

CHAPTER IV

RELEVANCE OF *ḤADĪS* ABOUT LAND MANAGEMENT TO THE AGRARIAN LAW: CASE IN INDONESIA

A. Practice of Land Management Based On *Ḥadīṣ*

Existing land management practices since the time of the Prophet. such as explained in several *Ḥadīṣ* of land management in Chapter III, among others; the discussion of the *Ḥadīṣ* of the Prophet advice in managing land owned. In the hadith, the prophet gives advice to the owner of the land to cultivate (plant) land, if the land owners are reluctant to the prophet advised to give the land to someone else to be processed, if the owners are reluctant prophet then asked the owner to maintain and care for her. Although it is essentially the same hadith *Iḥyā al-Mawāt*, but the object and different coverage, differences can be seen in the word "من كانت له أرض" "Anyone who has a" meaning of this Hadith is more directed to the owner land to cultivate the land only.

As for the *Ḥadīṣ* about *Iḥyā al-Mawāt* is aimed at the general public. In the *Ḥadīṣ* the prophet gives power to all those to revive dead land, it contained the word "من أحيى أرضاً" "he who turned the land" says turn here means taking care, planting, take advantage. Granting freedom to the people to cultivate the land of the dead is the King or Sultan's authority, while the Prophet was the king of Medina at that time. One thing that needs to look in this *Ḥadīṣ* is about the position of

the prophet at the time was a leader or king there, making these *Ḥadīṣ* a command from the King of Medina (the Prophet Muhammad) to people in Medina. So, the researchers saw that the *Ḥadīṣ* is fully bound by space and time and the condition of society at that time, and then the researchers hope that Muslims today do not make these traditions as a foundation to seize land owned by someone else.

The spirit of the prophet in the land management also can see at the *Ḥadīṣ* further discussion is about the suggestion to grow until doomsday prophet, this tradition as showing that in the end of this earth will be hot and dry, therefore the prophet calls for plant vigor (go green). Researchers looked spirit and initiative to go green prophets since the early incredible, see the circumstances in which the world is currently in booming, it is a Global Warming. Then as morale boosters communities to manage land, the prophet also said in a *Ḥadīṣ* about the reward for tree growers, and when the fruit of the tree has been eaten by birds or other animals then it is an alms from the tree growers will he get the reward in the hereafter.

Besides some *Ḥadīṣ* about the spirit of the prophet in the management of land, there is also a tradition of land management practices that are prohibited by the Prophet. As *Muzara'ah* and *Mukhābarah* ie soil management system for the results, but the essence of the ban is to issue their *Gharar*, that is the party who will suffer from the land management practices, but if both parties are

willing and trust each other, then with the land management for the results to be executed.

Muzara'ah cooperation between immigrants and the Ansar group occurred in order to meet the needs of each. Ansar group as the owner of the land while immigrants as a group manager with the result set. Recorded most of the Prophet's companions do this either from the family of Abu Bakr, Umar, Uthman and Ali.¹ At that time a large part of a good friend because of his work in government defense activities such as running the state, social and religious activities other than uses this pattern Muzara'ah cooperation. In addition to the results obtained, this cooperation can also strengthen the relationship among Muslims. Prophet did not justify their land management practices by both the fixed rental model based in exchange for certain goods or money. But the Messenger of applying pattern relative lease agreement with the results that will be obtained. Ban the practice of fixed rent is actually intended to protect soil tilling the soil if it is found that managed not to get results while he was still obligated to pay the rent on the land specified. This is clearly contrary to the principles of justice. With the cooperation pattern relative lease on the results of the respective parties will share the results and risk. In connection with the large percentage of the results, the Prophet did not specify directly. At that time known is 1/4, 1/2, or 1/3 and the results are carried out after the cut with the provisions set forth ushr.

¹ Haris Faulidi Asnawi, *Sistem Muzâra 'ah Dalam Ekonomi Islam*, Millah. 2005, Vol. IV, p. 2

As it has described in the previous discussion in Chapter II, which is the land management practices of Arab nations before Islam come is differ from each other. Especially in rural areas, where is the place of commodity farmers and herders get on together, here there is a spectrum of wide ways in using the land. In some areas there are permanent resident as farmers and strictly control their land, whereas their livestock has grazing by their rented peoples.

In other area, the farmers settle with the goat herders use the same land. Meanwhile, in another area, residents move (nomads) in groups of low grazing areas to a high area. However, at certain seasons they do farming. Besides, there is also a fully nomadic group but they have control over some populated in oases areas or in the edges of the desert.²

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

فَاسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أُضِيعُ عَمَلَ عَامِلٍ مِّنْكُمْ مِّنْ ذَكَرٍ أَوْ أَنْتَنِي بَعْضُكُمْ مِنْ بَعْضٍ
فَالَّذِينَ هَاجَرُوا وَأُخْرِجُوا مِنْ دِيَارِهِمْ وَأُوذُوا فِي سَبِيلِي وَقَاتَلُوا وَقُتِلُوا لَأُكَفِّرَنَّ عَنْهُمْ

² Albert Hourani, *A History of The Arab People*, Translated by Irfan Abu Bakar, *Sejarah Bangsa-Bangsa Muslim*, Mizan, Bandung, 2004, p. 221-222

سَيِّئَاتِهِمْ وَلَئَدْجَلْنَهُمْ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ نَوَافًا مِنْ عِنْدِ اللَّهِ وَاللَّهُ عِنْدَهُ حُسْنُ
الثَّوَابِ (١٩٥)

“And their Lord hath accepted of them, and answered them: "Never will I suffer to be lost the work of any of you, be he male or female: Ye are members, one of another: Those who have left their homes, or been driven out therefrom, or suffered harm in My Cause, or fought or been slain,- verily, I will blot out from them their iniquities, and admit them into Gardens with rivers flowing beneath;- A reward from the presence of Allah, and from His presence is the best of rewards."

And Q.S. Al-Hasr verse 2:

هُوَ الَّذِي أَخْرَجَ الَّذِينَ كَفَرُوا مِنْ أَهْلِ الْكِتَابِ مِنْ دِيَارِهِمْ لِأَوَّلِ الْحَشْرِ مَا ظَنَنْتُمْ أَنْ
يَخْرُجُوا وَظَنُّوا أَنَّهُمْ مَانِعَتُهُمْ حُصُونُهُمْ مِنَ اللَّهِ فَأَتَاهُمُ اللَّهُ مِنْ حَيْثُ لَمْ يَحْتَسِبُوا وَقَذَفَ
فِي قُلُوبِهِمُ الرُّعْبَ يُخْرِبُونَ بُيُوتَهُمْ بِأَيْدِيهِمْ وَأَيْدِي الْمُؤْمِنِينَ فَاعْتَبِرُوا يَا أُولِيَ الْأَبْصَارِ
(٢)

“It is He Who got out the Unbelievers among the People of the Book from their homes at the first gathering (of the forces). Little did ye think that they would get out: And they thought that their fortresses would defend them from Allah! But the (Wrath of) Allah came to them from quarters from which they little expected (it), and cast terror into their hearts, so that they destroyed their dwellings by their own hands and the hands of the Believers, take warning, then, O ye with eyes (to see)!”.

Beside the explanation of the Qur'an, land ownership rights is also justified by Prophet PBUH by applying *ganimah* concept to the

soldiers who join in war with give part of subjected lands as happened in the land of *Khaibar*.³ Thereby, the friend of *Anṣar* that majority work as farmers and fields processors also acquire legitimacy of individual land ownership from Prophet Muhammad PBUH.

In Islamic history, land management already exists at the time of the Prophet PBUH and companion. Land is a natural resource that given by Allah to human. As a form of thankfulness, should the humans keep and maintain it, because it is the source of human life. As Allah SWT said in the Holy Qur'an:

هُوَ الَّذِي جَعَلَ لَكُمُ الْأَرْضَ ذُلُولًا فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِن رِّزْقِهِ وَإِلَيْهِ النُّشُورُ
(١٥)

“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 Allah is no exception to the land. In this case, the Prophet PBUH also said in *ḥadīṣ*:

لَا حِمَى إِلَّا لِلَّهِ وَلِرَسُولِهِ

"Nothing protected land (*hima*) except belongs to Allah and His messenger "

This was confirmed by God in His Word:

³ Ridwan, *Pemilikan Rakyat dan Negara Atas tanah: Menurut Hukum pertanian indonesia dalam perspektif Islam*, (BADAN LITBANG DAN DIKLAT KEMENTERIAN AGAMA RI, cet.pertama 2010), p.77

⁴ Q.S. Al-Mulk [67] : 15

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

Because of land ownership, inherent in God and man is none other than the mandate was limited to recipients by human land management should be based on the will of God.⁶

The subdivision and land management has become very complex due to the extent of the territory of Islam and the diversity of the characteristics of the land area or the spoils of war that we find a lot of thought and land management practices that are typical of the times.

As the Researcher said above that the spirit of land management by Muslims was growing rapidly after their *Hijrah* to Medina. Under the command of the Prophet PBUH, Muslims work together to build the Medina becomes a Muslim country forward, especially in agriculture and food security. The spirit is apparent in some of the Word of Prophet PBUH about management of land that becomes a motivation for spirit of Muslims to manage the land.

Some of the words of the Prophet PBUH, namely, the Prophet related suggestion to revive dead land (*Iḥyā al-Mawāt*), “Whoever

⁵ Qs. An-Nisā [4] : 126

⁶ Siti Mariam Malinumbay S. Salasal, *The Concept of Land Ownership: Islamic Perspective*, *Buletin Geoinformasi*, Jld. 2 No.2, ms. 285 -304, Penerbitan Akademik Fakulti Kejuruteraan & Sains Geoinformasi, Desember, 1998, p. 287

revives dead land then he is entitled to have it. This suggestion is a form of anxiety of Prophet PBUH for the many of abandoned land. Because if there is a lot of land is not taken care of, will lead to economic decline of Islamic society. Besides, it will also make the quality of the soil is lowered and difficult to cultivate.

In this case, the Prophet PBUH also recommended for the land owners who are not willing to cultivate the land so that the land was given to his brother to be processed *"Whoever then plant your own land or give it to someone else, if you are reluctant to then endure"*. It is also as a trigger of public awareness to cultivate the land as well as trigger the spirit of unity (*uḥuwah*).

Spirit of Prophet PBUH in the land management is also seen in a *ḥadīṣ* *"When the time comes and at the hand of anyone there is seed of dates if possible to plant it, do it."* *Ḥadīṣ*, gives the sense that the spirit of planting trees is needed. Because by planting a tree, it will be able to maintain the circulation of the air that we breathe will keep clean, free from pollution, and makes beautiful scenery also. Trees are also very useful for water absorption, natural balance, and produce oxygen which is very valuable for life.

Spirit of Prophet PBUH in the land management is also increasingly clear with the *Ḥadīṣ* that explains about respect for the land manager, *"It is not a Muslim who plant a plant, except the results are consumed (by birds or other animals) of the tree is Ṣadaqah for him, and which is taken from a person, is also a Ṣadaqah, what has been eaten by animals and birds are also a Ṣadaqah, and what is*

taken by a person is also a Ṣadaqah. Here the Prophet PBUH emphasis on what has been done by someone who is willing to work the land as they will get many unexpected rewards of what he has planted.

B. Relevance *Ḥadīṣ* about land management with the Basic Agrarian Law in Indonesia

The endorsement of UUPA No. 5 of 1960, is the long struggle of the founders of this country to realize the structuring, management and control of agrarian resources for the benefit of the people and the peasantry Indonesia. Structuring, management and control of resources are the basis or foundation of Agrarian populist economic realization of a just accordance with the mandate of the Constitution of the State (UUD) of Indonesia.

However, the fact that we have experienced over the 54 years since the UUPA was born, this legislation become heirlooms, just celebrated each year. For half a century, UUPA has been used as a tool by the authorities and employers to conduct suppression, duping, even impoverishment for the greater part of the people in this country. Law is only a tool of exploitation of agrarian resources for the benefit of foreign capital investment and the wealth of nature in this country.

The failure of the implementation UUPA No. 5 1960 in Indonesia, an intentional factor, this is a key reason why Indonesia state that has a foreign debt of 1,600 trillion, with a population of 230 million, 40% live below the poverty line. Yet when you view the

history, basic theory and thinking UUPA birth are relevant to what was done by the Prophet PBUH when the initial period of development of the Medina, which is managing the land for the benefit of the people, as in Section 2 Paragraph (3) UUPA 1960 "which is based on the right authority master of the State, are used to achieve the maximum benefit of the people in terms of nationality, wellbeing and independence in the community and the state of Indonesian law an independent, sovereign, just and prosperous".

Several sections in the UUPA also relevant to the apostles *sunnah* (*ḥadīṣ*) were applied in Medina, as in Section 5. UUPA

agrarian law that applies to the earth, water and air space is the common law, to the extent not contrary to the national interest and the State, are based on the unity of the nation, the Indonesian socialism as well as with the regulations set forth in this Law and other laws, everything with regard to the elements that rely on religious law.

In this section the Indonesian government was give of religious law to keep the unity of the nation, but the essence is contained in the aforementioned section also implicitly contains Islamic law. As in the phrase "the agrarian law that applies to the earth, water and air space is the customary law," when researchers re-trace the history of customary law applicable Indonesian nation in pre-colonial as recommended by the Prophet PBUH concerning the *Iḥyā' al-Mawāt* (turn the soil dead) where whoever is working on no man's land then he is the owner.

In section 10, paragraph (1) UUPA which states that "Any person or legal entity that has the rights over agricultural land in

principle required to work or be actively working on their own, by preventing means blackmail." This section is also relevant to what is decreed Prophet PBUH on plant suggestions for people who own the land, and give it to someone else to work on (without coercion and extortion). Meanwhile, in another *ḥadīṣ* of Prophet PBUH also prohibit the leasing of land as it is feared there will be one of the injured party, but if between the two parties agree on a fair rental price (no coercion and extortion) then it does not matter.

Then in chapter 15 UUPA states that "Maintain soil, including add fertility and prevent the damage is the duty of every person, legal entity or agency that has a legal relationship with the land, with due regard to the economically weak." Explicitly section 15 is particularly relevant to the spirit of Land management has done Prophet PBUH, which have kept the soil, planted so lush, even when doomsday arrives while still in the hands of the Prophet PBUH told plant seeds for planting the seedlings took.

The presence of some relevance between the traditions (*ḥadīṣ*) of the Prophet Muhammad PBUH with the Sections in the UUPA is not a wonderful thing, because as we know that most of the founders of this country and the originator of the Act are Muslim. Therefore, the Islamic law also became of one source in UUPA,⁷ but one thing that makes researchers amazed that, why in the State of Indonesia is much of the Muslim, there are many contained agrarian disputes or

⁷ Darwin Ginting, *Hukum Kepemilikan Hak Atas Tanah Bidang Agribisnis*, Ghalia Indonesia, Bogor, 2010, p. 33-37.

natural disasters that occur due to poor management of land. The answer to the question above is because the UUPA has not been run up by the government.

During this, the civil society has urged the government seeks to maximize return UUPA in Indonesia, that people's efforts finally materialized on the success of the Society in order to force the ruler of this country signed TAP MPR No. IX of 2001, it's about the renewal Agricultural and Natural Resources Management in Indonesia. But, the birth of the TAP MPR No. IX of 2001, is also not supported by the government's willingness to carry out agrarian reform.

This fact is a constitutional violation by the government. Another description states that the government does not have the will to make the rules and the Act which aims to build up the strength of the economy. This is leading to a lot of Agrarian disputes in Indonesia, this dispute has been detrimental to the people and farmers, both economic, social, cultural, and human rights. It also led to violence, the criminalization of people who defend her rights, even their lives removal efforts, forced evictions of people from their land.

As some of the cases around land recorded in the data of National Human Rights Commission (KOMNAS HAM), this problem is not only to make the people become poorer, miserable. This describe that the Indonesian government has not shown the political will "Political will" especially to resolve the land problems that occur in this region. Examples of cases that happened today is about distrubute 5,800 hectares of land (soil) ex-Hak Guna Usaha (HGU)

PTPN II, that until now has not been realized, the land should be distributed to the people who are entitled, but the reality is different, partly of the land controlled by the developers and other parties, and that land not to farm or not farmers.⁸

The situation is different to that of the Prophet PBUH and his companions used to be, they are always protecting the rights of its people, especially in the field of agrarian. Besides, the Prophet PBUH through his *ḥadīṣ* also reveals the spirit of the land management for the welfare of the people, and the *ḥadīṣ* of the Prophet PBUH command that is used by Muslims and the companions in ancient times as a foundation to manage the land. Supposedly the majority of the Indonesian nation and its people are Muslim leaders can implement the role and function of land management at the time of the Prophet PBUH (through the *ḥadīṣ*), even though the natural geographical conditions and soil biological Indonesia is different from Arab land, but not the land element that must be equated, but the spirit and management objectives (for People) that we apply and resume practicing in the country.

⁸<http://Rajawali%20News%20%C2%BB%20Kasus%20Tanah%20Eks%20HGU%20PTPN%20II,%20Anto%20Keling%20Didemo%20ke%20Kantor%20Gubsu.htm>. accessed November 01, 2014.