

**LAND ACQUISITION IN THE WORK CREATION
LAW IN THE PERSPECTIVE OF ISLAMIC
OWNERSHIP THEORY
(an Analysis with the concept of *Istimlak* and
Milk al-daulah)**

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Abstract

The work creation law is one of the priority programs of the National Legislation Program proposed by the executive to the legislature. Since it was proposed by the executive to be discussed by the legislature, this law has generated protests from some people because several articles in it are considered controversial, including the chapter on land acquisition. This research wants to look at several provisions in land acquisition from the perspective of istimlak and milk al-daulah. This study used a qualitative method with a normative-juridical analysis approach to the library data sources. The results of this study indicate that there are several problems in the chapter of land acquisition in the work creation law according to the concept istimlak and milk al-daulah, namely the addition of letters regarding the criteria of public interest and in the elimination of analysis of environmental impacts on land objects of acquisition. This problem is contrary to Istimlak and Milk al-daulah because the rules are not fulfilled dharuriyah and can cause harm to humans and the universe.

Keywords: The Job Creation Law, Istimlak, Milk Al-Daulah

1. Introduction

problem that is currently a hot topic in the discussion of the Indonesian people is the Job Creation Act (Ciptaker Law). The ratification of the law has generated pro and contra reactions because there are several problematic articles in it¹. Among several issues that have received criticism and public attention are the provisions regarding agrarian affairs. Dewi Kartika, who is the Secretary General of the Land Reform Consortium (KPA), believes that the Job Creation Law actually hinders Land Reform because it only benefits capital owners. Meanwhile, it is feared that farmers and indigenous peoples will not get their land rights fairly². The Job Creation Law has not been able to substantially fulfill several principles, so it is feared that it will worsen the injustice in land ownership and control that has occurred so far³.

Agrarian issues that are controversial in the Job Creation Law are regarding land acquisition for public interests. this problem is a classic problem that has sparked controversy in the community over the years⁴. The existence of the Job Creation Law, which revised several provisions of the previous law, has the potential to increase the number of conflicts that occurred previously⁵. This problem arises because of two different interests between the government and land owners. The state considers that the activities carried out are legal actions for the sake of the public. whereas land owners retain their rights and ownership⁶.

The problem, especially regarding ownership, gives the author a point of view to further examine the intent and purpose of the creation of the Job Creation Law. The majority of views that have emerged stated

¹ BBC NEWS Indonesia. (2020). Omnibus Law: Penghapusan pasal di UU Cipta Kerja 'Menyalahi Aturan', menurut pakar tata negara. Retrieved from <https://www.bbc.com/indonesia/laporan-khusus-54430492> on October 29, 2020

² Wardhani, D. K. (2020). Disharmoni Antara RUU Cipta Kerja Bab Pertanahan dengan Prinsip-Prinsip UU Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA). Jurnal Komunikasi Hukum (JKH) Universitas Pendidikan Ganesha, 440-455. Retrieved from <https://ejournal.undiksha.ac.id/index.php/jkh/article/view/28095> on November 8, 2020

³ *Ibid*, 440-455

⁴ Sudirman, S. (2014). Pembangunan Jalan Tol di Indonesia: Kendala Pembebasan Tanah Untuk Pembangunan bagi Kepentingan Umum dan Gagasan Upaya Penyelesaiannya. Bhumi, 522-542. Retrieved from <http://jurnalbhumi.stpn.ac.id/index.php/JB/article/view/189> on November 10, 2020

⁵ *Ibid*, 440-455

⁶ *Ibid*, 522-542

that they contradicted the contents of the Job Creation Law. Therefore, researchers want to discuss these problems and find solutions through an Islamic economic perspective. Because in principle, Islamic economics with the perfection of its teachings has explained about economic rules including allowing individual rights to property and justifying the ownership of all types of property that can be obtained according to a lawful way⁷. The peculiarity of the Islamic economy's concept of private property rights lies in the fact that Islamic economics has legitimized property rights depending on the morals attached to it. Islamic economic thought assumes that there is no danger in private property rights, on the contrary, it encourages everyone to try to get property so that it can provide great benefits to society⁸.

In addition to recognizing individual rights to ownership, Islam also regulates forced purchases by the government for reasons of public interest. The peculiarity of the Islamic economic concept of private property lies in the fact that in Islam the legitimacy of property rights depends on the morals attached to it. In this case Islam is different from capitalism, because neither of the two is successful in placing the individual in harmony in a social mosaic⁹. Basically Islam prohibits eradicating ownership by means of expropriation, because it will limit human efforts to acquire wealth and is clearly contrary to human nature and will fight against freedom of ownership, then Islam comes to allow individual ownership and limits ownership by this mechanism, not by depriving people. So that the method (mechanism) is in accordance with human nature and is able to regulate interpersonal relationships between them¹⁰.

In Islamic economics, discussion of ownership rights has been regulated in the Al-Qur'an and Sunnah. There is a special discussion regarding the arrangement of ownership rights in relation to state ownership and the management of the resource rights of state property from a theoretical as well as technical perspective. From state ownership there is such a thing as State Ownership (*al-milkiyyat al-daulah* / state

⁷ Rahman, A. (1995). *Doktrin Ekonomi Islam*. Yogyakarta: PT. Dana Bhakti Wakaf.

⁸ *Ibid*, 1995

⁹ Manan, Abdul. (1995) *Teori dan Praktek Ekonomi Islam*. Yogyakarta: PT. Dana Bhakti Wakaf, h. 64

¹⁰ An-Nabhani, Taqiyuddin. (1996). *Membangun Sistem Ekonomi Alternatif, Perspektif Islam*. Surabaya: Risalah Gusti. h. 60.

property). In this thinking, many discuss about ownership which is of use value with regard to all state obligations to its people, including for non-Muslim communities¹¹. Intended for the common interest and benefit, where the state and society can jointly utilize it in accordance with statutory regulations and its management becomes the authority of the caliph / state¹².

Furthermore, in technical, there is a *istimlak* that discusses how the state can use community property rights for state development aimed at the benefit of the people. In the use of these rights it is also regulated so as not to harm the right owner by replacing it with compensation that is equivalent to the value of the community property rights¹³. view *istimlak* This has various views from Muslim intellectual figures such as *Wahbah Az-Zuhayli* who argues that the application of this principle requires a willingness principle from various parties involved in it¹⁴. Furthermore, according to Imam Al-Mawardi in his book *al-Ahkam al-sultaniyyah* who thinks this practice is allowed based on the actions of Umar bin Khattab in solving the problems of the ummah¹⁵.

Regarding property rights discussed in Islamic economics, some of the above principles can be used as solutions in overcoming problems that exist in the Ciptak Labor Law. Even though what is contained in the Job Creation Law causes many problems of land acquisition for the public interest which is among the various problems that cause polemics, it can be traced which elements are good in the law relating to the principle of ownership in Islamic economics and which are the opposing sides of the a more in-depth evaluation must be carried out to find a solution.

This polemic requires the author to understand more deeply the legal provisions regarding this land acquisition, especially from the perspective of law from Islamic economics. This study aims to enrich the treasures of Islamic economics, especially in terms of determining ownership rights in accordance with existing Islamic law. With the

¹¹ Djazuli, A. (2003). *Fiqh Siyasah Implementasi Kemashlahatan Umat Dalam Rambu-Rambu Syariah*. Jakarta: Prenada Media.

¹² Jajuli, S. (2014). *Kepemilikan Umum Dalam Islam*. Jurnal Ilmu Syari'ah Dan Hukum, 48 (2), 1-16.

¹³ *Ibid*, 2003

¹⁴ Herry, M. (2008). *Pengadaan Tanah Untuk Kepentingan Umum (Perspektif al-Quran)*. Ulul Albab, 239-255

¹⁵ *Ibid*, 2008

development of discussions regarding ownership rights, it can help resolve the ownership polemic that is currently happening in the community. With this discussion, the community can learn what property rights they can fight for so that it is not manipulated by certain parties who want to take advantage of their property, especially the misuse of rights by the government against the community¹⁶. Based on the background that has been mentioned above, the author is interested in discussing more deeply about The Job Creation Law in a review of the perspective of ownership theory in Islam, using the theory of *milk al-daulah* and *istimlak*.

2. Research Methods

This research focuses on the analysis of legal nomenclature in the form of applicable laws in Indonesia in terms of the perspective of ownership theory in Islamic public finance, the theory used is *istimlak* and *milk al-daulah* to assess and analyze several articles in the JobLaw with regard to ownership. This study used a descriptive qualitative method with a juridical-normative approach. The juridical-normative approach is an approach that places the source of law as the object of research. This approach is the most commonly used in legal research besides the juridical-empirical approach¹⁷. Because it uses a juridical-normative approach, the data source in this study is library data in the form of legal sources, both primary and secondary sources of law¹⁸.

Primary legal sources are sources of law in the form of statutory regulations established by the state or authorized law-forming bodies¹⁹. Primary legal documents have stronger binding power than secondary law and tertiary law²⁰. The primary source of law in this study is Law Number 11 of 2020 concerning Job Creation and Law Number 02 of

¹⁶ Kontan.co.id. (2020). Omnibus law UU Cipta Kerja ciptakan masalah baru bidang pertanahan bernama Bank Tanah. Retrieved from <https://nasional.kontan.co.id/news/omnibus-law-uu-cipta-kerja-ciapkan-masalah-baru-bidang-pertanahan-bernama-bank-tanah> on October 29, 2020

¹⁷ Efendi, J., & Ibrahim, J. (2018). *Metode Penelitian Hukum: Normatif dan Empiris* Depok: Prenada Media Group.

¹⁸ Field, M. A. (1986). Sources of Law: The Scope of Federal Common Law. *Harvard Law Review*, 881-984

¹⁹ Efendi, J., & Ibrahim, J. (2018). *Metode Penelitian Hukum: Normatif dan Empiris* Depok: Prenada Media Group.

²⁰ Diantha, I. M. (2017). *Metode Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media Group.

2012 concerning land acquisition for public purposes. Apart from primary sources, this research also uses secondary sources of law in the form of legal literatures scattered in various academic works that discuss themes related to research. Secondary sources of law in this study are fiqh books related to *Istimlak* and *Milk al-daulah*, and other sources in the form of books, research journals and research reports (Efendi & Ibrahim, 2018).

Data analysis was performed using a content analysis approach. Where research data in the form of secondary and tertiary is read in depth to get the desired understanding in accordance with the formulation of the problem posed. Then the results of the analysis are interpreted by comparing the results of the analysis to the data with the theoretical basis presented.

3. Results and Discussion

A. Theoretical Basis

1. The Concept of Ownership in Islamic Economics

Ownership in Islam is relative or bound. Everything that is owned by humans is not true ownership, because in the concept of Islam, only Allah SWT is the only one who owns everything in this world. As mentioned in the Word of Allah SWT:

وَلِلَّهِ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ ۖ وَإِلَى اللَّهِ الْمَصِيرُ

Meaning: And belonging to Allah is the kingdom of the heavens and the earth and only to Allah (all creatures) (QS. An-Nurr: 42)

لَهُ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَمَا بَيْنَهُمَا وَمَا تَحْتَ الثَّرَى

Meaning: What is in the sky, what what's on the earth, what's in between, and what's under the ground. (QS. Thaha: 6)

أَلَا إِنَّ لِلَّهِ مَنْ فِي السَّمَاوَاتِ وَمَنْ فِي الْأَرْضِ ۖ وَمَا يَتَّبِعُ الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ شُرَكَاءَ ۚ إِنَّ يَنْتَعُونَ إِلَّا الظَّنَّ وَإِنْ هُمْ إِلَّا يَخْرُصُونَ

Meaning: Remember, belonging to Allah includes who is in the sky and who is on earth (QS. Yunus: 66)

From the above verses, it confirms that the true owner of everything (including land) is in fact is Allah SWT. Allah SWT has entrusted and

given power (*istikhlaf*) to humans to manage what actually belongs to Allah in accordance with His Shari'a. Imam Al-Qurthubi said, «This verse is the argument that the origin of ownership (*ashlul milki*) belongs to Allah SWT, and humans have no right except to use (*tasharruf*) in a manner so that the property and wealth owned by humans contains a mandate. Therefore, we as humans are forbidden to act arbitrarily towards anything that is created on this earth such as exploiting natural resources, changing the life order of living things, etc.

Furthermore, ownership according to Ibn Taymiyyah's thinking in²¹, actually property rights are divided into three parts. The first few things of this property are individual property rights (*al-milkiyyat al-fardiyyah* / private property). This right deals with private ownership. According to Yunus Al-Misri, in²² this ownership is a law that applies to certain substances or uses, which allows the owner to take advantage of these items and get compensation, either because they are used by other people, such as rented etc. Furthermore, the second is public ownership (*al-milkiyyat al-ammah* / public property). This ownership discusses public ownership which according to Taqyuddin An-Nabhani is a permit from As-Shari' (law maker) to the community or society to both use goods simultaneously. Objects that are included in the category of public ownership are objects that have been declared by shari' that these objects are intended for the community and As-Shari' prohibits these objects being controlled by only one person²³. Finally, the third is state ownership (*al-milkiyyat al-daulah* / state property) which discusses that state ownership is the property of all people that needs to be given full attention because its usefulness cannot be extinct and preserved until the next generation.

2. State Ownership (*al-milkiyyat al-daulah*/state property)

Milk al-Daulah / state ownership is the property of the state or the assets of all the people whose management and use is for the public

²¹ Widiastuti, T., Herianingrum, S., Wisudanto, Ningsih, S., Setiyoati, A., Dzikrulloh, et al. (2020). *Keuangan Publik Syariah Teori Dan Praktik*. Surabaya: CV. Naraya.

²² Syah, A. (2019, Oktober 1). *Kepemilikan (Fikih Muamalat Bag. 6)*. Retrieved from Komisi Fatwa: <https://www.muisumut.com/blog/2019/10/01/kepemilikan-fikih-muamalat-bag-6/> on October 27, 2020

²³ Jajuli, S. (2014). *Kepemilikan Umum Dalam Islam*. *Jurnal Ilmu Syari'ah Dan Hukum*, 48 (2), 1-16, Retrieved from <http://asy-syirah.uin-suka.com/index.php/AS/article/download/123/122> on October 25, 2020

interest. State ownership is also defined as ownership which is of use value with respect to all state obligations towards its people, including for non-Muslim communities²⁴.

State property (*Milk al-Daulah*) is intended for a common interest and benefit, where the state and society can use it together in accordance with statutory regulations and its management becomes the authority of the caliph / state. The duty of the state / government is to carry out the mission of the Prophet Muhammad SAW in protecting religion and carrying out the mandate of human life²⁵.

In this case, the State needs property rights to earn income in order to carry out its obligations such as providing education to maintain the law, maintaining domestic security and protecting the interests of the community. State assets are actually public assets. Ibn Taymiyyah mentioned that the main sources of State assets are zakat, taxes, waqf, fines, grants, and spoils of war (*ghanimah*), as well as inventions that have no owner²⁶. The state is obliged to take advantage of public wealth for the public interest, but it must not use it excessively. Just as zakat is allocated to people who are entitled to receive it in accordance with the provisions of the Sharia. So, in this case even though every individual is free to own wealth, ownership must still comply with and follow the provisions of the Shari'a and morals. Basically, private property rights are a basic intuition. Under certain conditions, the State has the power to intervene in the property rights of these individuals. However, it is wrong to think about the right of the State above all else²⁷.

Islam considers the owner of the property as a mandate holder who represents holding the wealth of the community. The responsibility for these assets is greater than the sense of ownership²⁸. So in this case the government of an Islamic country has the right to manage and use it in various ways that are considered beneficial to society. No one, either alone or in a group, owns these objects for their own interests and is against the

²⁴ Phoenix, T. P. (2012). *Kamus Besar Bahasa Indonesia*. Jakarta Barat: PT. Media Pustaka Phoenix.

²⁵ Ali Akbar, "Konsep Kepemilikan dalm Islam", *Jurnal Ushuluddin Uin-Suska*, Vol. XVIII, No. 2, Juli 2012, hlm. 136-137, Retrieved from <http://ejournal.uin-suska.ac.id/index.php/ushuludin/article/view/704> on October 26, 2020

²⁶ Yusuf Qardhawi, *Norma dan Etika Ekonomi Islam*, (Penerjemah: Zainal Arifin dan Dahlia Husin), (Jakarta: Gema Insani, 1997), hlm. 158-159

²⁷ *Ibid*, 1-16

²⁸ *Ibid*, 158-159

public interest²⁹. Regarding the management of natural resources, Islam does not regulate in detail, but is regulated globally, so that the rulers can make these rules easily, by referring to general principles and arguments contained in the Al-Quran and Sunnah. The government has a big role to play in regulating mining and must be able to guarantee the people's welfare, namely by distributing natural wealth fairly. By paying attention to the general interest rather than the special interest³⁰.

3. Istimlak

In Arabic, Istimlak is masdara from the word istamlaka. In Istimlak means asking to be owned. According to Wahbah al-Zuhayli's view, Istimlak is the right to take land by the state in exchange for fair returns by coercing the owner due to emergency factors or for the public benefit, such as the expansion of mosques, roads, and so on³¹. Acquisition of land in this way is carried out on the basis of transactions and the will of power either on the basis of voluntary or coercion³².

According to the word of Allah in QS An-Nisa 'verse 29, that basically the law of origin of forced possession is invalid

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۚ وَلَا تَقْتُلُوا أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

Meaning: O you who believe, do not consume each others wealth in a wrong way, except in the way of business that occurs with mutual love between you. And do not kill yourselves, for Allah is Merciful to you.

From the description of the verse, Wahbah Az-Zuhayli³³ states that it is a form of tyranny when doing transactions without the consent of the parties. The scholars agree that buying and selling is declared invalid if there is no element of voluntariness. However, there are the majority of scholars who state the ability of Istimlak performed by the government, but on the condition of its use for the public interest allowed by the syara and with adequate compensation.

²⁹ *Ibid*, 136-137

³⁰ H. A Djazuli, Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam dalam Menyelesaikan Masalah-Masalah Yang Praktis, (Jakarta: Kencana, 2006), hlm. 166

³¹ *Ibid*, 166

³² Az-Zuhayli, W. (2012). Fiqhul Islam Wa Adillatuhu. Damsyiq: Darul Fikri.

³³ *Ibid*, 2012

This also happened during the caliphate of Usman bin Affan. The actions taken by Umar and Usman in the history are not found in the presence of a group of Companions who opposed his policy³⁴. So in conclusion in such cases *istimlak* is allowed. Zaynuddin bin Abd al-Aziz in the book *Qurrah al-Ain* mentions that if the mosque is narrow and can no longer accommodate and needs expansion, while in addition there is immovable property that is endowed or as property, then can sell *waqf* land for the expansion of the mosque even if the the owner objected to selling it. According to popular opinion it is permissible to force it to sell it and then buy it according to the price of the *waqf*. Only part of the lecture is explained, that the mosque should not be evicted due to the widening of the road³⁵. Imam Al-Mawardi in his book *al-Ahkam al-sultaniyyah* also stated his abilities regarding *Istimlak*, namely by referring to the actions of Umar bin Khattab who bought a number of houses and leveled it to expand the *Masjid al-Haram*.

Mustafa Ahmad Azzarqa in his book, *Al-Fiqh Al-Islami Fi Sawbih Al-Jadid* mentions that the transfer of property belonging to an individual becomes public property or vice versa sometimes based on the obligation of *syara* , just as *Istimlak* is done to create public benefit³⁶. Al-Syatibi³⁷ in his book *Al-Muwafaqat Fi Usul Al-Ahkam* mentions that in fact the public interest precedes the special interest. The companions also used to expand the mosque of Rasulullah SAW with the surrounding land, whether the owner was willing or not. This is done because it is based on the preference of the public interest over the special interest, but still with the provisions do not cause harm to the individual. Hasyiah Al-Dasuqi said, if forced to sell with *halal coercion* then selling it becomes common (necessity), as an Imam (Leader) forces the owner to sell his house for the expansion of a mosque, public road or cemetery³⁸.

³⁴ *Ibid*, 166

³⁵ Syukri, M. (2017). *Beli Paksa (Istimlak) Tanah untuk Kepentingan Umum Menurut Pendapat Wahbah Al-Zuhayli*. Banda Aceh: Universitas Islam Negeri Ar-Raniry Darussalam. Retrieved from <https://repository.ar-raniry.ac.id/915/1/Untitled.pdf> on October 29, 2020

³⁶ Santrionline. (2017). *Hukum Penggusuran Tanah Oleh Pemerintah*. Retrieved from <http://www.santrionline.net/2016/05/hukum-penggusuran-tanah-oleh-pemerintah.html?m=1> on October 29, 2020

³⁷ *Ibid*, 166

³⁸ *Ibid*, 2017

In practice in this modern age, the government's action to realize al-maslahat alāmmah (public interest) in Istimlak without limiting it to certain people by Wahbah al-Zuhayli³⁹ evaluates it as one of the efforts in approaching God, glorifying Him. as «the absolute owner» in the theory of ownership. Istimlak practice performed by the government in the perspective of maqāshid al-syarīah can be accepted when with consideration of the practice is done on the basis of factors hajiyyāt that rise to djarūrah. With the perspective of maqāshid al-syarīah, the actions taken by the government also need to follow up on existing activities in accordance with the applicable legal corridors and there is no element to harm one party, especially society as the owner of such rights as we can see in the Copyright Law Work in its future implementation.

4. Findings and Discussion

Among the problems that arise in the Job Creation Law is the problem of land acquisition in the interests of providing convenience and smoothness in job creation. This provision is contained in Article 122 Chapter VII concerning land acquisition, this law changes, removes, or stipulates new regulations from several provisions stipulated in Law Number 2 of 2012 concerning land acquisition for development for public interests and Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land.

Adjustment of several articles by changing, deleting, or enacting new regulations from Law Number 2 of 2012 creates new problems with regard to land acquisition, these problems can be found in Article 123 of the Job Creation Law which changes the provisions in Article 10 of Law Number 2 of 2012 with regard to the criteria for the designation of land acquisition which falls into the category of public interest.

Before experiencing changes in the criteria for public interest in article 10 of Law Number 2 of 2012, it consisted of seventeen (17) points from letter (a) to letter (r) which included a. national defense and security; b. public roads, toll roads, tunnels, railways, train stations, and railway operating facilities; c. reservoirs, dams, weirs, irrigation, drinking water channels, sewerage and sanitation, and other irrigation structures; d. ports, airports and terminals; e. oil, gas and geothermal

³⁹ *Ibid*, 2012

infrastructure; f. electricity generation, transmission, substation, network and distribution; g. Government telecommunications and information networks; h. waste disposal and processing sites; i. Government / Regional Government hospitals; j. public safety facilities; k. Government / Regional Government public burial places; l. social facilities, public facilities, and public green open spaces; m. natural reserves and cultural heritage; n. government / regional / village government offices; o. arrangement of urban slum settlements and / or land consolidation, as well as housing for low-income communities with rental status; p. government / regional government educational infrastructure or schools; q. Government / Regional Government sports infrastructure; and r. public markets and public parking lots.

But after experiencing a change in the criteria to be twenty-four (24) with the addition of the criteria from letter (s) to letter (x) which includes: s. Upstream and Downstream Oil and Gas Industrial Estates that are initiated and / or controlled by the Central Government, Regional Governments, State-owned enterprises, or region-owned enterprises; t. Special Economic Zones that are initiated and / or controlled by the Central Government, Regional Governments, State Owned Enterprises, or Regionally Owned Enterprises; u. Industrial Estates initiated and / or controlled by the Central Government, regional governments, State Owned Enterprises, or Regionally Owned Enterprises; v. Tourism Areas that are initiated and controlled by the Central Government, Regional Governments, State Owned Enterprises, or Regionally Owned Enterprises; and w. Food Security Zones initiated and / or controlled by the Central Government, Regional Governments, State Owned Enterprises, or Regionally Owned Enterprises. And x. a technology development area that is initiated and / or controlled by the Central Government, Local Government, State-Owned Enterprises, or Region-Owned Enterprises.

This addition certainly adds to the criteria that become the legal legitimacy for the government to take community land for reasons of public interest. Even though only with the number of criteria before being amended by the Job Creation Law, there were very many disputes between the government and the community in land acquisition, based on the search page in the Supreme Court's decision directory with the search keyword "Land acquisition for the public interest" it was recorded

that up to October 2020 there were 904 disputes. land that already has a permanent decision, this does not include ongoing cases and dispute cases that are not being sued by the owner. It is feared that the widening of the criteria from letter (s) to (x) will become an instrument that will widen agrarian conflicts in the field of land acquisition for public interests as well as an instrument for investors and conglomerates to plunder land and people's ownership on the grounds of creating jobs.

In Islam, the basic principles that become the legal and legal requirements of buying and selling both among the community and the community with the government are the principle of mutual agreement, agreement and willingness between the two parties (*taraadhin*)⁴⁰ This is clearly stated in the word of Allah Qs. An-Nisa: 29 and also the hadith of the Prophet narrated by Ibn Hibban which means "In fact, buying and selling is based on consensual / mutual consent"⁴¹. If the owner is willing to have his land taken by the government with or without compensation, the sale and purchase becomes valid even though it is used outside the provisions of Law Number 2 of 2012 both before and after the amendments to the Job Creation Law⁴². However, the problem is when the land owner does not agree, so there is forced buying and selling.

Regarding the forced buying by the government, the scholars discuss it in a chapter *istimlak*⁴³, regarding this the majority of the scholars state that the forced buying and selling is legally carried out by the government even though the owner is not willing but with various conditions including general benefit over individual, with compensation. which is reasonable, taking into account the economic price of the location, the allocation for something that is *dharuri* and the benefit for the *ummah* is greater than the benefit of the individual⁴⁴⁴⁵⁴⁶

In principle, Islamic law is very wise, where the law is something that cannot be allowed in an emergency situation for the benefit of the general public. According to Imam al-Ghazali, a condition that cannot

⁴⁰ Harun, N. (2007). *Fiqh Muamalah*. Jakarta: Gaya Media Pradana.

⁴¹ Hibban, I. (2007). *Shahih Ibnu Hibban JUZ IX*. -: Maktabah Syamilah.

⁴² Az-Zuhaili, W. (2012). *Fiqhul Islam Wa Adillatuhu*. Damsyiq: Darul Fikri.

⁴³ *Ibid*

⁴⁴ *Ibid*

⁴⁵ al-Mawardi, I. (2006). *Al-Ahkam As-sulthaniyah*. Cairo: Darul Hadits.

⁴⁶ Az-Zarqa', M. A. (2019). *Al-Fiqhul Islami fi Tsaubihi al-Jadid*. Dimsyq: Maktabah Jaami'ah Dimsyiq.

be allowed for the sake of benefit must fulfill three elements, namely dharuriyat, qath'iyat and kulliyat. He also mentioned that the change in law which was not originally allowed to be limited to the dharuriyat alone, not the hajiyyat, even during tahsiniyat⁴⁷. Referring to the opinion of Imam al-Ghazali, it is worth questioning whether the addition of elements of interest and general benefit in the Job Law includes Creation dharuriyat, hajiyyat or tahsiniyat. According to the author's analysis, this is not dharuriyat, but haajiyyat or tahsiniyat.

Referring to the designation of forced purchases by the government in the Employment Law, there are many requirements of the allocation of purchases that do not meet the of Creation rules dharuri as in letter t. Special Economic Zones, letter u. Industrial Estate, letter v. Tourism Area, and letter x. Technology development area. This designation, in the eyes of maqashid shari'ah, does not enter into dharuri but another hajiyyat or tahsiniyat, this designation will potentially benefit investors and conglomerates alone, as well as harm people whose land is forcibly taken by the government.

A problem that also arises in the Job Creation Law is the removal of the obligation to analyze environmental impacts (AMDAL) on land locations that have been designated for procurement. This provision takes effect after the Job Creation Law Article 123 adds three articles between articles 19 and 20, namely articles 19A, 19B and 19C in Law Number 2 of 2012 concerning land acquisition, Article 19C on the grounds of efficiency in letter (e) states that after the determination of the location of land acquisition, there is no need for any environmental impact analysis requirements. This is of course very contrary to the principle of milk al-daulah, because in milk al-daulah the principle of the relationship between the state (as government) and the land which is its territory is the right to manage by regulating and distributing it fairly and equally for the greatest benefit of humanity. and the universe^{48,49}, the elimination and neglect of environmental impact analysis has the potential to bring harm to humans and the universe, because among the designations of land acquisition as stated in the amendment to Law Number 2 of 2012

⁴⁷ al-Ghazali, I. (2000). *al-Mustasyfa fi 'Ilmil Ushul*. Beirut: Daar al-kutub al-Ilmiyyah.

⁴⁸ An-Nabhani, T. (2002). *Sistem Ekonomi Islam*. Jakarta: Hizbut Tahrir Indonesia

⁴⁹ Herry, M. (2008). Pengadaan Tanah Untuk Kepentingan Umum (Perspektif al-Quran). *Ulul Albab*, 239-255

Article 8 are sectors that has the potential to have an adverse effect on the environment such as the mining industry, tourism, technology development areas, upstream and downstream areas of oil and gas, waste management and control areas and others. Apart from contradicting the principle of *milk al-daulah Qanun*, this Qanun also contradicts the principle specific where land acquisition and other legal activities carried out by the government should not cause harm to humans and the universe⁵⁰⁵¹

Conclusion and Research Implications

Based on the previous explanation, It is concluded that there are several problems with regard to land acquisition in the JobLaw from the perspective of *milk al-daulah* and *istimlak*. We can find this problem in Article 123 which adds several criteria for designating the procurement of hold for public use, which previously were only 17 letters to 24 letters. In addition, problems also arise regarding the removal of the obligation to analyze environmental impacts (Amdal) on the location of land that has been designated for procurement.

In the perspective, *Istimlak* forced purchases by the government must be for an interest that is *dharuriyah*, while the addition of some of these criteria in the perspective of *maqashid sharia* does not fulfill the element of *dharuriyah*. The elimination of the analysis of environmental impacts is also contrary to the principle of *milk al-daulah* because in the concept of *milk al-daulah* the state has management rights to land that is in its territorial territory with the main objective for the common benefit. Meanwhile, eliminating AMDAL will potentially bring harm to humans and the universe.

The various criteria for land acquisition interests in the Job Creation Law are in principle a positive policy that must be carried out by the state for the common interest. However, in its implementation, the government must look carefully at the individual rights attached to the object to be released. If in practice the people do not agree with the liberation policy that is not categorized as *dharuriyat*, the government should look for alternative policies such as prioritizing state territorial land that has not been adhered to by individual rights (*mubaahat*). Or by negotiating fairly

⁵⁰ Djazuli, A. (2003). *Fiqh Siyasah Implementasi Kemashlahatan Umat Dalam Rambu-Rambu Syariah*. Jakarta: Prenada Media.

⁵¹ al-Mawardi, I. (2006). *Al-Ahkam As-sulthaniyah*. Cairo: Darul Hadits.

so that individual rights owners are willing (*taraadhin*). This policy will certainly reduce the potential for agrarian conflicts that often occur so far.

With regard to the analysis of environmental impacts, the government should pay great attention to this issue. Where the environment is part of the components of human life. When the environment is damaged, simultaneously the quality of human life also decreases, automatically human life becomes unbalanced and disasters will come and go. This condition will certainly add to its own burden on the country. To overcome this, an analysis of environmental impacts is a necessity. Not only on the land to be acquired but in all state and individual activities that have the potential to damage the environment. This research is expected to be useful as a material for consideration for related parties who have the authority to regulate land matters and contribute to expanding the academic literature, especially in the field of Islamic law studies on land and ownership.

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