

THE DECONSTRUCTION OF NAHDLATUL ULAMA ACTIVISTS AGAINST THE CONCEPT OF AGRARIAN REFORM BASED ON FIQH OF PRIORITIES

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Abstract

After several years of suspension, agrarian reform was re-implemented as a way to achieve agrarian justice. This policy was stipulated in the Presidential Regulation Number 86 of 2018 concerning the Implementation of Agrarian Reform which is framed in the Agrarian Reform and Social Forestry (RAPS). However, many groups, mainly the Nahdlatul Ulama (NU) with their strong activism in the agrarian struggle, deeply criticized this policy. This research will examine how NU activists deconstruct the concept of agrarian reform in the RAPS policy using the priority fiqh theory. Fiqh of priorities was initiated to consider the implementation of charity acts or policies deserving the priority of concern based on Shariah principles. This study applied empirical and normative legal research by interviewing NU activists, who paid a specific concern in the agrarian sector, and by conducting a literature review of the results of NU's ijtihad regarding agrarian reform. The result of this study indicates that agrarian reform in the RAPS policy has not fulfilled the priority fiqh principles. This article contributes to the accuracy of the concept and implementation of agrarian reform in Indonesia which is more just in accordance with the scale of priorities needed to achieve the goals of agrarian reform.

Setelah bertahun-tahun ditangguhkan, reforma agraria kembali diterapkan sebagai salah satu cara untuk mewujudkan keadilan di bidang agraria. Kebijakan ini

ditetapkan dalam Peraturan Presiden Nomor 86 Tahun 2018 tentang Pelaksanaan Reforma Agraria yang dibingkai dalam kebijakan Reforma Agraria dan Pergutanan Sosial (RAPS). Tetapi, kebijakan reforma agraria dalam RAPS dikritik banyak kalangan, salah satunya dari kalangan Nahdlatul Ulama (NU) yang aktif dalam perjuangan agraria. Penelitian ini akan mengkaji bagaimana dekonstruksi aktivis NU terhadap konsep reforma agraria dalam kebijakan RAPS dengan menggunakan teori fikih prioritas. Fikih prioritas merupakan salah satu teori dalam fikih kontemporer yang digagas untuk mempertimbangkan pelaksanaan amal atau kebijakan yang perlu diprioritaskan berdasarkan kaidah-kaidah syariat. Metode penelitian yang digunakan yaitu penelitian hukum empiris dan normatif, dengan mewawancarai para aktivis NU concern di bidang agraria serta kajian literatur terhadap hasil ijtihad NU mengenai reforma agraria. Hasil penelitian ini menunjukkan bahwa reforma agraria dalam kebijakan RAPS belum memenuhi kaidah fikih prioritas. Artikel ini berkontribusi untuk mengakurasi konsep dan implementasi reforma agraria di Indonesia yang lebih adil sesuai dengan skala prioritas yang dibutuhkan untuk menggapai tujuan reforma agraria.

Keywords: *Agrarian Reform, Fiqh of Priorities, Nahdlatul Ulama*

Introduction

After several years of suspension, agrarian reform was re-implemented as a way to achieve agrarian justice. This policy was stipulated in the 2015-2019 National Medium-Term Development Plan (RPJMN). The 2020-2024 RPJMN was strengthened under Presidential Regulation Number 86 of 2018 concerning the Implementation of Agrarian Reform and was contained in the Agrarian Reform and Social Forestry (RAPS). This policy finds its point of relevance in the midst of unequal land tenure in Indonesia. Until 2019, the registered land ownership in 31 provinces in Indonesia indicated an extremely high inequality with a Gini index of 0.59-0.88.¹ On this basis, many groups, mainly the Nahdlatul Ulama (NU) with their strong activism in the agrarian struggle, deeply criticized the existing agrarian reform policy in the RAPS.² As one of the largest religious

1 Tim Penyusun, "Laporan Akhir Penelitian Ketimpangan Penguasaan Dan Pemilikan Tanah: Analisis Di Tingkat Wilayah Dan Rumah Tangga Petani" (Pusat Penelitian dan Pengembangan Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional, 2019), 136.

2 Konsorsium Pembaruan Agraria, "Masa Depan Reforma Agraria Melampaui Tahun Politik: Catatan Akhir Tahun 2018," 2018; Dessy Ghea Herrayani, Lucky Faradila Soraya, and Oemar Moechtar, "Eksistensi Hak Komunal Masyarakat Hukum Adat Dalam Kebijakan Penataan Aset Reforma Agraria," *Jurnal Kertha Patrika*, 2019; Ahmad Nashih Luthfi, "Reforma Kelembagaan Dalam Kebijakan Reforma Agraria Era Joko Widodo-Jusuf Kalla [Institutional Reform in the Joko Widodo-Jusuf Kalla Era of Agrarian Reform Policy]," *Jurnal Bhumi* 4, no. 2 (2018): 153; Arsan Nurrokhman Nurrokhman, "Quo Vadis Indonesian Agrarian Reform: Implementation of UUPA in the President Regulation No. 86 of 2018," *BHUMI: Jurnal Agraria Dan Pertanahan* 5, no. 3 (2019): 19–24, <https://doi.org/10.31292/jb.v5i3.385>; Roy Murtadho, "Kritik Ekonomi-Politik RAPS," *Prisma* 38, no. 3 (2018): 117–31.

organizations in Indonesia, NU held that the policy was conceptually flawed. In addition to the inaccurate target address of land tenure inequality as the main problem in terms of the object of agrarian reform, the agrarian reform program also failed to target the groups most in need.

Many studies have addressed the pivotal role of NU in the agrarian struggle, both at the structural level and at the cultural level. Among the studies examining the role of structural NU in fighting for agrarian justice were those carried out by Shohibuddin.³ Shohibuddin highlighted the shift in NU's agrarian *ijtihad* at the NU Syuriah Executive Conference in Jakarta in 1961 with the results of the National Alim Ulama Conference, Mataram 2017. In his other study⁴, Shohib explained the differences in NU's struggle to realize religious justice in the period before and after 1965. In this study, Shohib also tabulated 69 decisions of various Nahdlatul Ulama National Forums regarding agrarian issues from 1926 to 2017. Another research on NU's structural movement in the agrarian struggle was conducted by Luthfi. In his study of the Nahdlatul Ulama Agricultural Organization (PERTANU), Luthfi focused his study on the pros and cons of land reform that emerged during the early days of the 1960 UUPA being passed. In contrast to PBNU, which at that time was against land reform as mentioned by Shohib, PERTANU in a historical study conducted by Luthfi turned out to be in favor of land reform as part of the UUPA agenda. Another study looking at NU's structural attitude in responding to agrarian problems was conducted by Usman.⁵ However, this research is too general and lacks depth because it only summarizes the results of previous studies.

Studies that are closer to this research are studies that examine the struggle of the cultural Nahdlatul Ulama in fighting for agrarian justice. Widayati and Suparjan⁶, for example, focused on the study of the role of FKNSDA as an NU cultural organization that was born in the last decade to advocate for agrarian conflicts as well as promote agrarian justice. Using social movement theory, Widayati positions FNKSDA as a radical democratic movement with a vision

3 Mohamad Shohibuddin, "Ijtihad Agraria Nahdlatul Ulama," in *Perspektif Agraria Kritis: Teori, Kebijakan Dan Kajian Empiris* (Yogyakarta: STPN Press, 2018), 113–157.

4 Mohamad Shohibuddin, "Jejak Panjang Kiprah Nahdlatul Ulama Di Bidang Agraria," in *Perspektif Agraria Kritis: Teori, Kebijakan Dan Kajian Empiris* (Yogyakarta: STPN Press, 2018), 125–57.

5 Muh Ilham Usman, "Islam and Agrarian: Study of Nahdhatul Ulama's Religious Social Thought," *Adabiyah* 19, no. 2 (2019): 172–85.

6 Asri Widayati and . Suparjan, "Reaktualisasi Perjuangan Nahdlatul Ulama Dalam Mewujudkan Kedaulatan Sumber Daya Agraria (Studi Gerakan Demokrasi Radikal Pada FNKSDA)," *BHUMI: Jurnal Agraria Dan Pertanian* 5, no. 1 SE-Articles (May 2019): 84–98, <https://doi.org/10.31292/jb.v5i1.321>.

of people's sovereignty. Another study on the FNKSDA was conducted by Kodir and Mushoffa⁷ which examined the rationale of FNKSDA in viewing Natural Resource Sovereignty. Neither the studies by Widayati & Suparjan nor Kodir & Mushoffa examined specifically the concept of agrarian reform according to FNKSDA.

Therefore, this research has some differences from previous studies. *First*, this study focuses on the conceptual aspects of agrarian reform which are still being debated until now. *Second*, the opinion of FNKSDA activists is taken into account because, although it is a cultural organization that has absolutely no structural relationship with PBNU, the role of FNKSDA is quite significant in raising the awareness of religious communities to push for agrarian reform as a social movement. The significance of FNKSDA's role is also seen in their efforts to bring back the fiqh perspective as a tool of analysis and argumentation, both in advocating for agrarian policies and cases of land grabbing in various regions as well as in deconstructing RAPS policies. Unfortunately, research that specifically examines the conceptual aspects of agrarian reform according to the FNKSDA has never been carried out. *Third*, what is no less new in this study is the use of the priority fiqh theory as a basis for formulating the priority formula for agrarian reform in Indonesia. Finally, no specific research has been conducted on NU's formulation of agrarian reform before, especially in relation to the debate on the concept and implementation of the latest agrarian reform policies—which Tania Murray Li⁸ referred to as “21st-century land reform in Indonesia”.

This research will, thus, examine the formulation of NU's fiqh of priorities regarding agrarian reform in response to the implementation of the RAPS policy. Fiqh of priorities is one of the theories in contemporary fiqh which was initiated to consider the implementation of charity act deserving priorities of concern based on sharia principles.⁹ Fiqh of priorities can also serve as the basic reference

7 Abdul - Kodir and In'amul Mushoffa, “Islam, Agrarian Struggle, and Natural Resources: The Exertion of Front Nahdliyin for Sovereignty of Natural Resources Struggle Towards Socio-Ecological Crisis in Indonesia,” *Karsa: Jurnal Sosial Dan Budaya Keislaman* 25, no. 1 SE-Articles (June 2017): 57–89, <https://doi.org/10.19105/karsa.v25i1.1160>.

8 Tania Murray Li, “Commons, Co-Ops, and Corporations: Assembling Indonesia's Twenty-First Century Land Reform,” *Journal of Peasant Studies* 48, no. 3 (2021), <https://doi.org/10.1080/03066150.2021.1890718>.

9 Mulyono Jamal and Muhammad Abdul Aziz, “Metodologi Istinbath Muhammadiyah Dan NU: (Kajian Perbandingan Majelis Tarjih Dan Lajnah Bahtsul Masail),” *Ijtihad: Jurnal Hukum Dan Ekonomi Islam* 7, no. 2 (2013): 183–202; Husni Mubarrak A. Latif, “Studi Fiqh Prioritas Dalam Sunnah Nabi,” *Jurnal Ilmiah Al-Mu'ashirah* 16, no. 1 (2019): 22, <https://doi.org/10.22373/jim.v16i1.5738>; Suci Ramadhona,

for developing humanitarian-based policies.¹⁰ Using the fiqh of priorities theory, this study reviewed the results of the NU *bahtsul masail* (public discussion of problems) and the opinions of NU activists who are concerned with the agrarian sector as the research objects. It was aimed to help formulate the concept, object, and subject of agrarian reform based on the scale of priorities needed to significantly reduce land tenure inequality in Indonesia.

Research Methods

This study applied empirical and normative legal research by interviewing NU activists, who paid a specific concern in the agrarian sector, and by conducting a literature review of the results of NU's *ijtihad* regarding agrarian reform, especially in responding to agrarian policies in Presidential Regulation Number 86 of 2018 concerning Agrarian Reform. For this purpose, this study also used a conceptual approach by analyzing the provisions of Islamic law, especially *maqâshid al-syarî'ah* in the interpretation of agrarian problems from the perspective of fiqh of priorities. The collected data were analyzed using the library research method or literature review of the fiqh of priorities theories. The qualitative method used is a method that focuses on in-depth observation so that it can produce a more comprehensive study of a phenomenon.

The Concept of Agrarian Reform Based on Fiqh of Priorities: A Critique to RAPS Policy

Three major events in the last decade, namely the 33rd Muktamar in Jombang 2015, the National Alim Ulama Conference and the NU Grand Conference in Lombok 2017, and the 34th Muktamar in Lampung 2021, indicate NU's attention to agrarian reform as a priority of the program. In the National Conference of Alim Ulama in Lombok, the issue of land distribution was even discussed in two *bahstu masail* commissions at once, namely *Bahtsu Masail Ad-diniyah al-Maudhuiyah* (discussed actual problems that were questions in the community) and *Bahs Masail Ad-diniyah Al-Qanuniyyat* (discussed various issues related to

"Konsep Yusuf Qardhawi Tentang Fiqh Prioritas," *Tesis* (Institute Islam Negeri Sumatera Utara, 2014); Abdul Uyayyinah dan Abdul Bari, "Implementasi Fiqh Al-Awlawiyah Pada Prioritas Kebutuhan Mustahik Dalam Pendistribusian Zakat (Studi Komparasi Di Lembaga Amil Zakat (BAZ) Pamekasan Dengan Baitul Maal Hidayatullah (BMH) Pamekasan Dan Lembaga Amil Zakat, Infaq Dan Shadaqah Muhammadiyah (LA)," *Al-Tsaman: Jurnal Ekonomi Dan Keuangan Islam* 3, no. 1 (2021): 1–46; Yusuf Al-Qaradhâwî, *Fiqh Prioritas* (Jakarta: Gema Insani Press, 1997).

10 Ahmad Muhtadi Anshor and Muhammad Ngizzul Muttaqin, "Implementasi Pemikiran Fiqh Prioritas Yusuf Al-Qardhawi Sebagai Upaya Membangun Kebijakan Berbasis Kemanusiaan," *Al-Maslahah: Jurnal Ilmu Syariah* 16, no. 1 (2020): 64–85.

with state policy).

In those three major events, NU seems to express fairly progressive views on agrarian issues from a fiqh perspective. These are indicated by the followings: First, the granting of excessive management permits to certain parties or the detriment of other parties is considered a *mudharat* (damage) or *dhirarah 'ammah* (general damage). The fiqh rule of *la dirara wa la dirar* (anything that harms oneself or harms others is prohibited) applies in this case. Second, agrarian reform is part of efforts to achieve *maqâshid al-syarî'ah*, especially *hifdzul mal* (safeguarding wealth) and *hifdzun nafs* (safeguarding the soul). *Hifdzul mal* refers to an effort to create economic balance, while *Hifdzul al-nafs* is defined as an effort to meet the needs of a decent life for everyone. Third, the government is allowed to annul the granting of excessive land management rights by the previous government on the basis of benefit. In this case, the rule of "*dar' al-mafasid aula min jalb al-masalih*" applies (taking objection to harm takes precedence over taking benefits).

The results of the *ijtihad* that demanded land reform significantly defied the NU's Syria Conference in Jakarta 1961 prohibiting land reform. Instead of emphasizing the protection of unlimited individual property rights, NU is now considering land distribution as an urgent issue or *daruriyyat*. Fair distribution of land is seen as an effort to fulfill *hifz al-nafs* (safeguarding the soul) and *hifz al-mal* (safeguarding wealth), which in the theoretical discourse of *Maqâshid al-syarî'ah*, are agreed upon as primary needs, in addition to *hifz al-din* (safeguarding religion), *hifz al-nasl* (safeguarding offspring), and *hifz al-'aql* (safeguarding the mind).

NU's *ijtihad* and the results of the interviews with the NU agrarian activists held that the agrarian reform should be directed at reorganizing the unequal structure of the main objective of the agrarian reform. For this reason, the land redistribution program must address the root cause of this inequality, namely the massive land monopoly by a small handful of corporations that the State facilitated through various investment concessions. Without such an agenda on equal distribution of land, it is impossible to call the program the real agrarian reform (Interview with Roy Murtadho, 15 July 2022). Roy agreed with various theories delineating that one of the primary goals of agrarian reform is to break the chain of agrarian conflicts. However, the so-called agrarian reform policy in Indonesia was implemented along with the constantly occurring agrarian conflicts due to the granting of government permits to investment companies in various regions.

Through his research published in the *Prisma Journal*, Roy wrote that Jokowi's agrarian reform, which was based on the 2015-2019 National Medium-Term Plan and Presidential Regulation No. 86 of 2018 concerning Agrarian

Reform, was indicated to adopt the post-Washington consensus neoliberal style, emphasizing bureaucratic reform, governance reform, and legal certainty for the sake of investment¹¹. Another indicator, according to Roy, is the fact that TORA failed to prioritize its target on curbing the corporate or oligarchic control through HGU (the right to cultivate), which was mainly attributed to the fact that the data of HGU is far from transparent. This is certainly a disconcerting fact even though Indonesia Forest Watch won a lawsuit against the ATR/BPN Ministry at the Supreme Court in 2017. The lawsuit aimed to ensure the availability and accessibility of the data on land tenure to the public to provide control over land distribution. Ideally, it is these large-scale lands of HGU that should be the primary targets for the agrarian reform objects.

An agrarian activist from the NU circle proposed a more moderate narrative on this issue. As an agrarian scholar, Shohib and his colleagues in the National Committee for Agrarian Reform (KNPA) were involved in the drafting of regulations implementation at the Presidential Staff Office (KSP). As a lecturer at the Faculty of Human Ecology, IPB, Shohib held that this Presidential Regulation has its opportunities and limitations in the land reform agenda. "Its opportunity lies in the possibility of a policy breakthrough for the government at the regional level to be involved in executing agrarian reform. The Agrarian Reform Task Force (GTRA) formed by the Presidential Decree involves multi-sectoral parties in the ministries, including the government and civil society. However, once more, the real practice highly depends on the local government implementation. A local government with a progressive outlook is likely more capable of achieving its agrarian reform target, as seen in the achievement of the Sigi Regency. Otherwise, the real implementation will be far from ideal (An interview with Shohibuddin, 13 July 2022)"

On the other hand, the limitation, according to Shohib, was attributed to the issuance of this regulation, which was merely in the form of a Presidential Decree, instead of a Government Regulation which holds a stronger position and can better accommodate new norms even though it has not yet been regulated in law. As a result, the authority of this Presidential Decree cannot go beyond the implementation of agrarian reform contained in higher or parallel regulations, such as the Presidential Decree on state-owned land. Since the early drafting of this regulation, Shohib and his colleagues who were involved in the National Committee for Agrarian Reform (KNPA) hoped that the draft would take the form of government regulation for stronger authority and better possibility

11 Murtadho, "Kritik Ekonomi-Politik RAPS."

in accommodating the new norms. However, the political situation made this impossible (An interview with Shohibuddin, 13 July 2022). During the interview, Shohib confirmed that the six prerequisites for Agrarian Reform mentioned by Gunawan Wiradi had not been met. The six prerequisites are 1) the presence of political will from the government; 2) the existence of an organized community (people's organizations, especially farmers' organizations), strong and pro-reform; 3) availability of complete and accurate data on agrarian affairs; 4) a condition where the ruling elite is separated from the business elite;¹² 5) the presence of bureaucratic apparatuses who understand the concept and goals of agrarian reform; and 6) full support from the military and police for the agrarian reform program. Indonesia's current political situation, according to Gunawan Wiradi, made it impossible to achieve the prerequisites for agrarian reform.¹³

NU's *ijtihad* in agrarian reform also addressed cases of extensive conversion of productive land to mining or other sectors. Muhammad Al-Fayyadl, one of NU's young intellectuals who has been actively advocating agrarian cases, stated that when there is a conflict between the *maslahat* (benefits) and the *mafsadat* (damage), Islamic law encourages canceling an action that ends up in posing damages.¹⁴ An industrial development that harms other parties, as obvious in the Kendeng farming community, which was threatened by the loss of water sources due to karst mining, is a form of *mafsada*, which is illegal in Islamic law. This refers to the rule of "*dar' al-mafasid hall min jalb al-mashalih*" (taking the refusal of the harm takes precedence over taking the benefits)¹⁵ Benefits for an industrial development, such as providing income for the state treasury, remain unrealistic in nature, since they are only potential, or are still speculative, depending on the profit and loss from sales of cement factories.

“Conversely, a more real benefit is obvious in the attempt to preserve Gunung Kendeng as the primary source of water for millions of people in the northern part of Java, as a way to maintain the agricultural sustainability and the fertility of the land ('ijo royo-royo') of Java and Central Java as national rice granaries, which is incomparable to potential or fictitious benefits. In terms of fiqh, this will lead to a conflict between the particular benefit ('al-maslahat al-juz'iyat') and the general benefit ('al-maslahat 'ammah-kulliyat'). In this context, there is a need to win the general benefit over the

12 Hariadi Kartodihardjo and Eko Cahyono, "Agrarian Reform in Indonesia: Analyze Concepts and Their Implementation from a Governance Perspective," *Jurnal Manajemen Hutan Tropika* 27 (2021): 1–8, <https://doi.org/10.7226/jtfm.27.te.1>.

13 Noer Fauzi Rachman and Usep Setiawan, eds., *Buku Putih Reforma Agraria Reforma Agraria Menuju Kemandirian Bangsa*, 3rd ed. (Jakarta: Konsorsium Pembaruan Agraria, 2015).

14 Muhammad Al-Fayyadl, "Menakwil Penyikapan Mbah Maimoen Atas Kasus Semen," fnksda.or.id, 2017.

15 Muhammad Al-Fayyadl, "Kasus Rembang Dalam Perspektif Hukum Islam," fnksda.or.id, 2015.

*particular. In the logic of this law, this includes winning the interests of citizens over particular (private) company interests, people's interests above government interests, and collective interests above individual/group interests.*¹⁶

In the review of fiqh of priorities, NU places the necessity of land distribution for agrarian reform the same as or as part of the *maqâshid al-syarî'ah*. The concept of *maqâshid al-syarî'ah* is defined as the intent or purpose or principle of the law in Islam¹⁷. When these primary needs are not met, the government and society need to work together to realize these needs. The root cause of the problem of unequal land distribution lies in the granting of excessive concessions to a handful of conglomerates,¹⁸ which is deemed as *mafsada* and thus requires the presence of the State to restrict or annul the previous government's policies for the sake of public benefit.

The attempt to meet the demands of land for all citizens as a basic need must take precedence over other needs that are artificial, speculative, or are still suspected, including the effort to boost economic growth or state revenue¹⁹. The government's attempt to increase state revenue is basically questionable considering the current government's policy towards tax abolishing for investors.²⁰ Amidst the threat of extraordinary land tenure inequality and agrarian conflicts in various regions, it is timely for NU to prioritize the agrarian reform through *ijtihad* in the latest *bahtsu masail* or through *jihad* (struggle) in defending the rights of the public and the right to maintain the sustainability of natural resources in various agrarian conflicts.

It is noteworthy, however, that there has been a convoluted relationship between human and land ownership, not only in terms of economics, but also in terms of social, political, cultural, religious aspects,²¹ and other dimensions. Humans are born, seek a livelihood, carry on life, and die on the ground.

16 Al-Fayyadl, "Menakwil Penyikapan Mbah Maimoen Atas Kasus Semen."

17 Abdul Wahab Khallaf, *Ilm Ushûl Fiqh* (Kairo: Dârul Qolam, n.d.).

18 In'amul Mushoffa, "Liberalisasi Hukum Penanaman Modal Dan Implikasinya Terhadap Hak Ekonomi, Sosial, Dan Budaya," *Jurnal Hukum Kenegaraan* 1, no. 1 (2020).

19 Agus Suntoro, Nurrahman Aji Utomo, and Mahardika Agestyuning Hermanto, "Reformulation of Agrarian Regulations Within a Human Rights Framework," *Journal of Southeast Asian Human Rights* 6, no. 2 (2022), <https://doi.org/10.19184/jseahr.v6i2.27776>; Natanael Dwi Reki, "Pembatasan Pemilikan Dan Penguasaan Hak Atas Tanah Dalam Perspektif Reforma Agraria," *Jurnal Hukum Magnum Opus*, 2018, <https://doi.org/10.30996/jhmo.v0i0.1767>.

20 "Investasi Rp 30 Triliun Diganjar Bebas Pajak Selama 20 Tahun," bkpm.go.id, n.d.

21 Arba Arba and Israfil Israfil, "Hubungan Hukum Antara Manusia Dengan Tanah, Air Dan Lingkungan Alam Menurut Konsepsi Hukum Islam Dan Hukum Agraria Nasional (UUPA)," *Jurnal Risalah Kenotariatan* 2, no. 1 SE-Articles (July 2021): 60–64, <https://doi.org/10.29303/risalahkenotariatan.v2i1.23>.

Interestingly, humans are also created from the ground. Hence, there is an essential and magical-religious relationship between humans and land, and with water and air. A commonly held view considers the land as the mother who gives birth and supports humans in many local cosmologies.²² For instance, local wisdom in Papua refers to the ground as *mama*, while in the Samin community, the ground is known as *ibu bhumi* (mother nature). Thus, being deprived of land ownership means losing self-respect, life sources, sovereignty, and a connecting place between humans and the Creator.²³ In this regard, it is justified to say that land actually contains five Sharia objectives (*maqasid Sharia*) at once.

In the case of *hifdzud din* (safeguarding religion), a Muslim will find it difficult to pray in conditions of drought or when the surrounding environment is heavily polluted with waste and dust due to mining because one of the conditions for prayer is to be in a state of purity which can be achieved by means of ablution. Even worse, people will also find it harder to worship Friday congregational prayers and visit the graves if the mosque and graves in their village are swept away, as happened in the case of the construction of the Yogyakarta International Airport in Kulonprogo.²⁴ In the case of *hifz al-nasl* (safeguarding the self), a whole generation may die upon encountering hardship of life because they are deprived of their land and livelihoods or because their land is no longer appropriate for residence, as happened in Kalimantan.²⁵ In the case of *hifz al-aql*, it is undeniable having a clear state of mind is nearly impossible amidst the critical situation attributed to land grabbing that may lead to emotional rage.²⁶ In short, the loss or deprivation of land causes the loss of *maqâshid al-syari'ah*. Therefore, the redistribution of land to those in need is a necessary agenda for the State since it represents *maslahah dharuriyat* (urgent matters).

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- 22 Todd W Ferguson and Jeffrey A Tamburello, "The Natural Environment as a Spiritual Resource: A Theory of Regional Variation in Religious Adherence," *Sociology of Religion* 76, no. 3 (September 2015): 295–314, <https://doi.org/10.1093/socrel/srv029>.
- 23 Nurhasan Ismail, "Arah Politik Hukum Pertanahan Dan Perlindungan Kepemilikan Tanah Masyarakat," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 1 (2012): 34, <https://doi.org/http://dx.doi.org/10.33331/rechtsvinding.v1i1.105>.
- 24 Gelar Ali Ahmad, "Masterplan Percepatan Dan Perluasan Pembangunan Ekonomi Indonesia (MP3EI), Sengketa Agraria Dan Viktimologi : Studi Kasus Pembangunan New Yogyakarta International Airport (NYIA)," *Jurnal Ilmiah Galuh Justisi* 6, no. 1 (2018): 12, <https://doi.org/10.25157/jigj.v6i1.1237>.
- 25 Siti Maimunah, *Negara Tambang Dan Masyarakat Adat* (Malang: Intrans Publishing, 2012); M Nazir Salim, "Bertani Diantara Himpitan Tambang (Belajar Dari Petani Kutai Kartanegara)," *BHUMI: Jurnal Agraria Dan Pertanahan* 2, no. 1 SE-Articles (May 2016): 31–47, <https://doi.org/10.31292/jb.v2i1.230>.
- 26 S Rohmah, I Mushoffa, and M A Kholish, *Konstitusi Hijau Dan Ijtihad Ekologi: Genealogi, Konsep, Masa Depan, Dan Tantangannya Di Indonesia* (Universitas Brawijaya Press, 2022), 100.

In Al-Ghazali's theory of *maslahah*,²⁷ Asy-Syatibi²⁸, and Al-Qaradhawi²⁹ defined *maslahah dharuriyah* as the highest level of *maqashidus sharia*. *Dharuriyah* refers to primary benefit, in which human life is very dependent on both the diniyah (religion) and worldly aspects, without which humans cannot live. *Maslahah dharuriyah* must take precedence over *maslahah hajjiyah* or secondary which functions to eliminate difficulties or distress in life. The next level following the *hajjiyah* level is the *tahsiniyyah* or *kamaliyah* level, namely the tertiary benefit as a life adornment. Generally, the scholars place *hafdzud din* as the most urgent, but for Ibn Taimiyah who lived during the colonial era of the Tartars, the maintenance of life and property was the most *dharuriyah maslahah* (urgent benefit) among all the *maqashidus sharia*. The appropriate order given by Ibn Taimiyah is as follows: Soul → treasure → honor → reason → religion.³⁰

The emphasis on soul and property issues as the most *dharuriyah* (urgent) problem seems relevant in the midst of—as Bung Karno termed—the neo-colonialism that continues to give birth to victims of agrarian conflicts. Even though we no longer face Dutch colonialism today, the victims of agrarian conflicts caused by investment companies facilitated by the state mostly have to struggle and end up with physical repression, suppression of the right to enjoy freedom, and even death. In 2021 alone, as recorded by the Consortium for Agrarian Reform, 139 individuals were criminalized, 19 were persecuted, and 11 died as a result of agrarian conflicts.³¹ In a speech entitled *Laksana Malaikat Yang Menyerbu Dari Langit Jalannya Revolusi Kita* (The Path of Our Revolution is Like an Angel that Invades From the Sky) delivered on the anniversary of the Proclamation of Indonesian Independence on August 17, 1960, President Soekarno stated: “The Indonesian Revolution without Land Reform is the same as a building without a base, the same as a tree without a trunk, it's tantamount to talking big without content... Land must not be used as an instrument of exploitation, let alone exploitation of foreign capital against the Indonesian people. Land for farming! Land for those who really work the land!...”³² Due to the importance of the urgent redistribution

27 Abū Hāmid Al-Ghazālī, *Al-Mustafā 'ā Min 'Ilm Al-'Usūl*, Ed. Muhammad 'Abd Al-Salām 'Abd Al-Sbāfī (Kairo: Dar al-Kutub al-Ilmiyah, 2000).

28 Al-Syatibi, *Al-Muafaqat Fi Ushulal-Syariah* (Kairo: Musthafa Muhammad, n.d.).

29 Yusuf Al-Qaradhāwī, *Dirāsah fī Fiqh Maqāsid Al-Shari'ah* (Kairo: Dār al-Shurūq, 2006).

30 Nashrun Jauhari, “Fiqh Prioritas Sebagai Instrumen Ijtihād Maqāidī Perspektif Yūsuf Al-Qarāḍawī Dan Urgensinya Di Era Kontemporer,” *Marajī Journal of Islamic Studies* 3, no. 1 (2016): 147.147

31 Konsorsium Pembaruan Agraria, “Catatan Akhir Tahun 2021: Penggusuran Skala Nasional,” 2021.

32 Sukarno, *Di Bawah Bendera Revolusi II* (Yogyakarta: Media Pressindo & Yayasan Bung Karno, 2015).459

of land, it is justified to position the land as an urgent need for everyone.

Equally important is the fact that NU not only highlights the need of legalizing assets, as has the government done in recent years, but also puts pressure on redistribution, instead of merely claiming the program as part of agrarian reform. “The Jokowi-JK government needs to oversee the agrarian reform agenda, not limited to the land certification program, but the redistribution of land for the people and land for farmers. This effort must be parallel with the revision of the Agrarian Law No. 5 of 1960 concerning agrarian affairs in the context of returning land as a basic right of citizens.”³³

In this regard, it is relevant when NU provides critical notes on the RAPS. In addition to emphasizing that land redistribution is not a mere excessive granting of land, NU emphasizes that the implementation of agrarian reform must also pay attention to aspirations from the lower structure.³⁴ This note is in line with the concept of true agrarian reform, which must also include protection for owners after redistribution, both in the form of providing business capital and other necessary assistance, such as subsidies for agricultural materials. In many practices, the results of land redistribution often lead back to inequality of tenure, which is generated by the difficulty to accumulate business capital, the lack of a market that protects farmers, and the reduction of subsidies for agricultural materials³⁵. In the end, land ownership is monopolized by wealthy landowners who are able to practice self-management by employing other people (farm labourers).

The notes of the NU Congress found relevance when the Coordinating Team for the Acceleration of Implementation of Agrarian Reform in 2020 reported that the achievement of asset legalization was much more intense than land redistribution. The report indicated that of the total Agrarian Reform target of 9 million hectares, the completed asset legalization program up to 2020 amounted to 5.37 million hectares or 119.3%, while the land redistribution program that has been realized has only reached 1,176 .994 hectares or only 26.15%.³⁶

33 Pengurus Besar Nahdlatul Ulama, *Hasil-Hasil Munas Alim Ulama Konbes NU 2017* (Jakarta: Lembaga Ta’lif wan Nasyr PBNU, 2017). 307

34 “Rekomendasi Mukhtamar Ke-34 Nahdlatul Ulama Lampung, 23 Desember 2021” (Lampung, n.d.).

35 Dita Perwitasari et al., “Redistribution of Land for the Plantation in Indonesia,” in *Proceedings of the International Joint Conference on Arts and Humanities 2022 (IJCAH 2022)* (Atlantis Press, 2023), https://doi.org/10.2991/978-2-38476-008-4_9.

36 Deputi Bidang Koordinasi Pengembangan Wilayah dan Tata Ruang Kementerian Koordinator Bidang Perekonomian, “Laporan Pelaksanaan Reforma Agraria Dan Penyelesaian Penguasaan Tanah Dalam Kawasan Hutan (PPTKH) Tahun 2015-2020” (Jakarta, 2021). 42

There is some truth to the criticism of NU agrarian activists. Roy Murtadho (An interview, 15 July 2022) stated that the legalization of assets would lead to easier land transactions for investment. Some agrarian experts such as White, Borras, and Hall, in their review held that, in principle, land certification is not a pro-poor and pro-farmers program, and instead is aimed at facilitating transactions. It is undeniable that land certification is indeed a program encouraged by the World Bank to secure land ownership (land tenure security) although the World Bank constantly views that the implementation of land redistribution will be far from effective.³⁷ Such a contrasting point of view is attributed to the fact that the World Bank is part of the global development (developmentalism) scenario. For this reason, the Recommendations for the 34th NU Conference in Lampung 2021 stated “The current emphasis of development policy that prioritizes the industry over the public interest has positioned the people as a weak group (*mustad’afin*) and vulnerable to repression in the name of Development”, which thus also needs government’s consideration. All along, there has been relentless criticism against the development that refers to the Western economic model by many critical studies.³⁸ In the agrarian sector, a study by Mansour Fakih³⁹ on modern development, for example, held that the agrarian reform only causes changes in social formations, from “feudal social formations” to “capitalist social formations which lead to socio-economic inequality.

Regarding indigenous peoples, NU through the *bahtsu masail* at Mukhtamar 2021 also declared that the government’s attempt to increase large-scale investments has led to “... the increasing tendency to press and reduce *ulayat* lands for indigenous minority communities who still maintain their right to live collectively and sovereignty over the land.”⁴⁰ The highlight of the Recommendation of the 34th Congress of NU is in line with the study of Cahyono, et al regarding Agrarian Conflict in the Territory of Indigenous Peoples, which stated that concessions and permits from multi-sector management of Agrarian Resources, especially Forestry, Plantation, and Mining were strengthened by the legitimacy of security forces “with state permission” and have excluded the Customary Law Communities (MHA) from their own homeland in forest areas. The

37 Dwi Wulan Pujiriyani et al., *Land Grabbing: Bibliografi Beranotasi* (Yogyakarta: STPN Press, 2014). xx

38 In’amul Mushoffa, “Politik Hukum Penanaman Modal Dalam UU No.25 Tahun 2007: Pendekatan Critical Legal Studies” (Universitas Widyagama, 2019).

39 Mansour Fakih, *Runtuhnya Teori Pembangunan Dan Globalisasi*, 1st ed. (Yogyakarta: Insist Press & Pustaka Pelajar, 1999).

40 “Rekomendasi Mukhtamar Ke-34 Nahdlatul Ulama Lampung, 23 Desember 2021.”

primary root cause of the structural agrarian conflict over the Customary Law Communities in forest areas is the lack of legal certainty and complete recognition of the rights of Customary Law Communities and their territories in forest areas by the State.⁴¹ In short, what the government did, regarding the indigenous people and the land, was a violation of the UUPA.⁴²

To deal with this situation, the government needs to optimize the realization of agrarian justice through agrarian reform, both in terms of policy concepts and its implementation. One of the attempts to optimize the program is by presenting the role of religious organizations. This is one of the possible roles because religious organizations have been keeping their presence in Indonesia since pre-independence in various emancipation struggles. The significance of religion has also been recognized as a source of law in Indonesia,⁴³ in particular agrarian law. Article 5 of the UUPA which serves as the legal umbrella for various products of legislation related to agrarian affairs determined that “The agrarian law applicable to the earth, water, and airspace is *adat* provided that it is not contrary to the national interest and the interest of the State, which are based on national unity, to Indonesian socialism, to the provisions stipulated in this Act, nor to other legislation, all with due regard to elements which are based on religious law.”

Within the framework of fiqh of priorities, the results of this study show that the problems behind investment are more speculative in nature, often causing harm, as evidenced by the fact that many people are excluded from their land as mentioned in the results of the Mukhtar and National Conference of NU clerics and various studies.⁴⁴ NU has emphasized the importance of the distribution of land to those most in need, for example, by quoting the opinion of Jalaluddin As-Suyuti:

41 Eko Cahyono et al., *Konflik Agraria Masyarakat Hukum Adat Atas Wilayahnya Di Kawasan Hutan: Sumatera, Jawa, Kalimantan, Sulawesi, Maluku, Bali, Nusatenggara, Papua* (Jakarta: Komisi Nasional Hak Asasi Manusia Republik Indonesia, 2016).

42 Sudarsono Soedomo, “Political Economy of Land Use in Indonesia: Trap and Curse of Natural Forests,” *Jurnal Manajemen Hutan Tropika* 27, no. Table 2 (2021): 42–51, <https://doi.org/10.7226/jtfm.27.te.42>.

43 Siti Rohmah, “Rekonstruksi Teoritis Penyerapan Hukum Islam Ke Dalam Hukum Nasional Di Indonesia,” *Ijtihad: Jurnal Hukum Dan Ekonomi Islam* 12, no. 1 (2018): 85, <https://doi.org/10.21111/ijtihad.v12i1.2548>. <http://dx.doi.org/10.21111/ijtihad.v12i1.2548>

44 In'amul Mushoffa, “Ayat-Ayat Neoliberal: Implikasi Praktis Dan Yuridis Amandemen Pasal 33 UUD 1945 Terhadap Ketimpangan Penguasaan Sumber Daya Alam (SDA) Di Indonesia,” *Transisi* 11 (2017); Ari Tri Wibowo, “The Impact of The Development of Investment and Construction on The Land Reform Years in Indonesia,” *Jurnal Dinamika Hukum* 19, no. 3 (2020): 745, <https://doi.org/10.20884/1.jdh.2019.19.3.2597>.

“As-Subki said: ‘Then it is not permissible for the Imam to give possession to anyone except what Allah has ordained. The duty or authority of the priest is only to divide, and this distribution must refer to the principle of justice. Among the conditions that must be fulfilled in this distribution is fair—prioritizing those who need it the most—and equal distribution among people who have the same needs.’⁴⁵

This research review shows that NU no longer approaches fiqh issues in black and white, but examines them with an analytical perspective outside of fiqh studies such as agrarian discourse and political economy. This results in relevant and urgent *ijtihad* in policy problems, such as in the urge for agrarian reform.

In the future, the fiqh of priorities is deemed a very relevant approach for the formation of government policies to ensure that the public benefit (*maslahat*) is in accordance with the state’s aspirations. The presence of fiqh of priorities gains importance to deal with government policies, which are often biased toward the interests of certain groups who have access to power.⁴⁶ Fiqh of priorities enables Islamic law to contribute to policy-making, not only regarding religious affairs but also related to social reality regarding the livelihood of the people in a country as a whole.⁴⁷

Conclusion

The results of this study indicate that according to Nahdlatul Ulama, the arrangements regarding land objects and subjects of agrarian reform in Presidential Regulation No. 86 of 2018 concerning Agrarian Reform have not fulfilled the formulation of fiqh of priorities. This result is due to several reasons: *First*, in terms of the object of the program, the Presidential Regulation No. 86 of 2018 concerning Agrarian Reform has not been aimed at reorganizing the structure of extreme land tenure inequality in Indonesia. *Second*, in terms of the object of the program, the agrarian reform has never prioritized the parties who need more land, namely small farmers and homeless farmers who are excessively pressured by increasingly liberal agricultural policies and the rise of large-scale concessions to corporations that evict their cultivated lands for the sake of economic growth through investment.

This research recommended the following. *First*, there is a need to prioritize

45 Jalaluddin As-Suyuthi, *Al-Asybah Wa an-Nazha'ir* (Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.).

46 Moh Anas Kholish and Ilham Fitra Ulumuddin, “Supremasi Hukum Dan Perubahan Sosial: Sebuah Tinjauan Hukum Barat Dan Hukum Islam,” *PJLS: Peradaban Journal of Law And Society* 1, no. 1 (2022): 47–59, <https://doi.org/https://doi.org/10.59001/pjls.v1i1.20>.

47 Anshor and Muttaqin, “Implementasi Pemikiran Fiqih Prioritas Yusuf Al-Qardhawi Sebagai Upaya Membangun Kebijakan Berbasis Kemanusiaan.”

the use of fiqh of priorities amidst the diverse perspective of Muslims on the importance of balance in determining and achieving *daruriyyat*, *hajiyyat*, and *tahsiniiyyat* or *kamaliyyat maslahat*, especially with regard to state policies that concern the lives of many people. *Second*, it is necessary to strengthen the land redistribution agenda in government programs to make it in line with the spirit of putting an end to the unequal structure of land tenure and realizing an economic balance, which in the review of fiqh of priorities can strengthen *maqâshid al-syarî'ah* (safeguarding life, property, lineage, reason, religion). This program is especially helpful for farming communities, who are constantly pressured by the increasingly infertile land and threatened by the loss of land due to agrarian conflicts. *Third*, research on state policies should be developed to encourage the realization of state policies that are just, humane, and in harmony with the public benefit, for the sake of life in both the world and hereafter.

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