<sup>37</sup> Hardiyanto, Barid. "Politics of land policies in Indonesia in the era of President Susilo Bambang Yudhoyono." *Land Use Policy* 101 (2021). <https://doi.org/10.1016/j.landusepol.2020.105134>.

party to make land dispossession from local smallholders, protected forest, and customary tenure possible. This process working in systemize structure, backed by legal and material support.<sup>38</sup> Sometime, it could be forced by the vision of country development. One of these examples is land acquisition for large-scale agricultural program by the government and entrepreneurs as facilitators.<sup>39</sup> Fisher observes the core idea of the land grab by the government policies today has same scheme on colonial policies in the past. The exploitative practices for many reasons have led to excessive land grab within society.<sup>40</sup>

## **Re-Islamizing land law: reshaping Islamic principle in response to ecological scarcity**

There was very limited research has been conducted on the complex and distinctive forms of land tenure and land rights found in Muslim societies.<sup>41</sup> The ultimate cause is because Muslim community live in a wide geographical spread. Even though more than 20% of the world population is Islamic believers, Islamic land law is not sufficiently documented and aligned with informal and statutory systems.<sup>42</sup> It is also difficult to detail it since the incredible diversity inside of the body of the Muslim law together with the lack of reliable and systematic data.<sup>43</sup> Meanwhile, in the historical

<sup>38</sup> Ito, Takeshi, Noer Fauzi Rachman, and Laksmi A. Savitri. "Power to make land dispossession acceptable: a policy discourse analysis of the Merauke Integrated Food and Energy Estate (MIFEE), Papua, Indonesia." *Journal of Peasant Studies* 41, No. 1 (2014): 29-50.

<sup>39</sup> Vel, J. A. C., and Stepanus Makambombu. "Access in land disputes arising in the context of the commercialization of agriculture in Sumba (Nusa Tenggara Timur)." *Van Vollenhoven Institute Working Papers* (2009).

<sup>40</sup> Fisher, Micah R., and Willem van der Muur. "Misleading icons of communal lands in Indonesia: Implications of adat forest recognition from a model site in Kajang, Sulawesi." *The Asia Pacific Journal of Anthropology* 21, No. 1 (2020): 55-76.

<sup>41</sup> Sait, Siraj & Hilary Lim. *Land, law and Islam: Property and Human Rights in the Muslim World*. (London, Zed Books, 2006).

<sup>42</sup> Siraj & Peters, 2011, p. 7.

<sup>43</sup> Sait & Lim, 2006, p. 6

tradition of Muslim community land ownership has been recognizing in the prophet Muhammad era.<sup>44</sup>

The recognition of the land control begins when Muslim land conquer occurred as at the time when the Clan of *Nadhir* betrayed their agreement with Muslims. Land as one of the spoils of war has possessed by the state which also possible to distribute to the *iqta'* (land reform institutionalization). *Iqta'* will operate the land to create financial support for social welfare.<sup>45</sup> In the fourth year of hijra, all the land as spoils of the war owned by the state but the usage of it was given to the native to manage and cultivate it in the sharing beneficial systems. This is one of the efforts to prevent the concentration of wealth in the hands of a few people.<sup>46</sup>

Nowadays, the dilapidated practice of land management and distribution in Muslim country has impacted ecological scarcity. Based on the index of economic freedom many of the Islamic states such as Tunisia, Afghanistan, Lebanon, Pakistan, Egypt, Bangladesh, and Iran have shown low rank on the property right and protection. In Iran, property right is either protected or rejected by the government. It is the result of un-independent of the supreme leader, corruption, and the legitimation the confiscation of the property of ethnic and religious minorities. Similarly, Egypt or Tunisia also faces endemic corruption at all levels of government also law enforcement, the impunity of high-level official and the court has politicized under the authoritarian government. This rotten management of land generates ecological scarcity as a result of social injustice, lack of awareness of environmental issues, and failing to understand the qur'anic message and prophetic tradition.<sup>47</sup>

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<sup>44</sup> Ridwan, Ridwan. "Land Ownership Reform in Islam." *Asian Social Science* 15, No. 2 (2019): 164-164.

<sup>45</sup> Ridwan, 2019, p. 167

<sup>46</sup> Ridwan, 2019, p. 168

<sup>47</sup> Ismail, Roslina, Jumadil Saputra, and Azlina Abdul Aziz. "Improving Environmental Performance of the Muslim World: Evidence from Affluent Countries". *International Journal of Energy Economics and Policy*, 9, (2019); 301-312. <https://doi.org/10.32479/ijeep.7788>

## 1. Islamic ethical concept to the land law issue

It was an old-fashioned issue when some the Islamic thinkers have been debating on land management. Some of them stated in the Islamic economic system, the land management was under capitalism or socialism control. Some the Islamic socialists argued that based on the Hadith of the Prophet, the principle of land ownership is belongs to God and humans were the only trustees that are allowed for welfare. This opinion emerged in the classical period and supported that land management and ownership in Islam is communalistic controlled by the state. Meanwhile, Islamic capitalism argued that sharia jurisprudence has not prevented the private property right to the land and it is already granted by God.

Based on the fact above, land law in several Muslim communities has no similarities and it should not be a rigid shape. Ridwan argues Muslim countries shared the nature of land management and ownership with a socialistic-religious dimension. It displayed a legal diversity system inside of the dynamic and the flexibility of land law in Islamic countries. It also equal with the popular term in Fiqh “*the changes of the Islamic law is flexible with the change of place, time, condition, and local tradition*”<sup>48</sup>. Even farther, it is derived from the *maslahah* theory which means something that brings goodness, benefits, and uses <sup>49</sup>.

Moreover, according to the Islamic ethical concept to the land law substance, it should be considered a certain principle:

**TABLE 1. Environmental Protection in Islamic perspective**

<b>Recommendation</b>	<b><i>Tashawuf</i> Concept</b>	<b>Fiqh Concept</b>	<b>Normative Foundation</b>
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<sup>48</sup> M. Ridwan. IMPLEMENTASI KAIDAH “PERUBAHAN HUKUM ISLAM SEBAB PERUBAHAN TEMPAT DAN WAKTU” PERSPEKTIF EKONOMI ISLAM. Profit : Jurnal Kajian Ekonomi Dan Perbankan Syariah, 2 (2018), 18–32. <https://doi.org/10.33650/profit.v2i2.557>

<sup>49</sup> M. Ridwan, 2018. p.23

Environmental pollution prohibition	Islamic ethics prohibits the destruction of all creatures on earth (including the environment).	Usually, environmental pollution is caused by the company or behaviour that brings to the actual harm to ecology (prohibit/haram)	QS. Al-A'raf [7]: 56 is the verse in the Qur'an that prohibit to destroying nature
		The exception occurs to the lower-level pollution compared with the <i>maslahat</i> that they will obtain.	The hadith of on the prohibition to defecate and urinate in any place
		The construction should be far from the human settlement and do not harm the other living creature The technological innovation should be reduced the impact of pollution	Al-Qawa'id Fiqhiyyah - Do not do actions (harm) that harm yourself and others - Disadvantage must be removed - <i>Taşarruf</i> (action) of the priest (government) towards the people must be connected with benefit
		The controlling function must be carried out by the government strictly so as not to cause harmful impacts.	- Fatwa of Al-Imam Ramli in his book about prohibition of environmental pollution by factory waste
		Land and everything that include in the land is a source of public facility (the <i>maslahat</i> and benefit must be)	
The prohibition to do the deforestation practice		Islamic jurisprudent prohibits deforestation	- The verse that prohibits: QS. Saba: 15-17 - Hadith

		practice because it can be resulted a damage and disasters that threaten living things.	prohibition of cutting down trees that interfere with the other interests
Encouraging to the greening and planting activity	<p>Doing good act to:</p> <ul style="list-style-type: none"> <li>- All creatures were created as a signal to know of God's power.</li> <li>- All things on earth and in heaven are in God.</li> <li>- According to the first Ulama (Salaf Shalih), Nature is a silent Mushaf while the Qur'an is the Mushaf that speaks, or creature as the visible Book</li> </ul>	<p>Islamic view and recommendation:</p> <ul style="list-style-type: none"> <li>- Getting a reward from God</li> <li>- Government has an authority to decide the conservation land</li> <li>- Islam commands landowners who are unable to till their own land to be tilled by others.</li> </ul>	<ul style="list-style-type: none"> <li>- Hadith from Jabir RA., he said that: "The friends among us already have excess land, so they say: "We lease it a third, a quarter and a half." Then the Prophet said: "Whoever has land, then he should plant it or give it to his brother, then if he is reluctant, then he should take care of the land."</li> <li>- The Prophet sallallaahu 'alaihi wasallam once established <i>hima</i> (Conservation area in Islam) in Naqī' while 'Umar established <i>hima</i> in As-Saraf and Ar Rabzah"</li> <li>- If the apocalypse is about to occur and you have</li> </ul>

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a plant seed in your hands, then if you can plant it before the doomsday actually occurs, do it.

- QS. Al-Baqarah [2]:163 is the verse in Al-Quran that describe about the creation of the heaven, the earth and everything in it is a sign of the greatness of Allah
- QS. Al-Isra' [17]:44 explaine that seven heavens, and the earth, and everyone in them praise to Allah.

Do not contain any kind of discriminations

- In the classification of land in Islam, the individual ownership (*iqta'*) or land in full ownership (*mulk*) is permittable. In the land is abandon or neglect state can repossess it.
  - Islam also protect the native or local people who have their land and property to
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- use to be managed
  - land allocation into the development agenda, public areas, and certain areas like mosque, road, or market should not disturb or create any harm
  - *Hima* (collective land-ownership system by the tribal economic structure) also protected by Islamic principle, others can not encroach upon it especially if the *hima* is traced to the poor people.<sup>50</sup>
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## 2. Islamic ideological ethics to the legal enforcement and land management

Islam has given serious attention to the issues of morality and the rise of legal enforcement. As mentioned before, many Islamic countries have faced many problems in land administration like democratic deficit and misuse of a limited resource. Thus, it is implied the need in seeking into the grass-root restoration especially, from the improvement through of the individual and stakeholder faith. Yusuf Al-Qardhawi declared that the fundamental factor that caused environmental damage is the result of moral decadence, bad faith, and false consciousness. Furthermore, Hallaq stated that its important to understand the moral cosmos in the Qur'anic

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<sup>50</sup> Jaria, Ainul Maidin. *Principles of Malaysian Land Law*. (Singapore, LexisNexis, 2008), pp608-620.



narrative. It is laying down on the divine of truth and justice (*haqq*), promotes good and suppresses evil (*al-amr bil-ma'rūf wal-nahy 'an al-munkar*), and does well as good-doers (*muslihun*). Humans for whatever their role on the earth must believe in God (*mu'min*), following the Qur'anic ethics which pervaded shari'a and constituted it. Every creature on the earth is created for humanity to enjoy and cherish, appreciate these gifts and blessing and not abuse them (*tughyān*).<sup>51</sup> In the further context, Immanuel Kant in his philosophy also reveal that to be rational is not influence people act to respect for the law but also need a moral motivation necessarily set upon our own humanity. The idea to create the law or legislate it should come from the recognition of the good value and morality together with humanity or rational nature given to a human.<sup>52</sup>

The formation of the legal system in Islamic law tradition essentially attributes with no single concept likewise the Islamic land law. It can be an evolution of a complete judiciary system or full elaboration of a positive legal doctrine. It is also a complex format in the legal school or the science of legal theory of fiqh. Either with or without the changes of Islamic law formation before, it should be in search of an ultimate truth of the God will (*sharia*).<sup>53</sup> Khaled Abou El-Fadl believes there is no single person or institution that may or can represent the Divine Will (*shari'a*) but, everyone is responsible for seeking and learning the way of God – the shari'ah or the truth. Wadud stated every adult man or woman is obligated to understand and implement the shari'ah (God's will) but it is not only through the textual indicator but together in ways to understand a complex

<sup>51</sup> Hallaq, Wael. *The Impossible State: Islam, politics, and Modernity's Moral Predicament*. (Columbia, Columbia University Press, 2012).

<sup>52</sup> Kant, Immanuel, and Jerome B. Schneewind. *Groundwork for the Metaphysics of Morals*. (London, Yale University Press, 2002). See also Anggraini, Gita. *Islam dan Agraria. Telaah Normatif dan Historis Perjuangan Islam dalam Merombak Ketidakadilan Agraria*. (Yogyakarta, STPN Press, 2016).

<sup>53</sup> Hallaq, 2012.

matrix of relationship that collateral to the text of Qur'an and all of the Islamic law source.<sup>54</sup>

Ultimately, the tawhidic paradigm is the principles factor in operating land management and land law transformation. Tawhid is cosmic harmony or true justice. It emphasizes the unity of all human creatures under Allah as the only one creature. Humans must realize that they are a part of the creature, equal as God creatures who has their own responsibility inside of the metaphysical and physical realities.<sup>55</sup> All the nature is interconnected under the God blueprint, humans as trustees (*khalifah*) have no right except to use (*tasharruf*), to protect, and forbidden to act unfairly toward anything created on this planet exploitation of natural resources, altering the life order of living things, and etc.<sup>56</sup>

Moreover, the distribution of the land and land regulation should promote the concept of *maqasid al-syari'ah* or *maqasid al-tasyri'*. Land law construction means an effort to attract benefit (*jalb al-amshalih*) and avoid damage (*daf'ul mafasid*),<sup>57</sup> mostly depart from the fairness distribution, solidarity (*takaf al-ijtima'*), and managing by the mutual interest (*haqq Allah wa haqq al-adamiy*).<sup>58</sup> Legislators and legal enforcement actors must consider with the implementation of land law do not expense other common interest and must comply the principle of *al-maslahah al-ammah*.<sup>59</sup> In short, the process of legal enforcement and land

<sup>54</sup> Wadud, Amina. *Inside the Gender Jihad: Women's Reform in Islam*. (New York, Simon and Schuster, 2013), p. 200.

<sup>55</sup> Wadud, 2013.

<sup>56</sup> Mirzal, Husnul, Muhammad Hasdiyani Wicaksono Putra, and Shally Nur Rasyida. "Land Acquisition in The Work Creation Law in The Perspective of Islamic Ownership Theory (An Analysis with the Concept of Istimlak and Milk al-Daulah)." *Ijtihad: Jurnal Hukum dan Ekonomi Islam* 15, No. 1 (2021).

<sup>57</sup> Komaruddin, Koko. "Fairness in the distribution of land ownership in Indonesia based on Islamic law perspective." *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 20, No. 2 (2020): 211-234.

<sup>58</sup> Komaruddin, 2020.

<sup>59</sup> Surono, Agus. "Conflict Management of Utilizing Forest Resources in Making the Rights of Local People in Partnership in Islamic Perspective." *International Journal of Civil Engineering and Technology* 9, No. 4 (2018).

law-making must involve the development of an effective culture of legal awareness in achieving the purpose of the law. Community as a whole should have higher awareness to work properly within society.<sup>60</sup>

## Conclusion

This study concluded that the purpose of understanding of re-Islamizing the land law in global context is not intended to promote the certain Islamic legal system which exists in some of the Islamic countries. Meanwhile, ecological problems rapidly change many sectors of life such like social inequality, war, political discourse, and human-animal conflict. The fact that the majority of the Islamic country has also struggled to face environmental scarcity as the result of the defective land law system must be seen as a reason to rebuild a new concept. Re-Islamizing the ethical and ideal ideological structure of land law or legal enforcement construction can lead to applying legal certainty and legal justice for humans and all living creatures.

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<sup>60</sup> Hejazziey, Djawahir. "Law Enforcement in Islam." *AHKAM: Jurnal Ilmu Syariah* 15, No. 1 (2015).

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