



UTILIZING ILLEGAL LAND IN THE PERSPECTIVE OF INDONESIA LAND LAW AND ISLAMIC LAW

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Abstract: Illegal Land Use in Perspective of Land Law and Islamic Law. The issue to be discussed in this research is how to regulate illegal land use in terms of criminal law and how the law regarding illegal land use is viewed from Islamic criminal law. The research method used in this paper is a normative juridical method that originates from a literature study. Arrangements for illegal land use are regulated in statutory provisions, including Perpu Law No. 51 of 1960, which reads that it is prohibited to use the land without a valid permit or proxy and can be subject to a principal criminal penalty in the form of imprisonment for a maximum of 3 (three) months and/or a fine of up to Rp. 5,000. In the perspective of *jinayah fiqh*, agrarian regulations were not found. However, it can be explained using the concept *Maqa>sid as-Shari'ah* (the purpose of establishing Islamic law). There are also regulations regarding human welfare, namely taking advantage, rejecting harm and eliminating trouble.

Keywords: Illegal land; Land Law; Islamic law.

1. INTRODUCTION

Land grabbing is nothing new in Indonesia. The word confiscation itself can be interpreted as an act of taking rights or assets arbitrarily or contrary to laws and regulations, such as taking other people's land or houses that are not theirs. Unlawful land grabbing is an unlawful act that can be qualified as a criminal offence. In the regulations that have been written in the Criminal Code article 385 concerning land grabbing reads "anyone who with the intention of benefiting himself or another person with a credit verband a right over Indonesian land, a building, construction, planting, and seeding, even though it is known that those who own or participate in have rights over it are other people.(Pasaribu, 2013)

Furthermore, in the *fiqh jinayah* regarding illegal land use, in the view of *fiqh* there is no detailed provision regarding land or agrarian affairs, but we review land or agrarian affairs using *ushul fiqh* analysis, explaining the concept of *maqashid as-shari'ah* (the purpose of establishing Islamic law).).(Romli, 1999, p. 157)However, in *fiqh* there are also those that discuss human welfare, namely taking advantage, rejecting harm and eliminating distress.(Yahya & Fatchurrahman, 1986, p. 106)Illegal land use itself is also included in the *takzir* finger group, where the power lies with the government or leaders who lead in the area, the form of sanctions is not determined by *syara'* but belongs to the government or leaders.(Az-Zuhaili, 2011, pp. 284–285)

2. METHOD

Research is a core element in contributing to the development of science and technology. This is done because this research has the aim of uncovering the truth systematically, methodologically and consistently so that it can match real conditions. Through this research process, further analysis and processing of the data that has been collected are carried out.(Soekanto, 2016, p. 16)

The research method used is normative juridical research.(Ibrahim, 2008, p. 295)Normative juridical research itself has a meaning, namely research that has a focus on reviewing the application of positive legal principles or norms. Taking the term from Ronald Dworkin, research like this is commonly referred to as doctrinal research, which is research that



analyzes law, both written and unwritten in books or laws decided by judges through court proceedings. Sociological juridical research is different from normative juridical research, sociological research itself is research that starts from the problem by looking at the reality that occurs in the field and then connecting it with the applicable laws and regulations.

The nature of this research is analytical descriptive, analytical descriptive research is a study that describes, examines, explains and analyzes a legal regulation. (Nasution, 2013, p. 2)

3. ANALYSIS OF STUDY FINDINGS

3.1 The Concept of Illegal Land Use in the Perspective of the Land Law

The meaning of illegal land use is an act of controlling, occupying, or taking over land or anything belonging to another person illegally or against the law, violating the law here can be interpreted as any action or activity that is not in accordance with applicable regulations. In article 1 of Law Number 51 PRP of 1960 concerning the Prohibition of Use of Land Without a Permit, the right or proxy states that land is land that is directly controlled by the state and land that does not include the ownership of individuals or legal entities. Actions that are carried out intentionally with the intention of controlling and occupying other people's land are unlawful acts. Ervina Eka Putri, "Law Enforcement Against Criminal Offenders of Land Expropriation and Destruction in the Bandar Lampung Region" (University of Lampung, 2018), 4.

From a legal perspective, illegal land use is defined as follows. First, taking rights or assets in an arbitrary way or ignoring written regulations or laws. All activities that violate these regulations can be said to be a violation of the law. Second, attacking (breaking, crashing) in a reckless or silent way without the victim's knowledge. Third, committing the act of entering someone's house without the permission of the home owner, interrupting words or heeding other people's words, and so on. Fourth, use roads or public facilities at will without heeding existing regulations. Sapto Hadi et al., "Legal Study of Complaints and Land Acquisition Cases in the City of Samarinda Study Laws Against Cases of Complaints and Land Acquisition in The City Of Samarinda," *Journal de Jure* 12, no. 1 (2020): 87.

3.2 The Concept of Illegal Land Use in the Perspective of Islamic Criminal Law

Fiqh or Islamic law is a law that regulates the relationship between God and human creation, with their families and communities, and with the natural surroundings, in accordance with sharia law which is widespread. Experts are of the opinion that fiqh law regulates all aspects and is binding on all groups, including the mukallaf, and no work or action escapes fiqh rules. (Prasetyo, 2013, p. 12)

In fiqh, the definition of status of state land is land free of rights located in a certain area, which has not been built by a person or legal entity, land that is located far from human thought, does not include public or social facilities, while abandoned land means land that has been abandoned or not taken care of by the owner for 3 years. (Ismail, 2013, p. 29)

The fiqh scholars all agree that the definition and terms of state land or dead and neglected land are land free of the state from a right, land that has not been cultivated and utilized by a person or legal entity located in an area or area. Land that is located far from residential areas and is not one of the social facilities. While neglected land means land that has been abandoned and neglected by its owner for 3 years or more.

3.3 Penalties for Illegal Land Use in the Perspective of the Land Law

In view of Law Number 51 of 1960 concerning the prohibition of land use without permission the rightful person or proxy has regulated it, but in practice there is often a contradiction between factual events and the laws and regulations in effect at this time. There are many violations committed by the opposition or individuals for the sake of seeking personal gain without regard for common prosperity.

In Perppu. Number 51 of 1960 article 1 reads "it is prohibited to use land without the rightful permission or its legal proxy, with the condition that if plantation and forest lands are excluded they will be settled according to article 5 paragraph (1)". Without reducing the validity of the provisions in Articles 3, 4, 5, you can be sentenced to a maximum of 3 (three) months and/or a fine of up to Rp. 5000,- (five thousand rupiah). In article 2 it is also clearly written



"anyone who interferes with those who have the right or their legal proxies in exercising their rights over a plot of land". (Government Regulation in Lieu of Law (Perpu), 1960)

According to the author, the article above has many meanings so that there are many misunderstandings for a group of parties who misuse it, which the author underlines is "anyone who interferes with those who have the right or their legal proxy in exercising their rights over a plot of land". The right to a plot of land is meant whether it is the indigenous people who experience disputes over their territory or the government that has given management permits to investors or the entrepreneur who wants to build a business in that area. In the case above, conclusions can only be found when the judge has decided at trial.

3.4 Views of Airlangga University Students on Illegal Land Use in the Perspective of the Land Law

The informant interviewed by the author has a background as an anthropology student at Airlangga University, Surabaya, and is also active in cases of land disputes or usurpation of land rights by residents occupying customary lands. Ulayat lands are lands with related customary law communities. Mastery over indigenous peoples' land is known as ulayat land. Ulayat rights are a set of rights and obligations of customary law communities in relation to land within their territory. UU no. The existence of customary rights is recognized by Law Number 5 of 1960 or the Basic Agrarian Law (UUPA). The confirmation is accompanied by 2 (two) conditions, namely regarding its existence and regarding its implementation. According to Article 3 of the BAL, customary rights are recognized "as long as they exist". (Pradana, 2020)

4. CONCLUSION

Illegal use of land can be interpreted as an act of controlling, occupying, or taking over another person's land or land unlawfully, against rights, or violates applicable legal regulations even though he knows that another person has rights or shares rights over the land. , shall be punished by a maximum imprisonment of four years' imprisonment. According to the explanation above, in Jinayah fiqh illegal use of land is also included in the takzir finger group because the power is in the hands of the government or the leader of that area.

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