

Stelionaat Crime From a Criminal Law Perspective and Islamic Criminal Law

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Abstract

This research was conducted to analyze how Islamic law and criminal law view land grabbing (Stelionaat). Soil is something that is essential for human life so it is a very vital object, and at the same time problems often occur in it. This research was conducted using qualitative income with primary and secondary data sources. The results of the research revealed that there were specifically no Islamic regulations regarding land grabbing, but Caliph Umar once punished someone for committing this act. Meanwhile, criminal law is generally regulated in Law no. 5 of 1960 concerning Agrarian Principles (UUPA) and government regulation Number 24 of 1997 concerning land registration.

Keywords: Land, Islam, Criminal Law



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INTRODUCTION

Land is a gift from God Almighty which has an important function in creating a just and prosperous society. Seeing this urgency, it is appropriate that this matter needs to be included in the constitution of a State which is based on the belief in One Almighty God as stated in the 1945 Constitution of the Unitary State of the Republic of Indonesia as the basis of the State. Land is a very important and determining need. Human existence cannot be separated from the land as a source of human livelihood itself. For many people, land cannot be separated from life itself. People's attachment to their land can be seen through the patterns of human life in society. The 1945 Constitution in article 33 paragraph (3) regulates the use of land which states that "the earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". The government hopes that this regulation will be the main capital in improving the welfare of society. And it is the property of every citizen, not a few. As the legal basis for national land politics with one aim, namely for the prosperity of the people with a mechanism for control by the state, which is then further explained in Law Number 5 of 1960 concerning basic regulations on Agrarian principles (the Basic Agrarian Law). The basic agrarian law is the positive land law that applies in Indonesia to this day.

The main objective of the Basic Agrarian Law above is to regulate the various types of land rights that can be granted and owned by each person, either individually or jointly with other people or legal entities. According to article 16 of the Basic Agrarian Law, the rights to land that can be owned and given to every person and/or legal entity are ownership rights, use rights and others. In this way, authority is given to land rights holders to utilize the land according to its intended purpose. However, in reality, currently the implementation of land registration has not been fully realized, in fact it is stated that the number of land plots that have been registered is only around 31% of the 85 million land plots in Indonesia. In Indonesia, certificates of land rights act as strong evidence as confirmed in article 19

paragraph (2) letter c UUPA and article 32 paragraph (1) Government Regulation Number 24 of 1997 concerning land registration which has now been revoked and reaffirmed Government Regulation Number 24 of 1997. One of the proofs of land rights is a certificate, a certificate is legal evidence that is strong and authentic. The strength of the certificate is a guarantee of legal certainty for the certificate holder as perfect evidence as long as there is no opposing party who proves otherwise. A person or legal entity will easily prove themselves as the holder of rights to a plot of land and the condition of that land, for example the area, boundaries, existing buildings, type of rights and the burdens that exist on rights to that land, and so on.

The birth of the Basic Agrarian Law means the creation of a National Agrarian Law, which will provide legal certainty for all people and enable the achievement of the functions of the earth, water and natural resources as envisioned. Considering that the Basic Agrarian Law is the basic regulation for the new national agrarian law, this Basic Agrarian Law only contains the principles and main questions of agrarian matters. In its implementation, this law still requires various related laws from other laws and regulations. Land issues require special attention and handling from various parties, because the current development is widespread in various fields, so there must be guarantees of land rights. To avoid disputes between people who need the land. So regulations regarding land were created which are useful for regulating all land use activities in Indonesia, namely regulation Number 5 of 1960 concerning Agrarian Principles. There are various kinds of problems, one of which is double certificates, which until now has not been resolved at the National Land Agency (BPN) level. The government, in ensuring legal certainty in the field of control and ownership of land, makes certainty of the location and boundaries of each plot of land a main factor and priority that cannot be ignored.

Talking about community behavior, it is certain that there is some deviant behavior from various levels of society. From this deviant behavior, there are also other people in society who will become victims and experience losses from this deviant behavior. One example of an object that is often the object of problems is land. Land is often found to be an object in Civil and Criminal Law in Indonesia, starting from forgery of land deeds, land disputes, land grabbing, and so on. Land grabbing is not something new and occurs in Indonesia. The word invasion itself can be interpreted as the act of taking rights or property arbitrarily or without paying attention to laws and regulations, such as occupying someone else's land or house, which is not their right. The act of illegally grabbing land is an unlawful act, which can be classified as a criminal act. The above can happen because land is a gift from God Almighty to mankind on earth. Therefore, land is a basic human need, from birth to death. That humans need land as a place to live and as a source of life. Cosmologically, land is where humans come from, where humans live, where humans work, where humans live, and where humans will go. In this case, land has economic, social, cultural, political and ecological dimensions.

As is known, law has a binding and coercive nature and has become a basic instrument for society to obey. One example of the coercive nature of the legal system in Indonesia is in Law no. 1 of 1946 concerning Criminal Law Regulations which were later called the Criminal Code (KUHP). From the description above, it shows that there are quite a lot of alternatives for applying criminal sanctions to acts of unlawful land grabbing. These criminal law articles can be used by investigators depending on which actions exactly fulfill the elements of the criminal law article that was violated. Quite a lot of land disputes arise as a result of the incorrect location and boundaries of land parcels. Therefore, the problem of measuring and mapping and providing large-scale maps for the purposes of carrying out land registration is something that should not be ignored and is an important part of serious attention, not only in

the context of collecting land tenure data but also in presenting data on land owners and storage. that data. In the basic Agrarian law, land certificates are never mentioned, but as found in article 19 paragraph (2) letter C, there is a mention of "proof of rights". In everyday terms, this proof of title is often interpreted as a land title certificate. To follow up on the above, government regulation number 24 of 1997 concerning land registration has been issued, as a complement to previous government regulations. Carrying out land registration in society is a state task carried out by the government for the benefit of the people, in order to provide land rights status in Indonesia. The objectives of land registration according to government regulation number 24 of 1997 in article 3 are:

1. To provide legal certainty and protection to holders of rights to a plot of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights in question.
2. To provide information to interested parties, including the government, so that they can easily obtain the data needed to carry out legal actions regarding registered land plots and apartment units.
3. To ensure orderly land administration.

Criminals in choosing the object of their crime always take into account the value of the object of crime they choose, with the risks they will receive if the crime is revealed. Objects circulating in society that have high value include falsification of documents which is often used as an object of crime. It cannot be denied that the current prevalence of document forgery crimes in society is very worrying, so that ordinary people will become victims of this crime. The emergence of this crime was triggered because the perpetrators wanted profit. All crimes of document falsification have very large implications, both for the victim and for other people in society with material and non-material losses.

In a society that is as advanced and orderly as it is today, we certainly want a guarantee of the truth of the documents or letters that someone has. The increase in population and the need for housing has caused individuals to emerge. People are easily tempted by cheap land and house prices, sometimes the prices are even quite unreasonable to below market prices. This lure makes people careless in not checking the authenticity of the land certificate they want to buy. Problems surrounding land certificates in Indonesia that often occur are duplication of original certificates or the exchange of original certificates for fake ones by unscrupulous individuals. This is because the community is less aware of the important role of land certificates, lack of knowledge regarding land ownership and also due to economic conditions, limited funds which are only sufficient to manage and register proof of ownership with only proof of land ownership.

Although the main function of a land title certificate is as evidence, the certificate is not the only proof of land title. It is still possible to prove a person's land rights by other means of evidence, such as a register deed issued by the village government where the land is located. Certificates as evidence are very important, for example in cases of transfer of rights, and legal acts of transfer of rights aim to transfer land rights to other people, namely in the form of buying and selling land, gifts or wills and so on. Land disputes in the country have become a structural problem. These disputes arise mainly from hegemonic processes through political, development and policy processes. These hegemonic processes are much more prominent than natural processes. This means that the main trigger for land disputes is the political order and process, development and land policy. Meanwhile, land law in Islam can be defined as Islamic laws regarding land in relation to ownership rights (bayariyah), management (tasharruf), and distribution (tauzi') of land. In the Islamic view, everything that exists in the

heavens and the earth, including the land, essentially belongs to Allah SWT. Simply, as in the word of Allah QS al-Nur / 24: 42.

This verse confirms that the ultimate owner of everything (including land) is Allah alone. Then, Allah SWT as the ultimate owner gives power (istikhlaf) to humans to manage this property of Allah in accordance with His laws. Ownership (ashlul ownership) belongs to Allah SWT. And that humans have no rights except to use (tasharruf) in a way that is approved by Allah. Regulating land with laws other than Allah's law is forbidden by Him, as in the word of Allah QS al-Kahf/18: 26. In this way, Islam has clearly explained the philosophy of land ownership in Islam. In essence there are 2 (two) points, namely: the true owner of the land is Allah SWT. And Allah SWT as the ultimate owner has given power to humans to manage land according to Allah's laws. Based on the description above, the author is interested in studying further the land mafia by analyzing the problem using the concepts of criminal law and Islamic criminal law.

RESEARCH METHODS

The research used by the author is normative research or library research. Namely research that uses books as literature material and author references obtained from several book sources related to this research. This research is library research, namely research carried out in libraries and using reading materials in the form of books, magazines or others. The general aim of this research is to classify and examine previous forms of studies so that they are more easily understood by all groups so that the results of this research can later confirm existing theories (opinions), and make it easier for people to understand more quickly. This research was carried out by describing the problem being studied as it is, or called descriptive. Research data sources are primary and secondary. Primary data sources are data obtained directly from the object under study (directly from the source). This source is directly related to research needs in order to achieve research objectives. The primary sources in this research are the book *Tayri' al-Jinai al-Islami* compiled by Abdul Qadir Audah, *al-Ahkam Shulthaniah* authored by Abu Hasan al-Mawardi, the Al-Qur'an, the Books of Hadith, *Tafsir-Tafsir Ahkam*, Criminal Code and other primary legal books. Secondary Data, as for what is used as secondary legal material in completing this dissertation to make it better, is legal material which provides instructions and explanations for primary and secondary legal materials such as dictionaries and encyclopedias. The data collection technique used is a documentation technique, namely a method of collecting written data that has become a document. The data that has been obtained and collected, both primary data and secondary data, is processed first, analyzed qualitatively, then presented in a descriptive manner, namely by explaining, describing and illustrating the problem so that a conclusion can be drawn as a form of solving the problem under study which is closely related to this writing.

RESEARCH RESULT AND DISCUSSION

In the development of Islamic law, there are no specific regulations regarding land grabbing (Stelionaat) and counterfeiting, but there are examples of cases from ancient times that can be used as a basis and example that the crime of counterfeiting has existed since ancient times. During the time of Umar bin Khatab there was a case about Mu'an bin Zaidah who faked a Baitul Mal stamp, then the Baitul Mal guard came to him to take the fake stamp and took his property, this case was heard by Umar bin Khattab so Umar hit him a hundred times and imprisoned him, then scolded and beaten a hundred times again, scolded again and then beaten a hundred times and then exiled him. From the example above, it turns out that fraud using this method of forgery already occurred during the time of the Prophet SAW and

his companions. As in the hadith of the Prophet SAW below which prohibits the element of fraud in buying and selling: From Abu Hurairah ra, said: "Once the Messenger of Allah passed by a pile of food {in the market}", then he put his hand into the pile after lifting it again, it turned out that his fingers were wet. Then he asked "why is it like this, O food seller?", the answer was "it was raining, O Messenger of Allah." He said, why not put it on top (where it is wet) so that people can see it; whoever cheats is not among my group" (H.R. Muslim).

From the above hadith it is clear that fraud is forbidden because fraud is a lie that can harm other people, so Islam prohibits lying and considers it a major sin. There is no provision for this issue of forgery in Islamic law so it is something that is worth researching, considering that in the national legal system this problem is regulated in Article 263 of the Criminal Code and in particular forgery of land certificate documents in Law no. 5 of 1960 concerning Agrarian Principles (UUPA) and government regulation Number 24 of 1997 concerning land registration. However, this does not mean that in Islamic law there is no punishment for criminal acts of land grabbing and forgery. Welfare State or welfare state is a concept of a legal state. This concept means that the government must provide protection for its citizens not only in the political field, but also in the social and economic fields. The government has a responsibility to guarantee the public interest. Aspects that were originally community affairs also became government affairs, such as health, education, land, and so on. The welfare state gives the government the will to carry out public welfare administration. The realization of humans who act fairly in a country leads to the creation of a rule of law. The aim of the rule of law is none other than the realization of justice for its citizens. What is meant by a rule of law is a state based on law and justice for its citizens. All authority and actions of state equipment are based solely on law.

After fifteen years of independence, the Indonesian nation for the first time prepared basic regulations regarding Agrarian Law/National Land Law. These regulations are built based on the 1945 Constitution and Pancasila. Through the approval of the Mutual Cooperation Representative Council (DPR GR) and ratified by President Soekarno, the UUPA came into effect on September 24 1960. In the General Explanation I of the UUPA regarding the 3 (three) main objectives of the UUPA, including:

1. Lay the foundations for the preparation of national agrarian law which will be a tool to bring prosperity, happiness and justice to the State and the people, especially farmers, within the framework of a just and prosperous society;
2. Laying the foundations for unity and simplicity in land law;
3. Lay the foundations to provide legal certainty regarding land rights for the entire people.

The necessity of realizing Pancasila in the UUPA is proof that national law must be guided by the philosophy of the Indonesian nation. UUPA regulates land rights. There are various types of land rights, namely Ownership Rights, Cultivation Rights, Building Use Rights, Use Rights, Rental Rights for Buildings, Land Opening Rights, Forest Product Rights, Pawn Rights, Profit Sharing Rights, Occupancy Rights, and Rental Rights. Farmland. For Business Use Rights, Building Use Rights, and Use Rights, these are further regulated in Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Use Rights. In terms of language, maqāsid asy-syari'ah consists of two words, namely maqasyid which means gap or goal and syariah which means the path to the source of water, this can also be said to be the path to the main source of life. The aim of maqasyid sharia is for human benefit. "Maqāsid is also interpreted as a collection of divine intentions and moral concepts that form the basis of Islamic law, for example justice, human dignity, free will, generosity, ease of community cooperation. Maqāsid presents the relationship between

Islamic law and contemporary ideas about human rights, development and civilization". Benefits can be realized well if the five main elements can be realized and maintained, namely religion, soul, lineage, reason and wealth. The aim of syar'i in enacting legal provisions for themukallaf people is in an effort to realize goodness for their lives through provisions that are darūriy, hājjiy, and tahsīniy. Maqāsid asy-syari'ah, which substantially contains benefits, according to Asy Syathibi Maqasid Syari'ah contains four aspects, namely:

1. The initial goal of Sharia' is establishing sharia, namely human benefit in this world and the hereafter.
2. Determination of sharia as something that must be understood.
3. Establishment of sharia as a taklifi law that must be implemented.
4. The establishment of sharia to bring humans under the protection of the law.

The first aspect relates to the content and nature of maqāsid shari'ah. The second aspect relates to the language dimension so that the Shari'a can be understood so that the benefits it contains can be achieved. The third aspect relates to the implementation of sharia provisions in realizing benefits. This also relates to human ability to carry it out. The final aspect relates to human obedience as amukallaf under and to the laws of Allah. Or in more explicit terms, the objective aspect of the Shari'a seeks to free humans from the restraints of their desires. The explanation of the concept of maqasid syari'ah is that in istinbat making laws one must pay attention to universal values in a text (Al-Qur'an and Sunnah), so that every law making creates justice, comfort and tranquility in society. Because basically the aim of syara' in establishing its laws is for the benefit of the world and the hereafter.

Imam Asy-Syathibi believes that the main aim of maqasid sharia is to maintain and fight for three categories of law, namely:

1. Darūriyyāt. In language it means urgent or emergency needs. In this category there are five things that need to be considered, namely maintaining religion, maintaining the soul, maintaining the mind, maintaining honor and descendants, and maintaining property. In Daruriyyat needs, if this level of need is not met, it will threaten the safety of humanity in this world and in the afterlife. The benefit of Dharuriyyat is something that must exist to realize benefits related to the worldly and spiritual dimensions. If this does not exist, it will cause damage and even loss of life and livelihoods such as eating, drinking, praying, fasting and other forms of worship. There are five most important and basic things included in this type, whose interests must always be maintained or maintained:
 - a. Maintaining Religion (Hifzh al-Din). For individual ad-din, it is related to the worship carried out by a Muslim and Muslim woman, defending Islam from heretical teachings, defending Islam from attacks by people who believe in other religions as in Q.S Al-Taubah (9) verse 41.
 - b. Maintaining the Soul (Hifzh al-Nafs). In Islam, the human soul is something very valuable and must be guarded and protected. A Muslim is prohibited from killing others or himself. Q.S Al-Anam (6) verse 151.
 - c. Maintaining Reason (Hifzh al-Aql). What differentiates humans from animals is reason, because reason must be guarded and protected. Islam prohibits us from corrupting our minds such as drinking alcohol. Q.S Al-Maidah (5) verse 90.
 - d. Maintaining the Family/lineage (Hifzh al-Nasl). Maintaining lineage by marrying according to religion and state. Q.S An-Nisa (4) verse 23 Maintaining Wealth (Hifz al-Mal)

Property is a very important and valuable thing, but Islam prohibits obtaining property illegally, by taking other people's property through theft or corruption. Q.S Al-Maidah (5) verse 38.

- a. Hajjiyyat
- b. In language it means secondary needs. If this need is not realized, it will not threaten safety, but will experience difficulties. To eliminate these difficulties, in Islam there is the law of rukhsa (relief), namely the law that is needed to lighten the burden, so that the law can be implemented without feeling pressured and constrained.
- c. Tahsīniyyāt
- d. In language it means perfect things. This level of need is in the form of complementary needs. If this need is not met, it will not threaten or cause difficulties. Syatibi is of the view that the purpose of these three categories is to ensure that the benefit of Muslims both in this world and in the afterlife is realized in the best way because God acts for the good of his servants. Sharia in creating sharia (laws) is not haphazard and without direction, but aims to realize public benefit, provide benefits and avoid harm to mankind.
- e. The classification expressed by al-Syathibi in the form of hierarchical human needs and their derivatives is called classical al-Maqāṣid. As time or era changed, al-Maqāṣid experienced development. The classic al-Maqāṣid has received criticism from contemporary al-Maqāṣid initiators. Classical Al-Maqāṣid only focuses on individual subjects (individual life, self-esteem and property) rather than society (society, national self-esteem and national economy). From this criticism, contemporary initiators emerged 3 (three) groups in the division of al-Maqāṣid, namely:
 - f. Al-Maqāṣid generally pays attention to the necessity and necessity of Islamic law as a whole. Justice, universality and convenience are also added to al-Maqāṣid.
 - g. Specific Al-Maqāṣid that can be considered in a particular chapter in Islamic law, such as preventing monopoly in the mu'amalat chapter.
 - h. Partial Al-Maqāṣid includes what is considered to be the Divine intent behind a particular text or law.
 - i. Control over land can be used in a physical and juridical sense. Juridical control is based on rights, which are protected by law and generally give the right holder the authority to physically control the land they are entitled to. However, there is also juridical control which, even though it gives authority to physically control the land that is owned, in reality the physical control is carried out by another party. For example, land owned is leased to another party and the tenant physically controls it or the land is controlled by another party without rights. In this case, the land owner, based on his legal control rights, has the right to demand that the land in question be physically handed back to him. Apart from that, it is also known that juridical control over land does not give authority to physically control the land in question, for example, creditors holding collateral rights to land have juridical control rights over the land used as collateral, but physical control remains with the land owner.

The concept of control over land rights contains the meaning of a series of authorities, obligations or prohibitions for the right holder to do something regarding the land they own. "Something" that is permissible, obligatory or prohibited to do which constitutes the content of tenure rights is the criterion or benchmark for differentiating between tenure rights over land. In Law no. 5 of 1960 concerning Basic Agrarian Principles Regulations or what is often called UUPA (Basic Agrarian Law) land control rights include: Cultivation



Rights (article 28 UUPA); Building Use Rights (article 35 UUPA); Usage Rights (article 41); and other rights regulated by UUPA and other implementing regulations. These rights contain authority and are given by law to the right holder to use land that is not his own, namely state land or land belonging to another person for a certain period of time and for certain purposes. So land control rights are basically permission from the state (as a power organization) to use land with certain authority.

2. Land as a Source of Dispute

Since ancient times, land has been a source of dispute or conflict and often results in loss of life. As a social phenomenon, agrarian (land) dispute or conflict is a process of interaction between two (or more) people or groups who each fight for their interests over the same object, namely land and other objects related to land. However, the land disputes or conflicts that occur really depend on the existing conditions of agricultural relations, as well as the systems and policies that apply at that time. From the various agrarian (land) disputes or conflicts that occur, it can be understood as a process of accumulation of production factors, which in this case can be seen as follows:

- a. Disputes or conflicts occur in the context of the struggle for agrarian resources. In this agrarian dispute or conflict what occurs is not actually a problem of scarcity of land resources, but rather a struggle for agrarian resources in the form of massive expansion by investors to control agrarian resources that were previously controlled by the people.
- b. Disputes or conflicts occur in the context of coercion against certain commodities. Being forced to plant specified commodities gives rise to land conflicts. In the agricultural sector, especially the plantation sub-sector, land conflicts arise as a result of determining commodities intended to encourage export needs.
- c. Disputes or conflicts occur in the context of a floating period. Land disputes or conflicts arise when farmers have no connection with the power elements above them. When farmers do not have any alliances, their position becomes weak. Disputes or conflicts that arise can almost always be suppressed and inhibited by power so that they do not become widespread. This situation is of course very unfavorable for farmers because the interest in aspirations that have previously protected farmers has disappeared, prohibiting farmers from organizing themselves collectively to fight for their interests and strengthen their bargaining position.

Disputes are legal phenomena that can occur anywhere and at any time, because disputes are not bound by time and space. As a legal phenomenon, every dispute requires resolution and there is no dispute without resolution. According to Nader Todd Models or forms of resolving disputes or conflicts in society can take the form of:

- a. Adjudication (Dispute resolution model through court institutions whose decisions are binding on the parties to the dispute);
- b. Mediation (Dispute resolution model involving a third party to help the disputing parties to achieve their goals. The third party involved as an intermediary or mediator is passive because the decisions taken are still based on the agreement of the disputing parties);
- c. Arbitration (Dispute resolution model carried out by a third party whose decision is agreed to by the disputing parties); Negotiation (Dispute resolution model that does not involve a third party, but is resolved by compromise by the disputing parties);
- d. Coercion or Violence (Dispute resolution model which is to force the will of one party to the opposing party, which can take the form of physical action such as carrying out legal action itself);



- e. Avoidance (Dispute resolution model carried out by one party, where the weakest party submits itself to the stronger party. The weakest party attempts to escape the power of the stronger party, for example by severing social relations);
- f. Just let it go (Dispute resolution model carried out by one party without making any efforts towards the opposing party).

3. Criminal act of land grabbing

The criminal act of encroachment is regulated in Article 385 Paragraph (4) of the Criminal Code, if a person with similar intentions mortgages or rents out a plot of land where a person exercises the people's right to use that land, while he knows that another person has the right or is also entitled to the land, then he can be sentenced to 4 (four) years in prison. In the Criminal Code Book II Chapter XXV, fraudulent acts such as land grabbing can be threatened with a maximum prison sentence of four years. Article 385 consists of 6 paragraphs which clearly define the crime. All forms of crime contained in article 385 are called "Stellionaat" crimes, which are acts of embezzlement of rights to immovable property belonging to other people, such as land, rice fields, gardens, buildings, etc. In summary, the entire contents of the article state all unlawful acts such as intentionally selling, renting, exchanging, mortgaging, using as collateral for a debt, using land or property belonging to another person with the intention of seeking personal or other person's profit illegally or against the law. applicable. This is the only article of the Criminal Code that is often used by investigators and public prosecutors to prosecute perpetrators of land grabbing, especially in paragraph (4) which reads: Any person who, with similar purposes, mortgages or rents out a plot of land on which a person exercises the people's right to use that land, while he knows that another person has the right or is also entitled to that land.

In addition to Article 385 of the Criminal Code, land grabbing of land rights in a broader sense is also regulated in PERPU Number 51 of 1960 concerning Prohibition of Land Use Without the Permit of the Entitled or Their Authorized Person, specifically in Article 2 and Article 6. With clear legal rules, parties Those who have rights to land can take legal steps, both criminal and civil, to prosecute the perpetrators of land grabbing. In this case, the element that must be fulfilled is the element of "profiting oneself or another person unlawfully, selling, exchanging" which means more or less the act of a person selling or exchanging land that does not belong to another party and making a profit from this action. . Meanwhile, another article mentions Article 167 Paragraph (1) of the Criminal Code which states: Whoever, against the rights of another person, enters by force into a house or closed room or yard used by another person, or is there without his right, does not immediately leave that place at the request of the rightful person or on behalf of the person who has the right to be sentenced to imprisonment for up to one month or a fine of up to IDR 4,500,"

PERPU Number 51 of 1960 concerning the Prohibition of Using Land Without the Permission of the Entitled Person or His/Her Authorized Person states that the use of land without the authorized person's permission or authorized agent is a prohibited act and is punishable by criminal penalties. Article 2 reads as follows: It is prohibited to use land without the rightful permission or legal proxy. The elements of Article 2 are: "Using land without permission, without proper permission". Without reducing the validity of the provisions in Article 3, Article 4 and Article 5, he can be punished with imprisonment for a maximum of 3 (three) months and/or a fine of up to Rp. 5,000,- (five thousand rupiah). "Whoever" uses land without the permission of the rightful person or his/her legal

authority, with the provisions, that if it concerns plantation and forest land, they are excluded which will be resolved according to Article 5 paragraph (1) "Whoever" interferes with the rightful person or his/her legal authority in using rights to a plot of land. "Anyone who" orders, invites, persuades or recommends verbally or in writing to carry out the acts referred to in Article 2 or sub b of Paragraph (1). "Whoever" provides assistance in any way to carry out the act mentioned in Article 2 or letter b of Paragraph (1);

4. Stelionaat Crime

According to Article 385 of the Criminal Code, the crime of land grabbing is also known as the crime of stellionaat. The term stellionaat itself is not included in the formulation of the relevant article. Therefore, stellionaat is a qualifying sentence given to crimes that fulfill the elements contained in Article 385 of the Criminal Code. According to R. Soesilo, the crime mentioned in Article 385 of the Criminal Code can be called the crime of stellionaat, which means embezzlement of rights to immovable objects (onroerende goederen).²⁹ What is meant by immovable goods or objects here is land, rice fields, buildings and so on. So, it can be concluded that the crime of stellionaat is the act of selling, exchanging, encumbering, renting, mortgaging, the right to use land, buildings, plants and plant seeds on owned land while knowing that someone else has the right to the land.

5. Islamic Criminal Law

Islamic law or Islamic sharia is a system of rules based on the revelation of Allah SWT and the Sunnah of the Prophet regarding the behavior of mukallaf (people who can be burdened with obligations). Fiqh is another term used to refer to Islamic law. This term is usually used in two senses. Firstly, in the sense of legal science or parallel to the term jurisprudence in English so that fiqh refers to the branch of study that examines Islamic law. Second, it is used in the sense of science itself, and is parallel to the term law in English. In this sense, fiqh is a set of norms or rules that regulate behavior, both originating directly from the Qur'an and the Sunnah of the Prophet SAW. Nor from the results of ijtihad of Islamic legal experts. Generally in practice, fiqh in this second sense is used synonymously with sharia in the narrow sense. The difference is only in terms of emphasis where sharia describes and emphasizes that Islamic law has a divine dimension and is based on Allah's revelation, while fiqh describes other characteristics of Islamic law, namely that even though it has a divine character, its application and translation in real life and the character of society is entirely a human effort.

The term jinayah is used for criminal acts whose sanctions are the death penalty, forced labor for life, temporary hard labor and imprisonment. The term janhah is a criminal offense that is sanctioned by imprisonment for more than one week, or a fine of more than one hundred rupiah (one dinar). The term mukhalafah is a criminal offense that is sanctioned by imprisonment for not more than one week, or a fine of not more than one hundred piasters (Article 11.12 of the Egyptian Criminal Code). According to Islamic criminal law, these three terms are called "jarimah or jinayah" without distinguishing between the severity of the punishment that will be imposed on the perpetrator because the principle of Islamic criminal law lies in the nature of the punishment. According to Haliman "the terminology of Islamic criminal law is the provisions of Islamic sharia law which prohibit doing or not doing something, and violations of these legal provisions are subject to punishment in the form of bodily suffering or a fine for the violation."

In Islamic criminal law, an act is considered jarimah if the conditions and harmony are fulfilled. According to the language, the word jarimah comes from the word (جَرَمَ)

(jarama" then becomes the masdar form "jaramatan" which means: a sinful act, wrongdoing or crime, the perpetrator of which is called "jarim", and the one who is subject to the act is "mujarom' alaihi". Meanwhile, according to the terminology, these are the prohibitions of Allah SWT (AlSyri') which are sanctioned by him with the punishment of had, qisash/diyat and ta'zir. From the explanation above, we can conclude that fiqh products are human products whose nature is relative, based on revelation, and can change according to needs, as explained in the rules of fiqhyyah above which state that, changes in place and time cause changes in the law, which means that the law must be appropriate to the conditions of the times.

The thoughts or ideas of Indonesian Muslims regarding the application of Islamic criminal law in Indonesia, at least there is a cluster of thoughts, namely modern Islamic thought with the idea of the application of Islamic criminal law in Indonesia being substantive values, namely justice and universal values, such as adulterers are prohibited and the perpetrators are punished, but It doesn't have to be stoning, or stealing is a form of crime and the perpetrator must be punished, but it doesn't have to be cut, the punishment is adjusted to conditions in Indonesia. This thinking is the idea of modern Islamic thought such as NU, ICMI, Muhammadiyah and MUI. The idea of implementing Islamic criminal law in Indonesia must be normative as the text of the Koran says, meaning formal legal. The contextualization of Islamic criminal law can be seen from the consideration of an act that is considered a crime, namely causing harm to society, both individually and collectively. Islamic criminal law, which is usually called fiqh jinayah, is part of Islamic law that has been in place since the sending of the Prophet Muhammad. Jinayah jurisprudence consists of two words, namely fiqh and jinayah. The linguistic meaning of fiqh comes from the pronunciation faqiha, yafqahu, fiqhan, which means to understand, or understand. In terms of fiqh, fiqh is the science of practical sharia laws taken from detailed propositions.

Islamic criminal law norms cannot be separated from the issue of studying prohibitions and sanctions. The prohibition on committing crimes in Islam is referred to as *al-ahkām al-aṣliyyah* (basic teachings), namely the original law that must be maintained in the form of a prohibition that must be obeyed by all components of society. This prohibition aims to avoid *madharat*. So the formulation of the problem in this writing is What are the Provisions for the Crime of Fraud According to the Perspective of Islamic Criminal Law, and the aim of this research is to determine the view of Islamic criminal law towards criminal acts of fraud. Thus, actions that can harm property are strictly prohibited by Islam and the perpetrators will be dealt with firmly. Therefore, theft, fraud, embezzlement and scale fraud are prohibited acts. Islamic criminal law classifies it into the criminal law of theft and *ḥirābah* (robbery) and *Jarīmah ta'zīr*. In Islamic criminal law there is no specific term regarding fraud. If seen from the perspective of the acts and elements contained in fraud, there are similarities between the criminal act of fraud and the criminal acts regulated in Islam, namely: *ghulul*, betrayal and lying. In the future, of course, legal or political legal measures are needed that can overcome the empty space in legal provisions regarding criminal acts of grabbing and falsifying land deeds. This is because as is known, the government, through its legal products, also known as policies, is here to be able to overcome problems that occur in society.

CONCLUSION

In Islamic law, there are no specific regulations regarding land grabbing (*Stelionaat*) and forgery, but during the time of Umar bin Khatab an incident occurred that involved Mu'an bin Zaidah and punished him. In the national legal system, this problem is regulated in Article 263

of the Criminal Code and in particular falsification of land title documents in Law no. 5 of 1960 concerning Agrarian Principles (UUPA) and government regulation Number 24 of 1997 concerning land registration.

BIBLIOGRAPHY

- A.P Perlindungan, 1981. Kapita Selekta Hukum Agraria, Bandung. Alumni.
- Abdullah bin Bin Muhammad Asy-syaibi al-Abdari Al-Harari al- Habsyi. 2004. Umdah ar-Raghib fi Mukhtashar Bughyatul ath-Thalib, Beirut. Syarikah Dar al Masyari'.
- Abu Hasan al-Mawardi. 2015. al- Ahkam al-Shulthaniah wa al-Wilayah al- Diniyah, Indonesia. Haramain.
- Adrian, Sutedi. 2012. Hak Atas Tanah dan Pendaftarannya. Jakarta. sinar grafika.
- Al Imam Abu Dawud as Sajistani. Syaikh Syauib Al Arnauth Sunan Abu Daud. Khulusatu Hukumu.
- Al-Maliki, Abdurrahman. 1963. As-Siyasah Al-Iqtishadiyah Al-Musla. Bogor, Cahaya.
- Afzalurrahman, 1995. Doktrin Ekonomi Islam. Yogyakarta. Dana Bakti Wakaf.
- Al-Nawawiy, Abu Zakariya Yahya ibn Syaraf. 1983. Shahih Muslim bi Syarh al- Nawawiy, Beirut. Dar al-Fikr.
- Al-Qur'an al-Karim
- Amir, Abdul Azis. 1969. Ta'zir al-Syari'at al-Islam. Beirut, Daar al-Fikr Arabi. Alie Yafie, Dkk, Ensiklopedi Hukum Pidana Islam, Jilid II, Bogor. PT.Kharisma.
- Anis, Ibrahim. dkk. 1972 . Al-Mu'jam Al-Wasit, Mesir. Majma' Al-Lughah Al- Arabiyyah.
- Ary Octaviyanti, dkk., "Tindak Pidana Pemalsuan Sertifikat Tanah ditinjau dari Pasal 263 dan 264 KUHP", Bhakti Hukum: Jurnal Pengabdian Kepada Masyarakat, Volume 1(1)
- Ash-Shiddiqi, Hasbi. 1975. Falsafah Hukum Islam. Jakarta. Bulan Bintang.
- Bandung. CV. Mandar Maju
- Boedi Harsono, Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya. Bandung: Djambatan, 1999.
- Chazawi, Adami. 2001. Kejahatan mengenai Pemalsuan, Jakarta, Rajagrafindo Persada.
- Chomzah, Ali Achmad. 2004. Hukum Pertanahan Di Indonesia Dan permasalahannya Jakarta. Prestasi pustaka.
- Dasar Pokok-Pokok Agraria Presiden Republik Indonesia www.makalah-hukumpidana.blogspot.com/makalah
- Departemen Pendidikan dan Kebudayaan, Pola Penguasaan, Pemilikan dan Penggunaan Tanah Secara Tradisional .Ambon, Depdikbud, 1992.
- Dewi Kurnia Sari, Tindak Pidana Pemalsuan Surat dalam Pandangan Hukum Islam (Kajian Atas Putusan Pengadilan Depok), Skripsi yang tidak dipublikasikan. Jakarta. UNJ, 2009.
- Entiman, Nae fandri. 2015. Kepastian Hukum Terhadap Hak Atas Tanah yang sudah bersertifikat .Surabaya. Prestasi Pustaka.
- Gunawan Wiradi, Reforma Agraria: Perjalanan Yang belum Berakhir (Jakarta: KPA, 2000.
- Hamzah, Andi. KUHP dan KUHP. Jakarta. PT Rineka Cipta, 2004 Hamzah, Andi. 2008. Terminology Hukum Pidana, Jakarta. Sinar Grafika.
- Hanafi, Ahmad. 1976. Asas-Asas Hukum Pidana Islam, Jakarta. Bulan Bintang. hukumpidana.blogspot.com/2010/11/tindak-pidana-pemalsuan.html, tanggal 27 Januari 2021.
- Harsono, Boedi. 1989. Hukum Agraria Indonesia, Himpunan Peraturan-peraturan Hukum Tanah, Jakarta. Penerbit Djambatan.
- Hermit, Herman. Cara Memperoleh Sertifikat Tanah Milik, Tanah Negara dan Tanah Pemda. Bandung. Mandar maju. 2007.

- HM, Pahrudin (2023). *Anatomi Kebijakan Publik*. Jakarta: Kencana Prenada Media Group.
- Ilmu. Audah, Abdul Qadir. 1992. *Al-Tasyri' Al-Jina'i Al-Islami Muqaranam bi Al-Qanun Al-Wad'i*, Beirut. Mu'assasah Al-Risalah.
- Irfan, Nurul dan Masyrofah, 2013. *Fiqh Jinayah*, Jakarta. Amzah.
- Kasim dan Suhendar. *Petani dan Konflik Agraria*. t.k: AKATIGA, 1998.
- Kementerian Agama RI, 2014. *Al-quran dan tercemahannya*, solo. Tiga Serangkai. Lubis, Yamin dan Lubis, Abd. Rahim. *Hukum Pendaftaran Tanah Edisi Revisi*.
- Lamintang, P.A.F. *Delik-delik Khusus Kejahatan Membahayakan Kepercayaan Umum Terhadap Surat, Alat Pembayaran, Alat Bukti, dan Peradilan*, Jakarta. Sinar Grafika, 2001.
- Mannan, Abdul. 1997. *Teori Dan Praktek Ekonomi Islam*. Yogyakarta. PT. Amanah, Bunda Sejati.
- Marsum, 1991. *Fiqh Jinayat (Hukum Pidana Islam)*. Yogyakarta. BAG. Penerbitan FH UII.
- Mochamad Munir, "Penggunaan Pengadilan Negeri Sebagai Lembaga Untuk Menyelesaikan Sengketa dalam Masyarakat", Desertasi S3, Universitas Airlangga (1997).
- Moeljatno, 1998. *KUHP dan KUHP serta Komentar Terhadap Pasal-pasalnya*, Jakarta. Sinar Grafika.
- Mudjiono, 1992. *Hukum Agraria*. Yogyakarta, Liberty.
- Muhammad Ibn'Isa Saurah Ibn Musa Ibn al-Dahhak al-Tirmizi, 1975 juz. III. Mesir. Syarikah Maktabah Wa Matba'ah Mustafah al-Halb.
- Murad, Rusmadi. 2007. *Menyikap Tabir Masalah Pertanahan Rangkaian Tulisan Dan Materi Ceramah*. Jakarta, Mandar Maju.
- Nader dan Todd, *The Disputing Process Law in Ten Societes*. New York: Colombia University Press, 1978.
- Pahrudin HM & Citra Darminto, *The impact of local government policies on people's welfare in the regional autonomy era: A case study of Jambi City, Indonesia*. *Kasetsart Journal of Social Sciences*, 42(4), 732-737. Retrieved from <https://so04.tci-thaijo.org/index.php/kjss/article/view/255717>.
- Penjelasan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah (LN Tahun 1997 Nomor, TLN Nomor 3696).
- Poerwadarminta, W.J.S. 2003. *Kamus Umum Bahasa Indonesia*. Jakarta. Balai Pustaka.
- Qal'ahji, Muhammad Rawas. 1999, *Ensiklopedi Fiqh Umar bin Khatab*, Jakarta: PT Raja Grafindo Persada.
- Rahman. Afzalur. 1995. *Doktrin Ekonomi Islam*. Yogyakarta. Dana Bakti Wakaf.
- Salim Ibn Samir al-Hadrami. t.t. *Safinah An-Najat*. Indonesia, Dar Ihya al-Kutub al-Arabbiyah.
- Santoso, Topo. 2003. *Membumikan Syariat Islam*, Jakarta. Gema Insani Press.
- Soekanto, Soerjono, 2014. *Pengantar Penelitian Hukum*. Jakarta, UI Press. Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan
- Sudarto. 1986. *Hukum dan Hukum Pidana*. Alumni. Bandung.
- Sugiono, 2016. *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*, Bandung, Alfa Beta.
- Sukiati, 2017. *Metodologi Penelitian sebuah Pengantar*, Medan, Perdana Publishing
- Sumardjono, Maria. 2008. *Mediasi Sengketa Tanah*. Jakarta. Kompas.
- Sutedi, Adrian. 2012. *Hak Atas Tanah dan Pendaftarannya*, Jakarta. sinar grafika. Santoso, Topo 2003. *Membumikan Hukum Pidana Islam*. Jakarta. Gema Insani Press.
- Sutedi, Adrian. 2012. *Sertifikat Hak Atas Tanah dan Pendaftarannya*. Jakarta. Sinar Grafika.
- Mudjiono, 1992. *Hukum Agraria*. Yogyakarta. Penerbit liberty
- Wahbah Zuhaili, t.t. *Fiqhu al-Islam wa adillatuh* juz VI, Beirut. Dar al Fikr.