

Review of Islamic criminal law on decision number 81/PID/2020/PT. KPG on criminal land grabbing (*stellionaat*)

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Abstract: This study will discuss about legal considerations in the ruling of Number 81/PID/2020/PT.KPG on the land usurpation and its relevance to Islamic Criminal Law. The issues that have been examined are the considerations of the judge, the elements of the jarimah, and the application of the land usurpation sentencing as viewed from Islamic perspective. The research method used a normative juridical approach with a case study and qualitative descriptive analysis. The results indicate there is a mismatch between the heaviness of the violation and the lightness of the sanctions, and the central role of the maqasid sharia values in the administration of justice. The study concludes the need for Islamic law values integration in the justice process, proposed improvements to achieve legal certainty, and the protection of the rights of society to the land through just and moral ruling. This study concludes that the ruling lacks alignment between the severity of the crime and the imposed sanction. It emphasizes the urgency of integrating Islamic criminal law values, particularly maqasid sharia, to ensure justice, legal certainty, and protection of land rights within society.

Keywords: Jarimah, land, consideration

How to Cite: Subekti A. A., Najmudin, D., & Azazy, Y. (2025). Review of Islamic criminal law on decision number 81/PID/2020/PT. KPG on criminal land grabbing (*stellionaat*), 11 (2), 125-136. <https://doi.org/10.55210/assyariah.v11i2.2102>

Introduction

Land grabbing, also known as *stellionaat*, is regulated under Article 385 of the Indonesian Criminal Code (KUHP), which is found in Book III, Chapter XXV, concerning fraudulent acts. This article stipulates that anyone who, with the intent of unlawfully benefiting themselves or others, sells, exchanges, or encumbers land or buildings over which another party has a rightful claim, shall be punishable by imprisonment for up to four years. The law seeks to prevent the exploitation of land rights for personal gain, especially when such actions disregard existing legal ownership or rights. In practice, land grabbing may manifest in various forms, such as constructing on disputed land, evicting rightful owners, or selling land that is not legally owned (Kusnianto 2024)(Marsono et al. 2024).

From the perspective of Islamic Criminal Law, land grabbing is likened to the crime of *ghasab*, which refers to the unlawful seizure or control of property. Wahbah al-Zuhaili defines *ghasab* as the wrongful taking or use of another's property, even without removing it from the owner's possession, if the intent is to usurp control (Al-Zuhaili 2021). Islam strictly prohibits such acts, as outlined in Surah An-Nisa (4):29:

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

Meaning; "O you who believe, do not eat your neighbor's wealth by unlawful means, except in the form of consensual trade between you. Do not kill yourselves. Verily, Allah is Most Merciful to you." (QS. An-Nisa [4] :29)

In Islamic jurisprudence, land grabbing is not punished by *hudud* (fixed punishments), but falls under *ta'zir* (discretionary punishments). A hadith of the Prophet Muhammad (SAW) states: "There is

no cutting of the hand for a traitor (*kha'in*), grabber (*ghasib*), or embezzler (*mukhtalis*).\" (HR. Ahmad, Abu Daud, An-Nasa'i, At-Tirmidhi, and Ibn Majah) (Jamhir and Alhamra 2019). As elaborated by Al-Syirazi, *ta'zir* is a punishment whose form and degree are determined by the ruler or judge to achieve justice and social order (Misran 2018).

In modern Indonesia, land grabbing remains a serious and growing problem. According to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), from 2015 to 2025, there were 36,638 recorded land disputes, with 18,557 unresolved. In 2024 alone, the Anti-Mafia Land Task Force recorded 82 land grabbing cases involving 4,569 hectares and potential losses reaching IDR 1.7 trillion.

This issue is exemplified in Court of Appeal Decision Number 81/PID/2020/PT.KPG. Between 2013 and 2017, Yoel Saketu unlawfully sold 2 hectares of waqf land belonging to the Nurussa'adah Grand Mosque for IDR 215 million. The appellate court found the defendant guilty of violating Article 385(1) of the KUHP and sentenced him to 1 year and 6 months in prison. This sentence, while within the lower bounds of the law, was seen as disproportionate to the gravity of the offense, especially considering that the land belonged to a religious foundation. From the standpoint of justice, particularly Islamic justice, the penalty did not adequately reflect the principles of deterrence, restitution, and moral accountability.

In Islamic criminal theory, justice is paramount. The Qur'an declares:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ

Meaning: "And ... When you judge between men, judge justly". (Q.S. An-Nisa [4]: 58).

Justice (*adl*) in Islam means restoring rights to their owners and preventing oppression. As Abdul Qadir Audah and Al-Syatibi assert, the purpose of punishment in Islamic law is to uphold justice, protect society, and preserve the maqasid shari'ah particularly *hifz al-mal* (protection of wealth) (Gaffar, Darlina, and Sapriadi 2023).

This study focuses on three key aspects: (1) analyzing the legal reasoning of the judges in Decision No. 81/PID/2020/PT.KPG, (2) identifying the criminal elements and sanctions related to land grabbing in light of Islamic Criminal Law, and (3) assessing the relevance of Islamic legal principles in shaping fairer outcomes in such cases.

Previous studies have examined land grabbing from various angles. Rahman et al. (2022) focused solely on civil law analysis (Rahman et al. 2022). Marjan et al. (2023) addressed material aspects and juridical considerations but did not offer insights from Islamic law (Marjan, Toule, and Latupeirissa 2023). Rebong (2023) explored legal effectiveness and enforcement barriers without touching on religious perspectives (Rebong 2023). This study distinguishes itself by offering a normative legal analysis grounded in Islamic criminal principles and the casuistic priority theory (Ali 2017), which prioritizes justice, utility, and legal certainty. Therefore, this research is expected to contribute a unique, integrative framework by aligning statutory law and Islamic jurisprudence to address complex land disputes more holistically.

Methods

This research employs a normative juridical method with a case study approach, aiming to investigate the legal considerations in Decision No. 81/PID/2020/PT.KPG regarding land grabbing, and to analyze its relevance within Islamic Criminal Law. The case study method enables the researcher to uncover the unique aspects of the case and interpret the court's reasoning in the context of broader legal and socio-religious theories (Sinthania, Debby 2022). The study is classified as qualitative-descriptive research, as it seeks to describe and interpret the legal facts, doctrines, and reasoning patterns without employing statistical analysis (Syahrizal and Jailani 2023). The normative juridical approach treats

law as a system of norms and is used to assess the consistency, fairness, and jurisprudential grounding of the judicial decision (Huda 2021).

Data collection relies on documentary study, including primary legal materials such as the Qur'an, Hadith, the Indonesian Criminal Code (KUHP), and statutory laws; as well as secondary legal materials such as books, journal articles, and previous studies related to land grabbing and Islamic criminal law. Legal sources are examined using qualitative content analysis, and legal interpretation techniques are applied to uncover the underlying legal principles. The data is analyzed through Miles and Huberman's three-step model: data reduction, data display, and conclusion drawing. Through this approach, legal reasoning is interpreted systematically and aligned with Islamic legal theory, particularly the doctrines of ghasab and ta'zir within *maqāṣid al-syarī'ah*.

Results and Discussion

Judges' Considerations in Decision Number 81/PID/2020/PT.KPG

In Decision No. 81/PID/2020/PT.KPG, the Kupang High Judge did attempt to consider both juridical and non-juridical aspects. However, the explanation needs to be more detailed to understand how these two considerations interact with each other, especially in the context of a case like this and its relevance to Islamic principles. From a juridical perspective, this verdict did rely on the facts of the trial that proved the element of personal gain by grabbing land belonging to others and then selling it to the witnesses. The judge carefully applied Article 385 of the Criminal Code on Land Grabbing or Embezzlement of Rights to Immovable Property (*Stellionaat*), by highlighting how the defendant's actions fulfilled the criminal elements stipulated in the law. For example, it was proven that the defendant had the malicious intent to unlawfully benefit himself by harming the victim who owned the land rights to the waqf.

Not only that, this decision is also strong with non-juridical considerations, where the judge did not only stop at the application of positive law articles, but also emphasized the destructive social impact of this land grabbing practice. The judge highlighted how the defendant's actions had created legal uncertainty in the community regarding land ownership, as the defendant had taken the rights of many people or waqf land to build a mosque in Kupang. In an Islamic context, although this verdict was based on positive Indonesian law, the implications on justice and protection of property rights considered sought to be in line with sharia principles.

In this case, the Panel of Kupang High Court Judges considered the proven legal facts, the Panel of High Court Judges agreed with the Panel of First Judges and the defendant was found guilty in accordance with the single charge of the Public Prosecutor based on Article 385-1 of the Criminal Code with the element of "whoever" which refers to the defendant Yoel Saeketu with identity, the defendant is capable of committing legal acts, and is capable of being held accountable for what he did. Therefore, the element/aspect of "whoever" has been fulfilled, because "whoever" is an element of the perpetrator or subject of a criminal offense (offense), using this word means that the perpetrator is anyone, anyone can be the perpetrator. In the Criminal Code system, only humans can be the subject of criminal acts (perpetrators), as stated by Mahrus Ali that, "the subject of criminal acts recognized by the Criminal Code is a human being (*natuurlijk person*)" (Walandouw 2020). Therefore, because the defendant Yoel Saeketu is a human being or a legal subject, the element of "whoever" is fulfilled.

The element/aspect "with the intent to unlawfully benefit oneself or others" is aimed at unlawful benefit. According to Pompe, unlawfulness is generally not an element of a criminal act, unless expressly stated in the formulation of the law (Sari 2020). Based on the testimony of witnesses, the defendant sold the Kupang City Land Office identification map to the buyers in 2017 after mediation in November 2016. The defendant had promised the buyers that a deed of sale and purchase would be made, but the deed could not be made because the certificate had not yet been resolved, so the proceeds from the sale

were used by the defendant for personal use. In the last mediation in November 2016 the defendant and the witness Muhammad Djafar did not reach an agreement that the land would be divided into two. In fact, the defendant sold approximately 2 hectares of the land area of 57,672 MP and the defendant came to the witness's house and asked for Rp 25,000,000 on the grounds that if he was given the defendant would not disturb the waqf land, then the witness said that he did not have any money. This element can be fulfilled, because in fact the word "with intent" shows that there is an element of intentionality as an intention (*opzet als oogmerk*). The intent was intended to provide personal benefit and the perpetrator Yoel Saeketu knew that the benefit was unlawful. This is because the words "to benefit oneself or others" and the word "against the law" are located in front of the word "with intent" so that the word includes the two words "to benefit" and "against the law. Intentionality is part of the term *mens rea* because Indonesian criminal law recognizes several different forms of *mens rea*, namely intentionality, negligence, and case-specific intent (Ar and Rusbandi 2024). In the context of intent, *mens rea* is divided into two levels, such as direct intent, meaning that the perpetrator has a direct intention to commit a criminal act, as well as indirect intent, meaning that the perpetrator may not want certain consequences, but is aware of the possibility of these consequences occurring and still continues his actions (Ar and Rusbandi 2024).

In the case of the defendant Yoel Saeketu, he had clear and conscious intentions, because he took over or controlled land that did not belong to him, as seen from the witness testimony above. Then, he tried to remove the legitimate owner from the right to control the waqf land, as well as to benefit from the control of the land, such as selling the land to the witnesses. This is in line with *ghasab* according to the Hanafiyah scholars which is the taking of valuable, respected, and protected property without the permission of the owner in the form of taking that removes the "hand" of the owner of the property (Jamhir and Alhamra 2019).

The word "against the law" contained in the formulation of the criminal offense article, according to D. Simons, is "according to the general assumption, that *wederrechtelijk* (against the law) has no other meaning than 'without own rights' *zonder eigen recht* (Walandouw 2020). In Article 385 of the Criminal Code means without own rights or the perpetrator does not have the right to take action to take land with the intention of benefiting himself or others. In *ghasab*, the scholars of the Shafi'i and Hanbali madhabs are of the opinion that the control of other people's property arbitrarily or forcibly in the absence of rights (Jamhir and Alhamra 2019). Yoel Saeketu did not have a sign of purchase of the land so that because of the actions of Yoel Saeketu who took and then sold to the witnesses was an act without his own rights.

Furthermore, the element of "selling, exchanging or encumbering with *credit verband* an Indonesian land right a building, structure, planting or seeding on land with Indonesian rights when it is known that the owner or co-owner of the right is someone else" is addressed to the evidence of Certificate of Ownership (SHM) number 12 of 1991 an. Muhammad Djafar acting for and an, Masjid Raya Nurussa'adah. Then, based on the testimony of witnesses, the land was controlled/sold for approximately 2 hectares with sales proceeds of around Rp 215,000,000,- so this element has been fulfilled, because it is clear that Yoel Saeketu as the defendant has sold an Indonesian land right even though the right is already owned by another person. Therefore, the defendant Yoel Saeketu violated the Islamic principle known as *maqasid al-syari'ah* in the form of security over other people's property, meaning the ownership rights of waqf land in the name of the witness.

Not only the above considerations, the Appeal Judge needs to consider what is felt by the community, as a result of the defendant's legal actions. From the appeal decision, the Appeal Judge disagreed with the First Judge for imposing *voorwaar delijke*, because the First Judge did not consider the basis for deciding *voorwaar delijke*. Vide Article 14 f of the Criminal Code, the Appeal Judge was of the opinion that if there was a subjective reason between the defendant and the victim to reconcile,

the defendant had enjoyed the proceeds of his crime even though the land belonged to a Foundation that was used for social and religious purposes.

Apart from the aforementioned elements being met, the High Court ruled by relying on two pieces of evidence. First, from the testimony of witnesses. Second, a photocopy of the National Land Agency decision No. 415/HM/BPN/91 on the granting of property rights to an. Nadzir Muhammad Djafar acting for and an. Nurussa'adah Grand Mosque, photocopy of application for waqf land rights an. Nurussa'adah Grand Mosque Kupang number W.Y/2-f/87/339/1989, as well as evidence of receipts for payment of other land objects used by the defendant. From the results that have been described, it can be made a premise that the judge has tried to consider the juridical arguments presented, although it needs to be confirmed whether the Kupang high judge really considered the juridical aspects thoroughly. The mitigating circumstances for the defendant according to the judge were that the defendant was polite in court, the defendant confessed, regretted his actions, and had promised not to repeat his actions, and the defendant had not previously received a sentence. So far, the aspects or elements in the High Judge's sociological considerations are sufficient for the imposition of a sentence of 1.6 years.

Given that in modern theories of casuistic priorities, it is necessary to prioritize one of the three aspects of legal objectives among justice, expediency, and legal certainty, but it must be seen from the case itself (Ali 2017). The Kupang High Judge tried to prioritize justice. It can be seen from the consideration of the Kupang High Judge who disagreed with the decision of the First Judge by deciding the punishment by *voorwaar delijke*, because according to the Kupang High Judge, if there are subjective reasons, the defendant has enjoyed the proceeds of the crime even though the land belongs to the Foundation which is used for social religion.

Apart from this, the Kupang Appeal Judge agreed with the considerations made by the Panel of First Judges in revealing the legal facts at trial. The first judge considered that the defendant had threatened the witness Muhammad Djafar by asking for Rp 25,000,000 so that he would not disturb the land again. If this is considered, the defendant could legitimately be sentenced to more than 1.6 years. In this case, the defendant not only took a piece of land but also tried to extort the witness. Extortion which aims to make people give objects, give debts, or even be able to write off debts, and intends to benefit themselves (Unio 2024). If seen in the view of Islamic law, it is known as *ikrah*, which according to Imam Jurjany, is the coercion of another person to something that is not liked accompanied by a threat. The *ikrah* carried out by the defendant Yoel Saeketu is included in *ikrah naqish* or *ghairu mulji'*, which is a situation where the threat does not cause death or disability, because the defendant only wants some money to no longer disturb a piece of waqf land (Mahmudin 2020). This is in line with the *qualifying circumstances*, which is an element in the form of additional circumstances that aggravate criminal penalties (Hananta 2018).

As mentioned earlier, that land grabbing in Islamic Criminal Law can be subject to *ta'zir* punishment *Ta'zir* does provide room for judges to equate punishment with the prevailing situation and conditions or (KUHP). That way, it allows law enforcers to consider various factors, for example on the level of guilt of the perpetrator, his social circumstances, or on the impact made by the perpetrator on the wider community (Efendi 2023). This is where at least the judge can try to be in line with *shara'* because *ta'zir* gives more authority to decide cases, but the Kupang High Court Judge did not pay attention to legal considerations on the actions of the defendant Yoel Saeketu who committed *ikrah*.

The decision of the Kupang High Court Judge in this land grabbing case to uphold the criminal conviction of the perpetrator from the first conviction shows an interesting convergence between positive legal principles and Islamic values. In terms of positive juridical principles or the Criminal Code, the judge strictly applied the defendant to Article 385 of the Criminal Code which emphasizes concrete evidence of an act to unlawfully take possession of a plot of land and *the mens rea* of the defendant to take over the ownership of waqf land on behalf of the witness. This is the essence of criminal law enforcement because of the emphasis on formal evidence of ownership and the physical

act of controlling a piece of land. However, in the view of Islamic law, this decision is substantially in line with the principle of protection of property rights and prohibition of deprivation of property rights. The actions of the defendant Yoel Saeketu clearly violate the concept of *milkiyah* or ownership that is protected in *shara'*. The sentence imposed by the Kupang Appeal Judge, although based on the Penal Code, can be seen as part of an effort to uphold justice (*adl*) and prevent damage (*fasad*) in society with the objective of *mashlahah* in Sharia to maintain order and individual rights.

In Islamic criminal law, the defendant's actions fulfill the concept of *ghasab*, involve *ikrah naqish*, and qualify for *ta'zīr* punishment due to its discretionary nature. The judge's decision can be seen as partially aligned with *maqāṣid al-sharī'ah*, particularly in safeguarding property (*hifz al-māl*) and upholding justice (*'adl*). However, the lack of full consideration of ethical harm and coercion (*ikrah*) reveals a missed opportunity to deliver a more comprehensive justice

In addition, it lies in how both systems highlight the harm caused. The Criminal Code focuses on the material loss of the victim due to the criminal act, while Islamic law does not only look at the material loss aspect, but at the ethical and moral loss due to the violation of trust and honesty. The judge's decision to consider the detrimental impact on the fabric of community life (non-juridical) implicitly expands the scope of recognized losses, beyond just the individual losses of the victim. This closely parallels the principle of *mashlahah* in Islam, where collective loss must also be considered in law enforcement.

Elements and Sanctions of the Crime of Land Grabbing in Decision Number 81/PID/2020/PT.KPG According to Islamic Criminal Law

The elements and sanctions of criminal acts in the context of land grabbing against verdict number 81/PID/2020/PT/KPG according to Islamic Criminal Law, have been mentioned in al-Qur'an Surah an-Nisa (4) verse 29 and in the hadith of the Prophet Muhammad SAW. That way, we can recognize the term *Al-Istislah*. *Al-istislah* means, a desire to make improvements to something in a physically healthy (Ar-Rahmaniy 2017).

Al-istislah is a term that can be used in fiqh science just like the term *mashlahah al-mursalah*. The concept of the term in question is any benefit that belongs to *maqashid al-syar'i*. *Mashlahah al-mursalah* in general can be said to be like everything that can be taken all the benefits and reject the presence of harm so that the *mashlahah* classified by Islamic law is the goal of realizing *mashlahah* in general forms (Ar-Rahmaniy 2017). This, *maslahah al-mursalah* is offering *shara'* law to cases that do not have rules or sanctions in the *nash* and *ijma'* with points to protect the detached, which is a *maslahat* that has not been explained by *shara'* nor to be rejected (Ar-Rahmaniy 2017).

Broadly speaking, *kemashlahatan* is based on five main issues in the objectives of *al-syariat* (*maqasid sharia*), including: protecting religion (*maqashid al-din*), protecting the soul (*maqashid al-nafs*), maintaining the intellect (*maqashid al-'aql*), protecting offspring (*maqashid al-nasl*), and securing property (*maqashid al-mal*) (Sya'bani 2015). In addition, the scholars classify *mashlahah* in the perspective of *shari'a* based on the provisions of the *nash shari'a* and the law into three stages, first, *al-dharuriyat* (primary), namely something that can protect than the five main objectives of *shari'i*. Secondly, *al-hajjiyat* (secondary), which are actions that in the absence of this, it will not interfere and not to the point of damage, such as hunting, making transactions, and others. Third, *al-tashniyat* (tertiary), namely needs that even if abandoned, it does not cause harm to those who leave it, such as circumstances for the sake of maintaining, morals, self-esteem, or manners, as well as simplicity in managing their property (Ar-Rahmaniy 2017).

Therefore, before proceeding to the elements and sanctions in Islamic Criminal Law, it is necessary to know what is meant by land grabbing according to Islamic Criminal Law. The act of land grabbing needs special attention, considering that it may violate the main objective in *maqasid sharia*,

which is to protect property. Land grabbing has been mentioned by several scholars, this action is closer to the act of *ghasab*.

There are many scholars who have opined on the act of *ghasab*, but what is more appropriate in this context is that according to Imam Abu Hanifah and Imam Abu Yusuf, the act can be categorized as *ghasab* if it involves controlling the property of another person, for example by moving or taking it from the rightful owner. In addition, according to the majority of scholars, including Muhammad bin Hasan Ash-Shibani and Zufar bin Hudail bin Qais, two fiqh figures from the Hanafi school of thought, *ghasab* does not always require the transfer or transfer of goods from the power of the owner, but with control of the object it can be said to be *ghasab*, especially if it is to transfer property rights from the owner (Jamhir and Alhamra 2019). This statement is very much in line with the concept of *ghasab* in Islamic law. *Ghasab* is specifically defined as the unjust possession or seizure of another person's property without the owner's permission. In the context of land grabbing, the act of managing, occupying, or controlling land that has become the property of another without the lawful consent of the owner (Vanessa Inkha Zefanya Uway 2018), directly fulfills this definition of *ghasab*. This is so because the essence of *ghasab* lies in the deprivation of ownership and control rights through unauthorized physical action, regardless of its ultimate purpose. Thus, the criminal act of land grabbing in this context aligns not merely with the perpetrator's intent to benefit, but more precisely with the unlawful control and physical domination of another's property, which is the essence of *ghasab*.

After understanding the act of land grabbing according to Islamic Criminal Law, it continues with the elements of the jarimah that have been considered fulfilling for someone to commit a jarimah act. In general, there are three elements of jarimah, namely, the formal element (*al-rukn al-syar'i*), then the element of the material (*al-rukn al-madi*), and the moral element (*al-rukn al-adabi*), all three of which have been stated by Fiqh Ulama (Hamzani 2022). These three elements, as will be explained further, are fulfilled in the act of land grabbing committed by the defendant Yoel Saeketu as contained in Decision Number 81/PID/2020/PT.KPG.

First, there is a *text* that has commanded that the act is not permissible and threatened the perpetrator. Positive law recognizes this as an element of form or *al-rukn ash-shar'i*. The fiqh rules are such as "There is no criminal offense and no punishment without a *nash*" (Hamzani 2022). In line with Surah al-Isra (17) Verse 15 which reads:

وَمَا كُنَّا مُعَذِّبِينَ حَتَّى نَبْعَثَ رَسُولًا

Meaning; "And we will not torment a people until we send a messenger." (QS. Al-Isra :17:15).

Thus, there are prohibitions and punitive sanctions in the criminal act of land grabbing. As in Surah an-Nisa (4) Verse 29 which prohibits the act of taking the rights of others, except in consensual commerce. In addition, in the Prophet's hadith which reads:

مَنْ أَخَذَ شِبْرًا مِنَ الْأَرْضِ ظُلْمًا فَإِنَّهُ يُطَوَّقُهُ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرْضِينَ

Meaning: "Whoever takes an inch of land unjustly then on the Day of Resurrection the land will be wrapped around him seven layers" (HR. Bukhari Muslim) (Muhibbin 2017)

The legal facts revealed in Decision Number 81/PID/2020/PT.KPG show that the defendant Yoel Saeketu has fulfilled the elements of *al-rukn al-syar'i*. The defendant, as considered by the First Judge and agreed by the Court of Appeal, took property (land) illegally. He knew for certain that the land had been owned by another person with a Certificate of Ownership (SHM) No. 12 of 1991 since 2012, however, he still sold the land in 2017. Yoel Saeketu's actions directly violate the Shari'ah prohibition of taking the rights of others without legitimate cause, and he has been threatened with consequences, both in this life, and in the hereafter, as shown by the above arguments.

Second, the behavior that is the basis for the occurrence of jarimah includes concrete actions that violate the prohibitions of sharia as well as passive attitudes in the form of not carrying out sharia

orders, such as leaving prayers. Positive law recognizes the material element or *ar-rukn al-madi* (Hamzani 2022). In this case of land grabbing, the material element has been concretely fulfilled by the actions of the defendant Yoel Saeketu. The court's decision clearly outlines how Yoel Saeketu utilized the land for his own benefit, namely by selling the waqf land to another party without the permission of the legal owner. This act of selling without rights is a physical act that blatantly violates the material/shara' prohibition of unlawfully controlling or transferring another person's property. Thus, the actual and active actions of the defendant Yoel Saeketu directly establish the fulfillment of *al-rukn al-maddi*.

Third, is the perpetrator of the jarimah itself, someone who has *mukallaf* or can already carry out his responsibility according to the law. Positive law considers this as a moral element (*ar-rukn al-adabi*) (Hamzani 2022). Based on the consideration of the Kupang High Court Judge who agreed with the legal facts of the First Judge, the defendant Yoel Saeketu is an individual who qualifies as a *mukallaf* and is legally accountable. There is no indication in the verdict that Yoel Saeketu suffers from mental illness or other conditions that render him incompetent. Although the defendant adheres to the Protestant religion, this will not prevent him from the status of *mukallaf* and the obligation to obey the law. As individuals who have qualified to be subjected to the burden of the law (*mukallaf*), non-Muslims are also still subjected to the burden of subsidiary laws (*furu'*), because they are included in the group to whom the laws of the Shari'ah are addressed (*mukhatab*) (Puteh and Arfa 2022). Thus, Yoel Saeketu is legitimately a legal subject who can be held accountable for his act of land grabbing.

Sanctions for perpetrators of land grabbing or *ghasab*, Fiqh scholars suggest three forms of sanctions that can be received by the perpetrators of *ghasab*. First, it is sinful and will get its reward in this world and in the hereafter, against the perpetrator who has known that something taken is not personal property, but belongs to someone else. Secondly, they must return the goods that have been taken. Third, paying a fine or compensation if the goods are damaged (Al-Zuhaily 2021).

Other opinions such as those of the Hanafiah Ulama and the Malikiyyah Ulama suggest that for the disciplinary stage, the perpetrators of *ghasab* are subject to *ta'zir* sanctions, lashes or imprisonment, applied to *ghasab* perpetrators who are *mumayyiz* (Al-Zuhaily 2021). Imam al-Nawawi divides the sanctions against the perpetrators of *ghasab* based on the condition of the goods that are the object of *ghasab* into three groups, namely: Goods that remain intact as before, goods that are lost, and goods that experience damage or shrinkage. In each of these conditions, it is emphasized that the perpetrator is obliged to return the item in its original state to its owner. If the obligation is not fulfilled, then the authorities can take action to take over and impose *ta'zir* or *ta'dib* sanctions on the perpetrator (Atqia 2019).

Ta'zir has properties and characteristics according to the Hanafiyah, Malikiyah, Hanabilah and Shafi'iyah scholars, if a case is related to the rights of fellow human beings (*adami* rights), then the implementation of *ta'zir* punishment becomes an obligation and cannot be ignored. This is because the judge does not have the authority to abolish *adami* rights. If the judge considers that imposing a *ta'zir* punishment brings benefits, then the punishment must be enforced. However, if the judge considers that there is no benefit in imposing *ta'zir*, or he knows that the offender will be deterred without the need for punishment, then it is permissible for the judge not to impose it. The second nature of *ta'zir* punishment is to provide a deterrent effect for the perpetrator (Thohari 2016).

In Decision Number 81/PID/2020/PT.KPG, the Judge sentenced the defendant Yoel Saeketu to 1 year and 6 months (1.6 years) imprisonment for the crime of land grabbing. From a *ta'zir* perspective, this sentence should not only consider the formal juridical aspects, but should also reflect the weight of the very serious violation of *adami* rights in this case, especially with the element of coercion. Yoel Saeketu's land grab has caused significant material and immaterial losses to the victim, undermined legal certainty over property ownership, and disrupted the fabric of society. More crucially, the trial facts revealed through witness testimony at first instance stated that the defendant Yoel Saeketu made a threat

to the victim, namely that he would not disturb a piece of waqf land if the victim would give him Rp 25,000,000. This threat clearly shows the element of *ikrah* (coercion) carried out by the defendant.

In the context of *ta'zir* which must be enforced for *adami* rights, and especially when there is an element of *ikrah* by the perpetrator, the question that arises is whether this 1.6 year sentence is optimal enough to fully carry out the function of *ta'zir*?

Aspects of Deterrent Effect and Proportionality: The existence of coercion (*ikrah*) on the part of the defendant should be an aggravating factor in determining the *ta'zir* sanction. Threats and extortion (demanding Rp 25 million) indicate a higher level of malicious intent and a more serious level of violation of *adami*'s rights than pure trespassing without coercion. Therefore, a sentence of 1.6 years is potentially insufficient to provide a proportionate deterrent effect against acts of occupation accompanied by extortion and threats.

Justice for Victims: When the perpetrator uses coercion, the harm suffered by the victim is not only material but also psychological. *Ta'zir* sentences should ideally reflect the extent of the victim's suffering. A sentence of 1.6 years may not comprehensively compensate for the suffering and injustice experienced by the victim as a result of threats and intentional trespassing. Consistency of Legal Considerations: Ironically, the crucial fact of *ikrah* recorded in the witness statement was considered by the First Judge, but not explicitly reconsidered or upheld by the Appeal Judge. This raises questions as to the extent to which the final decision has been thorough in assessing all aspects of the crime, particularly those that reinforce the Defendant's malicious intent and *modus operandi*.

Thus, there is a strong argument that considering the severity of the impact of the violation of *adami*'s rights which is exacerbated by the coercion (*ikrah*) of the defendant Yoel Saeketu, the sentence of 1.6 years does not seem to fully reflect the function of *ta'zir* which should proportionally and comprehensively restore the rights of victims and provide a maximum and fair deterrent effect. The case of Yoel Saeketu thus becomes a representative model for integrating Islamic legal reasoning into modern land ownership disputes involving waqf assets.

Relevance of Islamic Criminal Law on Land Grabbing in Decision Number 81/PID/2020/PT.KPG

Then the relevance of Islamic Criminal Law to Decision Number 81/PID/2020/PT.KPG has at least been mentioned above. Islamic law prioritizes the protection of individual property rights, especially in the context of land waqf which is addressed by the hadith of Ibn 'Umar who said: "*Annahu la yuba'u asluha wa la yuhabu wa la yuratsu*". This means that the substance cannot be sold, given away, and cannot be inherited. How harmful it is for the *Nadzir* to handle waqf assets that are needed by the community, for example in the case contained in this decision, which is to build a mosque, then the mosque is sold by the waqif. This problem will cause *dalar* (harm), so it needs to be avoided, as the Islamic rule "*al-dararu yuzalu syar'an*" (legally, something that will cause harm needs to be avoided)(Christianto 2022) . Thus, the protection of property rights, especially waqf, is very firm in Islam. Furthermore, the relevance of justice. Evident in *maqasid shari'ah* in maintaining property or can be called *hifz al-mal*. In the context of justice means that Islamic Law needs to ensure compliance or obedience to sharia not only in the application of punishment or formal regulations, but, achieving moral goals.

Respect for one's property rights is very high, this has been reflected in the hadith of the Prophet Muhammad SAW which reads:

مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ أَهْلِهِ، أَوْ دُونَ دِمِهِ، أَوْ دُونَ دِينِهِ فَهُوَ شَهِيدٌ

Meaning; "Whoever is killed in defense of his property dies as a *martyr*" (Ibn Majah)(Batubara 2017)

Not only that, Islam always upholds the protection of individual property rights, as has been exemplified by the Prophet Muhammad SAW and continued by the *Khulafa Rashidin*. One example

occurred during the Battle of Hunain, when the Prophet Muhammad SAW found a steel cap belonging to Sofwan bin Umayyah. When asked if the hats would be taken without compensation, the Prophet replied that all hats lost in battle would be compensated as a replacement (Aji 2015)

Then, Islamic Criminal Law prioritizes justice in enforcing the law. This is because Allah SWT has offered each of His servants to be able to uphold justice even if only to themselves.

As stated in surah an-Nisa (4); 135, namely: (Aji 2015)

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنْفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أُولَىٰ بِحِمِّهَا فَالَا تَتَّبِعُوا الْهَوَىٰ أَنْ تَعْدِلُوا وَإِنْ تَلَوْا أَوْ تُعْرَضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا.

Meaning: "O you who believe, be you men of justice, witnesses for the sake of Allah, even if it be against yourselves or your parents and relatives. If he is rich or poor, Allah knows what is in his best interest. So do not follow your lusts to deviate from the truth. And if you twist your words or are reluctant to bear witness, then surely Allah is All-Knowing of all that you do" (QS. An-Nisa: 4: 135).

This is what the Prophet Muhammad SAW and the *Khulafaur Rashidin* did, thus creating a fair and healthy judicial system. For example, Caliph Umar bin Khattab firmly brought each of his governors to court if there were demands or complaints from the people against them (Aji 2015).

The relevance of Islamic Criminal Law in verdict number 81/PID/2020/PT.KPG cannot be denied, because this law guarantees protection and security for the existence of each individual's property, especially for property that is legally obtained according to sharia provisions. This guarantee includes the rights to own and enjoy property, the right to invest in forms that have been justified by Sharia, the right to make digital money transfers, and the right to protect every other individual who lives on his property (Aji 2015). In addition, the relevance of Islamic Criminal Law to decision number 81/PID/2020/PT.KPG. regarding justice, because the court needs to aim at the principles of legal certainty, justice, and expediency.

Conclusion

This research analyzes the legal considerations of the Kupang High Judge in Decision Number 81/PID/2020/PT.KPG regarding the crime of land grabbing, and examines the elements and sanctions according to Islamic Criminal Law, as well as assessing their relevance to the decision. The results show that there is a discrepancy between the severity of the offense and the lightness of the sanctions, especially in cases that harm socio-religious interests. The concept of justice and *maqasid sharia* in Islamic Criminal Law can contribute in assessing and justifying criminal decisions. This research enriches the science of criminal law by combining the perspectives of positive and Islamic law, and provides a critical view of the judicial process of land grabbing cases that involve public or social interests. It is recommended to strengthen the regulation and implementation of the law against criminal acts of land grabbing, especially social assets such as waqf land, and it is hoped that law enforcers will consider moral aspects, public benefits, and principles of justice in Islamic law to achieve legal objectives holistically.

References

- Aji, Ahmad Mukri. 2015. "Hak Dan Kewajiban Asasi Manusia Dalam Perspektif Islam." *SALAM: Jurnal Sosial Dan Budaya Syar-i* 2(2). doi:10.15408/sjsbs.v2i2.2386.
- Ali, Achmad. 2017. *Menguak Tabir Hukum*.
- Al-Zuhaily. 2021. *Terjemah Fiqih Islam Wa Adillatuhu Mahtabahazzaen*.
- Ar, Aris Munandar, and Aditya Slamet Rusbandi. 2024. "Peran Niat (Mens Rea) Dalam Pertanggungjawaban Pidana Di Indonesia." 1(3):240–52.
- Ar-Rahmaniy, Mursiyidin. 2017. "Teori Al-Istishlah Dalam Penerapan Hukum Islam." *AL-QADHA Jurnal Hukum Islam Dan Perundang-Undangan* 4(2).

- Atqia, Khairul. 2019. "Pendidikan Anti Korupsi Dan Kolusi." *Bunga Rampai: Pendidikan Agama Islam* 78–88.
- Batubara, Sarmiana. 2017. "Kepemilikan Relatif (Al-Milkiyah Al-Muqayyadah) Privat Dan Publik Dalam Ekonomi Islam." *JURIS (Jurnal Ilmiah Syariah)* 16(2):173. doi:10.31958/juris.v16i2.971.
- Christianto, Irfan. 2022. "Perlindungan Hukum Terhadap Tanah Wakaf Melalui Pendaftaran Tanah Berdasarkan Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria." *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 10(01):91–106. doi:10.30868/am.v10i01.2027.
- Efendi, Sumardi. 2023. "Analisis Sanksi Pidana Dalam Hukum Islam Pendekatan Teoritis Dan Pustaka." 3(2):151–62. doi:10.47498/maqasidi.v3i2.3524.
- Gaffar, Azis, Darlina, and Sapriadi. 2023. "Hukum Islam Dan Efek Jera Pemidanaan Di Indonesia." *Al-Ahkam: Hukum Pidana Islam* 5(1):1–10.
- Hamzani, Achmad Irwan. 2022. *Hukum Pidana Islam Tinjauan Teoritis Jilid 1*.
- Hananta, Dwi. 2018. "AGGRAVATING AND MITIGATING CIRCUMSTANCES CONSIDERATION ON SENTENCING." 87–108.
- Huda, M. C. 2021. *Metode Penelitian Hukum (Pendekatan Yuridis Sosiologis)*.
- Jamhir, Jamhir, and Mustika Alhamra. 2019. "Tindak Pidana Penggelapan Dalam Hukum Positif Ditinjau Menurut Hukum Islam." *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 8(1):81. doi:10.22373/legitimasi.v8i1.6441.
- Kusnianto, Hendrik. 2024. "Akibat Hukum Pelaku Penyerobotan Tanah Dalam Aspek Hukum Pidana Indonesia." *Legalitas* 9(1):113. doi:10.31293/lg.v9i1.8015.
- Mahmudin, Mahmudin. 2020. "Ikrah (Paksaan) Dalam Perspektif Hukum Islam." *Al-Falah: Jurnal Ilmiah Keislaman Dan Kemasyarakatan* 20(2):133–44. doi:10.47732/alfalahjikk.v20i2.144.
- Marjan, Muh Efendi, Elsa R. M. Toule, and Julianus E. Latupeirissa. 2023. "Tindak Pidana Penyerobotan Tanah." *BACARITA Law Journal* 4(1):35–41.
- Marsono, Adi, Irwan Yulianto, Ide Prima Hadiyanto, Ilmu Hukum, Fakultas Hukum, Universitas Abdurachman, Saleh Situbondo, Ilmu Hukum, Fakultas Hukum, Universitas Abdurachman, Saleh Situbondo, Ilmu Hukum, Fakultas Hukum, Universitas Abdurachman, and Saleh Situbondo. 2024. "Tinjauan Yuridis Penegakan Hukum Terhadap Pelaku Tindak Pidana Penyerobotan Tanah Dan Pengrusakan Tanah." *Jurnal Ilmiah AKSES* 2(1):36–47.
- Misran. 2018. "Kriteria Jarimah Takzir." *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 2(1):84–95.
- Muhibbin, Mohammad. 2017. "Perspektif Hukum Islam Tentang Konsep Penguasaan Tanah." *Al Risalah* 17(1):61–74.
- Puteh, Zainuddin, and Faisar Ananda Arfa. 2022. "Non-Muslim Sebagai Subjek Hukum Islam Dalam Konsep Mukallaf." *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 11(1):78. doi:10.22373/legitimasi.v11i1.13763.
- Rahman, Irsan, Riezka Eka Mayasari, Yeni Haerani, and Patma Sari. 2022. "Analisis Hukum Perdata Terhadap Kasus Penyerobotan Tanah." *Article in Jurnal Tana Mana* 3(1):77–85.
- Rebong, Fransisko Rohanda. 2023. "Efektivitas Sanksi Pidana Dan Kendala Penegakan Hukum Tindak Pidana Penyerobotan Tanah Berdasarkan Pasal 385 KUHP Dan Undang-Undang (Perpu) Nomor 51 Tahun 1960 Tentang Larangan Pemakaian Tanah Tanpa Izin Yang Berhak Atau Kuasanya." *Jurnal Iustitia Omnibus* 3(1):54–69.
- Sari, Indah. 2020. "Perbuatan Melawan Hukum (Pmh) Dalam Hukum Pidana Dan Hukum Perdata." *Jurnal Ilmiah Hukum Dirgantara* 11(1):53–70. doi:10.35968/jh.v11i1.651.
- Sinthania, Debby, Dkk. 2022. *Metodologi Penelitian Kualitatif*.
- Sya'bani, Akmaludin. 2015. "Maqasid Al-Syari ' Ah Sebagai Metode Ijtihad." *El-Hikam: Journal of Education and Religious Studies* VIII(1):127–42.
- Syahrizal, Hasan, and M. Syahrani Jailani. 2023. "Jenis-Jenis Penelitian Dalam Penelitian Kuantitatif Dan Kualitatif." *Jurnal QOSIM Jurnal Pendidikan Sosial & Humaniora* 1(1):13–23. doi:10.61104/jq.v1i1.49.
- Thohari, Fuad. 2016. *Hadis Ahkam Kajian Hadis-Hadis Hukum Pidana Islam (Hudud, Qishash, Dan Ta'zir)*.
- Unio, V. R. dkk. 2024. "Tinjauan Yuridis Tentang Pemerasan Dan Pengancaman Menurut Kitab Undang-Undang Hukum Pidana." *Lex Administratum* 12(05).

- Vanessa Inkha Zefanya Uway. 2018. "Kajian Terhadap Hak Milik Atas Tanah Yang Diduduki Secara Melawan Hukum." *Lex Administratum* V(1):53–54.
- Walandouw, Rony A. 2020. "Unsur Melawan Hukum Yang Subjektif Dalam Tindak Pidana Pencurian Pasal 362 KUHP." *Lex Crimen* IX(3):249–57.