



## Transfer of rights to cultivated land according to law no. 18 of 2021 concerning land/agrarian affairs in islamic legal analysis

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Article Info	Abstract
<b>Article History</b> Received: 2025-07-05 Revised: 2025-08-06 Published: 2025-09-05  <b>Keywords:</b> <i>Transfer of Rights, Cultivated Land, Islamic Law</i>	<p>This study examines the transition of rights over cultivated land to private ownership, focusing on Indonesian positive legal regulations and analyzing them from an Islamic legal perspective. The background to this research stems from the reality that much land in Indonesia, particularly ex-HGU (HGU) or abandoned land, has long been cultivated by communities without legal certainty. Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration provides a new legal framework that allows cultivators to obtain ownership rights to the land, provided they meet administrative and substantive requirements. The research method used is normative legal research with a statutory and conceptual approach, examining applicable positive legal provisions and Islamic legal principles related to land ownership and management.</p> <p>Under positive law, the process of transferring rights to cultivated land to ownership involves an inventory of the object and subject, verification of ownership, proof of continuous land management, release of rights from the previous party, and issuance of a certificate by the National Land Agency (BPN). Meanwhile, under Islamic law, land ownership can be obtained through the concepts of <i>ihya' al-mawat</i> (reviving dead land) and <i>iqtha'</i> (land granting by the ruler), with the basic principles of justice (<i>al-'adl</i>), benefit (<i>al-mashlahah</i>), and the prohibition of land abandonment. The analysis shows that the policy in Government Regulation No. 18 of 2021 is in accordance with sharia principles, especially regarding the granting of rights to cultivators who use the land productively and sustainably. The integration of positive law and Islamic law is expected to create a land system that is just, sustainable, and supports the welfare of the community. This study recommends that policy implementation be accompanied by strict supervision to prevent land speculation and ensure that land continues to be used for the common good.</p>

### I. INTRODUCTION

Land in life has a multidimensional meaning. Because of this multidimensional meaning, there is a tendency that people who have rights to land will defend their land rights by any means if their rights are taken away. The importance of land for humans as individuals or the state as the highest social organization is constitutionally regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "The land, water and natural resources contained therein are controlled by the state and used for the greatest

prosperity of the people." (Tutik and SH 2016) (Indonesia 1959)

Land registration is carried out taking into account the state and society, the needs of socio-economic traffic, and the possibility that every inch of land must have clear rights and rights holders under agrarian law. Land rights, which contain aspects of legal certainty and justice, are inseparable from the use and utilization of land that create prosperity. Certainty and justice alone cannot create prosperity without use and utilization. Conversely, use and utilization alone without certainty and justice cannot provide the just and certain prosperity that is the ideal of

independence. Rights to cultivated land are a crucial aspect in the context of land ownership and use in Indonesia. Along with the times and the needs of society, the understanding of rights to cultivated land has undergone significant transformation. Changes in government regulations have also influenced the way rights to cultivated land are regulated and implemented. (Hasanah, Sayuti, and Lisnawati 2024)

One government regulation that has had a significant impact on the transformation of rights to cultivated land is Government Regulation Number 18 of 2021. This regulation provides a new legal framework for regulating rights to cultivated land and has the potential to bring significant changes to its understanding and practice. However, in the context of Islamic law, questions arise regarding the suitability and implications of this regulation for Islamic legal principles governing land ownership and use. (Islamiyati 2019)

The history of land rights in Indonesia is rich and complex, spanning from pre-colonial times to the Reformation era. Land rights regulations have actually existed since pre-colonial times. However, these regulations were primarily customary and community-based, lacking clear systematization and consistent standards. The Dutch colonial era brought significant changes to land rights regulations. With the issuance of the Agrarian Law (Agrarische Wet) in 1870, the Dutch began systematizing land rights in Indonesia by implementing the concepts of *erfpacht* (building use rights) and *recht van opstal* (cultivating use rights). Under this system, land is owned by the state, and individuals or legal entities are only granted use rights. During the independence era, efforts to reform agrarian law began with the issuance of the Basic Agrarian Law (UUPA) in 1960. This UUPA aimed to equalize land ownership and prevent land accumulation in the hands of a few individuals. However, its implementation has encountered numerous obstacles, and many farmers still cultivate land that is not theirs. (Koeswahyono and Maharani 2022)

The next major change came with Government Regulation No. 18 of 2021. This regulation provides farmers who have long cultivated land with the opportunity to convert their land rights into ownership rights. In the context of this research, this regulation is important because it allows for the status of cultivated land in Bandar Khalipah Village to be

changed to ownership rights (Government Regulation of the Republic of Indonesia Number 18 of 2021). Government Regulation No. 18 of 2021 marks a new milestone in the history of Indonesian agrarian law. This regulation was designed in response to challenges arising from the old and problematic land ownership structure in Indonesia. Under this law, land rights, which have previously existed in a legal gray area, can be converted into ownership rights—a significant step in providing legal certainty and social justice for farmers (Government Regulation of the Republic of Indonesia Number 18 of 2021).

This change is inextricably linked to the history of land rights in Indonesia, which has been marked by inequities in land ownership and distribution. Since colonial times, land ownership structures in Indonesia have often favored certain groups, while farmers, as the primary food producers, have had limited access to land. This situation persisted after independence, despite agrarian reform efforts such as the 1960 Basic Agrarian Law (UUPA). While UUPA attempted to equalize land ownership, its implementation has been suboptimal, leaving many farmers forced to farm on other people's land. (Simanjuntak 2017)

In this context, Government Regulation No. 18 of 2021 represents a significant step forward. This law provides legal recognition and certainty for the land cultivated by farmers. With this regulation, farmers have the opportunity to obtain ownership rights to the land they cultivate, a significant change from the previous situation (Government Regulation of the Republic of Indonesia No. 18 of 2021). This change in land rights is not only important from a legal perspective but also has broad social and economic implications. From a social perspective, this change provides recognition and protection for farmers who have relied on land for their livelihoods. From an economic perspective, having land rights can help farmers gain access to credit and other resources, as well as enable them to invest and increase the productivity of their land. (Medaline, Zarzani, and Sari 2020)

However, these changes also present new challenges. The process of changing land rights is a complex one involving various parties, including farmers, communities, and the government. This process also requires significant time and resources, and there is the potential for conflict and disputes to arise. The issue of cultivation and settlement on land formerly owned by State Plantation Companies (PTPN) that has been abandoned or whose business permits have

expired has long been a complex issue in the Indonesian land context. These lands, often vast and fertile, are targeted by many communities seeking land for farming or housing. (Bilaldy and Ariani 2022)

The people who cultivate these lands often have no other choice. According to Budiardjo, this phenomenon often occurs in rural areas where population growth and unequal land distribution have made arable land extremely scarce. In this situation, land formerly owned by state-owned companies (PTPN) that has been abandoned or whose business permits have expired seems a logical and profitable option. However, this situation points to a larger problem in Indonesia's land system. By cultivating and building houses or even villages on these former PTPN lands, people hope that the government will release their rights, a hope that is often difficult to realize and a source of conflict and legal uncertainty.

Communities working on former PTPN land are often in a difficult position. They face uncertainty, lack clear legal rights, and face the risk of eviction. However, they also have hopes and a pressing need to acquire land for their livelihoods and shelter. Another common phenomenon in the issue of land use on former PTPN land is the practice of buying and selling such land by certain parties. In this situation of legal uncertainty and the urgent need for land, many people choose to purchase land from developers, such as community organizations (ormas) or other groups claiming to have permits. (SON 2024)

Furthermore, the transfer of rights to cultivated land is a complex issue and often triggers disputes in various regions across Indonesia. Within the context of national law, the transfer of land rights is specifically regulated by Law Number 18 of 2021 concerning Land, better known as the Agrarian Law. (Anggraeni 2022) This law seeks to regulate the use, control, and transfer of land rights to ensure justice and prosperity for all Indonesians. However, despite this clear legal basis, practices often differ, and problems related to the transfer of rights to cultivated land remain common.

Several cases of land disputes the author encountered illustrate the complexity of this issue. One example is the settlement of land claims in the former HGU (Cultivation Rights) area of the Helvetia Plantation in Medan, North Sumatra. This dispute involved various parties with claims to the land, including former plantation workers and private parties. In Deli Serdang, North Sumatra, a

land dispute resulted in the destruction of 13 houses, demonstrating the seriousness of this conflict and its impact on the local community. In Central Lampung, 126 farmers chose to relinquish their land due to legal uncertainty and the pressures they faced.

A visit by Mahfud MD, a prominent government figure, to Andalas University revealed the shocking fact that 75% of Indonesia's land is controlled by just 1% of the population. This statement illustrates the disparity in land ownership in Indonesia and highlights the need for restructuring and fairer law enforcement.

A closer look reveals that the majority of the land held is owned by limited liability companies (PT), foundations, or even former state-owned land holding companies (PTPN). This phenomenon reflects a paradox in land policy: while the state aims to provide a strong foundation for protecting land rights, its implementation remains far from ideal. In many cases, the granting of land rights has failed to reach the communities that should be the subject of the policy. The transfer of rights to cultivated land is a crucial aspect of this discussion, as it directly impacts the lives and well-being of smallholder farmers, who constitute the majority of Indonesia's population.

The legal vulnerability in managing cultivated land can be seen in the discrepancy between existing laws and the social and economic realities experienced by cultivated land communities. Numerous cases demonstrate that land, which should be a source of livelihood and prosperity for the people, instead ends up being the object of speculation and exploitation. This problem not only disrupts social stability but also has the potential to hamper sustainable development efforts mandated by the constitution. (ROZAQ 2023)

Furthermore, from an Islamic legal perspective, land management must adhere to the principles of justice, public welfare, and the protection of individual property rights recognized by Sharia. Islam views land not only as an economic commodity but also as a trust that must be used for the welfare of the people. Islamic law offers a unique perspective on land ownership and use, focusing not only on material aspects but also on spiritual and social ones.

Given the importance of land in people's lives and the clear provisions in Islamic law regarding land management, it is crucial to conduct an in-depth study of the transfer of rights to cultivated land within the context of the

Land/Agrarian Law and Islamic legal analysis. This study aims to identify and analyze the gap between theory and practice in land regulations, focusing on the aspects of justice and welfare mandated by the constitution and Islamic law.

Thus, this study aims to analyze the transfer of rights to cultivated land under Law No. 18 of 2021 concerning Land/Agrarian Affairs from an Islamic legal perspective. Through this analysis, it is hoped that a more comprehensive and equitable solution can be found to resolve cultivated land disputes in Indonesia, one that is not only in accordance with national law but also with Islamic legal principles.

This step is taken by communities in the hope of gaining legal certainty over the land they cultivate or fostering empathy. However, in many cases, this actually compounds the complexity of the problem. Permits held by developers are often legally unclear and, in some cases, even lead to conflicts with other parties claiming rights to the same land. This situation reflects the high demand for land and the low supply of legally secure land, compounded by the high price of land with permanent legal status, such as SHM (Freehold Title) or Sub-district Head Decree (SK Camat). Under these conditions, developers claiming to have permits are often able to sell land at high prices, while communities purchasing the land must bear the risk of legal uncertainty and potential conflict.

The government's role in providing legal certainty regarding land status is crucial in this situation. Government Regulation No. 18 of 2021 could provide a solution for communities working on land, including land formerly owned by PTPN (State-Owned Enterprises). However, further research and effective implementation are needed to ensure this regulation provides legal certainty and justice for the community (Government Regulation of the Republic of Indonesia No. 18 of 2021).

Therefore, the implementation of Government Regulation No. 18 of 2021 requires further research to understand how these changes to land rights can be implemented smoothly and fairly. This research also needs to examine how these changes are accepted by farmers and communities, and how they can contribute to Indonesia's sustainable development goals.

Rights to cultivated land play a crucial role in social life, particularly in the context of agrarianism. The transformation of rights to cultivated land is an interesting topic to discuss

from an Islamic legal perspective. Islamic law, as a comprehensive legal system, not only regulates aspects of religious life but also provides guidelines on how to manage property, including cultivated land, in accordance with sharia principles.

Understanding rights to cultivated land within the context of Islamic law, exploring various related concepts, and discussing the importance of maintaining a balance between individual rights and social interests in the ownership and management of cultivated land. We will also discuss possible transformations in Islamic law related to rights to cultivated land in response to the challenges of a changing era.

In this complex modern era, it is crucial for Muslim communities and policymakers to understand the principles of Islamic law relating to arable land in order to create a system that is just, sustainable, and in accordance with Islamic values. Therefore, this introduction will serve as a foundation for further research on the transformation of arable land rights under Islamic law, which encompasses legal, economic, social, and religious aspects.

In Islam, land is not merely a source of material wealth but also holds profound spiritual and social dimensions. Therefore, understanding rights to cultivated land in an Islamic context involves considerations of ethics, justice, and social welfare. The transformation of rights to cultivated land in Islamic law encompasses various aspects, including ownership, use, and management of land, taking into account Islamic principles such as ownership rights (*mulk*), lease rights (*ijarah*), and management rights (*wakalah*).

During the reign of Umar ibn al-Khattab, a special policy known as "*hilmawan*" and "*takjir*" was implemented. *Hilmawan* granted individuals the right to cultivate previously unused land, with the stipulation that after three years of cultivation, the land would become their property. This policy aimed to encourage more productive land management and reduce wasteland.

On the other hand, *takjir* refers to the government granting permission to individuals or groups to manage land for a specific period of time under certain conditions. If the land manager meets the specified terms and conditions, the land can be granted as their property.

The concept of *iptath* in Islamic law, discussed in the book "*Siyasah Iqtishaniyah*" by Abdurrahman Maliky, refers to the granting of land by the government to individuals or groups as a form of appreciation or for a specific purpose.



This land grant can be made for various reasons, including improving community welfare, encouraging economic growth, or as a reward for specific services.

In Islamic legal analysis, the granting of land by the government must be based on the principles of justice and public welfare. The government must ensure that this land grant does not cause harm to the wider community and can provide the greatest benefits for the recipient and society as a whole. The transfer of rights to cultivated land within the framework of Law Number 18 of 2021 concerning Land/Agrarian Affairs aligns with several concepts in Islamic law, such as *tamlih*, *hilmawan*, *takjir*, and *iptath*. A thorough understanding of these concepts can provide a more comprehensive perspective on the management and transfer of land rights, both within the context of positive law and Islamic law. The integration of these two approaches is expected to create a just and sustainable land system. Based on the above background, the author is interested in examining the Transfer of Rights to Cultivated Land According to Law Number 18 of 2021 concerning Land/Agrarian Affairs in Islamic Legal Analysis. The focus of the problem I discuss is.

1. What are the positive legal arrangements regarding the transfer of rights to cultivated land into private ownership?
2. How is the transfer of rights to cultivated land to private ownership according to Islam?

## II. RESEARCH METHODS

The research method used in this study is the normative legal research method with a statutory approach and a conceptual approach.(Indra Utama Tanjung 2024)A statutory approach was used to examine the provisions of Law Number 18 of 2021 concerning Land/Agrarian Affairs and its implementing regulations, which govern the transfer of rights to cultivated land to private ownership. A conceptual approach was used to analyze Islamic legal principles related to land ownership and management, including the concepts of *tamlik*, *hilmawan*, *takjir*, and *iptath*. The research data were sourced from primary legal materials, such as laws, government regulations, and relevant court decisions, as well as secondary legal materials in the form of literature, scientific journals, and the opinions of legal experts. The analysis was conducted qualitatively by outlining the relationships and differences between positive legal provisions and

Islamic legal principles, thus gaining a comprehensive understanding of the transfer of rights to cultivated land from the perspective of both legal systems.

## III. RESULTS AND DISCUSSION

### A. Positive Legal Regulations Regarding the Transfer of Rights to Cultivated Land to Private Ownership?

Positive legal regulations regarding the transfer of rights to cultivated land into private ownership in Indonesia cannot be understood partially, but must be seen as part of the entire national land law system which is rooted in the 1945 Constitution of the Republic of Indonesia, especially Article 33 paragraph (3) which emphasizes that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. This constitutional norm is the philosophical and legal basis for every law that regulates the control, use, and transfer of rights to land, including cultivated land.(Indonesia 2002)

Since the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), the state has stipulated that all land rights in Indonesia must have a clear legal basis. UUPA regulates the types of land rights, such as Ownership Rights, Cultivation Rights (HGU), Building Rights (HGB), Usage Rights, Lease Rights, and other rights recognized by law. However, in practice, much of the land cultivated by the community, particularly former state plantation land (ex-HGU PTPN) or abandoned land, does not have a certificate or definite title. This condition gives rise to the term "cultivated land," which is land that is physically controlled and utilized by an individual or group, but does not yet have proof of legal ownership rights under positive law.

Prior to the enactment of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, the transfer of rights to cultivated land to private ownership was very limited and required a lengthy process through the release of state rights or the release of third-party rights, followed by the granting of new rights. This mechanism was regulated by various regulations, including Government Regulation No. 24 of 1997 concerning Land Registration, which governs the procedures for initial registration of land rights, including land held without legal title. However, this regulation did not explicitly accommodate the transfer of cultivated land to

private ownership, often leaving farmers and tenants in legal limbo.

Significant changes occurred when the government issued Government Regulation No. 18 of 2021. This regulation is a derivative of Law No. 11 of 2020 concerning Job Creation (some of which was later adjusted through Law No. 6 of 2023 concerning the Determination of the Perppu on Job Creation into Law). This regulation explicitly regulates the control and transfer of land rights, including the possibility for cultivators to obtain ownership rights if they meet certain requirements.(Rahma 2023)

The articles in Government Regulation No. 18 of 2021 provide a clearer legal framework than previous regulations. This regulation emphasizes that land previously held under a Land Use Rights (Hak Guna Usaha) or Management Rights (Hak Pengelolaan) that has expired and subsequently acquired by the community for cultivation can be granted new rights by the state. These new rights can be Ownership Rights (Hak Milik), Land Use Rights (Hak Guna Usaha), Building Use Rights (Hak Guna Bangunan), or Land Use Rights (Hak Pakai), depending on the intended use and the requirements met by the applicant. This means that this regulation opens up the opportunity for legalization of land ownership, allowing the cultivator to fully own the land, as long as the process complies with legal provisions.

In a positive legal system, the transfer of rights to cultivated land into private ownership must comply with strict procedures. In general, the mechanisms include: (1) data collection and inventory of subjects and objects of cultivated land by the regional government or the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), (2) verification of physical control and use of the land, (3) proof of continuous control of the land for a certain period (generally a minimum of 20 consecutive years without dispute), (4) release of rights from the party that previously controlled it or from the state if the land is state land, and (5) issuance of a certificate of ownership by the BPN.

One of the key points in Government Regulation No. 18 of 2021 is the provision that allows for the granting of land ownership rights to cultivators who already control ex-HGU (HGU) land, abandoned land, or land formerly under Management Rights, as long as its use complies with spatial planning and is not subject to dispute. This provision represents a form of state affirmation for small communities, particularly

farmers, to ensure legal access to the land that is their source of livelihood.(Mukhlis Abidin 2023)

However, in practice, this process is not as simple as stated in the regulations. Several obstacles frequently arise, including overlapping ownership claims between cultivators and third parties (such as companies or legal entities), internal conflicts among cultivators, a lack of documentation proving land ownership, and administrative obstacles at the local government and National Land Agency (BPN) levels.

In addition to Government Regulation No. 18 of 2021, several other regulations are also relevant, including:

1. *Law Number 5 of 1960(UUPA)* – as the basic basis for all land rights regulations in Indonesia.
2. *PP Number 24 of 1997 concerning Land Registration*– regulates land registration procedures, including first-time registration of unregistered land.
3. *Regulation of the Minister of ATR/BPN Number 18 of 2021*– as technical implementing regulations for land registration and granting new rights.
4. *Law Number 39 of 2014 concerning Plantations*– regulate the use of plantation land and the release of plantation rights that have expired.
5. *Regulation of the Minister of ATR/BPN Number 7 of 2017*concerning the Regulation and Procedures for Determining Land Objects of Agrarian Reform (TORA) – relevant because cultivated land originating from state land or ex-HGU can be included in the TORA program to then be given to the community as Ownership Rights.

The Agrarian Reform Program, a national strategic agenda, also plays a crucial role in the context of land transfer. Through this program, the government seeks to redistribute land and legalize assets for land previously held without legal title. Land redistribution involves state land originating from abandoned land, former HGU land, or land released from forest areas, which is then transferred to those who meet the requirements for ownership rights.(Mustafidin 2023)

Normatively, the granting of ownership rights to land cultivators has several basic requirements: the recipient must be an Indonesian citizen, the area of land granted does not exceed the maximum ownership limit as stipulated in the regulations, and the land is used

for productive purposes and is not to be sold within a certain period. The provision prohibiting the sale of newly granted land is intended to prevent land speculation and ensure that the land is truly utilized by the recipient of the rights to improve their welfare.

However, on the implementation side, challenges arise when cultivated land to be transferred to ownership is located in an area with unclear legal status, such as in a dispute with a company, within a forest area, or on a designated public interest route. In such cases, even if the cultivator has fulfilled the administrative requirements, the land title transfer process can be delayed or even canceled.

Furthermore, proving land ownership is crucial. Cultivators must be able to demonstrate that they have actually and continuously controlled and utilized the land for a specified period. This evidence can include a statement from the village government, witnesses, proof of land and building tax (PBB) payment, or other relevant documents. Unfortunately, in many areas, land ownership records by cultivators are poorly documented, complicating the verification process.

From a positive legal perspective, the transfer of cultivated land to private ownership represents state recognition of long-standing land ownership that benefits both the cultivators and the community. The underlying principle is to provide legal certainty to those who de facto control and utilize the land, ensuring that such control is recognized de jure. With this legal certainty, it is hoped that cultivators will have greater freedom to utilize the land for economic activities, gain access to financing, and increase productivity.

On the one hand, this policy aligns with national development goals to create equitable land ownership and reduce agrarian inequality. However, without strict oversight, this policy has the potential to be exploited by parties who are not actually land owners, but rather land speculators seeking to profit from asset legalization. Therefore, regulations clearly outline procedures, criteria for recipients, and post-grant oversight.

In a broader context, the transfer of rights to cultivated land to private ownership is a manifestation of the constitutional and UUPA mandate to ensure that land is used optimally for the prosperity of the people. Government Regulation No. 18 of 2021 has provided a more progressive legal framework for realizing this mandate, although its success depends heavily on

the government's political will, land administration capacity, and active community participation.

## **B. Transfer of rights to cultivated land to private ownership according to Islam?**

From an Islamic legal perspective, discussions regarding the transfer of rights to cultivated land to private ownership cannot be separated from the basic principles of sharia regarding ownership (*al-milkiyyah*), management (*tasharruf*), and utilization of assets (*intifa'*) fairly and in accordance with the public interest. Islam views land not only as an economic asset, but also as a trust from God that must be managed fairly, productively, and bring benefits to society. This is based on the view that all true ownership belongs to God, as stated in Surah An-Nur, verse 33, "And give them of the wealth of God which He has given you."

This basic principle affirms that humans are merely caliphs mandated to utilize and manage the land according to His decrees. Within this framework, private ownership is recognized by sharia, but this right is relative, limited by social obligations, and must be accompanied by use that does not cause harm to others (*la dharar wa la dhirar*).

Ownership (*al-milkiyyah*) in Islam can arise through several reasons, including: (a) direct control over objects that are not yet owned by anyone (*ihraz al-mubahat*), such as reviving dead land (*ihya' al-mawat*), (b) inheritance (*al-mirats*), (c) gifts (*al-hibah*), (d) buying and selling (*al-bay'*), (e) gifts from the state or ruler (*al-iqtha'*), and (f) replacement or compensation (*al-'iwadh*). In the context of cultivated land, the two most relevant reasons for ownership are *ihya' al-mawat* and *al-iqtha'*.

*Ihya' al-mawat* Land revitalization is the process of revitalizing dead land that is not controlled or utilized by anyone by managing it to make it productive. In a hadith narrated by al-Bukhari and Ahmad, the Prophet Muhammad (peace be upon him) said: "Whoever revitalizes dead land, it becomes his." (Narrated by al-Bukhari and Ahmad). This hadith is the basis for the belief that a person can own land if he is able to revitalize and utilize it effectively.

*Al-iqtha'* is the granting of land by a ruler to a particular individual or group to manage, whether for specific services, economic needs, or equity policies. This grant is usually made to those who need land for their livelihood and productivity, on

the condition that the land is managed according to the purpose for which it was granted.

In the context of cultivated land in Indonesia, long-standing land ownership by farmers can be analogous to *ihya' al-mawat* if the land was previously neglected or unused. Meanwhile, the granting of ownership rights by the state through regulations such as Government Regulation No. 18 of 2021 can be likened to *al-iqtha'*, where the state acts as a guardian and manages the land for the benefit of the people. (Syarief 2014)

Islamic law does not recognize the concept of ownership arising from unauthorized possession if the land is still legally owned by another person. However, if the land in question is state land (*ardh al-daulah*), public land (*ardh al-'ammah*), or dead land (*ardh al-mawat*), then possession can be transformed into private ownership if it meets sharia requirements.

There are several important principles that govern the transfer of rights to cultivated land into ownership rights in Islam:

1. The Principle of Justice (*al-'adl*) – The transfer of rights must take into account fairness between individuals and society. Land given to cultivators must be appropriate to their needs and must not create new inequalities.
2. The Principle of Benefit (*al-mashlahah*) – Land ownership by cultivators must bring tangible benefits to the owner, their family, and the surrounding community. Land that is already owned must be utilized, not speculated upon.
3. Principle of Prohibition of Abandoning Land - In a hadith narrated by Imam al-Bukhari, Rasulullah SAW gave land to individuals on the condition that the land be managed, and if it is left abandoned for three years, the land can be taken back and given to another person who is able to manage it.
4. The Principle of Conditional Ownership – Ownership in Islam is not absolute and without limits; if land is used to the detriment of society or hinders the public good, the ruler has the right to revoke that right.

If we look at the condition of cultivated land in Indonesia, especially that which originates from ex-HGU or abandoned land, the transfer of rights to the cultivator can be considered valid according to sharia if:

- The cultivators really use the land for their living needs and do not just control it without producing.
- The land was previously not used by the previous owner or the state, so it is categorized as dead land.
- The transfer is carried out by the legitimate authority (state/government) as a form of *iqtha'* or land redistribution.

In Islamic history, Caliph Umar ibn Khattab's land policies in Iraq provide a concrete example. Umar restricted the granting of land to conquering armies, opting instead to make it public property, with the proceeds distributed among the people and future generations. However, Umar also applied the principle of *ihya' al-mawat* to anyone who wished to revitalize abandoned land. (Nawawi 2019)

Another relevant concept is *tamlik*, the process of transferring ownership from a public authority to an individual under certain conditions. In Islamic jurisprudence, *tamlik* can be achieved through state grants or certain compensation, as long as the ultimate goal is public welfare.

From a sharia perspective, Government Regulation No. 18 of 2021, which provides opportunities for cultivators to acquire ownership rights to the land they manage, is in fact in line with the principles of *iqtha'* and *ihya' al-mawat*. In this case, the state acts as a guardian (*waliyyul amr*) with the authority to manage state land for the benefit of the people.

However, to be in line with sharia, the implementation of this transition must ensure:

- Land is truly given to the original cultivators, not speculators or parties with large capital.
- There is a monitoring mechanism to ensure that land remains in productive use and is not traded in a short time for personal gain.
- The transfer of rights is accompanied by coaching and assistance with production facilities so that the new owner is able to optimize the land.

Islam emphasizes the importance of resolving land disputes peacefully through *sulh* (peace) before involving the courts. In the context of cultivated land, if there are multiple claims or objections from other parties, resolution can be achieved through mediation by the local government or traditional institutions, considering that land also has social and cultural dimensions.



If a dispute cannot be resolved amicably, the qadhi (judge) or judicial institution has the authority to decide based on evidence of ownership, the benefits generated, and the greater good. The principle is to grant rights to those who truly use the land productively, not simply those who possess the documents but allow them to lie fallow.

From the perspective of maqashid sharia, the transfer of rights to cultivated land into private ownership touches on at least three main objectives:

1. Hifzh al-Mal (protection of property) – provides legal recognition and protection for land managed by the cultivator.
2. Hifzh al-Nafs (protection of the soul) – guarantees a decent source of livelihood for farmers.
3. Hifzh al-Din (protection of religion) – ensuring the management of assets in accordance with the halal and fair provisions of sharia.

If managed according to sharia principles, this transition policy can be an instrument for economic equality while strengthening national food security, which is also part of the public interest (masalah 'ammah).

#### IV. CONCLUSIONS AND RECOMMENDATIONS

Based on this description, it can be concluded that the transfer of rights to cultivated land to private ownership under Indonesian positive law, as stipulated in Government Regulation No. 18 of 2021, is an affirmative step by the state to provide legal certainty and justice for cultivators who have managed the land in a real and sustainable manner. From an Islamic legal perspective, this policy aligns with the principles of *iqtha'* and *ihya' al-mawat*, which recognize land ownership by the party who maintains it, provided it is used for the benefit of the people. Both legal systems emphasize the importance of justice, benefit, and the prohibition of land neglect, so their integration can create land governance that is just, sustainable, and supports the welfare of the people.

#### REFERENCE LISTAN

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