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Contemporary Legal Transplantation of *Iḥyā' al-Mawāt*: From Prophetic Principles to Indonesian Positive Law

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Abstract: Land plays a role in livelihood, food security, and socioeconomic development. In Indonesia, the persistence of unused and abandoned land raises questions about land governance, equitable access, and agrarian resources' contribution to public welfare. This study examines how the Prophetic principles underlying *iḥyā' al-mawāt* can be transplanted into contemporary Indonesian positive law, particularly in regulating and redistributing unused land. It addresses a research gap concerning the legal mechanisms through which these principles may inform land policy without treating Islamic law as a formal source of state legislation. The study employs normative juridical research using statutory and conceptual approaches. Its secondary legal materials include primary legislation, scholarly literature, and legal sources, which it analyzes qualitatively through doctrinal interpretation and conceptual synthesis. The findings indicate that *iḥyā' al-mawāt* offers normative guidance for preventing unproductive landholding and directing land use toward social benefit. However, the classical concept of reviving ownerless or uncultivated land is not identical to the modern legal category of abandoned land; its transplantation therefore requires adaptation to Indonesia's constitutional and agrarian framework. Such adaptation may support state-led identification, control, and redistribution of qualifying abandoned land through established agrarian-reform procedures. It also underscores the need to distinguish land subject to valid rights from land lacking registered title, since their legal treatment and available remedies differ. This study contributes a framework of contemporary legal transplantation that translates the Prophetic values of productive land utilization, responsible stewardship, and *maṣlaḥah* into context-sensitive principles for Indonesian land governance. It offers a jurisprudential basis for strengthening regulation and agrarian reform while respecting statutory authority, legal certainty, and the rights of legitimate holders.

Keywords: *Iḥyā' al-Mawāt*; Legal Transplantation; Islamic Land Law; Indonesian Positive Law; Land Revitalization.

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INTRODUCTION

For human beings, land plays a crucial role because it enables them to earn a livelihood. As a source of livelihood, land has a very high material value.[1] One issue that often occurs in Indonesia is unused land. As the nation's regulator, the government has legal regulations that are expected to provide legal certainty on land tenure or rights. Legal certainty of land tenure is very useful for the interests of society in general, the nation, and the state. As a regulator, the government must be able to implement legal certainty in land rights to avoid the long list of issues that often occur, especially with unused land.[2]

Soon after Indonesia's independence, in 1960, the government issued Law No. 5 of 1960 on the Basic Agrarian Principles, which regulates natural resources in Indonesia, especially land. This law aims to create legal certainty of land tenure.[3] Anyone may have the right to land, but it is not limited to individuals, as groups of people and legal entities may also own land. However, the right to land must be exercised according to Article 4, clause (2) of the Basic Agrarian Principles, which states that all parties who own land rights are obliged to establish, use, and utilize the land tenure according to the limitations determined by applicable legal regulations in Indonesia.[4]

The imposition of land rights from the government to society does not mean that the party receiving such rights may act carelessly towards the land to which they have rights, as the imposition of rights from the government is directly attached to obligations that occur as right recipients in organizing, utilizing, and using their land according to the corridors and limitations determined by the legal regulations. One limitation in this law is the prohibition on not using land. [5]

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[1] A. Absori et al., "Indonesia as an Ecocracic Country: The State's Responsibility and the People's Participation in Preserving and in Managing the Environment Quality," *Quality: Access To Success* 21, no. 179 (2020): 140–43.

[2] Luh Putu Juwita Utami, Sukirno, and Irma Cahyaningtyas, "Penertiban Dan Pendayagunaan Tanah Terlantar (Studi Di Kantor Pertanahan Kabupaten Gianyar)," *NOTARIUS* 14, no. 1 (2021): 566–67.

[3] M.I. Bangsawan et al., "Abandoned Land Utilization for Food Security: A Welfare-Based Policy Approach in Indonesia," *International Journal of Sustainable Development and Planning* 19, no. 3 (2024): 1131–1138, https://doi.org/10.18280/ijsdp.190331.

[4] Ida Aju Pradnja Resosudarmo et al., "Indonesia's Land Reform: Implications for Local Livelihoods and Climate Change," *Forest Policy and Economics* 108 (2019), https://doi.org/10.1016/j.forpol.2019.04.007.

[5] Samudra Supriyanto, "Kriteria Tanah Terlantar Dalam Peraturan Perundangan Indonesia," *Jurnal Dinamika Hukum* 10, no. 1 (2010): 51–59.

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The state grants land rights to individuals or legal entities so the community can use and cultivate land to achieve economic sufficiency, welfare, or prosperity.[6] In order for the goal to be achieved, the community, as the bearer of land rights, must play an active role in managing, using, and cultivating their land so that they cannot use the land arbitrarily because there are obligations that must be carried out on the land they control in accordance with the rules and boundaries set by laws and regulations, one of which is the prohibition against neglecting the land according to Basic Agrarian Principles, Law Number 5 of 1960.[7] 10.23917/jurisprudence.v15i1.7082 Along with the times, the number of needs regarding land continues to increase. However, in reality, many land rights holders act arbitrarily towards the land they control, such as not providing benefits to the community and the State by not using the land, not cultivating it, and not maintaining it, while millions of citizens do not have any land for their wealth (e.g., a house or farm).[8]

Given land's limited availability and the growing demand for it for development, land must be used efficiently and optimally while preserving it.[9] In reality, even though land for development is limited, unused land is increasing in both urban and rural areas.[10] For agricultural land, Article 10 of the Basic Agrarian Principles states that, "In principle, every person or legal entity who has rights to agricultural land has the obligation to actively carry out or make efforts by themselves to prevent methods of extortion. The implementation of these stipulations will be regulated further in legal regulations."[11] Research on land

[6] Ricki Azis Dzaki, "Legal Certainty of Measurement and Mapping of Land Basic Maps," *Jurnal Hukum* 38, no. 2 (2022): 148–58, https://doi.org/10.26532/jh.v38i2.23655.

[7] Safrin Salam et al., "An Analysis of Legal Considerations of Judicial Decisions on Customary Land Disputes: A Comparison of Indonesia and Africa," *Jurnal Jurisprudence* 15, no. 1 (2025): 21–40, https://doi.org/10.23917/jurisprudence.v15i1.7082.

[8] K. Wardiono et al., "Philosophy, Law, and Ethics of Handling COVID-19 Pandemic in Indonesia," *Open Access Macedonian Journal of Medical Sciences* 9, no. E (2021): 1104–8.

[9] Chairul Anam, "Legal Analysis Regarding Deed Recognition of Debt Which Is Followed by Authority to Sell with Guarantee of Land Rights: Case Study of Cassation Voniss Number: 1011/k/Pdt/2014," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 9, no. 2 (2022): 274–84, https://doi.org/10.29300/mzn.v9i2.2922.

[10] Aerce Tehupeiory et al., "Tehupeiory, Aerce, Suwarno Suwarno, Ramisa Jahan, Mohit Islam," *Jurnal Hukum* 40, no. 2 (2024): 174–91.

[11] Nofi Sri Utami et al., "Equality of the Political Rights of People with Mental Disorders (PWMD) in General Elections," *Indian Journal of Forensic Medicine and Toxicology* 13, no. 4 (2019): 1571–75.

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conversion likewise emphasizes that spatial monitoring and effective zoning enforcement are relevant to the sustainable utilization of scarce land resources.[12]

As an implementation of the Omnibus Law[13] and the Basic Agrarian Principle Law, the government issued Government Regulation of the Republic of Indonesia Number 48 of 2025 Concerning Regulation of Abandoned Areas and Land. However, to date, it remains difficult to implement this regulation, especially for land owned by individuals/groups with land ownership rights and for disputed land among heirs. Such land cannot be managed or have its tenure shifted.[14] Article 1, number 5 of this government regulation states that unused land is land that has been unused by land right holders, management right holders, or parties who have obtained the basis for land control but have not obtained the rights to the land according to applicable legal regulations.[15]

Because of limitations in the existing regulatory framework, it remains unclear what "unused" means: land that is physically or juridically unused, or both? Therefore, defining, stating, or declaring unused land requires precaution and precision. So far, this government regulation can only be applied to land with the status of Business Usage Rights or Building Usage Rights. Meanwhile, it has not been applied to Land Ownership Rights. According to Government Regulation of the Republic of Indonesia number 48 of 2025 Concerning Regulation of Abandoned Areas and Land, land declared unused is directly under state control.[16] More recent doctrinal work identifies the need to align agrarian norms both vertically with the Constitution and horizontally across land-related sectors, while considering the distribution of land-related benefits.[17]

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[12] Wirawan, Bayu Andrianto, Yusni Ikhwan Siregar, Sukendi Sukendi, and Mulyadi Mulyadi, "Legal and Spatial Perspectives on Sustainable Built-Up Land Conversion Control in Pekanbaru," Jurnal Hukum 41, no. 4 (2025): 925–959, https://doi.org/10.26532/jh.v41i4.45024.

[13] Winanto Widayati, "The Challenges of Using the Omnibus Law Method in Indonesia's Legal System," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 2 (2025): 459–477.

[14] Ria Fitri, "Tinjauan Tanah Terlantar Dalam Perspektif Hukum Islam The Overview On Unattended Land In Islamic Law Perspective," *Kanun Jurnal Ilmu Hukum* 55 (2011): 14.

[15] Laurens Bakker, "Custom and Violence in Indonesia's Protracted Land Conflict," *Social Sciences & Humanities Open* 8, no. 1 (2023), https://doi.org/10.1016/j.ssaho.2023.100624.

[16] Triana Rejekiningsih, "Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum (Suatu Tinjauan Dari Teori, Yuridis Dan Penerapannya Di Indonesia)," *Yustisia* 5, no. 2 (2016): 67.

[17] Rusydianto, Wishnu, "Harmonization of National Land Law With the Principles of Agrarian Justice in the Constitution," Journal Critical Legal System 1, no. 1 (2026): 56–73, https://doi.org/10.68113/snf0wf81.

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Article 5 of the Basic Agrarian Principles can serve as a reference for the Agrarian sector. It states that: The agrarian law that is applicable over land, water, and space is the customary law, so long as it does not violate national and state interests, which are based on the unity of the nation with Indonesian interest as well as with regulations stipulated in this law and other regulations, and everything that complies with elements based on the religious law."[18] Fundamentally, the principle of the social function of land rights aims to guarantee land usage for the maximum welfare of the people. As a legal state with a welfare-state conception based on Pancasila ("The Five Principles" that make Indonesia's state ideals), land use must guarantee justice for all people.[19] Applying the social function principle to land rights becomes a strategy for achieving a legal state that guarantees fair land use. Therefore, it is crucial to analyze the essence of the social function principle through theoretical, juridical, and applied analyses in Indonesia, as a strategic effort to fulfill land rights for people's welfare.[20] Land is a nonrenewable natural resource, making land tenure regulations crucial. Article 33, clause (3) of the Republic of Indonesia's 1945 Constitution states, "Land, water, and the natural richness contained therein are under the control of the state and are used maximally for the welfare of the people".[21] A recent analysis of agrarian legal policy similarly argues that the constitutional orientation of land regulation should safeguard customary rights and public welfare rather than reduce land to a commercial asset.[22]

This study does not merely examine unused or abandoned land within Indonesian positive law. Instead, Islamic law should serve as the study's primary normative and

[18] M.T. Sirait, B. White, and U. Pradhan, "Land Rights and Land Reform Issues for Effective Natural Resources Management in Indonesia," in *Redefining Diversity & Dynamics of Natural Resources Management in Asia*, ed. Ganesh P. Shivakoti, Ujjwal Pradhan, and Helmi (Amsterdam, Netherlands: Elsevier, 2017).

[19] Faozi Latif, "Pengaturan Tanah Terlantar Menurut Hukum Positif Nasional Dan Hukum Ekonomi Syariah" (Institut Agama Islam Negeri Purwokerto, 2018).

[20] H.S.W. Nugroho et al., "Sort Elements Based on Priority, in Order to Improve the Quality of e-Learning in Health Using Difficulty-Usefulness Pyramid with Weighting (DUP-We)," *International Journal of Emerging Technologies in Learning* 14, no. 18 (2019): 186–93, https://doi.org/10.3991/ijet.v14i18.10809.

[21] John F McCarthy et al., "Land Reform Rationalities and Their Governance Effects in Indonesia: Provoking Land Politics or Addressing Adverse Formalisation?," *Geoforum* 132 (2022): 92-102, https://doi.org/10.1016/j.geoforum.2022.04.008.

[22] Muntaqo, Firman, Alip Dian Pratama, Febrian Febrian, Mada Apriandi Zuhir, and Lusi Apriyani, "The Reorienting the Agrarian Law: The Role of Agrarian Law in the Life of the Nation, State and Government," Jurnal Hukum 42, no. 4 (2026): 974–998, https://doi.org/10.26532/egm0v225.

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analytical framework. The principles derived from the practices and policies of the Prophet Muhammad ﷺ concerning unused land, particularly the concept of *iḥyā' al-mawāt*, should be adequately elaborated by examining their foundations in the Qur'an and Hadith, their development in Islamic jurisprudence, and the views of classical and contemporary scholars on land utilization, land ownership, productive use, public interest, and governmental authority. Accordingly, *legal transplantation* should not be understood merely as a similarity between Islamic norms and Indonesian land law, but as a process through which Islamic legal principles are transformed, adapted, and institutionalized within a modern state-based legal system.[23]

Previous research by Bangsawan[24] found that there is vast unused land (abandoned land) and that land is spread all over the country and must have a social function that emphasizes the importance of land protection for the greatest welfare of society in order to use the land for the greatest benefit of the people and to achieve prosperity by utilizing it for food production. In contrast, so many people are left without any land. If unused land is left alone, the social gap will widen. Without firm regulations, this issue may lead to social conflict among communities, as researchers recommend. The *maqasid al-syari'ah* theory aims to achieve the ultimate goal of deriving benefits from unused land. The government recommended taking unused land with rights of use, not land with ownership (except for land with an ownership certificate), to maximize benefits for food security because the legal user did not use their rights properly; food security has a strategic role in national development. This is because, under Indonesian law, the government has the right to take land with use rights if the rights holder does not use the land according to the land use rights.[25]

[23] Imam Mahdi, Etry Mike, and Arini Azka Mutia, "Contextualizing Islamic Law in Resolving Customary Land Conflicts: A Siyasah Syar'iyyah Approach to the Semende Tribe's Dispute in Bukit Barisan Selatan National Park," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 5 (2025): 696–710, https://doi.org/10.29300/mzn.v12i2.8619.

[24] Bangsawan et al., "Abandoned Land Utilization for Food Security: A Welfare-Based Policy Approach in Indonesia."

[25] Bangsawan et al.

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The novelty of this research, compared with previous research, falls into three strands: studies of *iḥyā' al-mawāt* in Islamic jurisprudence, studies of abandoned or unused land under Indonesian law, and studies of legal transplantation or the relationship between Islamic law and state law. This mapping would allow the study to demonstrate that the intersection of these three dimensions remains insufficiently explored within a single analytical framework, and this research formulates a clear analytical contribution by developing a framework of contemporary legal transplantation that explains how the principles of land productivity, the social function of land, public authority, and *maṣlaḥah* can be translated into contemporary policies governing abandoned land and agrarian redistribution.

However, based on the results of the National Land Agency's (BPN) identification in 2021. Data show that 73,000 million m2 of land is indicated as abandoned in Indonesia. Then, 459 parcels of land were declared abandoned, covering 48,000 million m2.[26] Apart from the fact that unused land is an unwise and uneconomic action (due to the loss of the opportunity to realize the land's economic potential), unused land in rural and urban areas is an unjust action.[27] It violates the obligation that holders of land ownership rights/land usage rights must fulfill. Other impacts of unused land include hindering the achievement of development programs' objectives and undermining national food and economic resilience. It limits society's access to land's socio-economic benefits, especially for farmers, disturbing the sense of justice and social harmony.[28] Recent agrarian scholarship also links unequal land ownership to limited access to land, weak recognition of customary rights, and obstacles to effective redistribution.[29] Land disputes arising from major development

[26] BPN, *Laporan Tahunan BPN (BPN Annual Report)* (Jakarta: BPN Pusat, 2022).

[27] Barid Hardiyanto, "Politics of Land Policies in Indonesia in the Era of President Susilo Bambang Yudhoyono," *Land Use Policy* 101 (2021), https://doi.org/10.1016/j.landusepol.2020.105134.

[28] Dayat Limbong, "Tanah Negara, Tanah Terlantar, Dan Penertibannya," *Jurnal Mercatoria* 10, no. 1 (2017): 1.

[29] Iriantoro, Agung, Junimart Girsang, and Suwarno Suwarno, "Structural Inequality of Land Ownership in Indonesia: A Justice-Based Legal Perspective," Jurnal Hukum 42, no. 1 (2026): 202–230, https://doi.org/10.26532/jh.v42i1.47808.

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projects also demonstrate why land governance must consider overlapping rules, community tenure claims, and mechanisms for resolving competing interests.[30]

According to Prophetic or Islamic law, unused land is called *ihya al-mawat*. *Al-Mawat* etymologically means 'dead', an antonym of 'living'. It refers to something lifeless, i.e., land that is uninhabited or unused.[31] Al-Mawat is land that is unused due to a lack of water, difficulties in using it, unclear owners, or never owned by anyone, or land with land tenure rights but whose owners are unknown, as well as land that is far from residential areas and is an object of continuous inheritance disputes, making its owner unclear. *Ihya al-mawat* means opening land that has no owner, or that has an owner but is unused, to manage, prepare, and turn into beneficial land, such as for residential areas, agricultural land, etc. Islam allows *ihya al-mawat* on unowned land that is not designated for public interests. *Ulil amri* (the government) may also take over unused land and put it to use for the people.

Islam motivates Muslims to expand productive land, so that they are spread across the earth.[32] They are also encouraged to bring dead land to life so they may have abundant wealth to support them in becoming stronger people. The bases of the application of *ihya al mawat* are *hadith* (traditions and sayings of Prophet Muhammad, peace be upon him) and *ijma* (unanimous agreement of Islamic scholars).[33] The basis of this from the *hadith* is narrated by Abu Dawud (*hadith* no. 3083) and At-Turmudzi (*hadith* no. 1378): From Said ibn Zaid from Prophet Muhammad (peace be upon him): "Whoever brings dead land to life, it is his." The work or efforts to bring unused land to life become the basis for the shift of that land's tenure rights, but it still needs juristic agreement or disagreement concerning

[30] Setia, Januar Kencana, "Land Conflicts in National Strategic Projects within the Framework of Agrarian Political Economy: an Analysis of Tenure Rights, Agrarian Reform, and Community-Based Conflict Resolution," Journal Critical Legal System 1, no. 2 (2026): 141–156, https://doi.org/10.68113/f4ffzg31.

[31] Ridwan, *Pemilikan Rakyat Dan Negara Atas Tanah Menurut Hukum Pertanahan Indonesia Dalam Perspektif Hukum Islam* (Jakarta: Bidang Litbang dan Diklat Kementrian Agama RI, 2010); Mutmainnah et al., "Agrarian Waqf and Counter-Dispossession in Infrastructure-Led Development: The Suramadu Development Corridor, Indonesia," *Journal of Rural Studies* 125 (2026), https://doi.org/10.1016/j.jrurstud.2026.104198.

[32] M. I. Bangsawan and A. Budiono, "Welfare-Based Natural Resource Policy in the Land Sector: Maqasid Asy-Syari'ah Perspective," *Review of International Geographical Education Online* 11, no. 3 (2021): 453–59.

[33] Ambok Pangiuk, "Ihya Al-Mawat Dalam Hukum Islam," *Media Akademika* 25, no. 2 (2010): 211–12.

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ownership status, the requirement of governmental or imam authorization, the treatment of land with an existing owner, and the legal consequences of *Ihya' al-Mawat* before it could become full ownership of this unused land[34]

Individuals' rights in bringing life to a plot of land take priority in enjoying the benefits of that land. The ownership rights of that land are still in the hands of the imam or government, and the imam has the right to collect taxes from the individual who brings life to that land.[35] This is according to the legal text written by a prominent *faqih* (Islamic legal expert), Syekh Muhammad Ibn al-Hasan ath-Thusi, in the Jihad Chapter of his book, *Al Mabsuth*: "Regarding unused land, they are not categorized as *ghanimah* (spoils of war that are divided among those who joined the war). The imam owns it exclusively. A Muslim who brings life to such land will have rights over it, and the Imam has the right to its tax.[36]

Given the wide area of unused land in Indonesia, prophetic law could be incorporated into land law, i.e., Government Regulation of the Republic of Indonesia number 48 of 2025 Concerning Regulation of Abandoned Areas and Land. It provides that the government may take over unused land for the people's welfare to maximize the land's potential for the people's welfare.[37] In essence, the state's revocation of unused land for the people's welfare is a land-management concept in Islamic sharia that is adopted or transplanted into positive law. Both laws aim to bring unused land into use when many citizens lack land rights. Both also allow the state to revoke unused land and optimize it for the people's welfare.[38] A research gap is the limited scholarly attention to how Islamic legal principles, particularly Prophetic principles concerning land utilization, have been transformed or transplanted into Indonesian positive law. This research aims to identify and analyze the Islamic legal principles embodied in the concept of *iḥyā' al-mawāt* and

[34] Abu Dawud, *Sunan Abu Dawud* (Beirut: Maktabah Al-Ashriyyah, 2018).
[35] Majd Al Naber and Francois Molle, "The Politics of Accessing Desert Land in Jordan," *Land Use Policy* 59 (2016): 492–503, https://doi.org/10.1016/j.landusepol.2016.09.026.
[36] Abu al Hasan Ali bin Khalaf bin Abdul Malik bin Bathal al Bakri al Qurthubi, *Syarh Al Bukhari Li Ibni Bathal Juz 6* (Riyadh: Maktabah Ar-Rusyd, 2003).
[37] Bangsawan and Budiono, "Welfare-Based Natural Resource Policy in the Land Sector: Maqasid Asy-Syari'ah Perspective."
[38] Teguh Musa Wiguna et al., "Huma Betang-Based Resolution of Mining Land Conflicts: Belom Bahadat Legal Culture of Bakumpai Dayak Community in Central Kalimantan, Indonesia," *Lex Localis* 22, no. 3 (2024).

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examine how these principles relate to Indonesian regulations governing abandoned or unused land. Based on the background above, the problem of this research is: "the Islamic legal question concerning the status and utilization of unproductive or unused land. The concept of iḥyā' al-mawāt can serve as the analytical starting point for demonstrating that Islamic jurisprudence establishes a relationship between land utilization, the legitimacy of land possession, and public welfare."

METHOD

This research study may employ a normative-doctrinal and comparative legal approach,[39] complemented by a socio-legal perspective if empirical data are available. Islamic legal sources should include the Qur'an, Hadith, classical and contemporary works of Islamic jurisprudence, and relevant scholarly discussions concerning *iḥyā' al-mawāt*, land ownership, the social function of land, and governmental authority.[40] The research is conceptual, using analytical framework techniques, a qualitative approach, and primary, secondary, and tertiary legal sources.[41] Descriptive analysis involves describing and analysing the findings. After obtaining the data, the authors analyzed them using the qualitative approach.[42]

The process used to generate the findings incorporated Islamic legal approaches, including normative jurisprudential analysis of relevant Islamic legal sources, combined with statutory and conceptual approaches to Indonesian land law. The findings should demonstrate not merely similarities between the two legal traditions, but also the processes

[39] Nurhani Fithriah, Dimas Dwi Arso, and Arini Azka Muthia, "Implementing Accessibility Principles in Alternative Dispute Resolution for Sharia Economic Disputes in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 10, no. 2 (2023): 292–301, https://doi.org/10.29300/mzn.v10i2.3010.

[40] Graziella De Martino et al., "Leveraging Textual Content, Citational Aspects and Dissenting Opinions through a Multi-View Contrastive Learning Methodology for Legal Precedent Analysis," *Computer Law & Security Review* 60 (2026), https://doi.org/10.1016/j.clsr.2025.106257.

[41] Achmad Arifullah, "Legal Protection for Child Offenders in Bullying Cases: Challenges and Deviations in Restorative Justice Practice," *Jurnal Ilmiah Mizani* 12, no. 2 (2025): 727–738, https://doi.org/10.29300/mzn.v12i2.9425.

[42] Ly Tuan Phan and Truc Ngoc Thanh Hoang, "Exploring Modality in Legal Discourse: Insights from a Systematic Literature Review," *Social Sciences & Humanities Open* 14 (2026), https://doi.org/10.1016/j.ssaho.2026.103236.

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of continuity, transformation, adaptation, and divergence between Islamic legal principles and Indonesian positive law. The academic contribution should therefore explain how Islamic legal principles can undergo normative and institutional transformation within a contemporary state legal system. A non-agrarian comparison in Indonesian legal reform also shows how legal rules should be evaluated against the protection of persons affected by their implementation; this parallel is methodological and does not establish a rule for land ownership.[43] A historical study of the reception and adaptation of narcotics regulation offers another methodological comparison: institutional continuity and functional adaptation should be distinguished from the direct transfer of identical legal rules.[44]

Islamic legal sources include the Qur'an, Hadith, classical and contemporary works of Islamic jurisprudence, and relevant scholarly discussions concerning iḥyā' al-mawāt, land ownership, the social function of land, and governmental authority. These sources were examined alongside relevant Indonesian land laws and regulations. Data on the research problem were sourced from *fiqh* books, agrarian books, and the national positive law on land, including Law No. 5 of 1960 on Basic Agrarian Principles, Government Regulation No. 11 of 2010 on Bringing Order and Utilizing Unused Land, changes to Government Regulation of the Republic of Indonesia number 48 of 2025 concerning the Regulation of Abandoned Areas and Land, Government Regulation instead of Law No. 51 of 1960 and Omnibus Law, and other national regulations. The study identifies and selects legal materials, establishes inclusion criteria, and applies legal approaches, interpretive techniques, and an analytical framework to connect Ihya' al-Mawāt with concepts of land ownership and utilization, the social function of land, state authority, and agrarian reform.

[43] Laksana, Andri Winjaya, Hendro Widodo, Dzaka Imtiyaz Iqbal, Dian Pramana, and Vasyl Shevchenko, "Children Are Not Criminals: Exposing Errors in Drug Law Enforcement and Reconstructing a Restorative Justice-Based Approach," Nusantara: Journal of Law Studies 5, no. 2 (2026): 1156–1179, https://doi.org/10.66325/nusantaralaw.v5i2.164.

[44] Laksana, Andri Winjaya, Hendro Widodo, Anton Rudiyanto, and Ida Musofiana, "From China to the Dutch East Indies: Colonial Opium Control and Indonesian Narcotics Law," Sriwijaya Law Review 10, no. 2 (2026): 445–465, https://doi.org/10.28946/slrev.v10i2.5940.

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After collecting the data, the authors would analyze whether a particular principle constitutes legal transplantation or merely resembles an existing provision of positive law.[45] The analysis should then compare the two legal frameworks to identify which principles have been adopted, modified, reinterpreted, or excluded in the process of legal transplantation. This methodological design ensures the research directly addresses the central question of how Islamic legal principles derived from Prophetic practice concerning unused land have been transformed into Indonesian positive law and what this transformation means for contemporary land-law development. This research used a qualitative approach, meaning a transparent and systematic research procedure that can be understood and, where possible, replicated.[46] This method was used to review and analyze data in the form of legal materials. Analysis involved doctrinal legal analysis, content analysis, thematic analysis, comparative legal analysis, or a combination, and explained how legal interpretation was conducted.[47]

RESULTS AND DISCUSSION

The transplantation of prophetic legal values into national law appears in the Doctrinal and Historical evidence. Philosophically, it can be traced through the Preamble to the 1945 Constitution of the Republic of Indonesia, specifically the phrase "By the grace of Allah, God Almighty" and the state foundation of "Belief in the One and Only God." These formulations demonstrate that the establishment of the national legal order is inseparable from the values of divinity and religious morality that permeate Indonesian society. The research proceeds systematically from Islamic legal principles to their transformation within Indonesian positive law. The first part may examine the normative construction of *iḥyā' al-mawāt* based on Hadith and Islamic jurisprudence, including

[45] Amar Fadillah, Nuke Athahirah, and Kuan-Ting Lai, "LawRAG: Indonesian Legal Document Retrieval-Augmented Generation with Specialized Chunking and Reranking Strategies," *Data Technologies and Applications* 60, no. 2 (2026): 330–47, https://doi.org/10.1108/DTA-03-2025-0195.

[46] Cezary Kowalczyk et al., "How Does Government Legal Intervention Affect the Process of Transformation of State-Owned Agricultural Land? The Research Methods and Their Practical Application," *Land Use Policy* 111 (2021), https://doi.org/10.1016/j.landusepol.2021.10576.

[47] Rui Shao et al., "Law LLM Unlearning via Interfere Prompt, Review Output and Update Parameter: New Challenges, Method and Baseline," *Expert Systems with Applications* 292 (2025), https://doi.org/10.1016/j.eswa.2025.128612.

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differences among the legal schools concerning rights over revived land, the requirement of governmental authorization, and the balance between individual interests and public welfare. The subsequent section may identify the substantive principles potentially reflected in contemporary land regulation, including land utilization, prevention of abandonment, public interest, productive ownership, and state authority. These principles should then be compared with the Indonesian legal framework to determine whether the process represents direct adoption, conceptual transformation, functional adaptation, or the development of legal norms that merely share certain similarities with Islamic law. The analysis should also recognize that Indonesian positive law is not identical to classical Islamic jurisprudence. Therefore, legal transplantation should be used critically to describe legal adaptation within modern state institutions rather than to suggest that Indonesian land law derives from Islamic jurisprudence.

The transplantation of prophetic law into national law is evident in court rulings that utilize prophetic legal principles, concepts, and norms as a basis for discovering, interpreting, and shaping the law in specific cases. This practice has developed primarily within the Religious Courts, covering matters such as marriage, inheritance, wills, gifts (*hibah)*, religious endowments (*wakaf*), almsgiving (*zakat, infak, and sedekah*), and Sharia economics, which serve as a key source of substantive law for judges. Thus, these rulings show that the transplantation of prophetic law into the Indonesian legal system occurs not only through the adoption of norms in legislation but also through judicial interpretation and judicial law-making, as judges adapt prophetic legal principles and contextualize them with values of justice, legal certainty, and societal conditions.

This means that prophetic law is one of the sources of Indonesia's national law, including land law. Prophetic law, in the form of regulations on unused land, aims to support the application of basic land philosophies in prophetic legal teachings, which state that land is inherited only by pious servants of God. Piety becomes the keyword for people who obtain God's mandate to own land. One of the main jobs of human beings on earth is to cultivate the earth maximally for the welfare of humankind. Therefore, the issue of the ownership of land and everything contained therein and everything that grows on it is always linked to the issue of the maximum use of that land for the welfare of human beings

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and their environment. Related to this, based on several revelations from God, it can be concluded that Allah creates the earth and everything in it, but human beings are given the mandate, or task, to manage it, as well as the obligation to be responsible for it. Allah creates everything on earth for the interest of humans' livelihood, but at the same time, Allah reminds them of the earth's destruction in the hands of the people. Environmental legal scholarship further underscores that claims of ecological damage require reliable assessment and evidence; this provides a related environmental consideration, not a criterion for declaring land abandoned.[48]

From the conceptual relationships and theoretical contributions, the transplantation of the prophetic law to agrarian law occurs through shared philosophical principles of social justice, stewardship, and the rejection of land hoarding, as Article 29, clause (1) of the 1945 Constitution states that the state is established under the principle of the Belief in God Almighty. Apart from that, Article 1, clause (2) of Law No. 5 of 1960 states, "The earth, water, and space, including natural resources contained therein within the territory of the Republic of Indonesia, which are blessings from God Almighty, are the earth, water, and space of the Indonesian nation and are national riches". The acknowledgement of earth, water, and space as blessings from God Almighty is appropriate to be understood with the consequence of respecting God's laws related to the utilization of earth (land), water, and space. Thus, the meaning of the acknowledgement of blessings from God Almighty is useless if the land that is a blessing of God is not managed in a manner that considers God's laws. The stipulations of Article 1, clause (2) show that for the Indonesian nation, the conception of the agrarian law is based on religious beliefs.

Amongst experts in Islamic *fiqh*, there are different opinions on the owners (subjects) of unused land, namely:[49]

[48] Rakhman, Habibul, "A Legal Review of Criminal Procedural Law Regarding the Complexity of Proving the Element of Ecological Loss in Court Proceedings," Journal Critical Legal System 1, no. 2 (2026): 124–140, https://doi.org/10.68113/ngfbk826.

[49] Sayyid Sabiq, *Fikih Sunnah* (Bandung: Alma'arif, 2008).

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a. The Syaih Imamiyah school of thought opines that unused land and other land are specially owned by the government, including land obtained through violence (war) or through peace (*sulh*) or through other means;
b. Based on a narration from Imam Ahmad Ibn Hanbal, it is opined that the government takes over unused land. The land is fully used for the people's interest.
c. Imam Ahmad Ibn Handal, Abu Hanifa, Imam Malik, Imam As Syafi'i, and most Islamic scholars opine that unused land is unowned land or land without ownership, which is called *res nullius* in civil law. Thus, *mawat* land complies with the law on permissible wealth.
d. Unused land may be land that owners have built but not used, not managed, or not planted for a very long time, or land with many heirs who lack the courage to manage it, leaving it unused. Thus, it becomes unused land. The state can revoke ownership rights to this land, making it state land managed for public benefit, such as building public facilities.[50]

The unused land is divided into two parts: (a) Land that has not been owned by anyone and has no signs of development, and (b) Land that someone has owned. Such land is divided into two types: (1) Land owned by a certain owner, either owned through sales transactions or through *ihya'* (grant/inheritance), but then the land is not utilized, making it unused land; and (2) Land that has never been opened, owned, or managed by anyone.[51] In this term and in the actual analytical findings, Ulil Amri (the government) brings order to this unused land by carrying out legal acts to revoke or retake unused land owned by certain people or groups.[52] The land, which, under prophetic law, is called unused land, becomes the target of the regulation program and is subject to permit revocation or

[50] Absori Absori et al., "Public Health-Based Policy on Stunting Prevention in Pati Regency, Central Java, Indonesia. Open Access Macedonian Journal of Medical Science," *Open Access Macedonian Journal of Medical Science* 10, no. E (2022): 259–63.
[51] J.Barry Cullingworth, "Land, Cities and Law," *Cities* 7, no. 2 (1990): 174–78, https://doi.org/10.1016/0264-2751(90)90074-H.
[52] Novi Puspitasari et al., "Proposing a Corporate Governance Model for an Islamic Property Developer," *International Journal of Housing Markets and Analysis* 17, no. 5 (2024): 1329–48, https://doi.org/10.1108/IJHMA-02-2024-0017.

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annulment. This may be land that has not been managed, is unused, or has never been owned by anyone.[53]

Unused land owned by certain people is called sawafi land, i.e., land placed under the power or monitoring of *ulil amri*/the government after it becomes subject to such an order. According to prophetic law, bringing order to unused land can be understood as a principle of revoking the ownership right to *sawafi* land. Ridzuan Awang explains *sawafi* land as land that has been given ownership certificates (*iqta'*) by the government to certain people to be used or managed. If such land is not managed/used for a certain period, or becomes unused after that time, *ulil amri* may retake it from the owner, give it to other people, or use it for public interests. The government carries out this action to bring order to the land or reclaim its tenure rights.[54]

Land owners have the right to file a protest with the *qadhi/mazalim* court (state administrative court) over this regulation, and *qadhi* (judges/the court) will decide this issue, whether or not it is true that the owner has not utilized this land for a certain period, or the land owner does not have the capability and does not carry out any efforts to manage or develop the land because the land is too wide or the owner is still striving to use the land.[55] The *qadhi* may decide based on the facts and return ownership rights, or uphold the ulil amri's decision to revoke the unused land. If the *qadhi* decides that the owners must still have rights over that land, the government's decision is declared null.[56]

The regulation of unused land in the prophetic law is called the *iqta'* concept. Regarding this, *fuqaha* (Islamic legal experts), including Imam Hambali, opine that a limit of three years is given to strive for it, i.e., the same time as *tahjir* deeds. If the person who obtained the *iqta'* fails to *ihya'* (bring prosperity) to the land during that period, his/her

[53] Aisyah, "Hukum Menggarap Tanah Mati Yang Telah Dimiliki Orang Zaman Dahulu Menurut Ibnu Qudamah" (Medan, 2003).

[54] Arief Budiono Absori, Sigit Sapto Nugroho and M. Fafdillah Emma Ellyani, Siti Syahida Nurani, "Indonesia as an Ecocracic Country: The State's Responsibility and the People's Participation in Preserving and in Managing the Environment Quality," *QUALITY Access to Success* 21, no. 179 (2020): 135.

[55] Jon D. Unruh, "Rural Land Tenure Resilience in Postwar Syria: Implications for Restitution and Stabilization," *Land Use Policy* 108 (2021), https://doi.org/10.1016/j.landusepol.2021.105535.

[56] Ridzuan Awang, *Undang-Undang Tanah Dalam Islam Pendekatan Perbandingan* (Kuala Lumpur: Dewan Bahasa dan Pustaka Kementerian Bahasa dan Pustaka, Kementerian Pendidikan Malaysia, 2004).

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right to that land is annulled.[57] In contrast, the Syafi'i school of thought does not set a fixed, long period, and each country has different policies. This school of thought questions the reason why that land is not managed. In the case that the failure to manage the land is caused by *munasabah* reasons (*force majeure* reasons), the right to control that land is still under the name of the person who obtained the *iqta'* until that reason no longer applies. In the case that the owner fails to manage that land without any valid reason, the person who obtained the *iqta'* of that land must immediately decide to manage/utilize it, or the *ulil amri*/government will let go of that land, so that the *iqta'* may be given to other people with more urgent needs.[58]

This opinion matches the ruling in this case in the Maliki school of thought. Thus, according to the Hanafi school of thought, a person's ownership of land is determined by the *iqta'*, giving him/her the right to monitor, manage, bring life to, and bring prosperity to that land. Meanwhile, the Syafi'i school of thought still depends on the factors causing the *iqta'* recipient's failure in striving to manage/utilize that land.[59] Therefore, both the Hanafi and Syafi'i schools of thought equally give a limit of tolerance to *iqta'* recipients with different forms of tolerance. The Hanafi school of thought gives a strict requirement as a form of its tolerance, i.e., three years. Meanwhile, the Syafi'i school of thought provides a flexible requirement, as the decision depends on the reasons the iqta' recipients fail to manage the land. Apart from that, the Hanafi, Maliki, and Syafi'i schools of thought equally acknowledge *tahjiir,* i.e., the development or sign given by someone which shows that he/she has carried out *hiya'* or has brought prosperity to, or has managed that land.[60]

The act of building structures on that land, such as houses, buildings, irrigation, and building foundations; or even the act of flattening that land, such as plastering, is categorized as acts of bringing prosperity to the land or utilizing it.[61] Thus, the government

[57] Muḥammad Al Qudah, "Iḥyā' Al-Arḍ Al-Mawāt Wa Atharuhu 'Ala 'l-Iqtiṣād AlWaṭani Al-Ardan Namudhujan," *IUG Journal of Islamic Studies* 24, no. 2 (2016): 247–277.
[58] Al Imam Asy-Syafi'I, *Kitab Induk, Jilid 5*, 2nd ed. (Jakarta: Faizan, 1992).
[59] Ahmed Ismail, *Al-Milkiyah Fi Al-Islam* (Kairo: Darul Ma'arif, 2011).
[60] Kahlaniy, *Kifayah Al-Akhyar* (Beirut: Dar Ihya, 2008).
[61] Anis Mashdurohatun et al., "The Conserving Agrarian Land for Future Generations: A Policy Blueprint for Indonesia," *Jurnal Hukum* 41, no. 1 (2025): 1–18, https://doi.org/10.26532/jh.v41i1.39893.

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does not have the right to take over it under the pretext of bringing order to unused land. Planting trees, such as teak, coconut, or other long-lived trees, is also a form of tahjir that may prevent the government from taking over the land, even if the owners do not visit the land for a long time after planting them.[62]

Theoretically, experts in Islamic *fiqh* share this view when determining ownership rights under tahjir: they identify who has the right to own the land and prohibit others from taking it.[63] This principle is based on a *hadith* of Prophet Muhammad (peace be upon him), which means "Whosoever fenced a land with a wall, it becomes his thereby." Prophet Muhammad determined that the *tahjir* period is three years.[64] This means that if, after three years, the land is not developed, the land is no longer owned by that person. This is based on a hadith narrated by Abu Ubaid from Thawwus. Prophet Muhammad stated, "Old land that human beings have inhabited becomes the property of Allah and His Prophets. Then, after that, they are for you. Whoever makes a barren land fertile, that land is his, and there is no right for people who neglect that land for more than three years."

Likewise, during his reign, Caliph Umar ibn Khattab practiced *tahjiir* for three years, stating that those who have land must give a sign, put a fence around it, or develop it (*tahjiir*). Landowners who leave land unused and do not cultivate it to make it productive will have their tenure rights revoked if this continues for three years. From Salim ibn Abdullah, Umar ibn Khattab gives a speech from a podium: "Whoever brings life to unused land, that land is his. Those who neglect it for three years, that land is no longer his right because many people neglect land under his power without cultivating it."

The concepts of *taḥjīr, iqṭā, iḥyā' al-mawāt*, and the revocation of legally valid land rights cannot be equated, as each possesses a distinct legal status and set of consequences. *Taḥjīr* constitutes an initial act demonstrating an intent to control and develop land, such as marking boundaries, construction, irrigation, or planting. *Iqṭā* refers to the granting or

[62] Muhammad Amin Suma, "Pertanahan Dalam Perspektif Agama Islam Dan Budaya Muslimin," in *Seminar Nasional Pertanah* (Bandung: Ikatan Mahasiswa Geodesi ITB, 1998), 432–33.

[63] M.Saleem Bukhari, "Squatting and the Use of Islamic Law: A Case Study of Land Occupation in Madinah Munawara, Saudi Arabia," *Habitat International* 6, no. 5–6 (1982), https://doi.org/10.1016/0197-3975(82)90022-4.

[64] An-Nizham Abu 'Abdillah Muhammad bin Isma'il Al-Bukhari, *Shahih Bukhari* (Beirut: Dar Ibnu Katsir, 2002).

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allocation of land by the authority (*ulil amri*) to an individual for management and utilization, whereas *iḥyā' al-mawāt* refers to the actual act of reviving or making productive a piece of land that was previously unused. Consequently, the three-year rule found in *fiqh* (Islamic jurisprudence) cannot be correctly interpreted as an automatic basis for the state to revoke all forms of land rights. That rule applies specifically to iqṭā recipients who fail to cultivate the land or fail to realize the *iḥyā* (revival/development) of the land granted to them. Jurists differ: some impose a three-year limit, while the Shafi'i school emphasizes the reasons for the land's non-utilization, taking into account justifiable circumstances or *force majeure*.[65]

In the context of Indonesian law, this doctrine cannot be transplanted literally because land tenure status and mechanisms differ from the classical construct of *iḥyā' al-mawāt*. National law recognizes individual land, land held by legal entities, customary land, state land, and land with use rights, each with distinct legal consequences. Research concerning the registration of customary communal land likewise highlights that state land administration must be reconciled with the distinctive status and rights of indigenous communities.[66] The differentiated position of legal entities as land-right holders also supports the need to avoid treating all land rights and ownership subjects as legally interchangeable.[67]

Therefore, the non-use of land for three years does not automatically grant the state the authority to revoke a legally valid right. Measures to address unused land must be carried out based on the type of right, the degree and duration of non-use, the reasons for

[65] Tubagus Thresna Irijanto, Pidi Apriyadi, and Noraziah Che Arshad, "Assessing the Potential of Waqf Land in Addressing the Housing Backlog in Indonesia," *International Journal of Housing Markets and Analysis* ahead-of-p, no. ahead-of-print (2026), https://doi.org/10.1108/IJHMA-09-2025-0225.

[66] Yarsina, Nova, Ari Budianto, Marsiansyahd, and Dian Arfianto, "Ulayat Land Registration in Providing Legal Certainty through Certification Based on the Principle of Justice," Nusantara: Journal of Law Studies 5, no. 1 (2026): 187–204, https://doi.org/10.66325/nusantaralaw.v5i1.121.

[67] Hutomo, Putra, Mohamad Ismed, Yuhelson Yuhelson, Henry Aspan, Irawan Soerodjo, and Hani Mefleh O. Hamdon, "The Legal Position of Individual Limited Liability Companies in Land Ownership: Towards the Realization of Agrarian Justice," Nusantara: Journal of Law Studies 5, no. 2 (2026): 1687–1713, https://doi.org/10.66325/nusantaralaw.v5i2.379.

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non-utilization, and the procedures prescribed by positive law.[68] A more realistic Islamic legal principle to adopt is not automatic revocation after three years. However, rather, the principle is that land rights entail a social function, an obligation for productive use, and the legitimacy of state intervention in cases of unused land, provided such intervention is carried out proportionately and through lawful legal procedures, including judicial decision. The revocation process differs from the original concept of prophetic law.[69]

Based on the description above, the conception of Prophetic law in handling *mawat* land is based on a period of three years. This period represents the maximum tolerance for unused land. If that land is not cultivated after three years, the *iqta'* of the right to that land is annulled, and the state has the authority to revoke that land based on the regulation. Then, the land is redistributed to other people.[70] This concept differs from Indonesian law: the government can revoke only usufruct rights to land or state land; other land rights, especially ownership certificates, require a court decision.

Attempting to transplant the prophetic law on the management of unused land into positive law would prevent several corporations from holding tenure over millions of hectares of land,[71] while tens of millions of people lack land or struggle to access it. Currently, this understanding of *iḥyā al-mawāt* is no longer consistent with Indonesia's land conditions and regulations. Globally, Article 33, clause (3) of the 1945 Constitution states that "The earth, water, and natural richness contained therein are under the control of the state..." The Law on Basic Agrarian Principles and other applicable land regulations provide a detailed description of the types of land that exist in Indonesia.[72]

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[68] Kimia Ghasemi, Mahdi Hamzenejad, and Abolfazl Meshkini, "The Livability of Iranian and Islamic Cities Considering the Nature of Traditional Land Uses in the City and the Rules of Their Settlement," *Habitat International* 90, no. 1 (2019), https://doi.org/10.1016/j.habitatint.2019.102006.

[69] Amal Hayati Ishak et al., "The Critical Success Factors of Waqf Land Development for Sustainable Agriculture," *Social Sciences & Humanities Open* 11 (2025), https://doi.org/10.1016/j.ssaho.2024.101244.

[70] Hafidz Abdullah, *Kunci Fiqih Syafi'i* (Semarang: CV. Asy-Syifa, 1992).

[71] "Kaget Ratusan Ribu Hektar Lahan Dikuasai Pihak Tertentu, Mahfud MD: Ini Gila," *Suara Islam*, December 2020.

[72] Sultan Alwan et al., "Legal Considerations from Judges in Supreme Court Decree No. 85 K/Pid.Sus/2013 Concerning the Acquittal of Exhibitionism Perpetrators and Their Implications as a Jurisprudence," *Jurnal Jurisprudence* 12, no. 2 (2022): 299–312, https://doi.org/10.23917/jurisprudence.v12i2.1401.

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Land regulations in Indonesia "do not necessitate" the existence of land that is truly free from ownership. In terms of ownership, Indonesian land regulations divide land into four categories: land owned by individuals (personal), land owned by legal agencies, customary land, and state-owned land.[73] Related to *iḥyā' al-mawāt,* in Indonesia, there is no more free unowned land as stated in the *hadith* and *fuqahā's* understanding in the past. Thus, unused land refers only to owned or managed land that is not cultivated.

Comparative doctrinal synthesis shows that the classical prophetic concept of *iḥyā' al-mawāt* and Indonesian land law share a common normative orientation, particularly the principle that land should serve a social and productive function rather than remain neglected; the right to control land is closely connected to its cultivation, utilization, or development. At the same time, the state, represented by *ulil amri*, retains authority to intervene when land is abandoned and no longer serves its intended function. Nevertheless, significant doctrinal differences exist regarding the conditions and consequences of such intervention.

The Hanafi and Hanbali approaches tend to recognize a relatively definite period, commonly associated with three years, after which failure to develop the land may justify the termination of the iqta'. In contrast, the Shafi'i approach is more flexible and requires consideration of the reasons for non-utilization, including legitimate circumstances or force majeure. Despite these differences, the schools share recognition of tahjir such as cultivation, construction, irrigation, fencing, or other visible forms of development as evidence that the land is being actively utilized. Indonesian land law follows a comparable functional logic by permitting state regulation of unused land, but it differs fundamentally from classical Islamic doctrine because Indonesia no longer recognizes genuinely ownerless land in the classical sense of *al-mawāt*. Land is legally classified as individual, legal-entity, customary, or state land, and the legal consequences of unused land depend on the specific category of land rights involved.

[73] Jean-Philippe Platteau, "Religion, Politics, and Development: Lessons from the Lands of Islam," *Journal of Economic Behavior & Organization* 68, no. 2 (2008): 329–51, https://doi.org/10.1016/j.jebo.2008.06.003.

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In the Indonesian context, these principles operate conditionally, taking into account the type of land right, the duration and degree of non-utilization, genuine efforts to develop the land, and legitimate reasons preventing its use.[74] This makes the Shafi'i emphasis on examining the causes of non-utilization particularly relevant, because it allows differentiation between deliberate non-use and temporary inability caused by reasonable circumstances. At the same time, the classical principle that ulil amri may reorganize neglected land for broader public benefit may be adapted to Indonesia through the existing mechanisms of abandoned-land regulation and agrarian reform, rather than by automatically revoking ownership rights after a fixed three-year period. Such an adaptive transplantation is consistent with the character of mu'amalah fiqh, which permits legal adjustment through ijtihad in response to changing social and institutional conditions. It therefore provides a stronger theoretical basis for integrating the substantive objectives of iḥyā' al-mawāt productivity, justice, welfare, and equitable access to land—into Indonesia's contemporary agrarian legal framework.

Building on that illustration, this paper proposes a new concept for transplanting prophetic law on land management, especially *iḥyā al-mawāt*, into Indonesia's land law framework. It is crucial to analyze the existence of prophetic law on *iḥyā' al-mawāt* from the perspective of Indonesian land law to see how it is positioned. The regulation on *iḥyā' al-mawāt* must follow the current context that has changed and transformed from past contexts. This is expected to provide an understanding that *fiqh* is a result of the *mujtahid's* thought, while accepting differences in line with the existing condition.[75]

From a subject-matter perspective, land can be categorized as land owned by persons or individuals, land owned by legal entities, customary land, and state-owned land. [76] The first type is land under personal ownership. The Law on Basic Agrarian Principles, Article 20, clause (1), states that, "Only Indonesian citizens may have ownership rights." The

[74] Laith H. Al-Ossmi and Vian Ahmed, "Land Tenure Administration: Towards a Regulatory Backdrop to Land Tenure in Iraq," *Land Use Policy* 57 (2016): 250–64, https://doi.org/10.1016/j.landusepol.2016.05.016.

[75] Z. Ulya, "Espaktasi Pengelolaan Tanah Terlantar Oleh Baitul Mal Dalam Peningkatan Kesejahteraan Masyarakat," *Jurnal Hukum & Pembangunan* 46, no. 4 (2016): 189.

[76] Rendy Octavianus Dumais, "Pengaturan Hukum Terhadap Keberadaan Tanah Terlantar Di Indonesia," *Lex et Societatis* 2, no. 5 (2005): 40–55.

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diction of "citizens" refers to individual persons. Therefore, to a certain point, land may be under the name of persons or individuals.

The second type is land owned by legal entities. The Law on Basic Agrarian Principles, Article 20, clause (2), confirms that "The government determines legal entities that may have ownership rights and their requirements." Government Regulation No. 38 of 1963 on the Appointment of Legal Entities Permitted to have Land Ownership Rights explains which types of legal entities may obtain ownership rights. Legal entities of this category include state-established banks, agricultural cooperative associations, religious agencies, and social agencies.[77]

The third type is customary land, which has existed before the enactment of the Law on Basic Agrarian Principles. This is why the law's rationale states that the national land law is arranged based on customary law. This customary law refers to land held under a communal or collective name by people of the same culture. Fourth, state-owned land, which is based on the 1945 Constitution, Article 33, clause (3), states, "The earth, water, and richness therein are under the control of the state..." The Law on Basic Agrarian Principles clarifies the existence of state-owned land and regulates the state's authority over the earth, water, and space in the territory of the state of Indonesia.

Regarding the rights attached to land, another thing needs to be noted. Ilyas Ismail described: "Article 16, clause (1), of Basic Agrarian Principles states various rights of land that legal subjects may have, namely: ownership rights; business use rights; building use rights; usage rights; rent rights; land-opening rights; the rights to collect forest produce; and other rights which will be regulated in the law and temporary rights as stipulated in Article 53, namely: lien rights, profit sharing business rights, boarding rights, and land rental rights. Apart from the rights to land as stated above, there are also Customary Rights (Article 3 of Basic Agrarian Principles), Management Rights (Regulation of the Supreme Court No. 9 of 1965), and Ownership Rights of an Apartment Unit (Law 20 of 2011).[78]

[77] Faisal Faisal and Turdialiev Mukhammad Ali Polatjon Ogli, "Judicial Reasoning on Criminal Sanctions in Court Decision: Comparation between Indonesia and Uzbekistan," *Jurnal Jurisprudence* 15, no. 2 (2025): 177–94, https://doi.org/10.23917/jurisprudence.v15i2.13649.

[78] Ilyas Ismail, Sufyan, and Azhari, "Rekonseptualisasi Hak Atas Tanah Dalam Kerangka Pembaharuan Hukum Tanah Nasional," *Jurnal Ilmu Hukum Litigasi* 14, no. 1 (2013).

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Of the rights above, ownership is the most special right. This is because ownership is the strongest and most complete right to land, passing from generation to generation.[79] Land with ownership status may be used, have its proceeds collected, and undergo other legal actions. Only persons with Indonesian citizenship and certain legal entities, such as state-established banks, agricultural cooperative agencies, social agencies, and religious entities, may be attached to such land. Even so, land with an ownership right status must still comply with the main plans of first-level regional governments, and its authority does not extend to the natural resources contained within the earth beneath it.[80]

Indonesian regulations on land exempt unused land from the category of ownership rights. This is reflected in the wording of the article in the Law on Basic Agrarian Principles, which defines unused land. Rahmadaini quotes Supriyanto's explanation that Article 27 of the Basic Agrarian Principles categorizes land that is purposely not used according to its situation, characteristics, or the goals of its rights as unused land, and that the state cannot bring order to unused land on privately owned land.[81]

This refers to neglect, lack of management, lack of care, and/or use that does not align with its objective. In simpler terms, land is deemed unused if the holders of land management rights do not carry out any activities on that land. The clause on unused land applies to state land whose management rights have been given to other parties.[82] The land is not sought, used, or benefited from. This classification exempts land with ownership rights or building usage rights under a personal name that are purposely or accidentally failed to be used according to the condition or characteristic and goals of the imposition of rights and land under the government's control.[83] As a part of *fiqh*, *iḥyā' al-mawāt* is not a final conception that is anti-change when it is transplanted to the national legal system.

[79] Rebecca Anne Riggs et al., "Forest Tenure and Conflict in Indonesia: Contested Rights in Rempek Village, Lombok," *Land Use Policy* 57 (2016): 241–49, https://doi.org/10.1016/j.landusepol.2016.06.002.

[80] Afifah Kusumadara, "Perkembangan Hak Negara Atas Tanah : Hak Menguasai Atau Hak Memiliki," *Jurnal Media Hukum* 20, no. 2 (2013): 262–276.

[81] Rahmadaini, "Pelaksanaan Penertiban Tanah Terlantar Di Provinsi Aceh," *Jurnal Ilmu Hukum, Pascasarjana Universitas Syiah Kuala* 2, no. 2 (2013): 51–62.

[82] Irawan Soerodjo, *Hukum Pertanahan Hak Pengelolaan Atas Tanah (HPL); Eksistensi, Pengaturan, Dan Praktik* (Yogyakarta: Laksbang Mediatama, 2014).

[83] Ali Ahmad Chomzah, *Hukum Pertanahan* (Jakarta: Prestasi Pustaka, 2002).

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Departing from the basic characteristic of *fiqh* as detailed regulations on human activities which accept change and/or revision following the development and condition of the era, *iḥyā' al-mawāt* is also subject to this demand. Not all conceptions in the fiqh can indeed be changed, but *muammalah fiqh* can be adapted to the new development. [84]

The relationship between *fiqh* and social change is divided into two categories. First, the theory of eternity (normativity). Regulations of practical *fiqh* do not accept change, such as the obligation and number of *rakaahs* in obligatory *salah*, the obligation to fast during the Ramadan month, the obligation to give *zakat*, and hajj (pilgrimage). Second, the theory of adaptability. Regulations of practical *fiqh* that are closely linked to the relationship between human beings are categorized into this second type. In this category, regulations must adapt to the development and changes of the era. This category is carried out through the instrument of *ijtihad*.[85] Regarding unused land, Law No. 52 of 1960 states that permits to use unused land are proposed to the mayor or regent. For the special capital region of Jakarta, it is proposed to the governor. In addition, Regulation of the State Agrarian Minister/Head of the National Land Agency No. 3 of 1998 on the Usage of Empty Land for Food Plants has been applied since June 22nd, 1998. This regulation accommodates unused land that is massively underutilized and allows the general public to use it before registering for a permit from authorized parties.

The regulation on unused land is also stipulated in Government Regulation of the Republic of Indonesia Number 48 of 2025 Concerning Regulation of Abandoned Areas and Land. It is stated that the permit application for unused land use is filed with the National Land Agency as the implementer of the designation regulation of the use, ownership, and control of previously unused state-owned land, by referring to this government regulation and the mandate of the Decision of the Republic of Indonesia's People's Representative Assembly No. IX/MPR/2001 on Agrarian Renewal and the Management of Natural Resources, unused land may have its status changed and its

[84] Abi Syaibah, *Abu Bakar Ibnu Syaibah, Al-Kitab Al-Mushannaf Fi Al-Ahadis Wa Al Atsar Juz 4* (Riyadh: Maktabah Ar-Rusyd, 1998).
[85] An-Nawawi, *Abu Zakaria Yahya Bin Syarif, Minhaj at-Thalibin Wa Umdata Al-Muftin Fi Al-Fiqh Juz 1* (Beirut: Dar al-Fikr, 2005).

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management rights transferred to other citizens through land redistribution as a manifestation of Agrarian Reform, or used for public facilities.[86]

Therefore, the implication of *iḥyā' al-mawāt*, which fulfills the *al-mawāt* land category in Indonesia's land regulation, does not reach the obtainment of ownership rights (*al-tamlīk*). The rights obtained include the rights to use, utilize, manage, and take profits (*haq al intifā'*) from the land. If the person who obtained these rights fails to manage the land, the land will be deemed unused and may be regulated by the state. Meanwhile, land with a status of *al-tamlīk*, or ownership rights, cannot be revoked, because ownership rights are special rights in Indonesia's positive land law. The government may take over land with ownership rights when it is carrying out land acquisition, where the government buys the land.[87]

Under positive law, the government may bring order to unused land and redistribute it to all types of land rights except ownership rights. This differs from the concept in Islam, where unused land with ownership rights may be revoked and redistributed if it is not developed. Forms of development, or *tahjir*, include managing land by cultivating it, building on it, or using it to herd animals. Land that is planted with long-life plants but is left alone or on which buildings are built (like houses) cannot be deemed unused, even though it is not inhabited or utilized for many years.

The central novelty of the study is the development of the concept of *Ihya' al-Mawāt* and its development into the argument that what can be transplanted are its underlying legal principles, such as productive land use, prevention of abandonment, the social function of land, public authority, and maṣlaḥah. This challanges of this research is how to develop model or typology of contemporary legal transplantation showing: (1) which fiqh principles could be retained especially productive land use, prevention of abandonment, the social function of land, public authority, and maṣlaḥah and its cant retained is land revocation without judicial or court decision; (2) elements are modified to

[86] Vicco Yunior, "Wewenang Pemerintah Dalam Penentuan Kriteria Tanah Terlantar Lianton," *Jurnal Jurist-Diction* 2, no. 6 (2019): 95.

[87] Muhammad An'im Jalal, *Analisis Hukum Islam Terhadap Hapusnya Hak Milik Tanah Dalam Pasal 27 Undang-Undang No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria* (Semarang: IAIN Semarang, 2018).

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accommodate the Indonesian legal system is the maslahah, which is the revocation of land could only by the court decision to prevented the imams or ruler forcible takeover the land for their own interest; (3) elements cannot be transplanted, is 3 years tenure as limit for take over or revocation land because it could made chaos and legal uncertainty; and (4) relevant principles can be adapted to the regulation and redistribution of abandoned land.

The transplantation of prophetic law related to unused land regulation in Indonesian positive law is similar in terms of ownership rights and time periods. This adaptation is permitted in *sharia muamalah*. Regulating land and redistributing unused land through agrarian reform is a key feature of this legal transplantation and a good solution for addressing the growing amount of unused land. At the same time, many citizens struggle to access or own land. Regulations on unused land aim to make it usable for citizens, which is crucial for public welfare. Findings confirm, challenge, refine, or extend existing studies.

Theoretically, this study contributes to the development of research on Islamic legal transplantation by demonstrating that the transplantation process should not be understood as the literal transfer of *fiqh* norms into national law, but rather as a process of adapting legal principles that takes into account changing social contexts, legal structures, and the specific character of Indonesia's land system. In the context of *iḥyā' al-mawāt* (reviving dead land), the study asserts that the transplantable principle is not merely the specific three-year timeframe, but rather more fundamental values: the obligation to utilize land productively, the prohibition against abandonment, the social function of land rights, and the state's authority to intervene for the public good. This approach reinforces the argument that *muamalah* law possesses an adaptive character and can be contextualized through ijtihad in alignment with social and legal developments. Thus, the study expands Islamic legal transplantation research from merely identifying normative similarities to constructing a transplantation model that is selective, contextual, and oriented toward legal objectives.

Practically, this study provides a conceptual foundation for developing agrarian law and agrarian reform policies in Indonesia, particularly regarding the handling of abandoned land and land redistribution. The principle of *iḥyā' al-mawāt* can serve as an

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ethical and normative framework to assert that land tenure must be accompanied by a responsibility to cultivate, utilize, and maintain the land for the social good. However, it must be applied through national legal mechanisms, taking into account the type of rights, land status, reasons for non-utilization, and legitimate enforcement procedures. Within this framework, the regulation and redistribution of abandoned land through agrarian reform can be understood as a modern adaptation of the principle of land utilization for public welfare, especially in situations characterized by disparities between large-scale landholdings and limited public access to land. Therefore, this study not only contributes to the academic discourse on Islamic law and agrarian law but also offers an argumentative basis for formulating land policies that are more equitable, productive, and oriented towards public welfare.

CONCLUSION

Prophetic law is an Islamic legal dimension that forms the foundation of the study of the contemporary relevance of *Ihya' al-Mawāt* as a principle-based legal transplantation. It identifies the specific forms of transformation revealed by the analysis: which principles demonstrate continuity with the doctrine of *iḥyā' al-mawāt*, which have been reinterpreted through state law, and which represent new institutional constructions within Indonesian positive law. The regulation and redistribution of unused land differed from the Islamic legal system. The concept of unused land in Islam is known as *Ihya' al Mawat*, which is different, where, according to Islamic or prophetic law *ulil amri*, or the government, has the authority to bring order to all types of land rights (including ownership rights) if the land is unused for some time. However, in Indonesia, the legal system limits this authority (either through judicial decision or parliamentary vote). However, certain exemptions apply to *Tahjiir* (land usage). The application of this attempt at transplantation involves principle-based legal adaptation, where, in Indonesian positive law on land, land with ownership rights cannot be revoked in the applicable Indonesian legal framework and is distinguished from different legal mechanisms, including the revocation or termination of rights, state control, the determination of abandoned land, and redistribution within the framework of agrarian reform. Thus, bringing order to unused land and redistributing it through agrarian

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reform can be carried out on all types of land except land with ownership rights. Bringing order to unused land (ihya' al mawat) and redistributing it are important elements in positive law and prophetic law. Under prophetic law, unused land is an oppressive act. This research acknowledges the study's limits by distinguishing between similarity of values or principles, normative influence, and legal transplantation in the strict doctrinal sense. Future research should examine empirically how land authorities, local governments, and Muslim communities implement these principles in governing and using unused or abandoned land.

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AB: Original research idea; conceived the research and provided materials and data for the research. AN: Selected research data as well as analyzed and interpreted the data. ND: Provided materials and data for the research as well as designed the methods. OA: Revised the manuscript and supervised the creation of the final draft. AA: Wrote the introduction and arranged the script according to the instructions.

CONFLICT OF INTEREST

The authors declare that there are no conflicts of interest associated with this publication. No financial, personal, or institutional relationships have influenced the research, its findings, or the preparation of this manuscript.

AI USAGE STATEMENT

The authors used generative artificial intelligence (AI) tools solely to assist with language refinement, grammar checking, translation, and improvements in manuscript readability and structure. The authors developed and verified all research ideas, arguments, data collection, data analysis, interpretation, and conclusions. AI tools were not used to generate research data, fabricate findings, or determine the scholarly conclusions. The

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authors take full responsibility for the accuracy, originality, and integrity of the entire manuscript.

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