

## CHAPTER II

### LAND MANAGEMENT IN ISLAMIC PERSPECTIVE

#### A. Soil Management

In this research, the researcher gives special attention for two words are the word “management” and the word “Land”. Therefore, the definition of those words used as the main discussion in this chapter.

Before going any further, in the research the term of land and soil used in the same meaning. Here the term land has two kinds of meaning. First, land is the place for plants to grow. In this first meaning, more attention directed at the quality of the soil for plants. Second, the term land is physical environment part of the land surface of the Earth that is composed of climate, relief, soil, water, and vegetation also all things that existing on top as long as there is its influence for using that land.<sup>1</sup>

For civitas academica, especially concern on the field of GEOBIOFISIK, economic and alsos in daily life, differentiation of these terms it is necessary. However, in this research, the researchers chose to use the term Land because the object "land" in this research is more common and widespread. While the term soil also used in this research especially in certain parts that

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<sup>1</sup> Sinatala Arsyad, *Penyelamatan Air, Tanah dan Lingkungan*, Crestpent press, Bogor, 2008, p. xix

describe the relevant land management. Therefore, the researchers hope there is no controvertion on these two terms.

### **1. The difinitioan of management**

The word "Management" means also setting or maintenance.<sup>2</sup> Many people will define management as the setting, management, and administration, and that's the sense that popular today. Management is defined as a series of jobs or work done by a group of people to do a series of work in achieving certain goals.

In *Kamus Besar Bahasa Indonesia* (KBBI) the word management means effectively use of resources to achieve the goals.<sup>3</sup> Meanwhile, according to Griffin defines management as follows:

*“Management is the process of planning and decision making, organizing, leading and controlling and organization human, financial, physical and information recources to archieve organizational goals in an efficient and effective manner”.*<sup>4</sup>

It said management is a process of planning and decision-making, organizing, leading and controlling the organization of human, financial, physical and information

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<sup>2</sup> Suharsimi Arikunto. *Manajemen Penelitian*, Rieneka Cipta, Jakarta, 2005, p. 31

<sup>3</sup> Depdiknas, *Kamus Besar Bahasa Indonesia Edisi Ketiga*, Balai Pustaka, Jakarta, 2007

<sup>4</sup> Ricky Griffin, *Management*, Cengage Learning, Boston, 2010, p. 6

resources to achieve organizational goals of efficiency and effectively. In the management process involved principal functions performed by a manager or leader, including planning (planning), organizing (organizing), the leader (leading), and monitoring (controlling).<sup>5</sup> Therefore, management is defined as a planned process, mengorganising, leading, and controlling the efforts of organization in all its aspects in order to achieve organizational goals effectively and efficiently.

Based on the definition above of management, in the outlines the stages to the conduct of management include:

- Planning
- Organizing
- Implementing
- Monitoring

Planning is the foundation of a process management activities and is an absolute requirement in an activity management. Especially in soil management, a good plane has made by manager (human) for the system of lay out chart and food's tenacity.

Then the organization related to the implementation of on-going plans. In this case, the government has made a

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<sup>5</sup> Nanang Fattah, *Landasan Manajemen Pendidikan*, Remaja Rosdakarya, Bandung, 2004, p.1

institution for land management that directly controlled by government. While the guidance from a leader like President is needed in order to produce something that is expected.

Then By the evaluation as a monitoring process can be an activity to determine whether an individual or group gain and use its resources effectively and efficiently to achieve the goal.

## **2. Management Function**

Based on the functions of management at the top of the outline can be given that the stages in the conduct of management include: planning, organizing, implementing, and monitoring. Management functions are universal, anywhere and in any organization. However, it all depends on the type of organization, culture and its members.

In this research, researchers tend to be guided by the opinion of Terry in *The Liang Gie*,<sup>6</sup> which states that the activities or functions of management, includes: planning , organizing, direction (actuating), and monitoring (controlling).

### **a. Planning**

The limitation and the definition of planning was different, it's according to the opinion of management experts. Planning is defined as the calculation and

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<sup>6</sup> The Liang Gie, *Administrasi Perkantoran*, Modern Liberty, Yokyakarta, 2000, p. 21

determination of what will be executed in order to achieve certain goals, which involves a place, by whom the perpetrator or the implementing procedures and how to achieve it.<sup>7</sup>

That plan was the basic that will be developed throughout the next function. Without a proper plan and a coherent, an organization will lose the central focus rests not just a list of activities that must be performed.

Planning is a process of preparing a series of decision-making for the execution of actions in achieving organizational goals, with and without the use of existing resources. As for the aspects of planning Include :

- 1). What to do?
- 2). Who did?
- 3). Where it will do?
- 4). Anything that be needful to achieve the goal?
- 5). How to do it?
- 6). Anything that can be done in order to achieve maximum goals?<sup>8</sup>

Thus, the key to success in a management was depending on the planning. Planning was a process and

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<sup>7</sup> Sutarno NS, *Manajemen Perpustakaan: Suatu Pendekatan Praktik*, Samitra Media Utama, Jakarta, 2004, p. 109

<sup>8</sup> Suharsimi Arikunto, *Manajemen Penelitian*, Rieneka Cipta, Jakarta, 2005, p. 38

activity leaders (managers) are continuous, meaning that every time something new arises.

Planning was the first step of each management. Planning was an activity that will be conducted in the future in a certain time to achieve certain objectives as well. A good planning is a rational, workable and to guide the next steps. Therefore, the planning has reached a good job of beginning the process of achieving organizational goals.<sup>9</sup>

Based on the description above, planning is essentially a thought process that is systematic, analytical, and rational to decide what to do, how to do it, who the executor, and when activity should be carried out.

b. Organizing

Organizing is the grouping activities, assigning activities are providing the authority's Necessary to carry out the activities. Organizing is the grouping of activities providing activities assignment purposes, the authority to carry out its activities.<sup>10</sup>

In an organization demanded the cooperation between two or more people to achieve a goals effectively and efficiently. Organization is a process for designing a

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<sup>9</sup> Patimah Siti Hardyanti, *Pengelolaan Perpustakaan Sekolah Di Sekolah Dasar Negeri Se-Kecamatan Nanggulan Kabupaten Kulon Progo*. S1 thesis, Universitas Negeri Yogyakarta, Yogyakarta, 2012, p. 17

<sup>10</sup> Lloyd L. Byars, Leslie W. Rue. *Human resource management*, McGraw-Hill/Irwin, Boston, 2006, p. 6

formal structure, grouping and organizing and dividing the tasks or the work among the members of the organization so that organizational goals can be achieved. To achieve these objectives it is necessary to choose those who have the ability and competence in performing the task.

Therefore, there need to pick and choose those that will be trusted or positioned in such a position. Related with that, need to be considered in terms of the process of withdrawal, placement, provision of training and development of members of the organization.

c. Direction

Direction is desire to make the others follow his desire with use personal power or position power effectively and in place long-term interests of the company. Including tell other people what to do with the tone varies from firm tone to ask or even threatening.

The aim is that the tasks can be resolved properly. Direction means the managers directing, leading and influencing subordinates. Manager does not perform all the activities themselves, but completing essential tasks through other people. They also do not just give orders, but to create a climate that can help the subordinates do the best job.

The function of Direction was as a leadership directing managers to improve the effectiveness and

efficiency to the fullest and creating a healthy work environment, dynamic, and so forth.

d. Supervision

Supervision is an activity to compare or measure that is being or has been carried out with the criteria, standards or norms of the plans that have been defined previously.<sup>11</sup>

Supervision is the last part of the management function carried out to determine:

- a. Are all activities have to run in accordance with the previous plan.
- b. What happens in the implementation barriers, loss, abuse of power and authority, irregularities and wastage.
- c. To prevent failure, loss, abuse of power and authority lapses, and waste.
- d. To improve the efficient and effective organization

Thus, planning is a beginning process of an activity management that the existence of it is indispensable in providing direction or benchmarks in an activity, and then the organization was related to entire associated with pooling existing resources to work together in preparing for

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<sup>11</sup> Sutarno NS, *Manajemen Perpustakaan: Suatu Pendekatan Praktik*, Samitra Media Utama, Jakarta, 2004, p. 128



the implementation of activities. The next stage was direction and implementation of activities that have always guided by the predetermined plan. The last stage is the supervision includes monitoring and evaluation activities, it can be repaired during the activity or to improve the program so that the next activity planned objectives achieved well.

### 3. The Difinitioan of Land

The word “Land” Etymologically in *Kamus Besar Bahasa Indonesia* means that the soil is the surface of earth or layer of earth that is above all.<sup>12</sup> Meanwhile, according to Cambriedge soil is the material on the surface of the ground in wich plant grow.<sup>13</sup>

Soil is a natural object contained in the surface of the earth's crust, which is composed of mineral materials as a result of weathering of rocks, and organic materials as a result of weathering of the remains of plants and animals, which is the medium or the growth of plants with qualities certain properties, which occur as a result of the combined effect of climatic factors, parent material, living bodies, the shape and length of time of the formation region.<sup>14</sup>

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<sup>12</sup> Depdiknas, *Kamus Besar Bahasa Indonesia Edisi Ketiga*, Balai Pustaka, Jakarta, 2007, p.1132

<sup>13</sup>Cambridge Advance Learner's Dictionary, Third Edition, Cambridge University Press, copyright 2008

<sup>14</sup>Hieronymus Yulipriyanto, *Biologi Tanah dan Strategi Pengelolaannya*, Graha Ilmu, Yogyakarta, 2010, p.11

While the terminology definitions can be seen from the ground thinking of experts. According to the soil survey staff (1975) in the Learning Module Fundamentals of soil science, land is a collection of natural bodies on the earth's surface that can be changed or created by humans from its constituent which includes organic material suitable for the development of plant roots. At the top is limited by air or water is shallow, the side to be limited by the water or even in the expanse of ice or rocks, while the lower part is limited by a material that cannot be called a land that is hard to define. The smallest of size 1 to 10 m<sup>2</sup> it's depending on the diversity horizon.<sup>15</sup>

In addition, soil implies different for each interest. A statue maker considers the soil as a major ingredient in the making of statues. Another case with a mining expert who considers the land as something that hinders their work as cover rocks or minerals that should they dig. Similarly, with an expert who considers the land as part of the soft surface of the earth so that the stones need to be installed on its surface in order to become stronger. Some housewife considers the land as the "causation" causing dirty shoes, floor, and carpet.<sup>16</sup>

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<sup>15</sup>Muslimin Mustafa, dkk, *Modul Pembelajaran Dasar-dasar Ilmu Tanah*, Program Studi Agroteknologi Jurusan Ilmu Tanah Fakultas Pertanian Universitas Hasanudin Makasar, Makasar, 2012, p. 1

<sup>16</sup>*Ibid.*, p.4.

The term of soil does have a broad understanding and different meanings according to the designation. In agriculture, soil is more specifically defined as a terrestrial plant growth media. Soil derived from the weathering of rock mixed with organic material remains of organisms (vegetation or animals) that live on it or in it. Moreover, in the ground there are also air and water. Groundwater comes from rain water retained by the soil so it does not seep into other places. This is what makes the soil as a medium to grow plants.

In addition to the origin and source of life (biological function), as water, land/soil also has a role or function of the socio-religious to cleanse and purify the body from unclean, as known in the fiqh, soil (dust) can be used for *Tayammum* when the conditions were not water, or there are medical reasons that do not allow body parts exposed to water (sick). Land is also an element that can be used to remove large unclean (mughalladzah).<sup>17</sup> Other religious functions, that stretch of land or ground (earth) is a means of worship (mosque) for all humans which finding in one of the *Hadis* of the Prophet Muhammad:

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<sup>17</sup>Iyas Asaad, dkk, *Teologi Lingkungan (Etika Pengelolaan Lingkungan Dalam Perspektif Islam)*, Deputi Komunikasi Lingkungan dan pemberdayaan Masyarakat, Kementerian Lingkungan Hidup, dan Majelis Lingkungan Hidup Pimpinan Pusat Muhammadiyah, 2011, Cet. 2, p. 43

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ  
 الْأَرْضُ كُلُّهَا مَسْجِدٌ إِلَّا الْمَقْبِرَةَ وَالْحَمَّامَ<sup>١٨</sup>

*Abu Sa'id Al Khudri's said; "Prophet sallallaahu 'alaihi wasallam said," The whole earth is a mosque except for grave and bathroom. "*

#### 4. Land Comptition

Every day we step on the ground, as well as around us to grow the plants and grass trees. Various questions arise about the land that we are standing and the trees and the grass grows. Why plants can be grown on the land and the land where it came from.

There are still a lot of curiosity about of land that need to be answered, like the diversity of the land itself such as land in the mountains, in the valleys and around the coast. But when we see to the fact, that a plant can grow on the ground, it means that the ground has the ability to provide food for it, like water and air, so because of that the plant can live and grow.

Based on these facts, land was defined as a material or soil mass consisting of mineral and organic material that supports plant growth on the surface of the earth. Soil is

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<sup>18</sup> Tirmidzi, Kitab : Shalat, Bab : Semua bumi adalah tempat sujud selain kuburan dan wc, No. *Ḥadīṣ* : 291

composed of rock particles, organic matter, living organisms, air and water.<sup>19</sup>

The interested parties on the land are farmers, both individually and in groups. Because the levels of livelihoods of them depend on agricultural production that manages, therefore the future of farmers was largely determined by to the manner of farmers in manage their land, they need more information to supports his efforts to increase agricultural production. Good soil gives a perspective of healthy life and a good crop.<sup>20</sup> Should be reminded that the good of agricultural product and the good of results has came from farmer effort was not only enjoyed by farmers, but also the community, and the government that needed food and clothing for healthy living by agricultural production. Therefore the understanding of the role of land as a factor of production needs to eat for living organisms is indispensable.

Several factors indicate that the soil was a natural part of the earth's crust which have experience in weathering processes biophysical-chemical for a long time. the biophysical-chemical processes was diverse from any location, revealing soil environmental conditions as diverse

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<sup>19</sup> Muslimin Mustafa, M.SC dkk, *Modul Pembelajaran Dasar-dasar Ilmu Tanah*, Program Studi Agroteknologi Jurusan Ilmu Tanah Fakultas Pertanian Universitas Hasanudin Makasar, Makasar 2012, p. 3

<sup>20</sup> *Ibid.*, p.4

as the state of the geomorphological and geological conditions of the region of the lithosphere which is above the water surface. An explanation of the origin of this land needs to be understood, because although the land part of the lithosphere of the Earth, but the process and the dynamics of formation only takes place in the lithosphere that gets outside influences such as radiation, air, or water, a condition that allows the continuation of life take place.<sup>21</sup>

## **5. Land Function**

Land that we see just such a stretch of the dead appeared to have a lot of functions that are important for living things, including :

- a. Soil serves as a place to grow plants. Plant roots anchored in the ground so that it can stand and grow well.
- b. Soil were able to provide water and a variety of nutrients both macro and micro.
- c. Land is also capable of providing oxygen (O<sub>2</sub>) known for plant growth through soil aeration system.
- d. Soil sustains plant establishment. Plant roots need to grow well in the soil in order to ensure the establishment of the plant. If soil drainage is blocked, roots grown only on the top layer of the aerasinya good. With shallow roots, the plant will easily fall.

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<sup>21</sup> *Ibid.*, p. 7

- e. Soil also acts as a place of life and living organisms, including microorganisms makroorganisme ground. Moreover, it also serves as a place to live that life of various vegetation in over.
- f. Soil serves as a tourist or recreation. If we discuss this role, it would lead us to think about the land because it will judge a place and all that is in place, including artistic value, beauty, mystical, cultural, human, nature, climate and other things. Example: Lake Toba Samosir Island premises with all the beauty of nature and culture in these places has become a clue for us that serve a wider area than just a place to grow plants alone.
- g. Land can be a buffer or a buffer system, so if there are compounds that are poisoned or excessive amount, then the soil acts as a filter or neutralize toxic substance or compound. Or in other words land a role in tackling the case of pollution of land and water would be the main constituent of the ground than air.
- h. Land is also used as a place founded buildings, bridges, runways, and others. By him that, the work involved in the field of civil engineering, building, it is necessary to know the nature of the land where the building will be set up. Science who studied about it called Soil Mechanics.

Given the amount of soil or land a role in human life and other organisms, it is necessary to note the land use

planning appropriately. The principle of biotic balance should be considered in the management of land for the purpose of sustainability (sustainable) land maintained.

## B. Land in the Perspective of Islam

### 1. The Term of Land In the Qur'an

*Nash* of Qur'an that relating to land is much enough. The study of the texts of the Qur'an that relating to the land, in this research conducted by researchers by finding the word *arḍun* (ارض), *turābun* (تراب) and *ṭīnun* (طين). As a results is found about 434 verses that have meaning land, are: 408 verses that have the word *arḍun* (ارض), 14 verses that have the word *turābun* (تراب), and 12 verses that have the word *ṭīnun* (طين).

The word *arḍun* (ارض) is *ism mufrad jins mu'annaṣ* (noun that a means single), with the plural (*jama' takṣīr*) is *arḍūn* (ارضون).<sup>22</sup> In *Mu'jam Mufradat li Alfazh al-Qur'an*, al-Raghib al-Ashfahani define it with something low or underneath (as opposed to something higher, for example the sky); something that could grow something else or something

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<sup>22</sup> Adib Bisri dan Munawwir AF, *Al-Bisri (Kamus Indonesia-Arab, Arab-Indonesia)*, Cet. 1, be studied and be valid by: Ahmad Warson Munawwir and Mustofa Bisri, Pustaka Progressif, Surabaya, 1999, p. 357



that can nourish something.<sup>23</sup> A similar definition proposed by Fairuz al-Abadi in *Qamus al-Muhith*.<sup>24</sup>

List of verse in the Qur'an that have the word <i>Arḍun</i> (ارض)			
Number of Surah	Name of Surah	Number of Verse	Sum of verse
2	Al-Baqarah	11, 22, 27, 29, 30, 33, 36, 60, 61, 71, 107, 116, 117,164, 168, 205, 251, 255, 267,273, 284.	21
3	Āli 'Imrān	5, 29, 83, 91, 109, 129, 137, 156, 180, 189, 190,191.	12
4	An-Nisā'	42, 97, 100, 101, 126, 131, 132, 170, 171.	9
5	Al-Mā'idah	17, 18, 21, 26, 31, 32, 33, 36, 40, 64, 97, 106, 120.	13
6	Al-An'ām	1, 3, 6, 11, 12, 14, 35, 38,59, 73, 75, 79, 101, 116.	14
7	Al-A'rāf	10, 24, 54, 56, 73, 74,85, 96, 128, 137, 146, 158, 185,187.	14
8	Al-Anfāl	26, 63, 67, 73.	4
9	At-Taubah	2, 25, 36, 74, 116, 118.	6
10	Yūnus	3, 6, 14, 18, 23, 24, 31,54, 55, 61, 66, 68, 78, 83, 99,101.	16

<sup>23</sup> Al-Ragib al-Ashfahani, *al-Mu'jam al-Mufradat li Alfazh al-Qur'an*, Dar al-Kutub al-'Ilmiyyah, Beirut, 2004, p. 22-23

<sup>24</sup> Muhammad ibn Ya'qub Fairuz Abadi, *al-Qamus al-Muhith*, Dar al-Kutub al-'Ilmiyyah, Beirut, 2004, p. 658

11	Hūd	6, 7, 20, 44, 61, 64, 85,107, 108, 116, 123.	11
12	Yūsuf	21, 56, 101, 105, 109,.	5
13	Ar-Ra'd	3, 4, 15, 16, 17, 18, 25, 31,33.	9
14	Ibrāhīm	2, 8, 10, 19, 26, 32, 38, 48.	8
15	Al-Hijr	19, 39, 85.	3
16	An-Nahl	3, 13, 15, 36, 45, 49, 52,65, 73, 77.	10
17	Al-Isrā'	4, 37, 44, 55, 90, 95, 99,102, 103.	9
18	Al-Kahfi	7, 14, 26, 45, 51, 84, 94.	7
19	Maryam	40, 65, 90, 93.	4
20	Tāhā	4, 6, 53.	3
21	Al-Anbiyā'	4, 16, 19, 21, 30, 31, 56,105.	8
22	Al-Hajj	5, 18, 41, 46, 63, 64, 65,70.	8
23	Al-Mu'minūn	18, 71, 79, 84, 112.	5
24	An-Nūr	35, 41, 42, 55, 57, 64.	6
25	Al-Furqān	2, 6, 59, 63.	4
26	Asy-Syu'arā'	7, 24, 152, 183.	4
27	An-Naml	25, 48, 60, 61, 62, 64, 65,69, 75, 82, 87.	11
28	Al-Qaşaş	4, 5, 6, 39, 57, 77, 81, 83.	8
29	Al-'Ankabūt	20, 22, 36, 39, 40, 44, 52,56, 61, 63.	10
30	Ar-Rūm	8, 9, 18, 19, 22, 24, 25, 26,27, 42, 50.	11
31	Luqmān	10, 16, 18, 20, 25, 26, 27,34.	8

32	As-Sajdah	4, 5, 10, 27.	4
33	Al-Ahzāb	27, 72.	2
34	Saba'	1, 2, 3, 9, 22, 24.	6
35	Fāṭir	1, 3, 9, 38, 39, 40, 41, 43, 44	9
36	Yāsin	33, 36, 81.	3
37	Aṣ-Ṣāffāt	5.	1
38	Ṣād	10, 26, 27, 28, 66.	5
39	Az-Zumar	5, 10, 21, 38, 44, 46, 47, 63, 67, 68, 69.	11
40	Gāfir	21, 26, 29, 57, 64, 75, 82.	7
41	Fuṣṣilat	9, 11, 15, 39.	4
42	Asy-Syūrā	4, 5, 11, 12, 27, 29, 31, 42, 49, 53.	10
43	Az-Zukhruf	10, 60, 82, 84, 85.	5
44	Ad-Dukhān	7, 29, 38.	3
45	Al-Jāsiyah	3, 5, 13, 22, 27, 36, 37.	7
46	Al-Ahqāf	3, 4, 20, 32, 33.	5
47	Muhammad	10, 22.	2
48	Al-Fath	4, 7, 14.	3
49	Al-Ḥujurāt	16, 18.	2
50	Qāf	4, 7, 38, 44.	4
51	Az-Zāriyāt	20, 23, 48.	3
52	Aṭ-Tūr	36.	1
53	An-Najm	31, 32.	2
54	Al-Qamar	12.	1
55	Ar-Raḥmān	10, 29, 33.	3
56	Al-Wāqī'ah	4.	1
57	Al-Ḥadid	1, 2, 4, 5, 10, 17, 21, 22.	8
58	Al-Mujādalah	7.	1
59	Al-Ḥasyr	1, 24.	2
61	As-Saaf	1.	1
62	Al-Jumu'ah	1, 10.	2

63	Al- Munāfiqūn	7.	1
64	At-Tagābun	1, 3, 4.	3
65	Ath-Talāq	12.	1
67	Al-Mulk	15, 16, 24.	3
69	Al-Hāqqah	14.	1
70	Al-Ma'ārij	14.	1
71	Nūh	17, 26.	2
72	Al-Jin	10, 12.	2
73	Al-Muzzammil	14, 20.	2
77	Al-Mursalāt	25.	1
78	An-Naba'	6, 37.	2
79	An-Nāzi'āt	30.	1
80	'Abasa	26.	1
84	Al-Insyiqāq	3.	1
85	Al-Burūj	9.	1
86	Aṭ-Tāriq	12.	1
88	Al-Gāsiyah	20.	1
89	Al-Fajr	21.	1
91	Asy-Syams	6.	1
99	Az-Zalzalah	1, 2.	2
<b>Sum of verse=</b>			<b>408</b>

The word *Turābun* (تراب) is also used in the Quran to show the meaning of the land. In *Mu'jam Mufradat li Alfazh al-Qur'an* Mentioned that the meaning of *Turab* is *arḍun* (ارض). The word *turābun* (تراب) derived from *fi'l māḍi* (past tense) *tarība* (تريب) that have meaning something that can adhere.<sup>25</sup>

<sup>25</sup> Al-Ragib al-Asfahani, op. cit., p.84

List of verse in the Qur'an that containing the word <i>Turābun</i> (تراب)			
Number of Surah	Name of Surah	Number of verse	Sum of verse
2	Al-Baqarah	264.	1
3	Āli-'Imrān	59.	1
18	Al-Kahfi	37.	1
22	Al-Hajj	35.	1
23	Al-Mu'minūn	82.	1
27	An-Naml	67.	1
30	Ar-Rūm	20.	1
35	Fātir	11.	1
37	Aṣ-Ṣāffāt	16, 53.	2
40	Gāfir	67.	1
50	Qāf	3.	1
56	Al-Wāqi'ah	47.	1
78	An-Naba'	40.	1
<b>Total =</b>			<b>14</b>

The word *ṭīnun* (طين) which can be found in several verses of the Qur'an that have similar meaning with the word *turābun* (تراب). Thus explanation at least proposed by al-Raghib al-Ashfahani based on some verses in the Qur'an such as *aṣ-Ṣāffāt* [37]: 11, *al-A'rāf* [7]: 12, *Ṣād* [38]: 76, and *al-Qaṣaṣ* [28]: 38.<sup>26</sup> While Fairuz Abadi define the word *ṭīnun* (طين) as a piece that is close.<sup>27</sup>

<sup>26</sup> Al-Raghib al-Ashfahani, Op. Cit., p. 350

<sup>27</sup> Muhammad ibn Ya'qub Fairuz Abadi, Op. Cit., p. 1222

List of verse in the Qur'an that containing the word <i>Tīnun</i> (طين)			
Number of Surah	Name of Surah	Number of verse	Sum of verse
3	Āli-'Imran	49.	1
5	Al-Māi'dah	110.	1
6	Al-An'ām	2.	1
7	Al-A'raf	12.	1
17	Al-Isrā'	61.	1
23	Al-Mu'minūn	12.	1
28	Al-Qaṣaṣ	38.	1
32	As-Sajdah	7.	1
37	Aṣ-Ṣaffat	11.	1
38	Ṣād	71, 76.	2
51	Az-Zāriyāt	33	1
<b>Total =</b>			<b>12</b>

### C. The essence of Land in the Qur'an

Land is a natural resource that has a strategic role and function, both now and in the future. Besides as living space for living things, the land has a production function, that is as a producer of biomass, such as food, fiber, timber and medicine. Soil also plays a role in conserving water resources and conservation of the environment generally.

Land is a finite resource and constantly getting increasing pressure to fulfill the needs of human being such as for clothing, housing, and food, which from time to time increase as long as the number of human. Islam strongly encourages use of vacant land to be planted, which will return the results to humans. Because humans as caliph on earth who

were given the ability to sense, mind and made the inhabitants of the world to "master" and prosper. As Allah SWT said in the Holy Qur'an:

.....هُوَ أَنشَأَكُم مِّنَ الْأَرْضِ وَاسْتَعْمَرَكُمْ فِيهَا (٦١)<sup>28</sup>

.... It is He Who hath produced you from the earth and settled you therein...

Prophet Muhammad PBUH said:

عَنْ سَعِيدِ بْنِ زَيْدٍ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ أَحْيَى أَرْضًا مَيِّتَةً فَهِيَ لَهُ وَلَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ<sup>29</sup>

From Sa'id ibn Zaid ra of the Prophet he said: "Whoever revive dead land then he is entitled to have it, and for people who do not have the right to dhalim it."

*Hadis* above has meaning suggestion and also the threat. First, suggestion that every person always to revive the dead land, and utilizing the land that still life. If it can be done so whoever revive dead land he/she has the right to that land, this is a very great gift for people who revive on the land, as well as for somebody that use the land for planting

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<sup>28</sup> QS. Hūd [11]: 61

<sup>29</sup> This *Hadis* was narrated by al-Turmudzi in chapter *Ma dzakara fi Ihya' Ard al-Mawat*, Lidwa Pustaka-i- Software : Kitab Ḥadīṣ 9 Imam, Volume . 5, p. 248, Number of Ḥadīṣ. 1300

the plants that will be useful to planter. And that plants both in the dead land and in the land of living will always *Zikr* to Allah SWT.

The second is a threat to people who do not care (do not use the live land and not revive the dead land) to land categorized as *zalim* people, then the people who *zalim* has no right to benefit from the land either material (result of land) or results of *Zikr* of trees, plants, or plants that exist in the land.

In the Islamic view, everything in the sky and the earth including soil essentially belongs to Allah SWT alone. Allah said:

وَلِلَّهِ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ وَإِلَى اللَّهِ الْمَصِيرُ (٢٤) <sup>30</sup>

"Yea, to Allah belongs the dominion of the heavens and the earth, and to Allah is the final goal (of all)."

Allah SWT also said in the Holy Qur'an:

لَهُ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ يُحْيِي وَيُمِيتُ وَهُوَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ (٢) <sup>31</sup>

"To Him belongs the dominion of the heavens and the earth: It is He Who gives Life and Death; and He has Power over all things."

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<sup>30</sup> QS. An-Nūr [24] : 42

<sup>31</sup> QS. Al-Ĥadīd [57] : 2



Thus verses clarify that the real owner of all things (include soil) is Allah SWT only.<sup>32</sup> Then, Allah SWT as the ultimate owner, authorizing (*istikhlaf*) to people to manage it in accordance with His laws. Allah SWT said:

آمِنُوا بِاللَّهِ وَرَسُولِهِ وَأَنْفِقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلِفِينَ فِيهِ فَالَّذِينَ آمَنُوا مِنْكُمْ  
وَأَنْفَقُوا لَهُمْ أَجْرٌ كَبِيرٌ (٧)<sup>33</sup>

“Believe in Allah and His messenger, and spend (in charity) out of the (substance) whereof He has made you heirs. For, those of you who believe and spend (in charity),- for them is a great Reward.”

Interpret this verse, Imam Al-Qurtubi said, "This verse is the proposition that the origin of the ownership belongs to Allah SWT, and that humans do not have the right except utilizing a way that please by Allah SWT.<sup>34</sup>

Thereby, Islam has been explained clearly in the Islamic philosophy of land ownership. Essentially there are two (2) points, are: *First*, the ultimate owner of the land is Allah SWT. *Secondly*, Allah SWT as the ultimate owner has authority given to human to manage the land according to the laws of God.

Therefore, this philosophy has within the implications that is nothing new legislation to be used to regulate the issue of

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<sup>32</sup> Yasin Ghadiy, *Al-Amwal wa Al-Amlak al-'Ammah fil Islam*, (mu'tah: mu'assasah raam), 1994. p.19

<sup>33</sup> QS. Al-Ḥadīd [57] : 7

<sup>34</sup> Tafsir Al-Qurthubi, section I, p. 130.

the land, unless the laws of God alone.<sup>35</sup> Regulate land matters with the law except the law of God has been forbidden by God as the ultimate owner. Allah SWT said:

قُلِ اللَّهُ أَعْلَمُ بِمَا لَبِثُوا لَهُ غَيْبُ السَّمَاوَاتِ وَالْأَرْضِ أَبْصِرُ بِهِ وَأَسْمِعُ مَا لَهُمْ  
مِّنْ دُونِهِ مِنْ وَلِيٍّ وَلَا يُشْرِكُ فِي حُكْمِهِ أَحَدًا<sup>36</sup>(٢٦)

”Say: "Allah knows best how long they stayed: with Him is (the knowledge of) the secrets of the heavens and the earth: how clearly He sees, how finely He hears (everything)! They have no protector other than Him; nor does He share His Command with any person whatsoever.”

Ownership (*milkiyah*) in Islamic law is defined as a right established by Allah. for humans to utilize an object. Ownership is not born from the physical reality of an object, but the provisions of the law of Allah. on the thing.

Islamic Law set the ownership of the land in detail, by consider two aspects related to land, are:

1. Land substance (*Raqabah al-Ard*).
2. Benefits of Land (*Manfa'ah al-Ard*), that is using the land for agriculture, etc.

### c. History of Land Management

1. History of Land Management in the Arabian Peninsula

The pattern of life in Arab nation pre-Islam is differing from each other. There is a living settled in a particular

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<sup>35</sup> Abduh and Yahya, *Al-Milkiyah fi Al-Islam*, p. 138

<sup>36</sup> Qs. Al-Kahfi [18] : 26

place, there is a nomadic life on the move also.<sup>37</sup> For Arabian people who live in somewhere, both urban and rural areas have recognize the ownership of land individually and acknowledged its existence. Each individual allowed openly using and enjoying his property with security provided by the ethnic group or their nomadic tribe (*kabilah*). The right of private proprietary well know as particularly right of land ownership and populate house. For example in *Yasrib*, tribal *Aus*, tribal *Khazraj*, and the Jewish community, have plantations and agriculture respectively, and Jewish groups in general to control the land fertile.<sup>38</sup>

Meanwhile, the Arab peoples were nomadic pattern not familiar with the ownership of land or a house in personally, their life was migratory from one place to another to look for grass and fountainhead as their source of livelihood. If the war occurs between tribes, their motive is not to control the land that the tribe is defeated, but to arrogate and got of best of livestock and property. Mastery of land practices that apply is collective claim of ownership, that is land owned by the tribe as a protected land called *Hima'* as grazing place for their livestock. *Hima'* ownership rights is exclusive property of the tribes

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<sup>37</sup> Jaribah Bin Ahmad Al-harithi, *Al-fiqh al iqtisadi li amir almu'minin umar ibn khattab*, translated by Asmuni Sholikhan, Lc. "Fiqh ekonomi Umar ibn Khattab", Khalifah, Jakarta, 2006. p.31-32

<sup>38</sup> William Montgomery, "*Muhammad at Madinah*", Clarendon Press, Oxford, 1956, p.192-193

involved, and other tribal people should not use that land *Hima*.<sup>39</sup>

Besides, there is a collective property as mentioned above, there is also individuals land ownership such as rights of land ownership by the tribe leader (*Sayyid*) or a respectable person among the members of the tribe for own account, if the leaders of the tribes want a certain area, then he took a high place and told his dog to bark its voice loudly. How long its voice was heard, then that is the limit of land which he mastered as his own land of figure's tribes.<sup>40</sup> However, ownership is only temporary, because the ownership was limited to the benefits of land ownership rights, that is for cattle grazing land, if the land is not feasible for their animals then they will leave the land.

When Islam was present in the Arabian Peninsula ownership land system just like practiced by the Arab community who settled both in cities and in villages, then justified by the Qur'an as a form of ownership recognized as mentioned in Q.S. Āli- 'Imrān verse 195 and Al-Hasr verse 2.

Beside the explanation of the Qur'an, land ownership rights is also justified by prophet PBUH by applying *ganīmah* concept to the soldiers who join in war with give part of

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<sup>39</sup> Nuzhat Iqbal, "The concept of Land ownership in Islam and poverty Alleviation in Pakistan", The Pakistan Development Review, 39:4 part II (Winter 2000), p. 650.

<sup>40</sup> Muhammad ibn Idris al Shafi'i, *Al-Umm Chapter 4*, Dar al-Ma'rifah, Bayrut, 1393, p.48

subjected lands as happened in the land of *Khaibar*.<sup>41</sup> Thereby, the friend of *Anṣar* that majority work as farmers and fields processors also acquire legitimacy of individual land ownership from prophet PBUH.

While the practice of land mastery through *ḥima*' that apply in pre-Islamic period have been revised because it does not humane and more rely on the power even violence. The prophet PBUH with his Islam treatise makees regulations in terms of land ownership, either in terms of its philosophy or how is acquired it. Philosophically, orientation of *ḥima*' is not to enrich themselves but for the use of together. As for how mastery or its acquisition only performed by an *Imām* or head of state.<sup>42</sup>

In Islamic history, land management already exists at the time of prophet PBUH and friends. Land is a natural resource that given by God to human. As a form of gratitude, human should keep and maintain it, because it is the source of human life. Allah SWT said:

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<sup>41</sup> Ridwan, *"Pemilikan Rakyat dan Negara Atas tanah: Menurut Hukum pertanahan indonesia dalam perspektif Islam"*, BADAN LITBANG DAN DIKLAT KEMENTERIAN AGAMA RI, cet.pertama 2010, p.77

<sup>42</sup> Abi Zakariya Yahya Ibn Sharaf al-Nawawi al-Dimasqi, *Rawdah al-Talibin juz 4*, Dar-al-Kutub al-ilmiyyah, Bayrut ,T.th, p.357

هُوَ الَّذِي جَعَلَ لَكُمُ الْأَرْضَ ذُلُولًا فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِن رِّزْقِهِ وَإِلَيْهِ  
النُّشُورُ (١٥)<sup>43</sup>

“It is He Who has made the earth manageable for you, so traverse ye through its tracts and enjoy of the Sustenance which He furnishes: but unto Him is the Resurrection.”

All that is in the sky and on earth indeed belongs to God, is no exception to the land. This was confirmed by God in His Word:

وَلِلَّهِ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَكَانَ اللَّهُ بِكُلِّ شَيْءٍ مُّحِيطًا<sup>44</sup> (١٢٦)<sup>44</sup>  
“But to Allah belong all things in the heavens and on earth: And He it is that Encompasseth all things.”

Because of land ownership rights, inherent in God whereas human is none only receiver of mandate so land management by human should be based on the will of God.<sup>45</sup>

Islamic history records of land management has become essential for the spread of Islam in the early days, there was war that brought many consequences of the spoils in the form of land, among which:

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<sup>43</sup> Q.s. Al-Mulk [67] : 15

<sup>44</sup> Q.s. An-Nisa [4] : 126

<sup>45</sup> Siti Mariam Malinumbay S. Salasal, *The Concept of Land Ownership: Islamic Perspective*, Buletin Geoinformasi, Jld. 2 No.2, ms. 285 -304, Penerbitan Akademik Fakultas Kejuruteraan & Sains Geoinformasi, Desember, 1998, p. 287

a. Land *Kharaj* and '*Uṣr*

*Kharaj* land is defined as land that is acquired as a result of the Muslim conquest of a territory either by war or no war. Therefore, land *kharaj* can be grouped into two, are:<sup>46</sup>

1. land that was held by Muslim rulers willingly pass through agreement with retaining ownership of the land to the previous owner.
2. Land that was held by Muslim rulers pass through the warfare way that left by previous owner so that ownership become different being to the Muslims owner.

Status of this land of course different from the land '*uṣr*' that is the land Muslims owner until brings the consequence of discrimination in treatment of ownership and management. Division and this land management is becoming extremely complex due to the vast of Islamic empire and diverse characteristics of the land area or the spoils so there are many thought we found and the typical land management practices from time to time.<sup>47</sup>

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<sup>46</sup> Ibid, Siti Mariam Malinumbay S. Salasal, p. 296

<sup>47</sup> Makalah Kholis Budiyo, "*Studi Pemikiran dan Praktik Pengelolaan tanah dalam Sejarah Islam*", Program Studi Timur Tengah dan Islam Universitas Indonesia, Jakarta.

b. Conservation area (*al-Hima*)

*Hima* is wild life area, or protected forests, where removal wood, grass, livestock grazing, persecution, or exploitation of certain natural resources that prohibited, or the area in which there live and breed certain animals or plants that is protected and preserved. However, the utilization of natural resources in this *hima* still allowed by the rules and certain agreements. Institution or state authority has the right and obligation to develop and protect this *hima* region for the function and its conservation objectives.<sup>48</sup>

Prophet PBUH ever decide some areas around Medina as *hima* area to protect the valley area (oasis), pasture and plants in it. Ground processing and exploitation of other natural resources (illegal logging, removal of wood, grass, etc) are also prohibited. The Prophet also made a place as a wild life near Medina on the slopes of the mountains al Naqi with saying that the land is protected land.<sup>49</sup>

Following in the Prophet ways, Abu Bakr also decide an area called *al Rabazah* to protect animals of

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<sup>48</sup> Ilyas Asaad, dkk, *Teologi Lingkungan (Etika Pengelolaan Lingkungan Dalam Perspektif Islam)*, Deputi Komunikasi Lingkungan dan pemberdayaan Masyarakat, Kementerian Lingkungan Hidup, dan Majelis Lingkungan Hidup Pimpinan Pusat Muhammadiyah, 2011, Cet. 2, p. 56

<sup>49</sup> Nizar Abazhah, *Ketika Nabi di Kota*, Translated of book *Fi Madinah al Rasul*, Zaman, Jakarta, 2010, p. 331.



charity and assign Abu Salamah to take care of it. Umar bin Khattab pointed to another *hima*' area, that is al Syaraf and assigns a former slave named Hanni to take care of it. While the Caliph Ustman ibn Affan expand *hima* region that has previously been set by the Prophet and caliphs previously. *Hima* eventually developed into an institutionalized provision for the protection, maintenance and utilization of the area that has been determined, so the benefits everlasting and ongoing. Although there is no source that is explained in detail how to managed thus *hima*, but character of hima as an institution for the conservation of natural resources are recognized and empirically has a strategic role for nature conservation and public interest services (functions *maşlahah*).

Sardar (1985) has made *hima* categories contained in the Arabian peninsula, which is until now still preserved, into six types are:

1. Conservation area (protected) in which all the activities is grazing and grass removal are prohibited.
2. Protected areas (conservation) where the decision or the cutting of trees is prohibited or restricted.
3. Protected areas (conservation) where livestock grazing activities are measured by certain seasons.

4. Protected areas (sanctuary) for a particular species of animal or plant.
  5. Special protected areas for the maintenance of bees, so grazing in the flowering season is prohibited.
  6. Protected areas managed by the village or a particular tribe and its benefits for utilized village / general.
- c. Land ownership mechanism

According to Abdurrahman al-Maliki land can be owner by six ways according to Islamic law, are:<sup>50</sup>

1. By the buying and selling
2. By Inheritance
3. By a Grant
4. By *Ihya' Al-mawāt* is a proprietary process that is triggered by water or land rehabilitation activities that were previously dead or no man's land or land which previously no owner but then left without any management at all over a period of 3 years based on the *ḥadīṣ* narrated by Aisyah r.a.
5. By *Tahjir* is way to mark the land that is ownerless to further processing. Land clearing activities may include fencing of all the land, clearing grass and weeds as well as the preparation of irrigation facilities. Ownership of the land with this new

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<sup>50</sup> Al-Maliki, *as-Siyasah al-Iqtashadiyah al-Mustlah*, p. 51.

mechanism is recognized when the country is arable land can be returned to production within 3 years.

6. By *Al-Iqta* mechanism that is a form of gift-giving by the state to certain people. Type of administration can be *Iqta Tamliki* (has full rights to the land), *Iqta Istiqlal* (rights to utilizing without ownership), *Iqta Irfaq* (temporary ownership and for a particular purpose).

d. Pattern of Cooperation in Land Management

1. *Muzara'ah*

*Muzara'ah* derived from the word *zara'a-yazari'u-muzara'ah* which means plants the plant. In terminology, the "Al-Bada'I Al-Shana'I" Al-Kasani defines *muzara'ah* mean "Contract for farming in a land with some of result in accordance with the terms that have been made by *syari'at*".<sup>51</sup>

*Al-muzara'ah* is derived from the Arabic language from the word *az-zar'u*. the word *az-zar'u* itself has two meanings, the first meaning is *tharh az-zur'ah* that means throwing the seeds (in other terms of *az-zur'ah* is *al-budzi*), that is throwing seed into the soil. Moreover, the second meaning of *az-zar'u* is *al-inbaat* which means "growing crops". The

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<sup>51</sup> Arif Munandar Riswanto, *BUKU PINTAR ISLAM*, Mizan, Bandung, 2010, p. 143

meaning of the first is the actual meaning (*ma'na haqiqiy*), and the second meaning is connotation meaning (*ma'na majazi*) . Hence the Prophet said in a *ḥadīṣ*:

لَا يَقُولُ أَحَدُكُمْ زَرَعْتُ وَلِيَقُلْ حَرَنْتُ

"Do not let anyone among you say *zara'tu*, but let's say *harats-tu*"

Both this word has similar meanings daily, yet the word *ḥaratsa* is more likely to approach the meaning farming. The purpose of this *ḥadīṣ* is not to use the word *zara'a* if the intended meaning is the meaning of denotation grow,<sup>52</sup> because only Allah who can grow. Therefore Allah said in the Qur'an surah Al-Waqi'ah verses 63-64:

أَفَرَأَيْتُمْ مَا تَحْرُثُونَ (٦٣) أَأَنْتُمْ تَزْرَعُونَهُ أَمْ نَحْنُ الزَّارِعُونَ (٦٤)

“See ye the seed that ye sow in the ground?. Is it ye that cause it to grow, or are We the Cause?”

As for the terminology, some scholars have different opinion in defining it. Prof Dr Wahbah Zuhaily in his book *al-Fiqh al-Islâmy wa Adillatuhu* wrote that *Mālikīyyah* scholars define the cooperation

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<sup>52</sup> Al-Jazairy, ‘Abdurrahman, *al-Fiqh ‘alal Madzahib al-Arba’ah*, p.5, vol.3, Dar el-Bayan al-‘Arobiyy, Mesir, 2005.

in agriculture. *Ḥanabilah* scholars define with transference of management of the land to people that will cultivate it or do it, while the results will be divide by both parties. *Muzara'ah* also called *mukhābarah* or *muhāqalah*. Iraqis call *Qarah*. Syafiiyyah scholars differentiate the meaning of the term *muzara'ah* and *mukhābarah*. *Mukhābarah* defined by working on the land from land owners to the yeoman by the division of the harvest, while the seeds are from the yeoman. Then *muzara'ah* is *mukhābarah* itself but the seed comes from the land owner.<sup>53</sup>

While Syekh Abdurrahman al-Jaziri in his book *Al-Fiqh 'alal Madzahib al-Arba'ah* explained differences in definition of *muzara'ah* among scholars as follows: "According to *Hanafiah muzara'ah* is contract is to grow crops with most coming out of earth. According *Hanabilah muzara'ah* is the actual owner of the land handed over to arable land and the worker given seed. According to al-Shafi'i *muzara'ah* is a worker lease the land and along with the result of that land. And according to Syaikh Ibrahim al-Bajuri that *muzara'ah* is worker to manage the land with

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<sup>53</sup> Wahbah Zuhaili, *al-Fiqh al-Islâmy wa Adillatuhu*, Vol. V, Dar al-Fikr, Damaskus, 2008, p. 482

most of what comes out of it and the capital of the land owner. "

In addition, according to Sulaiman Rashid the author of book *Fiqh Islam*, *muzara'ah* is work a land (other person) like the field or farm with on a fee-paid partly of the result (half, third or quarter). Meanwhile, seeds and costs of working are guaranteed by the land owner. While *mukhābarah* is work a land (other person) like the field or farm with on a fee-paid partly of the result (half, third or quarter). Meanwhile, seeds and costs of working are guaranteed by yeoman.

So, from some of definitions above we can take conclude that *muzara'ah* according to the language means *muamalah* on the ground with most of the exit portion of it. And the terms of *muzara'ah* is an agreement in the processing of agricultural or land plantation between landowners and yeoman with result division accordance agreement between them.

In a *ḥadīṣ* narrated by Al-Bukhari, Ibn Umar used to notify Nafi' that prophet PBUH ever employing *Khaibar* people to manage his land with commission a half of the produce of the land.

## 2. *Iḥya' al-Mawat*

In our terms known to revive dead land. It means that making the land unproductive being productive, both

better place to live and farm. The word *Ihya' al-Mawat* consists of two words, that is *Ihya'* revive and *al-Mawat* something off, which means the *Ihya' al-Mawat* by language interpreted turn something dead. According to Abu Bakar Ibn Khusein al-Kasynawi *al-Mawat* is land that no owner and not used.<sup>54</sup> Al-Rafi'i defines *al-Mawat* with soil no owner and no use one.<sup>55</sup>

According to Syekh Muhammad the dead land is land that no owner and no one was taking advantage of the earth.<sup>56</sup> Ibn Qudamah define *al-Mawat* is the broken ground and is not known who the owner is.<sup>57</sup> Hasbullah Bakry has opinion that *Ihya' al-Mawat* which land is to be turned on by a person belonging to people who turn on the ground.<sup>58</sup> Meanwhile, according to Syaikh Syihab al-Din Qalyubi wa Umairah, *Ihya' al-Mawat* that is fertile the soil infertile.<sup>59</sup> Revive the dead land that means cultivating the soil, or make the land ready for immediate

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<sup>54</sup> Abu Bakar Ibn Khusein al-Kasynawi, *Asyhadul Madarik, Syarkh Irsyad al-Syalik fi Fiqhi Imam al-Aimma Malik*, Juz 2, Dar al-Kitab Ilmiah, Beirut, Libanon, 1991, p. 190

<sup>55</sup> Muhammad al-Syarbani al-Khatib, *al-Iqna fi Hall al-Alfadz Abi Syuja'*, Dar al-Ihya al-Kutub al-Arabiyah, Beirut, 1978, p.78

<sup>56</sup> Syekh Muhammad Ibn Qasim al-Ghazy, *Fath al-Qarib al-Mujib*, Dar Ihya al-Qutub al-Arabiyah, Indonesia, 1978. p.28

<sup>57</sup> Abu Muhammad Abdullah Ibn Qudamah al-Maqdisi, *al-Kafi fi Fiqh al-Imam Ahmad Ibn Hanbal*, al-Maktabul Islami, Beirut, 1998, p. 435

<sup>58</sup> Hasbullah Bakry, *Pedoman Islam di Indonesia*, Cet. 5, UI Press, Jakarta, 1990, p. 306

<sup>59</sup> Syihab al-Din Qalyubi Wa Umairah, *Qalyubi Wa Umairah*, Dar al-Ihya al-Kutub al-Arabiah, Indonesia, 1978, p.87

planting.<sup>60</sup> In other words, turn the dead soil is utilize the land for any purpose, so they can turn that the existence of a person's attempt to turn the soil, the effort had been made of his land.<sup>61</sup>

In terminology, there are some definitions of *Ihya 'al-Mawat* is the cultivation of vacant land that has not been processed, and no one has to be a productive land yet, either for farming or building, "suggests that the notion that because someone could have made a plot land, when the land was empty, unprocessed and not owner yet a person."<sup>62</sup>

The Qur'an does not explain *Ihya 'al-Mawat* clearly and in detail. Qur'an only revealed in general about the necessity scattered on the earth to find the gift of God as contained in the letter of al-Jumu'ah [62] verse 10:

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِن فَضْلِ اللَّهِ وَاذْكُرُوا  
اللَّهَ كَثِيرًا لَّعَلَّكُمْ تُفْلِحُونَ (١٠)

“And when the Prayer is finished, then may ye disperse through the land, and seek of the Bounty of Allah: and celebrate the Praises of Allah often (and without stint): that ye may prosper.”

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<sup>60</sup> Taquuddin An-Nabhani, *Membangun Sistem Ekonomi Alternatif*, Risalah Gusti, Surabaya, 1996, p. 135

<sup>61</sup> Ibid., p. 74

<sup>62</sup> Al-Imam Alamah Ibn Ali Ibn Muhammad Syaukani, *Nail al-Autar*, Dar al-Qutub al-Arabia, Beirut, tt, p. 3



This verse recommend for every Muslim to spread out on God's earth to make a living after their prayers. The phrase of spread out on the earth is endeavor in accordance with their expertise and their respective professions. For agriculture, farmer is farming on their land. Therefore, this verse encourages every individual Muslim to work actively and make productive all aspects that are useful for the needs of the society. In this case, turn the vacant land that is highly recommended in Islam due to turn idle land will affect the productivity of the community is increasing. In *Isyarah* of *Nash*, this verse encourages to turn vacant land.

Islamic teachings is animate dead land not just to make the soil come alive, but the soil must be turned to bring the results that can be used by humans. Turned the soil should be a source of income for the survival of human economic life.<sup>63</sup> Theme of revive the dead land in Islam shows us that Islam is saving a very big concern for the environment. That attention is preceded international conventions about the environment. If it implemented well, a very big concern of Islam can be a solution to the enormous environmental damage that is being hit modern times.

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<sup>63</sup>Arif Munandar Riswanto, *Buku Pintar Islam*, Mizan, Bandung, 2010, p. 143

## 2. History of Land Management Indonesia

The history of the development of agrarian law in Indonesia was very dynamic. This is going according to the rhythm of civilization and knowledge society and the conditions surrounding them. Investigating the history of agrarian law is necessary to look at the reality of current agrarian law and to project the future development of the agrarian law.

Broadly speaking, the history of land law in Indonesia divided into three periods, namely the pre-colonial period, the colonial period and after independence.<sup>64</sup>

### a. Pre-Colonial Period

In the early days of the kingdoms in Indonesia especially in Java, the pattern of management and organization of the land has not known yet by the public. But there is a record that at the time of *Majapahit* kingdom was known concept of individual and collective land ownership.

At that time, control of individuals to cultivate the land applicable to the pioneer farmer, if he has opened a new area, so he was given three years to score paddy before subjected to the taxpayer. Opening of paddy land done by some farmers make the land belongs to the joint. Then the opening of the land around the

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<sup>64</sup> Gunawan Wiradi, *Tonggak-tonggak Perjalanan Kebijakan Agraria Agraria di Indonesia dalam Prinsip-prinsip Reforma Agraria Jalan Penghidupan dan Kemakmuran Rakyat*, Pustaka Lapera Utama, Yogyakarta, 2001, p. 5-11.

village was done with the community to make the land belongs to the collective.

At the end of the kingdom of Mataram, land tenure systems are divided on the basis of *appanage* system, which is a form of land tenure which was a gift from the king to the royal officials on condition of paying tribute to the central authority in kind. And so the land management authority is entirely in the hands of the king or ruler of each area at the time

Base on investigating of history above, it can be conclude that the law was used by society in practice of land management at that times is customary law. It was unwritten law that was exist since of ancestor and was apply by the society of Indonesia before the Portuguese, Dutch and English come.<sup>65</sup>

b. Colonial period

When the Dutch came to Indonesia in 1677 by the VOC,<sup>66</sup> the area of Mataram kingdom has become a land protectorate of VOC, since that time the role of local officials is slightly reduced. In the mid 18th century VOC managed to obtain monopoly power of trade, at the time Dutch acts as an

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<sup>65</sup> Arie S Hutagalung, et.al, *Hukum Pertanahan di Belanda dan Indonesia*, Pustaka Larasan, UUPAi, 2012, p. 133.

<sup>66</sup> VOC (Vereenigde Oostindische Compagnie), founded on 20 March 1602. is the origin of the Netherlands Trade Union that has the power to monopolize the trading activity in Asia. The company is considered to be the world's first multinational corporation, and is the first company that issued the stock distribution system. Read more [http://id.wikipedia.org/wiki/Vereenigde\\_Oostindische\\_Compagnie](http://id.wikipedia.org/wiki/Vereenigde_Oostindische_Compagnie), accessed November 01, 2014.

intermediary between the local authorities by the king, in this case the Dutch managed to bring the authorities into effect for give his produce directly to the VOC.

In the 19th century the VOC went bankrupt, then all trade matters directly controlled by the government of the Dutch kingdom. For trade in Indonesian affairs submitted to the Governor General Deandles that makes the power more systematic, but at that time related to land tenure issues have not received serious attention. After that, the Dutch royal power was taken over by the British government, and For trade in Indonesian affairs submitted to Rafless as the new leader (1811-1816), by bringing *Domein*<sup>67</sup> theory, he made the issue of land tenure is important. Since then the agrarian history of Indonesia begins.<sup>68</sup>

In initiating his efforts to apply these theories in Indonesia, in 1811, Rafless formed a committee agrarian statistical inquiry, chaired by Mackenzei with nine members, as to which the information quoted by Ridwan from Soekanto that nine members are divided into several areas of research, namely, Yule (Banten ), Crawford (Cirebon), Raban Keasberry (Tegal), Lawrence (Pekalongan and Kedu), Eales (Semarang), Mc. Quoid

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<sup>67</sup> *Domein* theory is a soil mastery teori posits that mastery over a plot of land, means also ruled all of its contents, including the people living on it. More explanation see at, Putri agus wijayanti, *Tanah dan Sistem Perpajakan Masa Kolonial Inggris*, Tarawang Press, Yogyakarta, 2001, p. 9-10.

<sup>68</sup> Mohammad Hatta, *Hukum Tanah Nasional Dalam Perspektif Negara Kesatuan*, Media Abadi, Yogyakarta, 2005, p. 141

(Jepara), Adams (Surabaya), Hopkins (Rembang), and A dutch named Knops.<sup>69</sup> Based on the results of this research, Rafless conclude that all the land belongs to the king or the government, which then was born the *Domein* theory. Base on this theory, and then it made tax collection system of the earth (landrent) of 2/5 of the land arable.

In 1830, British rule was replaced by the Dutch government with the enactment of Governor Van der Bosch, it sets Cultuurstetsel policy that forced cultivation system, with the purpose of helping the Dutch country in crisis. Basic policy of the Netherlands is still subscribe to the theory Domein Raflees, that all land is owned by the government and the head of the village is considered rent to the government and then lend it to the head of the village farmers. On this basis, the main point of which is no longer Cultuurstetsel give 2/5 of the land produce, but 1/5 of the land to be planted with certain crops according to the needs of government, such as indigo, coffee, sugar cane, tobacco and so on which must then be submitted to the government for exported to Europe.<sup>70</sup> The results of this cultivation system provides great benefits and abundance for the Dutch government.

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<sup>69</sup> Ridwan, *Pemilikan Rakyat dan Negara Atas Tanah Menurut Hukum Pertanahaan Indonesia Dalam Perspektif Hukum Islam*, BADAN LITBANG DAN DIKLAT KEMENTERIAN AGAMA RI, 2010, p. 171.

<sup>70</sup> Erman Rajagukguk, *Hukum dan Masyarakat*, Bina Aksara, Jakarta, 1983, p. 12-13.

The amount of tax results in getting the Dutch government ruled by kings and ministers in the colonies. This causes made the financier of liberal groups opposed to the system controlled by Cultuurstelsel, then through a representative in the Dutch parliament, they demand to interfere in the colonies. After a heated debate with conservative supporters of the government, liberals finally win this debate. This led to the 1848 Dutch constitution modified, in which stipulates that the government in the colonies should be controlled by law, the process of formation of the new legislation was completed in 1854 with the release of Regering Regelen (RR). One paragraph of Section 62 of the RR states that the Governor-General may lease land with provisions that will be set by ordinance.

Section 62 of RR there are 8 paragraphs which then developed into a new theory in the history of Indonesian agrarian is *Agrarische wet* 1870, which was promulgated in the State Gazette no. 55 in 1870. One of the importance of a point inside the Section 1 states that *"all land that is not proven on the ground it is an absolute property rights, is the domain of the State (State-owned).*

An interesting case of the application of *Agrarische wet* 1870 that the domain of the theory is based on the principles of customary law Javanese state who worked on (the ground), then he is deemed eligible (the land), while the uncultivated land anyone in this concept is the property of God, and king is the

representative of God, the king has the right to the land, but the people should cultivate and occupy the land. Because at that time the Dutch authorities, the local Dutch East Indies (Indonesia) outside *Swapaja*<sup>71</sup> area of the Dutch power.

The enactment of this law in 1870 making *Agrarische wet* rising interest of foreign and private investors to invest engaged in private estates, especially in Java and Sumatra. Mastery of community land by private entrepreneurs has shifted the role of farmers into laborers. This causes the people's economy is not growing and poverty is increasing.<sup>72</sup>

Thus the history of the search we can analyze at least five kinds of land law as the law of the land a long time (before the enactment of the UUPA), it can be said that the law of the land in Indonesia at that time pluralistic, including:

1. Western Land Law which is based on Western Civil Law and other regulations
2. Customary Land Law which is based on Traditional Law
3. Land Law intergroup HATAH is originating on jurisprudence and opinions of the scholars

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<sup>71</sup> The Land *Swapraja* is An area that has a special legal defense force in the *Swapraja* region, such as the sultanate of Yogyakarta. The content of the law of this land, it is customary law made by the local Government and partly by the Dutch East Indies government.

<sup>72</sup> Ridwan, op.cit, p. 175

4. Land Administration Law which is based on the State Administration Law (*Agrarische wet* 1870 dan *Cultuurstetsel*)
5. *Swapraja* or Autonomous Land Law which is based on Law of the State or the State Administration Law.

However, as noted earlier, that being the principal provisions of the Land is the Law of the West (colonial) and the Customary Law of Lands, the other law only as a supplement only.

c. After Independence Period

After Indonesian independence in 1945, the agrarian policy *Agrarische wet* legacy of Dutch government is still enforced. It was only in 1948, Indonesian government form a committee to formulate Agrarian land law that reflects the personality and values of the nation of Indonesia.

In order to promote the general welfare based on the 1945 Constitution (UUD), section 33 (3) states that: "*The earth, water and the natural riches contained therein shall be controlled by the state and utilized for the welfare of the people*".

After fifteen years of independence, then in 1960, Indonesia has a new defense law in legitimate right on September 24, 1960 as Law no. 5 of 1960, the basic rules of agrarian subjects, hereinafter referred to as UUPA. The birth of this



UUPA encourage recognition on land Rights of the people and the state land for the benefit of the people.<sup>73</sup>

UUPA terminate regulations colonial land law and ending of dualism or pluralism land law in Indonesian, and to create the foundations for the development of a single national law of the land based on customary law as an original Indonesian national law.<sup>74</sup>

Based on what has been formulated in UUD 1945 as a reflection of the will of all the people of Indonesia, then further by UUPA in section 1 states that all land in the entire territory of the Republic of Indonesia is the "Rights of Indonesia". The word "is" means "belonging". Said as rights the Indonesian nation, because that rights was rooted in "Land Rights" by Customary Law, appointed to the top level, and Land Rights is what is used by the UUPA as a conception of the Indonesian National Land Law.

Appointment of Land Rights at the top level, and becoming the Right Indonesian nation has an meaning, that all the land in the territory of the Republic of Indonesia is a nation belongs to Indonesian. But keep in mind, that the relationship with the land belongs to all regions in Indonesia was not the same

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<sup>73</sup> Boedi Harsono, *Hukum Agraria Indonesia. Sejarah pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya*, Djambatan, Jakarta, 2007, p. 176-178.

<sup>74</sup> Arie S Hutagalung, et.al, *Hukum Pertanahan di Belanda dan Indonesia*, Pustaka Larasan, UUPAi, 2012, p. 148.

as ownership relations, because still recognized private property rights over land which is based on collective rights (section 4 UUPA). As the embodiment of the social nature of individual rights on the land, then it aspect formed in section 6 UUPA that the land rights have a social function.

### 3. Current Issues (Contemporary) Regarding the Land

The land has a strategic role in the welfare of the people, reflected in the wording of Section 33 (3) 1945. Under these provisions can be seen that "prosperity is the people" which became a major purpose function in regulating the use of land, water, and space and natural resources contained therein.<sup>75</sup>

To support the implementation of Section 33 paragraph (3) of the UUD 1945 followed by the issuance of Law No. 5 of 1960, which has laid the foundation for regulating the function of earth, water and air space and the natural resources contained in it is a tool to bring prosperity and justice, especially for the farmer, as expressed as follows that:

"Birth of UUPA 1960 is a long process, takes 12 years. Starting from the establishment of the "committee of Agrarian Yogya" (1948), "Agrarian committee Jakarta" (1951), "Soewahjo Committee" (1955), "State Committee for Agrarian Affairs" (1956), "Draft Soenarjo" (1958), "Draft Sadjarwo "(1960), finally it processing and accepted by Mutual Cooperation Council of Representatives (DPR-GR), which was then headed by Haji Zainul Arifin. UUPA

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<sup>75</sup> Bachtiar Effendi, *Pendaftaran Tanah Di Indonesia dan Peraturan-peraturan Pelaksanaannya*, Penerbit Alumni, Bandung, 1993, p. 54.

1960 is not formed by a parliamentary committee, not by the special committee of the parliamentary, but by a state committee involving various parties. In the history of Indonesia, only two issues that the law established by the committee states that the Law on Agrarian and Finance Law, this reflects how fundamental the agrarian question.<sup>76</sup>

Through a long and serious process that is the birth of UUPA which is a manifestation of the Constitution of 1945, Section 33 and is a reflection of the efforts of the founders of the country as founding fathers of the Republic of Indonesia at that time to reorganize the structure of agrarian inequality fairer. Therefore, for the Indonesian people, especially the poor farmers and farm workers, birth UUPA 1960 is a valuable milestone for the implementation of agrarian reform.<sup>77</sup>

However, based on data from the 1994-1996 National Human Rights Commission (KOMNAS HAM), the agency has received numerous reports from the public related to land issues from all provinces in Indonesia. Some provinces there are many violations in the area of land that is, Jakarta, North Sumatra, South Sulawesi, West Java, and Central Java.

The offender in the land sector can be divided into four groups: First, executive officers. Second, owner of company. Third,

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<sup>76</sup> Achmad Ya'kub, *Agenda Neoliberal Menyusup Melalui Kebijakan Agraria Di Indonesia*<sup>1</sup>, Jurnal Analisis Sosial Dengan Tema "Pembaruan Agraria: Antara Negara Dan Pasar", Vol. 9 April 2004, Akatiga.

<sup>77</sup> Achmad Ya'kub, *Reforma Agraria bagi Kesejahteraan dan Keadilan Sosial*, Federasi Serikat Petani Indonesia, 2005.

joint executive officer with the owner of the company, the fourth, the individual or citizen.

As for the types of violations in the script of the Commission data, include:<sup>78</sup>

1. Land Grabs with eviction and demolition
2. Deprivation of land without adequate compensation
3. Deprivation of land without changing
4. Confiscation of land by unilateral claims
5. Deprivation of land with *bulldozer* (demolition)
6. Deprivation of land with peg or fencing
7. Deprivation of land by intimidation
8. Confiscation of land by the denial of treaty
9. Confiscation of land with destruction of property
10. Confiscation of land by the issuance of a new certificate
11. Confiscation of land by forced evictions
12. Confiscation of land and buildings
13. Confiscation of land with certificate of rejection
14. Confiscation of land by dispossession
15. Confiscation of land by the change in ownership status
16. Confiscation of land by burning.

While based on the data recorded on the BPN (National Security Agency) which, during the year 2012 there were 7196 cases of land across Indonesia. Variety of cases is dominated by a dispute

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<sup>78</sup> Muhadar, *Viktisasi Kejahatan di Bidang Pertanahan*, Laksana PRESSindo, Yogyakarta, 2006. P. 189-191.

over the ownership of the land area. Meanwhile, according to the head of the BPN, Hendarman Supandji said the new notes agrarian cases throughout 2013 reached 2,857 cases. Although the number of land disputes is relatively decreased, but the rate is still relatively high.<sup>79</sup>

As conflict between PT. KAI with the peoples in RW 01 Manggarai and the residents of State House complex Occupants Retired Civil Servant (ex PJKA). The peoples and residents do a peaceful protest at the North 1 Road Manggarai, Tebet, South Jakarta, Tuesday (23/09/2014). They asked leaders of PT KAI to stop all efforts to the house occupied by residents. Therefore, PT KAI cannot show proof of ownership. If the unauthorized discharge, PT KAI must show proof of ownership.<sup>80</sup>

From this reality, researchers concluded that UUPA has not been able to address a myriad of problems over land in Indonesia, it is because the UUPA only be used as a sacred manuscript for the Government while in fact there has been no implementation at all.

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<sup>79</sup>[http://BPN%20%20Kasus%20Sengketa%20Lahan%20Indonesia%20Tinggi%20\\_%20Republika%20Online.htm](http://BPN%20%20Kasus%20Sengketa%20Lahan%20Indonesia%20Tinggi%20_%20Republika%20Online.htm) , accessed November 01, 2014.

<sup>80</sup>[http://Warga%20PJKA%20Manggarai%20Tolak%20Pengosongan%20Rumah%20PT%20KAI%20\\_%20Republika%20Online.htm](http://Warga%20PJKA%20Manggarai%20Tolak%20Pengosongan%20Rumah%20PT%20KAI%20_%20Republika%20Online.htm), accessed November 01, 2014.