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Justice, Land, and Sharia: Conceptualizing Agrarian Courts in the Settlement of Land Ownership Disputes

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Abstract:

Agrarian disputes remain pervasive and complex, frequently involving violations of land rights, land grabbing, and overlapping claims. Such disputes often span civil, administrative, and even criminal dimensions, resulting in fragmented litigation before the General Courts and the State Administrative Courts. This fragmented adjudication has produced inconsistent and conflicting judicial decisions, thereby undermining legal certainty and justice in the land sector. These conditions underscore the urgency of establishing a specialized agrarian court with a clear institutional and procedural framework. This study aims to formulate a conceptual model of an agrarian court and to propose its future institutional mechanism in order to ensure legal certainty in the resolution of agrarian disputes. From the perspective of Islamic law, land ownership constitutes a protected right (*ḥifẓ al-māl*) that necessitates an effective and just dispute-resolution mechanism. This research employs a normative legal methodology using statutory, case, comparative, and conceptual approaches, supported by primary, secondary, and non-legal materials. The findings propose the Agrarian Court Concept based on the "3Ps" framework—Position, Procedure, and Professionalism—which emphasizes institutional clarity, specialized procedural rules, and competent adjudicators. This model is designed to prevent future disputes, harmonize judicial decisions, and resolve agrarian conflicts in a manner that promotes legal certainty, justice, and the

broader objectives of law, including the principle of enjoining good and preventing harm.

Keywords: agrarian Court; dispute; Islamic law.

Introduction

Indonesia is home to diverse cultures that give rise to various disputes.[1] Conflicts over natural, economic, social, or political resources can occur at any time, leading to more serious disputes.[2] A conflict, a situation in which two or more parties are faced with differing interests, will not develop into a dispute if the aggrieved party simply harbours feelings of dissatisfaction or concern.[3] On the contrary, a conflict becomes a dispute when the aggrieved party feels dissatisfied or concerned, either directly with the party considered the cause of the harm or with another party.[4] A dispute or conflict is essentially a manifestation of a difference and/or opposition between two or more parties.[5] Disputes can also develop within a social community, forming an opposition between individuals, groups, or organizations.[6]

Disputes fall into two categories: Social disputes (usually related to traditions, ethics, manners, and morals that exist and develop within a community) and legal disputes (disputes that entail legal consequences due to violations of positive legal rules arising from conflicting rights and obligations of a person).[7] In other words, a

[1] Ajidar Matsyah et al., "Cultural Continuity and Legal Adaptation: The Evolution of Suluh in AcehÔÇÖs Conflict Resolution System," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (2025): 101–10, https://doi.org/10.31958/juris.v24i1.13272; Muh Ikhsan et al., "Revitalization of Kalosara Value as a Model of Conflict Resolution Based on Local Wisdom in Tolaki Wolasi Community," *El-Usrah: Jurnal Hukum Keluarga* 8, no. 1 (2025): 486–506, https://doi.org/10.22373/bp04wr46.

[2] Misbahuddin Misbahuddin et al., "The Possibility of Social Conflict in the Momentum of General Elections in the Sociological Perspective of Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025): 63–82, https://doi.org/10.22373/sjhk.v9i1.22665; Musda Asmara et al., "Tabot Ritual in Islamic Law: Philosophical Reflections on Sunni and Shiite Harmonization," *AHKAM : Jurnal Ilmu Syariah* 24, no. 2 (2024): 251–62, https://doi.org/10.15408/ajis.v24i2.36285; Islamul Haq et al., "Unlocking The Potential of 'Kalosara': An Extensive Analysis of Adultery Instances Dispute Resolution in the Tolaki Tribe through the Lens of al-Ishlah Concept," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 1 (2024): 86–100, https://doi.org/10.30631/alrisalah.v24i1.1488.

[3] Rachmadi Usman, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan* (Citra Aditya Bakti, 2013), 3.

[4] Khairil Azmin Mokhtar, "Institutions and Mechanisms for Internal Conflict Resolution: Legal and Non-Legal Means in Resolving Dispute and Attaining Justice in Malaysia," *Jurnal Media Hukum* 23, no. 2 (2016): 171–85, https://doi.org/10.18196/jmh.2016.0078.171-185.

[5] Bambang Sutiyoso, *Penyelesaian sengketa bisnis* (Citra Media, 2006), 3.

[6] Laura Leonardi, "The Place of Disorder and the Transformation of Social Conflict," in *Landscape Conflicts*, ed. Karsten Berr et al. (Springer Fachmedien, 2024), https://doi.org/10.1007/978-3-658-43352-9_4.

[7] Hotnidah Nasution and Ahmad Rifqi Muchtar, "Negotiating Islamic Law: The Practice of Inheritance Distribution in Polygamous Marriages in Indonesian Islamic Courts," *Al-Manahij: Jurnal Kajian Hukum Islam*, June 12, 2024, 125–44, https://doi.org/10.24090/mnh.v18i1.10921; Nuraida Fitri Habi et al., "Prioritizing Restorative Justice in the Settlement of the Sumbang Besak Adultery Case in Babeko Village, Jambi," *El-Mashlahah* 14, no. 2 (2024): 343–60, https://doi.org/10.23971/el-mashlahah.v14i2.8030; Muhammad Irkham Firdaus et al., "Settlement of Sharia Economic Disputes: Efficiency of Implementation in Indonesian Religious Courts," *Justicia Islamica* 21, no. 2 (2024): 335–56, https://doi.org/10.21154/justicia.v21i2.9240.

dispute is a situation in which one party feels disadvantaged by another party, and this aggrieved party expresses this dissatisfaction to the second party. When two or more conflicting opinions are involved, a dispute can occur.[8] In this study, land disputes are the most common type of dispute. Land disputes are generally related to violations of rights or harm to the interests of other parties, which can take the form of encroachment or occupation of land under other parties' ownership,[9] relocation of land ownership boundary markers, misuse of land documents, or specific legal decisions to obtain or control land, and falsification of records to obtain rights to land or control the land of others.[10] In addition, land-related decisions issued by state administrative officials are found to be noncompliant with applicable laws and regulations, thereby harming the rights of others. These decisions include the ratification of the Minutes of Collection and Examination of Physical Data without the agreement of the interested parties, the recording of physical and legal data on land with the absence of legal certainty,[11] the issuance of certificates with questionable legal data (subject rights), and decrees granting or extending land rights that fail to meet the requirements. Such land disputes require litigation in court.[12]

From an Islamic perspective, what lies in the heavens and on earth, including land, is the property of Allah SWT. As the valid owner of all objects in the universe, including land, Allah SWT grants humans authority (*istikhlaf*) to manage His property in accordance with His provisions. The source of ownership (*aslul milki*) belongs to Allah SWT, and humans only have the right to utilise (*tasarruf*) it in a manner that pleases Allah SWT. Therefore, legally, every policy in the field of land must be implemented by applying the laws of Allah SWT in that policy. In Islam, private ownership is recognised and regulated, ensuring that private property is managed without sacrificing the common good. Everything must be based on the benefits for humanity[13]. In Islam, one way to obtain ownership rights is by opening up land (*Ihya al-Mawat*). Although not elaborated, Islam provides general provisions

[8] Nurnaningsih Amriani, *Mediasi: Alternatif Penyelesaian Sengketa Di Pengadilan* (Raja Grafindo Persada, 2012), 18.

[9] Prasetyo Aryo Dewandaru et al., "Penyelesaian Sengketa Tanah Terhadap Sertifikat Ganda Di Badan Pertanahan Nasional," *Notarius* 13, no. 1 (2020): 154–69, https://doi.org/10.14710/nts.v13i1.29170.

[10] Anggita Anggita, "Penyelesaian Sengketa Konflik Kepemilikan Tanah Dengan Pendekatan Litigasi Di Pengadilan Tata Usaha Negara," *Savana: Indonesian Journal of Natural Resources and Environmental Law* 1, no. 01 (2024): 24, https://doi.org/10.25134/SAVANA.V1I01.30; Muh Afif Mahfud et al., "Land Bank in Indonesia: Disoriented Authority, Overlapping Regulations and Injustice," *Jambura Law Review* 6, no. 2 (2024): 240–63, https://doi.org/10.33756/jlr.v6i2.24166; Rico J. R. Tambunan et al., "The Authority of Sub-District Heads in Revoking Land Rights for Personal Interests: Between Legality and Justice," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 2 (2025): 429–42, https://doi.org/10.29303/ius.v13i2.1675; Abdulmajeed Hassan Bello, "Islamic Law of Inheritance among the Yoruba of Southwest Nigeria: A Case Study of Dar Ul-Qadha (Arbitration Panel)," *Journal of Islamic Law* 5, no. 1 (2024): 44–61, https://doi.org/10.24260/jil.v5i1.2058.

[11] Rizky Anggita et al., "Tinjauan Yuridis Penerbitan Sertifikat Tanah (Studi Di Kantor Pertanahan Kabupaten Garut)," *Notarius* 14, no. 2 (2021): 711, https://doi.org/10.14710/NTS.V14I2.43799.

[12] Putu Diva Sukmawati, "Hukum Agraria Dalam Penyelesaian Sengketa Tanah Di Indonesia," *Jurnal Ilmu Hukum Sui Generis* 2, no. 2 (2022): 89–102.

[13] Ali Akbar, "Konsep Kepemilikan Dalam Islam," *Jurnal Ushuluddin* 18, no. 2 (2012): 124, https://doi.org/10.24014/JUSH.V18I2.704.

for obtaining these ownership rights. The reclamation of land through *Ihya al-Mawat* applies to anyone who revives unused land, thereby making it their property. However, the land will remain their property as long as it is appropriately managed for three consecutive years.[14]

In addition to providing benefits to the owner, land ownership in Islam also serves another function: creating benefits for society as a whole.[15] If the losses suffered by others exceed the losses borne by the owner, the owner's ownership rights may be limited to avoid losses to others. The population growth and increasing needs, coupled with limited land area and inequalities in the structure of land control, ownership, use, and utilization, as well as in other production resources, have led to the emergence of land conflicts, which are prevalent in several regions. Land law in Islam can be understood as Islamic rules relating to land, particularly those pertaining to *milkiyah* (ownership), *tasharuf* (management), and *tauzi'* (distribution) of land.[16]

As explained in Islam, land use must follow the law. In some cases, land use is prone to disputes. Since Islamic law has not been fully implemented in any statutes, the Islamic legal system must be subject to state law. However, the implementation of Islamic law can later serve as a guideline for judges to facilitate the resolution of land disputes. Disputes in the land sector, encompassing civil, administrative, and even criminal aspects, also affect settlement through court litigation, which involves the General Court and the State Administrative Court. However, these two courts may issue dissenting decisions. Historically, Indonesia once had a land court called the "Land Reform Court" between 1964 and 1970, when Law No. 21 of 1964 concerning Land Reform Courts was in effect. The term "Land Reform Court" was coined following the state's interest in establishing institutional instruments, particularly judicial ones, to oversee the implementation of the Indonesian Revolution, including in the area of land ownership and utilisation.[17] The Land Reform Court was intended to be one of the key institutional elements required to complement other key elements of the revolution, namely the Land Reform Law as a reflection of the political will of the legislature and the commitment of the executive (government) to execute the mandate of Land Reform. The Land Reform Court was authorised to resolve and decide all issues of land ownership and utilisation. Its scope of authority covers both civil land disputes and administrative violations, as well as criminal violations in the field of land, including those committed by members of the military, which had to be tried in the Land Reform Court.

The Land Reform Court served to prevent the recurrence of concentrated land ownership, the landlord system, and exploitative land cultivation relationships. Inequality in land ownership and control should not occur, as it will trigger social

[14] Ita Dwilestari, "Pemanfaatan Tanah Milik Negara Perspektif Ihya' Al-Mawat," *Rayah Al-Islam* 8, no. 3 (2024): 1652, https://doi.org/10.37274/RAIS.V8I3.1136.
[15] Nur Fadlilatul Choiriyah et al., "Tinjauan Hukum Islam Terhadap Ihya' Al-Mawat Atas Hak Dan Pemanfaatan Government Ground," *Al-Faruq: Jurnal Hukum Ekonomi Syariah Dan Hukum Islam* 1, no. 2 (2023): 104, https://doi.org/10.58518/AL-FARUQ.V1I2.1420.
[16] Hafidhul Umami and Lia Mar'atul Ula, "Pembuktian, Alat Bukti Dan Batasan Hilangnya Status Kepemilikan Tanah (Kadaluwarsa Tanah)," *JAS MERAH: Jurnal Hukum Dan Ahwal al-Syakhsiyyah* 1, no. 1 (2021): 46–53.
[17] Nurhasan Ismail, *Hukum agraria: dalam tantangan perubahan* (Setara Press, 2018).

and economic differentiation or polarisation between the rich and the poor. Such conditions will inevitably develop into social conflict. In this context, the Land Reform Court had to serve to seek material truth and justice, rather than formal justice. However, the New Order government did not allow the Land Reform Court to exist. A question then arises: what was the rationale behind the abolition of the Land Reform Court by Law No. 7 of 1970 concerning the Abolition of the Land Reform Court? On the contrary, this court aimed to maximise the prosperity of the people by preventing citizens from becoming landless. Since the abolition of the Land Reform Court, the number of land dispute cases has been growing. Based on data from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), conflicts and court cases regarding land remain high, with 9,000 cases as of October 2020.[18]

The courts under the judiciary exist to apply the law to guarantee legal certainty and instil a sense of justice in those seeking it, and strive to address problems to achieve simple, swift, and affordable justice, as stipulated in Article 4, paragraph (2) of Law No. 48 of 2009 concerning Judicial Authority. The Administrative Court has absolute competence/authority to adjudicate administrative disputes, as outlined in Article 47 of Law No. 5 of 1986 concerning the Administrative Court. According to Article 1, paragraph 4 of Law No. 5 of 1986, in conjunction with Law No. 9 of 2004 concerning Administrative Courts, an administrative dispute arises between individuals or civil law entities and administrative bodies or officials, both at the central and regional levels, as a consequence of the issuance of an administrative decision.

The general court has absolute jurisdiction to examine and decide on land disputes that involve civil aspects related to ownership rights or rights derived from ownership, claims, or civil rights, as stipulated in Article 50 of Law No. 2 of 1986 concerning General Courts. This does not accommodate the specificity of agrarian law and all its legal aspects. In addition, there is a legal vacuum (*Recht Vacuum*) regarding the Land/Agrarian Court. This can be seen in Article 1, paragraph (5) in conjunction with Article 8 of Law No. 49 of 2009 concerning General Courts, which allows for the establishment of Special Courts, particularly the differentiation/specialization within the General Court system, including (1) Juvenile Court, (2) Commercial Court, (3) Human Rights Court, (4) Corruption Court, (5) Industrial Relations Court, and (6) Fisheries Court. However, the law does not mention the Land/Agrarian Court, even though land disputes in Indonesia account for the most cases in the Supreme Court backlog. Given that this gap has created legal uncertainty, this study proposes a concept and form for establishing an Agrarian Court with absolute jurisdiction over land disputes.

Methods

This study is categorised as legal research, which provides an understanding of the problem of norms in the activities of dogmatic legal science. This study also

[18] Ardiansyah Fadli and Hilda B Alexander, "Konflik Pertanahan 9.000 Kasus, Pengamat Sarankan Pemerintah Bagi-bagi Tanah," KOMPAS.com, November 4, 2020, https://www.kompas.com/properti/read/2020/11/04/185030121/konflik-pertanahan-9000-kasus-pengamat-sarankan-pemerintah-bagi-bagi.

describes and formulates legal norms in the legislation, given the absence of rules governing the Agrarian Court's existence. Enforcing legal norms (judicial practice) is necessary, given the overlapping authority between the State Administrative Court and the District Court. This enforcement is intended as a guide in setting the procedural law that serves as the basis for establishing the Agrarian Court, which roughly corresponds to the procedural law currently in force.[19] Through this legal research, the researchers will systematically and thoroughly describe the rationale for the urgency of establishing an agrarian court institution to resolve land ownership disputes and achieve legal certainty.

In this study, researchers used four approaches: 1) a statutory approach (considering that the existence of the Agrarian Court is not regulated, it is necessary to examine all laws and regulations related to the concept to be made); 2) a case approach (the rising number of cases makes the existence of the Agrarian Court have real urgency); 3) a comparative approach (considering that many countries already have their own Agrarian Court, conceptually similar to the concept proposed); and 4) a conceptual approach (this approach is the basis for the establishment of the Agrarian Court). The types and sources of legal materials used in this study are secondary laws divided into three groups. First, primary legal materials, authoritative in nature, consist of legislation, official records, and court decisions,[20] as listed in the following: The 1945 Constitution of the Republic of Indonesia, Indonesian Civil Code, Law No. 5 of 1960 concerning Basic Agrarian Principles, Law No. 2 of 1986 concerning General Courts, Government Regulation No. 19 of 2021 concerning Land Acquisition, Law No. 21 of 1964 concerning Land Reform Courts. The secondary legal materials provide explanations of primary legal materials. These materials include books, newspapers/magazines, and scientific papers related to land. Third, non-legal sources guide primary and secondary legal sources, including law dictionaries, encyclopaedias, and bibliographies.

Results and Discussion

Formulating Agrarian Court Arrangements for Resolving Land Ownership Disputes in Development to Ensure Legal Certainty

Two fundamental aspects that highlight the theory of the birth of property rights are state property rights and individual property rights as legal persons (*corpus*).[21] The state is the highest landowner because it holds the legal sovereignty rights of the state (dominion). The state, therefore, has absolute authority and power to act as the absolute highest owner of land. The absolute authority and power to own land derive from the doctrine of state sovereignty (*dominion*), which automatically makes the

[19] I. Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum* (Prenada Media, 2016), 18.
[20] Peter Mahmud Marzuki, *Penelitian hukum* (Kencana, 2007), 181.
[21] Rai Mantili and Remigius Jumalan, "Eksistensi Teori Hak Milik Pribadi Dalam Kepemilikan Perseroan Terbatas (Dari Perspektif Sistem Kapitalisme Dan Sistem Ekonomi Pancasila)," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 5, no. 2 (2022): 251–69, https://doi.org/10.23920/acta.v5i2.929.

state the absolute owner of land within its territorial environment (*dominium*).[22] However, the state's ownership is not regulated by the law of property (*jus proprietatis*); its regulatory scope is limited to land owned by citizens of the state as legal personal property. As a consequence, the state, as a public legal entity with legal status as a person in the sense of 'corpus comitatus', serves as the highest authority holding the sovereign rights of the state. Its ownership rights are not subject to or regulated by the law of property (*jus proprietatis*); they are based on the state's position as a person, in the sense of *'corpus corporatum'*, namely as a legal entity exercising the executive power of state sovereignty. The state, then, has the right to own land and act in civil law, making its land ownership rights also subject to personal property law as a legal subject (*corpus*). This concept of state property rights continues to be adopted in the legal systems of modern countries to this day, including during the reign of the VOC and the Dutch East Indies in Indonesia, in which case the legal term 'State-owned land' (*landsdomein* - before 1925, and *staatsdomein* - after 1925) was introduced for the state in the sense of 'corpus comitatus'; as well as 'government-owned land' (*gouvernment grond*), for land ownership by the state in the sense of 'corpus corporatum', namely the State Government. Therefore, it is also referred to as 'Government land' (*Gouvernement Grond* - abbreviated as GG).

Meanwhile, the basic concept of land acquisition for public interest is carried out through deliberation that relies on the agreement of the landowner and the party seeking the land.[23] Before the enactment of Presidential Decree No. 55 of 1993, the term land acquisition was not known. The term referred to in the Minister of Home Affairs Regulation No. 15 of 1975 was "land acquisition". According to the Regulation of the Minister of Home Affairs No. 15 of 1975, land acquisition is to release the original relationship between the right holder/authority over the land by providing compensation. The procedure for land acquisition is set out in Presidential Regulation No. 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest. This regulation has been replaced several times, most recently by Government Regulation No. 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest. The land acquisition for public interest takes place through the following steps in chart 1.

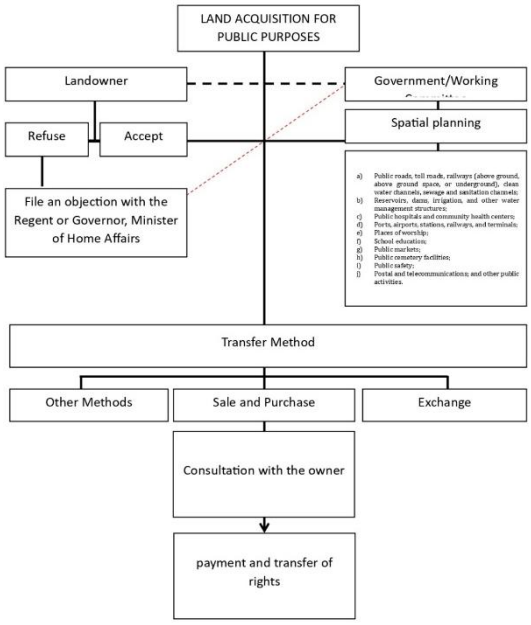
In cases of land acquisition for development or public interest, disputes or disagreements may arise between parties. Meanwhile, common agrarian/land conflicts concern land boundaries and compensation. Agrarian conflicts emerge when the land is used for public purposes. Such use is often preceded by notification. If problems arise regarding compensation, the feasibility of the compensation value for the land acquisition needs to be assessed. When residents affected by land acquisition refuse the compensation provided by the government or private legal entities, this case can be resolved through judicial channels. As mentioned earlier, Indonesia had a "Land Reform Court" between 1964 and 1970, following the enactment of Law No. 21/1964. The term "Land Reform Court" reflected the state's

[22] Heri Herdiansyah, "Paradoks Hak Menguasai Negara Dalam Hak Pengelolaan Atas Tanah Berdasarkan Putusan Peninjauan Kembali Mahkamah Agung Nomor 171 Pk/Tun/2016," *Indonesian Notary* 2, no. 3 (2020), https://scholarhub.ui.ac.id/notary/vol2/iss3/14.

[23] Agung Basuki Prasetyo, "Prinsip Pengadaan Tanah Bagi Kepentingan Umum," *Administrative Law and Governance Journal* 1, no. 3 (2018): 264, https://doi.org/10.14710/ALJ.V1I3.259-267.

interest in developing institutional instruments, especially the judiciary, to oversee the implementation of the Indonesian Revolution, including land tenure and utilisation.[24]

Chart 1. Flowchart of Land Acquisition for Public Interest



Source: compiled by the author

The Land Reform Court was initially intended as one of the main institutional elements required to complement the other main elements of the revolution. The existence of the Land Reform Law also reflected the legislature's political will and the executive's (government's) commitment to implementing the mandate of the Land Reform Law. This legal institution was authorised to resolve and decide all land tenure and utilisation issues, with its authority including adjudicating land civil disputes, administrative offences, and even land-related criminal offences, including those committed by members of the military. However, because the New Order government did not support the existence of the Land Reform Court, under Law No. 7 of 1970, the government abolished it. Politically, the existence of the Land Reform Court contradicted the interests of the communities supporting the New Order, considering that the Land Reform program would hamper the interests of large-scale land tenure.[25]

Juridically, the abolition of the Land Reform Court followed the condition that Law No. 21 of 1964 contradicts the 1945 Constitution after the assessment of the Interim People's Consultative Assembly (MPRS) outlined in the Decree (TAP) No. XIX/ MPRS/1966 juncto TAP No. XXXIX/MPRS/1968 juncto Law No. 6 of 1969 concerning the Declaration of the Inapplicability of Various Laws and PERPPU. Since then, land dispute conflicts have continued to rise. Based on data from the

[24] Ismail, *Hukum agraria*, 141.
[25] Ibid., 143.

Ministry of Agrarian Affairs and Spatial Planning / State Land Agency (ATR/BPN), land-related conflicts and court cases remain high, totalling 9,000 cases as of October 2020.[26]

To ensure legal certainty in resolving land ownership disputes for further land development, it is necessary to re-establish an agrarian court institution in Indonesia. However, in drafting the relevant regulation for the agrarian court institution in Indonesia, a legal comparison with other countries that already have such institutions is essential. This comparison can be seen as follows: first, Agrarian Court in Australia – Queensland. Agrarian courts, known in Australia as land courts, are found only in Queensland and New South Wales. The land court in Queensland operates under the Supreme Court of Queensland.[27] The land court, commonly referred to as the Land Court of Queensland, was established in 1897 following the issuance of the Land Act 1897, elaborating on what the land court is, the structure of the land court in Queensland, the jurisdiction possessed by the land court, and the authority that the land court in Queensland must exercise.[28]

As time and land conditions in Queensland have evolved, the regulations that govern the land courts have also changed. Currently, the Land Court Queensland is governed by the Land Court Act 2000. Under these regulations, the Queensland Land Court consists of a president (chief judge), appointed by the Governor in Council, member judges who are not members of the legislature, and judicial clerks who exercise judicial powers.[29] Land courts can be located anywhere in Queensland, as per Section 15 Division 3 Composition and appointments Land Court Act 2000, asserting that "The Land Court may be constituted in more than one place at the same time". The Land Court of Queensland prioritises liability or convenience in handling land disputes.[30] Section 7 Division 2 General Powers Land Court Act 2000 states that in exercising its jurisdiction, the land court is not bound by complex rules of evidence, but only requires the provision of information in such manner as it considers appropriate. The land court must act in accordance with justice, good conscience, and the substantial merits of the case, without regard to technicalities and other forms of law or court practice.

The implementation of this section is that many judicial matters differ from courts in other states to land courts in Queensland, in terms of the position of the land court, which can be located anywhere, adjusting where the land case is located, and also the establishment of the land appeal court (Land Appeal Court) in Queensland. The establishment of a land appeal court is based on where the appeal

[26] Fadli and Alexander, "Konflik Pertanahan 9.000 Kasus, Pengamat Sarankan Pemerintah Bagi-bagi Tanah."
[27] The Queensland Law Handbook, "Taking Action to Protect the Environment," The Queensland Law Handbook, 2023, https://queenslandlawhandbook.org.au/the-queensland-law-handbook/living-and-working-in-society/laws-affecting-the-environment/taking-action-to-protect-the-environment/.
[28] Queensland Courts, *Land Court of Queensland: Annual Report 2008-2009* (Land Court Queensland, 2009), 1–22.
[29] Madeline Taylor and Tina Hunter, *Agricultural Land Use and Natural Gas Extraction Conflicts: A Global Socio-Legal Perspective* (Routledge, 2018), 30.
[30] Carmel Macdonald, *Land Court of Queensland: Annual Report 2014-2015* (Land Court Queensland, 2015), 17.

decision is issued. A land appeal court is established by a judge and two members of the Supreme Court. The judge is nominated by the Chief Justice of the Supreme Court to act as a member of the land appeal court. When the decision to appeal comes from the Land Tribunal, the land appeal court is composed of a Supreme Court judge and two members, one of whom must be a member of the Land Tribunal to represent the court. If the handling of the case in the Land Appeal Court does not reach a fair decision, the party who appealed to the Land Appeal Court can appeal the decision of the Land Appeal Court to the court of appeal, referred to as the Supreme Court (Court of Appeal).

The following considerations, as described in Section 74 Part 4 Appeal to Court of Appeal Land Court Act 2000, can be referred to as the grounds for appeal to the Supreme Court (Court of Appeal): a) An error in law on the part of the Land Appeal Court: 1) The Land Appeal Court had no jurisdiction to make the decision; and 2) The Land Appeal Court exceeded its jurisdiction in making the decision In addition, a party wishing to appeal must obtain the approval of a judge of the Land Court of Appeal. Within 42 days after the decision of the Land Court of Appeal is issued, the applicant lodges an application to appeal the decision with the Supreme Court (Court of Appeal). In exercising its judicial powers, the Queensland Land Court prioritises Alternative Dispute Resolution (ADR) to resolve land disputes.

Second, Agrarian Court in Scotland. The Scottish Land Court is located in Edinburgh and has subject-matter jurisdiction over disputes between landlords and tenants relating to the tenancy of land, crofts, and farms. The Scottish Land Court was established on April 1, 1912, under section 3 of the Small Landholders (Scotland) Act 1911, which was amended by the Scottish Land Court Act 1993. The Scottish agrarian court serves as both a court of first instance and a court of appeal. The presidents of Scotland's agrarian courts are ranked as Senators of the College of Justice and must meet the same eligibility criteria as Senators. To be eligible for appointment as a senator, a person must have served at least five years as a chief constable or member of the police force, been an advocate for five years, a barrister with five years right of audience in the Court of First Instance or High Court, or have and have passed the civil law examination at least two years before application to become a Senator.

The President of the Court is accompanied by a Deputy President of the Court who is qualified by ability. The Scottish agrarian courts have agricultural members, referred to as practitioner members. These agricultural members do not have legal skills, but they do have significant agricultural skills. Agricultural members are placed in the divisional court, where they are assisted by the principal clerk as a legal assessor. However, the decision of the divisional court rests with the agricultural member. The courts hold hearings throughout Scotland, and cases can be heard before a divisional court (consisting of one agricultural member) or a full court (consisting of an agricultural member and a member with legal capacity). The Land Court in Scotland is a stand-alone judicial body subordinate to the Court of Sessions and the Supreme Court. The categories of cases handled in the Land Court are categorised as follows: Agricultural holdings - Tenancy; Agricultural holdings - Notice to quit; Agricultural holdings - Bad farm certificate; Agricultural holdings - Attraction of farm subsidies; Agricultural holdings - Other; Crofts - Status; Crofts -

Purchase; Crofts - Tenancy; Crofts - Resumption; Crofts – De-crofting directions - Appeal; Crofts - Other; Cottars (Farm Labour); and Procedures and Fees.

The legal comparison above highlights similarities and differences among the courts in Australia, Scotland, and Indonesia in resolving land disputes. The similarities are evident in the appeals that the losing party can apply at the first level of court. In terms of differences, while both Australia and Scotland have special judicial institutions for agrarian affairs under specific procedural law, Indonesia does not have a special agrarian court; instead, general courts settle land ownership disputes, and the state administrative court adjudicates land administration-related disputes. The urgency of establishing an agrarian court to resolve land ownership disputes for land development aligns with Mochtar Kusumaatmadja's view of development law: beyond being a complex of rules and principles that govern, it includes vital institutions and processes to realise the law in society.[31]

The Land Court Standing in Indonesia Context

Article 24(3) of the 1945 Constitution of the Republic of Indonesia states, "Other bodies whose functions are related to judicial power shall be regulated by law." This article regulates the existence of specialised judicial bodies. The establishment of such specialised judicial bodies must take into account the principles of benefit, efficiency, productivity and an integrated judicial system. This avoids the existence of specialised courts that exacerbate "jurisdictional disputes" due to various overlaps, thereby confusing *justitia* and creating legal uncertainty. The establishment of such specialised judicial bodies must be regulated by law in accordance with Article 27 of Law No. 48/2009 concerning Judicial Power. In this case, in addition to the establishment of special courts, there are also constitutional bodies or institutions related to judicial power, including prosecutors, advocates, and police.

Article 27, paragraph (1) of Law No. 48/2009 concerning Judicial Power states, "Special courts can only be established in one of the judicial circles under the Supreme Court as referred to in Article 25." The definition of "special" in Article 27, paragraph (1) of Law No. 48/2009 concerning Judicial Power is different from the definition of "special" in Law No. 14/1970, which refers to "special court" as a specificity in each judicial environment. Meanwhile, the specificity in Article 27, paragraph (1), of Law No. 48 of 2009 concerning Judicial Power is associated with the meaning of the term 'chamber' (*Raadkamer*). In the general judicial system, there are specialised courts for juvenile criminal cases, corruption cases, and human rights cases. Therefore, special courts, as mentioned in Article 27, paragraph (1), of Law No. 48/2009 concerning Judicial Power, are characterised by specialisation (differentiation/specialisation). The article also emphasises that special courts can be established only as part (a chamber) of a judicial environment. Juvenile courts, corruption courts, and human rights courts are within the general judicial environment.

Based on the provisions of Article 27, paragraph (1) jo Article 25 of Law No. 48/2009 concerning Judicial Power, special courts adjudicating land dispute resolution must be included in one of the judicial environments under the Supreme

[31] Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Alumni, 2002).

Court of the Republic of Indonesia, namely the general judicial scope or the special state administrative judicial scope. To determine this, it is necessary to understand the law, the characteristics of the land, and the issues that can be heard in the special court for land dispute resolution. Based on Article 33, paragraph (3) of the 1945 Constitution and Articles 2 & 3 of the Basic Agrarian Law (UUPA), although land is under public law, it has private characteristics. Land disputes are not limited to decrees issued by State Administrative officials. They can involve land ownership, land compensation, land acquisition, and falsification of land documents, among others. Given the complexity of land disputes, special land courts need to examine disputes over land ownership, the validity of land documents, and challenges to decisions of the National Land Agency. Specialised courts for land dispute resolution are more likely to be incorporated into the general judicial system under the Indonesian Supreme Court.

If included in the state administrative court, it is impossible to change the basis of the lawsuit stipulated in Law No. 5 of 1986 regarding who is sued and the object of the dispute. Law No. 5 of 1986 only regulates the examination of the lawsuit, particularly against the decision letter of state administrative officials. Therefore, the special court for land dispute resolution should be within the general judicial system. Based on these considerations, the standing of the special court for land dispute resolution is congruous with the 1945 Constitution and Law No. 48 of 2009 concerning Judicial Power. Moreover, its standing is within the general judicial environment under the Supreme Court of the Republic of Indonesia, as per Law No. 2 of 1986 concerning General Courts jo Law No. 8 of 2004 concerning Amendments to the Law on General Courts jo Article 27, paragraph (1) of Law No. 48 of 2009 concerning Judicial Power jo Law No. 14 of 1970 which culminates in the Supreme Court.

The Concept of the Procedural Law of the Land Court

The procedural law applicable in the General Court and the State Administrative Court has left room for land mafia, land speculators or parties who will reap benefits through covert extortion,[32] since the relevant rules of procedural law are absent. This unfair conduct can be detrimental to investors, society, and this country, as it hampers the utilisation of land to the greatest extent for the people's prosperity. Based on this, the procedural law in this context refers to the procedural law that proves material truth. This avoids the possibility of pretentious claims on the land by parties. No examination or decision is required for such claims with forged land documents.[33] Another matter concerns the procedure for filing a lawsuit. The procedure, according to the researcher, encompasses the following provisions: 1) a lawsuit over a land rights dispute is filed with the Chairman of the Agrarian Court; 2) the lawsuit is recorded by the clerk of the Agrarian Court in the court case register on the date the lawsuit is registered; 3) the clerk of the Agrarian Court issues a signed

[32] Dita Dwinata Garvania Tumangger and Budi Santoso, "Penegakan Hukum Terhadap Praktik Mafia Tanah Sebagai Pembuat Sertifikat Fiktif," *Notarius* 16, no. 2 (2023): 778, https://doi.org/10.14710/NTS.V16I2.41030.

[33] Iwan Permadi, "Kejahatan Mafia Tanah sebagai Ancaman Penguasaan Tanah yang Berkepastian Hukum," *Perspektif Hukum*, April 8, 2024, 1–25, https://doi.org/10.30649/ph.v24i1.250.

receipt on the same date as the registration; 4) the registrar of the Agrarian Court shall submit the petition to the Chairman of the Agrarian Court within a maximum period of two days as from the date the petition is registered. 5) Within a maximum of three days from the date the lawsuit is registered, the Agrarian Court shall set the day for hearing; 6) the bailiff shall make notification and summoning of the parties within a maximum of seven days as of the registration of the lawsuit; 7) the verdict on the lawsuit shall be pronounced at the latest 60 days since the lawsuit is registered; 8) if the time period cannot be met, with the approval of the Chief Justice of the Supreme Court, the time period may be extended for 30 days; 9) the decision must be pronounced in a session open to the public; 10) the bailiff shall deliver the verdict of the Agrarian Court to the parties at the latest 14 fourteen days as of the date of the verdict.

The Second Level of Legal Remedies at Cassation Against Agrarian Court Ruling

A cassation appeal against an Agrarian Court ruling can be made when a party does not accept the Agrarian Court's decision. Cassation takes place because there is no appeal from the Agrarian Court's decision in land disputes.[34] Therefore, cassation to the Supreme Court enables the party concerned to resubmit the case for adjudication, as the Agrarian Court's decision does not align with the applicable laws and regulations. With this cassation to the Supreme Court, the parties to the dispute can be assured of legal certainty regarding their legal standing in the dispute settlement. The cassation above is regulated based on the following provisions: 1) Only cassation may be filed against a decision of the Agrarian Court; 2) an application for cassation shall be filed no later than 14 (fourteen) days as of the date on which the Agrarian Court's decision is pronounced in open session or notified to the parties; 3) the request for cassation shall be registered at the Agrarian Court that has delivered the ruling by paying a fee, the amount of which shall be determined by the court; 4) the Registrar of the Agrarian Court shall register the request for cassation on the date the request is filed and give a signed receipt to the applicant for cassation on the same date as the registration; 5) the Registrar of the Agrarian Court shall deliver the petition for cassation to the respondent of the cassation within seven days after the petition for cassation is registered; 6) the petitioner for cassation shall submit a memorandum of cassation to the Agrarian Court clerk within 14 days from the date the petition for cassation is registered; 7) the Agrarian Court clerk shall deliver the cassation memorandum to the respondent of the cassation within seven days from the date the Agrarian Court clerk receives the cassation memorandum; 8) the respondent in cassation may file a counter-memory of cassation to the Agrarian Court clerk within a maximum period of 14 fourteen days from the date the respondent in cassation receives the counter-memory of cassation; 9) the Registrar of the Agrarian Court shall deliver the counter-memory of cassation to the petitioner of cassation within seven days at the latest from the time the Registrar of the Agrarian Court receives the counter-memory of cassation; 10) the Registrar of the Agrarian Court shall send the cassation case file to the Supreme Court within a maximum of

[34] Agus Budi Susilo, "Pembatasan Hak Kasasi Dan Konsekuensi Hukum Bagi Pencari Keadilan Dalam Sistem Peradilan Tata Usaha Negara Di Indonesia," *Jurnal Hukum Dan Peradilan* 5, no. 2 (2016): 299–318, https://doi.org/10.25216/jhp.5.2.2016.299-318.

14 fourteen days as of the period within which the respondent in cassation may file a counter-memory in cassation; 11) within seven days at the latest as of the date when the Supreme Court receives the request for cassation, the Supreme Court shall set a hearing day; 12) the cassation decision must be made at the latest 60 days from the date the cassation petition is received by the Supreme Court; 13) the Registrar of the Supreme Court shall deliver a copy of the cassation decision to the Registrar of the Agrarian Court within seven days as of the date the cassation decision is pronounced; 14) the bailiff of the Agrarian Court shall deliver a copy of the cassation decision to the petitioner of the cassation and the respondent of the cassation within seven days at the latest as of the date the clerk of the Agrarian Court receives the cassation decision.

Discovery of Material Truth in Agrarian Court

The prevailing doctrine about the civil justice process is that it is intended to reveal formal truth.[35] The process of resolving land cases as part of civil justice is considered to be subject to the doctrine of finding formal truth in its entirety. Yet, if examined under the Basic Agrarian Law (UUPA) and its implementing regulations, as material law in the land sector, there are demands that judges also apply the doctrine of material truth in this context. However, these demands are not widely realised by judges, or not many judges understand and implement them. As a consequence, their rulings in many land cases are problematic because they cannot be enforced.[36] In the process of finding the formal truth, judges are sufficiently based only on the facts or evidence submitted by the parties to the court.[37] In this case, the judge is in a passive state, not necessarily attempting to prove the validity or falsity of the facts or evidence submitted by the parties. The judge is not required to conduct a hearing at the location to find the truth of the actual conditions, nor should the judge inspect the place of the object of dispute to discover the facts.

As long as the facts or evidence submitted have met the criteria specified in the legislation, especially Book IV of the Civil Code, the judge can decide on a provision for the settlement of land cases. Conversely, in the process of discovering material truth, basing such a case only on the information, facts or evidence submitted by the parties is inadequate. Judges are required to actively try to prove the truth of the information, facts or evidence available. If the case examination process requires a location hearing or an examination at the place of the object of dispute or conflict, the demand must be carried out to establish the factual truth. If necessary, laboratory tests can be performed on the evidence. In the process of finding material truth, the judge should be able to identify the true source of the dispute or conflict and use it as

[35] Muhammad Irfan Luthfi Damanik and Fauziah Lubis, "Arti Pentingnya Pembuktian Dalam Proses Penemuan Hukum Di Peradilan Perdata," *Judge : Jurnal Hukum* 5, no. 02 (2024): 74–81, https://doi.org/10.54209/judge.v5i02.568.

[36] Disriani Latifah Soroinda and Anandri Annisa Rininta Soroinda Nasution, "Kekuatan Pembuktian Alat Bukti Elektronik Dalam Hukum Acara Perdata," *Jurnal Hukum & Pembangunan* 52, no. 2 (2022): 384–405.

[37] Tata Wijayanta et al., "Penerapan Prinsip Hakim Pasif Dan Aktif Serta Relevansinya Terhadap Konsep Kebenaran Formal," *Mimbar Hukum* 22, no. 3 (2010): 572–87, https://doi.org/10.22146/jmh.16243.

the basis for a decision that adequately addresses the main factor causing land cases. Many aspects regarding land cases require material proof.[38]

The veracity of land ownership documents that are equally owned by the litigants cannot be based solely on the testimony or facts submitted by the parties and what the judge believes. Document testing must be conducted through laboratory tests to assess validity or falsity, or to determine the applicable ownership documents. Other aspects that require field examination or trial at the place of the object of the case are as follows: assessing the factual condition of the land that is the object of the case, assessing the implementation of obligations by the parties to the case, assessing and determining the subject responsible for the intensity and effectiveness of land control and utilisation, and assessing the occurrence of land abandonment by one of the parties.[39]

Active Agrarian Court Judge

Most common general principles, well known among practitioners and academics, hold that civil law is based solely on the principle of passive judges, because private law regulates interests between individuals with distinct boundaries. Therefore, it is logical that judges adopt a passive attitude, both when waiting for cases to be submitted to them and when determining the boundaries of the case. Only the justice-seeking parties know the objectives they want to achieve in their settlements.[40] The primary duties of judges are to receive, examine, hear and resolve every case submitted to them, and they are obliged to assist justice seekers and try to address all obstacles to achieve a simple, swift, and affordable justice-seeking process. Judges in resolving civil cases are obliged to uphold the law and justice. Judges are responsible for adjudicating cases according to the law, ensuring fair adjudication and controlling arbitrariness in court decisions. Meanwhile, every judge's decision must be considered correct and respected (*res judicata provaritate habitur*). The judge's task in a civil case is to determine whether a legal relationship, as the basis for a lawsuit, exists.

Professional Judges (Ad-Hoc Judge and Special Judge of the Agrarian Court)

The establishment of the Agrarian Court within the general judicial framework, alongside labour and commercial courts, is a practical step to ensure simple, swift, and affordable land dispute settlement and fair court decisions that accurately resolve the dispute's underlying cause. In the researcher's view, what is vital for guaranteeing the professionalism of Agrarian Court judges is the presence of ad hoc judges with expertise in other fields related to land, such as land appraisal. Moreover, specialised agrarian court judges are professional judges who demonstrate integrity and are

[38] Disriani Latifah Soroinda and Anandri Annisa Rininta Soroinda Nasution, "Kekuatan Pembuktian Alat Bukti Elektronik Dalam Hukum Acara Perdata," *Jurnal Hukum & Pembangunan* 52, no. 2 (2022): 384–405.

[39] Nisa Amalina Adlina, "Pemeriksaan Setempat (Descente) Sebagai Pengetahuan Hakim Dalam Hukum Pembuktian Perkara Perdata," *Wasaka Hukum* 11, no. 2 (2023): 84–85.

[40] Nely Sama Kamalia, "Asas Pasif Dan Aktif Hakim Perdata Serta Relevansinya Dalam Konsep Kebenaran Formal," March 17, 2021, https://pa-rumbia.go.id/berita-seputar-peradilan/364-asas-pasif-dan-aktif-hakim-perdata-serta-relevansinya-dalam-konsep-kebenaran-formal.

recruited through a professional recruitment program. The selected judges are graduates of law education who study land law from the beginning and then join a higher education program to specialise in land law and related legal issues.[41]

Land Ownership from an Islamic Perspective

Basically, the Qur'an stipulates that human rights to land are limited to management, cultivation, and ownership of its products. This is because the valid owner of land is Allah SWT, while human ownership is not ultimate, but rather *majazi*, and not absolute. Therefore, at the time of the Prophet, the first priority in land ownership was in the hands of the government. This ownership could then be transferred to individuals. The government has the authority to grant, limit, or take over land ownership in accordance with the community's needs and interests. Ownership is a familiar concept and a basic need in human life. Friction and conflicts arising from property rights are common. Apart from being an object associated with a person, property can also be understood as something owned.[42] For example, when it is said "the land is his", it means that the land is something one owns. Islam recognises not only individual ownership, but also collective or community ownership, as well as ownership under the government or state. Allah SWT is the absolute owner of every object on earth, while human ownership is relative, limited to management and utilisation in compliance with His provisions.

In acquiring property rights and using them, a person is not permitted to violate the limits set by Sharia or to harm the rights and interests of others. The government or the leader is responsible for warning and sanctioning the person when such violations happen. Islam gives individuals the freedom to manage their property and conduct activities. However, in certain situations, Islam authorises the leader or government to intervene in people's ownership. The government or state has the right to intervene in ownership only when a person, entitled to the property rights and to use them, has violated Sharia provisions, infringed public interest, and caused harm to others. This is because basically, Allah obliges His people to do *Amar Ma'ruf Nahi Mungkar* (enforcing what is right and forbidding what is wrong). A land right can be transferred from the right holder as a legal subject to another party through deliberate legal action, with the aim that the other party acquires the right to the transferred land.[43] This then puts the government in a critical position of establishing the Agrarian Court that reflects the practice of *Amar Ma'ruf Nahi Mungkar*.

Given that in Islamic rules, the existence of property rights to land is highly valued, especially if the ownership is a perfect property right (*Milk al-Tam*), meaning that they are the ownership of objects and their benefits. This ownership right gives the owner full power to use or manage the object, making it impossible for other people or the government to intervene. Basically, a person's property rights over land

[41] Ibid.
[42] Mohammad Muhibbin, "The Concept Of Land Ownership In The Perspective Of Islamic Law," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 17, no. 01 (2017): 61–74, https://doi.org/10.30631/alrisalah.v17i01.25.
[43] Annisa Berliani et al., "Pemberian Ganti Kerugian Atas Pembebasan Tanah Untuk Kepentingan Umum Di Indonesia Dalam Perspektif Keadilan," *Collegium Studiosum Journal* 7, no. 1 (2024): 253–71, https://doi.org/10.56301/csj.v7i1.1338.

hold a social function. This means that land owned by individuals or legal entities not only functions for the benefit of the owner, but also has a social role. The use of land must benefit the owner, the community, and the state. Thus, land has a dual function: as a social asset that fosters social unity, and as a capital asset necessary for development.[44]

Although Islamic law does not provide detailed, comprehensive rules regarding land systems, Islam provides a general overview of land ownership and its use for the common good. Land management in Islam can be seen in the practices of the Prophet and the Companions in their government. Development and land provision are inextricable, as land is one of the primary factors in implementing development, particularly in urban areas. The main problem is that the needs for land, housing, and business premises, among others, always increase, but the areas of land do not.[45]

However, all government interventions must be based on the public good. When a land dispute arises, the existence of a special court is paramount, given the common overlap in authority between the District Court and the State Administrative Court. In practice, the two courts have the authority to decide land disputes. This implies that the state alone cannot address the existing problem, making the goal of *Amar Ma'ruf nahi mungkar* not fully achieved. In this context, the role of the state is not limited to the establishment of the court; it is responsible for the acquisition of land owned by individuals into state land for reasonable grounds, among others: first, the revocation of ownership is to realise benefits for the community, such as the transfer of property rights to land for the construction or widening of highways, as well as the expansion of places of worship that are no longer able to accommodate larger numbers of worshipers. In Islam, a person can lose their land rights because: (1) The owner has abandoned the land or has not been cultivated for three consecutive years; (2) The land is cultivated by someone other than the owner; and (3) of public interest.[46]

There are several grounds used to revoke land rights in the public interest, which also occurred during the time of the Prophet and the Companions: (1) When the Prophet built a mosque, he revoked the rights to land owned by the surrounding community for the construction site, providing compensation in the form of property equal to the value of the land, although the landowner released it free of charge; (2) Caliph Umar ibn Khattab and other rulers, when expanding the Prophet's mosque in Medina, evicted residents and revoked land rights in the surrounding community, paying compensation to those whose rights were revoked; and (3) In certain circumstances, the right to land conflicts with a greater and more pressing public interest, as in Umar's actions against Najran and Fadak to expand the Messenger's mosque and address other matters of public interest.

Therefore, the state cannot take coercive action, let alone an unjust taking. Such conduct is prohibited according to the words of Allah in QS. An-Nisa/4: 29: "O you

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[44] Djoni Sumardi Gozali, *Hukum Pengadaan Tanah, Asas Kesepakatan Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum* (UII Press, 2018), https://repo-dosen.ulm.ac.id/handle/123456789/9031.

[45] Nurjanah, "Redefensi Terhadap Pengaturan Hak Milik Atas Tanah," *Jurisprudentie* 3, no. 2 (2016): 152.

[46] Abdul Hafiz Sairazi et al., "Revitalizing Abandoned Land: Sheikh Muhammad Arshad Al-Banjari's Ihyā' al-Mawāt as a Pesantren Economic Model in 18th Century Banjarese Society," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 2 (2024): 258–70, https://doi.org/10.18592/sjhp.v24i2.13135.

who have believed, do not eat of each other's property by means of unlawful means, except by way of a mutual trade between you. And do not kill yourselves; surely Allah is Most Merciful to you."Islam does not allow the taking of other people's property without the consent or willingness of the owner. This is because private property in Islam is highly respected, valued and protected. The prohibition of wronging a piece of land is also stated in the Prophet's hadith: Abu Al Yaman reported to us Shu'aib from Az Zuhriy said, Tholhah bin 'Abdullah reported to me that 'Abdur-Rahmaan bin 'Amr bin Sahal reported to him that Sa'id bin Zayd (may Allah be pleased with him) said, I heard the Messenger of Allah (peace and blessings of Allah be upon him) say: "Whoever has wronged a piece of land (on the face of this earth) then later he will be burdened (hung around his neck) the land of the seven earths."

From the description above, it can be seen that the purpose of the law is to protect the benefits of humankind, upholding social values such as justice, brotherhood, solidarity, freedom, and nobility. Indonesia is a religious nation with the largest Muslim population. It is essential to pay attention to Islamic values regarding land ownership and utilisation as outlined in the Qur'an and Hadith, to ensure that the exercise of rights fulfils a sense of justice.[47] Regulating the agrarian court in resolving land ownership disputes for development is crucial to achieve legal certainty in the process of resolving disputes over land and preventing according to the concept of *Amar Ma'ruf Nahi Mungkar*.

Conclusion

Establishing an agrarian court has its urgency, given the increasing number of land disputes. This judicial body is vital to defending land ownership rights, as in line with the Prophet's hadith that prohibits taking other people's land. This provision is also consistent with the applicable law, which outlines the mechanism for defending property rights over land. These two laws serve the same purpose: Islamic Law encourages *Amar Ma'ruf Nahi Mungkar,* and the applicable law prevents and resolves land disputes. These purposes, then, can be summarised in three concepts: Position, Procedural, and Professional (3Ps). First, the Agrarian Court is positioned as a special court within the General Court. Second, procedurally, the Agrarian Court is a special court within the General Judicial System. Furthermore, still in a procedural scope, the position of the Agrarian Court is divided into four: 1) the period of trial in the Agrarian Court, which is determined by the decision on the lawsuit, must be

[47] Huzaimah Al-Anshori et al., "Clarifying Heirs' Rights in Indonesian Waqf Law: Toward Stronger Governance and Conflict Prevention," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 2 (2025): 529–53, https://doi.org/10.19109/nurani.v25i2.30356; Joko Budi Darmawan et al., "Incorporating Islah Principles into Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values," *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 269–94, https://doi.org/10.32332/milrev.v4i1.10435; Ummi Maskanah et al., "Application of the Principle of Justice in Non-Adjudicative Settlement of Banking Disputes from the Perspective of Islamic Law," *Jurisdictie: Jurnal Hukum Dan Syariah* 15, no. 1 (2024): 207–44, https://doi.org/10.18860/j.v15i1.25411; Hani Sholihah et al., "Reinterpretation of Justice in Islamic Inheritance Rights Based on Gender," *Al-'Adalah* 21, no. 1 (2024): 101–24, https://doi.org/10.24042/adalah.v21i1.21256; Bello, "Islamic Law of Inheritance among the Yoruba of Southwest Nigeria."

pronounced no later than 60 days after the lawsuit is registered; 2) cassation appeal against the Agrarian Court's decision can be made if there are parties who do not accept the Agrarian Court's decision, so that in the settlement of land disputes, there is no appeal in the Agrarian Court; 3) in the scope of the discovery of material truth, the procedural law in the special court for land dispute settlement to use is the procedural law that adheres to proving material truth, not the formal one; 4) the Agrarian Court judges are active, meaning that judges do not necessarily believe in the truth of an evidence or simply accept the rebuttal of the evidence. Fourth, professional, ad-hoc judges who have expertise in other fields but are still related to land, such as those who have expertise as land appraisers, and the selected special judges of the Agrarian Court are graduates of law education who have studied land law and continue to higher education of law to an in-depth professional understanding and master land law and other legal issues while being committed to the practice of *Amar ma'ruf Nahi mungkar*. However, this research only reaches the stage of concept formation, which still needs to be followed up with practical trials to determine whether this concept is appropriate for full use or requires some changes. The focus of this study is limited to the establishment of agrarian courts, without addressing the procedural law that will be used.

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