

# ***IHYA' AL-MAWAT'S RESISTANCE TO LAND LEGAL POLICY IN INDONESIA***

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## ***Abstract***

*The purpose of this study is to map and examine the manifestations, contributing elements, and ramifications of ihyā' al-mawāt opposition to Indonesian land laws. Utilizing a qualitative-objectivity approach, the findings from material and interviews are positioned. The research results show that there has been ihyā' al-mawāt resistance to land law policies in Indonesia due to prohibitions on use, management and ownership even though the goals are the same, namely community welfare and legal certainty over land. The factors causing resistance are based on the desire to prosper the earth, increase welfare, legal certainty, and resolve land legal relations with others. Open resistance was carried out in the form of demonstrations against state land control. Offering and enforcing the concept of ihyā' al-mawāt continually, expressing irritation and curses in one's heart without showing it to others, and crying in private are all examples of closed resistance. Clever revenge plotting is another way that closed resistance is demonstrated. The action of ihyā' al-mawāt resistance that must be taken against land law policy in Indonesia is the granting of rights to use and even own ownership of land resulting from the community's ihyā' al-mawāt in a professional.*

**Keywords:** *Ihyā' al-Mawāt; Land Law Policy; Social Resistance*

## **1. Introduction**

Indonesia's defense laws have encountered opposition from *ihyā' al-mawāt*. *Ihyā' al-mawāt*, which was thought to be a way to complete human welfare, has caused a number of issues. According to research, just 65% of Indonesian land is trouble-free (not complaining).<sup>1</sup> So this is still considered a threat. The Indonesian people's expectations of *Ihyā' al-mawāt* in terms of achieving prosperity and legal certainty over land are not met. It is still found that there are prohibitions against the community in utilizing, cultivating, managing and owning *ihyā' al-mawāt* land.<sup>2</sup>

From early studies that emphasized opposition to *ihyā' al-mawāt* because it was viewed as an invasion of land to later studies that concentrated more on the role of *ihyā' al-mawāt*, the relationship between *ihyā' al-mawāt* and land law policy in Indonesia has evolved. Recent studies

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<sup>1</sup> Kementerian BPN/Bapenas, "Kebijakan Pengelolaan Pertahanan Nasional," Kementerian BPN/Bapenas, 2018, [https://www.bappenas.go.id/files/kajian-trp/White\\_Paper\\_Pengelolaan\\_Pertanahan\\_Nasional.pdf](https://www.bappenas.go.id/files/kajian-trp/White_Paper_Pengelolaan_Pertanahan_Nasional.pdf).

<sup>2</sup> Ahmad Munif, "Ihyā' al-Mawāt Dalam Kerangka Hukum Pertanahan Di Indonesia," *Al-Ahkam* 28, no. 1 (2018): 73–96, <https://doi.org/10.21580/ahkam.2018.18.1.2347>.

see *ihyā' al-mawāt* as a factor in the progress and welfare of society and remains a solution to fulfill society's welfare which provides many possibilities for meeting people's needs so that *ihyā' al-mawāt* is something halal. As shown by Gunawan Ikhtiono et al, *ihyā' al-mawāt* still has an important role in turning an unproductive environment into a productive one.<sup>3</sup> It seems that *ihyā' al-mawāt* has been established as a goal force with human appeal based on the trend of previous research. However, there is a lack of mapping of the subject's perspective on responding and the challenges associated with Indonesian land law.<sup>4</sup> *Ihyā' al-mawāt* is positioned as an objective force because Islamic law views it as a *ta-awanu*, or aid, to the requirements of society. In actuality, though, it differs from Indonesian practice and is a breakthrough rather than an aid.

Therefore, this paper's goal is to address the inadequacies of previous research that typically examines resistance logically, ignoring subjective factors. The form of *ihyā' al-mawāt* resistance to Indonesian land law policy is also examined and mapped in this article, along with the factors that contribute to it and its implications.<sup>5</sup> Additionally, solutions for *ihyā' al-mawāt* opposition with regard to Indonesian legal policy are provided.

The premise of this essay is that *ihyā' al-mawāt* not only provides functions for society's advancement and convenience in satisfying its everyday demands, but it also generates new issues that need to be addressed. *Ihyā' al-mawāt* as a factor that can bring prosperity to society.<sup>6</sup> Nevertheless, *ihyā' al-mawāt* also results in a ban on its ownership, management, and use.<sup>7</sup> As an ethical teaching, *Ihyā' al-mawāt* has the ability to impose a new system by exposing a wealth of advantages in the contemporary era, thereby becoming a new welfare force through interaction

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<sup>3</sup> Gunawan Ikhtiono et al., "Land Conservation and Pest Management of Agriculture Perspective Islamic Religion," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 7, no. 4 (2020): 977–92; I. Hayat et al., "The Role of Islamic Environmental Ethics in the Alleviation of Climate Challenges and the Preservation of Ecosystem," *Russian Law Journal* 11, no. 11s (2023): 395–404, <https://doi.org/10.52783/rlj.v11i11s.1967>; Newton Kahumbi Maina, "Crop Diseases, Pests and Food Insecurity in Africa: An Islamic Perspective," in *Religion, Climate Change, and Food Security in Africa* (London (U.K): Springer, 2024), 167–79, [https://link.springer.com/chapter/10.1007/978-3-031-50392-4\\_10](https://link.springer.com/chapter/10.1007/978-3-031-50392-4_10).

<sup>4</sup> Munif, "Ihyā' al-Mawāt Dalam Kerangka Hukum Pertanahan Di Indonesia"; Hafidz Taqiyuddin and Hikmatul Luthfi, "Instruments of Property Ownership in Islam: The Study of Inheritance Law," *Journal of Islamic Thought and Civilization* 13, no. 1 (2023): 157–71. <https://doi.org/10.21580/ahkam.2018.18.1.2347>.

<sup>5</sup> Subaidi et al., "Eco-Pesantren: Islamic Education in Forest Conservation Landscapes," *Fudan Journal of the Humanities and Social Sciences* 16, no. 4 (2023): 541–67. <https://doi.org/10.1007/s40647-023-00386-w>

<sup>6</sup> Moh Nasrun and Sulthon Fathoni, "Positifkasi Hukum Keluarga Di Dunia Muslim Melalui Pembaharuan Hukum Keluarga," *Islamika: Jurnal Ilmu-Ilmu Keislaman* 20, no. 01 (2020): 80–94, <https://doi.org/10.32939/islamika.v20i01.568>; Utama Wardi et al., "Comparative Analysis of Islamic Family Law and Customary Law in the Settlement of Inheritance Disputes in Indonesia," *Hakamain: Journal of Sharia and Law Studies* 3, no. 1 (2024): 13–25. <https://doi.org/10.32939/islamika.v20i01.568>.

<sup>7</sup> Munif, "Ihyā' al-Mawāt Dalam Kerangka Hukum Pertanahan Di Indonesia"; Mohd Zubir Awang and Wan Yusof Wan Chik, "Application of Islamic Social Finance in Sustainable Development Goals with Specific Target for Maqasid Al-Shariah," *International Journal of Academic Research in Accounting Finance and Management Sciences* 13, no. 1 (2023): 35–46.

with Indonesian land law regulations. Thus, *iḥyā' al-mawāt* based on modernity requires a unified perception, agreement, adaptation and even willingness (*antaradin*) of the parties so as not to present new problems in land law policy in Indonesia.

Several previous articles and studies focused more on looking at the existence of land law in Indonesia in regulating abandoned land.<sup>8</sup> However, the following article is the opposite, trying to look at the resistance of *iḥyā' al-mawāt* to land law policies in Indonesia. This reading is necessary in order to see the grounding of Islamic law, such as *iḥyā' al-mawāt* which must follow the current context which has changed and is different from the context in the past, or current law follows old law, or current law and old law follow *maqasid Syariah iḥyā' al-mawat*. Not only that, the author also builds a framework for the implementation of *iḥyā' al-mawāt* based on real *maqashid sharia iḥyā' al-mawāt*. In this way, it is hoped that this article can provide an understanding that *fiqh*, which is the result of thought by *mujtahids*, also accepts changes following existing conditions based on *maqashid sharia iḥyā' al-mawāt*.

## 2. Method

A qualitative method based on both conventional and digital news data is used in research on Indonesia's defense legal policy's resistance to the spirit of *iḥyā' al-mawāt*. Based on news themes that satisfied the research target criteria—namely, *iḥyā' al-mawāt* resistance to Indonesian defense law rules that forbade usage, processing, and ownership—online news was chosen at random. In addition to being organized according to pertinent themes, the chosen news contains expert opinions on land law and *iḥyā' al-mawāt*, as well as firsthand accounts and practices of sources and instances that illustrate the ban on the use, ownership, and management of *iḥyā' al-mawāt*. Thus, the strengthening covered in this research includes strengthening the concepts of utilization, management and ownership. From an offline perspective, the author has read the main literature about *iḥyā' al-mawāt* and land laws and regulations in Indonesia as well as explanations, surveys, interviews, and library and field-based documentation both external and internal.

Groups of internal and external parties participated in the study to validate data gathered from online and offline news mapping. Participants are restricted to those who, on the one hand,

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<sup>8</sup> Ria Fitri, “Tinjauan Tanah Terlantar Dalam Perspektif Hukum Islam,” *Kanun Jurnal Ilmu Hukum* 13, no. 3 (2011): 1–16, <https://jurnal.usk.ac.id/kanun/article/view/6249>; Ade Tiffany Pasha, “The Effectiveness of Regulations Related to the Regulation of Abandoned Land in the Ideology of Pancasila Values,” *International Journal of Multicultural and Multireligious Understanding* 11, no. 2 (2024): 86–96; Diana Diana and Aan Aswari, “Legal Arrangements and Remedies for Abandoned Land: A Normative Study,” *Golden Ratio of Law and Social Policy Review* 2, no. 2 (2023): 23–33.

are accustomed to utilizing *ihyā' al-mawāt* and, on the other hand, do not understand it. They must employ *ihyā' al-mawāt* to suit their demands. Although they are an organization that is already interested in using, processing, controlling, and owning the outcomes of *ihyā' al-mawāt*, their low reading level undermines their trust in the practice. In order to meet its demands in accordance with the epidemic, this community is simultaneously undergoing a change process.

Nine external and internal community groups were selected for in-depth interviews. The selection of external and internal community groups takes into account gender balance and variations in lower, middle and upper classes of society, selected by taking into account socio-economic categories that are relevant to the use of *ihyā' al-mawāt*. People from various categories come from two regions that have different characteristics, namely from the western region and the eastern region which represents Indonesia.

In the data collection process, literature and interview guidelines were used as a basis for formulating questions. The open-ended questions covered five data areas. First, data related to the use, management and ownership of *ihyā' al-mawāt* among the community, which is an important factor in community involvement in *ihyā' al-mawāt*. Second, management of *ihyā' al-mawāt* which shows variations in use, management and ownership in the field. Third, the involvement of the community, traditional leaders and government in the *ihyā' al-mawāt* process. Fourth, the Islamic legal system and support from other institutions in the process of *ihyā' al-mawāt* and problem solving. Fifth, land law relating to the use, management and ownership of land.

### **3. Results and Discussion**

#### **3.1. *Ihyā' Al-Mawāt's Resistance to Land Law Policy in Indonesia***

##### **3.1.1. Prohibition of the Use, Management and Ownership of *Ihyā' Al-Mawāt* by Land Law in Indonesia**

Article 33 paragraph 2-3 of the 1945 Constitution, which declares that "branches of production which are important for the state and which affect the livelihoods of the people are controlled by the state," serves as the primary foundation for the literature that demonstrates Indonesia's land law's ban on using, managing, and owning *ihyā' al-mawāt* (verse 2). The state is in charge of the land, water, and assets found there, and it uses them to maximize the welfare of its citizens (paragraph 3). The goal of this state control is to enable all elements to be utilized and managed for the greater good of the society. Because of this, the state has authority over significant issues pertaining to the public interest.

To date, there are dozens of laws or regulations in lieu of laws (Perpu) that regulate land ownership and management in Indonesia. All laws and regulations in lieu of these laws aim to ensure that land control in Indonesia rests with the state. UUPA Article 2, which governs the state's jurisdiction over land, water, and outer space within the Indonesian state's borders, also makes clear that land exists in the state's name. Although there is no article that states that the state may own land.<sup>9</sup> However, it can be clearly understood that if there is land that is not or is not in the name of individuals, legal entities, and (or) customary land, then that land is land in the name of the state.<sup>10</sup>

The right to open land is a type of right that allows ownership of land to be obtained. The Delegation of Authority to Grant Land Rights Regulation 6 of 1972, issued by the Minister of Home Affairs, governs this. Simply put, the national land law system no longer upholds the freedom to open land. According to PMNA/KBPN 3/1999 on Delegation of Authority to Grant and Cancellation of Decisions to Grant Rights to State Land, this right is revoked and canceled. Thus, the possibility of obtaining ownership rights to land by clearing the land is no longer possible.<sup>11</sup> This unclear regulation of land clearing rights will later give rise to land disputes, for example land in forest areas.<sup>12</sup> In this context, it is once more stressed that property whose owner cannot be identified is regarded as state property.<sup>13</sup>

According to the UUPA's Article 2 Paragraph (2), the state has the authority to: (1) regulate and carry out the allocation, use, supply, and preservation of the earth, water, and outer space; (2) find out and regulate the legal relationships between people and the earth, water, and space; and

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<sup>9</sup> Afifah Kusumadara, "Perkembangan Hak Negara Atas Tanah: Hak Menguasai Atau Hak Memiliki?," *Jurnal Media Hukum* 20, no. 2 (2013), <https://doi.org/10.18196/jmh.v20i2.267>.

<sup>10</sup> Stanisław Bacior, "Austrian Cadastre Still in Use—Example Proceedings to Determine the Legal Status of Land Property in Southern Poland," *Land Use Policy* 131 (2023): 106740; Masresha Belete Asnakew et al., "Land Rights, Bases of Informal Settlements and Bogus Contract Documents as a Means of Urban Fringe Legal Land Transactions in Ethiopia," *Cities* 149 (2024): 104954; 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): 105769. <https://doi.org/10.1016/j.landusepol.2021.105769>

<sup>11</sup> Ilyas Ismail, Tn Sufyan, and Tn Azhari, "Rekonseptualisasi Hak Atas Tanah Dalam Kerangka Pembaharuan Hukum Tanah Nasional," *Jurnal Ilmu Hukum Litigasi* 14, no. 1 (2013): 1–32, <https://journal.unpas.ac.id/index.php/litigasi/article/view/91/23>.

<sup>12</sup> Abu Rokhmad, "Sengketa Tanah Kawasan Hutan Dan Resolusinya Dalam Perspektif Fiqh," *Walisongo: Jurnal Penelitian Sosial Keagamaan* 21, no. 1 (2013): 141–70, <https://doi.org/10.21580/ws.21.1.240>.

<sup>13</sup> Afin Prianda et al., "Sosialisasi Hukum Agraria (Pertanahan) Kepada Masyarakat Dusun Giyasan Dan Kawungon Desa Bumirejo Kecamatan Mungkid," *Cakrawala: Jurnal Pengabdian Masyarakat Global* 3, no. 3 (2024): 36–44, <https://doi.org/10.30640/cakrawala.v3i3.3046>; Muhammad Anugerah Puji Sakti et al., "Sosialisasi Hukum Agraria (Pertanahan) Kepada Masyarakat Dusun Giyasan Dan Kawungon Desa Bumirejo Kecamatan Mungkid," *Jurnal Pengembangan Masyarakat Lokal* 6, no. 2 (2023): 177–81, <http://www.e-journalppmunsa.ac.id/index.php/jpml/article/download/1405/1330>.

(3) determine and regulate the legal connection between people and the legal acts pertaining to the the planet, water-based, and space. Therefore, there is no more unclaimed territory. Land law closes itself off from being used, managed and owned because it belongs to the state. This concept of land law closes the opportunity for *iḥyā' al-mawāt* (abandoned, emergent and reclaimed land) to utilize, cultivate, manage and own even though the land pollutes the environment.

The facts on the ground which are proof of the prohibition on using, managing and owning *iḥyā' al-mawāt* by land law policy in Indonesia include the statement of Mr. Heru Hermawanto, MT who enthusiastically said 'It is not immediately possible for someone to use, manage and own abandoned land, arising, and reclamation because the land is under state control'. Likewise, Prof. Dr. Jonahar M Ec Dev casually said that 'the state policy to control abandoned, emergent and reclamation land is carried out in order to avoid community clashes in control of the land'.

The two statements above were further strengthened by Mr. Prof. Harkristuti Harkrisnowo, SH, MA, Ph.D, seriously said 'In my opinion, state control over abandoned, emerging and reclamation land in Indonesia is intended for the welfare of the community itself in the form of building roads, green spaces and so on'. "In Indonesia, abandoned, emerging, and reclaimed land is controlled and regulated by the state and can be managed by the community with state permission, but only in the form of cultivation rights, building use rights, use rights, rental rights, rights to collect forest products, and other rights of a temporary nature as stipulated in the land law," similarly stated Prof. Dr. Ir. Azwar Ma'as, M.Sc., in jest.

Dr. Dr. H. Muh. Iqbal, SE MT clearly said 'This vast Indonesian land must be regulated by the state so that there is no arbitrary use, management and ownership of the community'. This was confirmed again by Mr. Ir. Immam Algazali, MT freely said 'The right to open, utilize, manage and own abandoned, emergent and reclamation land must obtain permission from the state. This is intended so that the land can be used for the welfare of the community'. Then by Mr. Prof. Ir. Donation Baja M.Phil, PhD enthusiastically said in the interview that 'In fact, the presence of the state in regulating land in Indonesia is oriented towards legal certainty of use, management and ownership'.

Then the same thing was expressed by Mr. Prof. Dr. Ir. Max Nur Alam, MS said, 'In fact, legal certainty regarding land is important because it is inherited property which can open up opportunities for disputes from inheritance to inheritance if the land does not have legal certainty'. The same statement was conveyed by Mr Sumaila who said angrily that 'Until now I have managed state land for four years but the land has not received a certificate from BPN so it cannot be sold'.

Likewise, Mrs. Sarni's statement with a cynical smile said, 'I also want to plant sweet potatoes on this no man's land but the head of Sinabatta village doesn't allow it because the land is state land'.

Likewise, Mr. Kamarullah's statement angrily said, 'I want to use and own land on Jalan Tumbu but the Head of Topoyo Subdistrict doesn't allow it because the land is state land'. Likewise, Mr. Awaluddin's statement, with a bit of mockery, said, 'I intended to build a rice factory on cultivated land in the Topoyo area but the head of Kabubu village did not allow it because it was state land'. The literature and field facts above show that there is a prohibition on utilizing, managing and owning *iḥyā' al-mawāt* by land law in Indonesia.

### **3.1.2. Evidence of *Iḥyā' Al-Mawāt's* Resistance to the Prohibition on the Use, Management and Ownership of *Iḥyā' Al-Mawāt* by Land Law Policy in Indonesia**

The main basis of the literature which is evidence of resistance to the prohibition on using, managing and owning *iḥyā' al-mawāt* in land law policy in Indonesia is the universal command of the Qur'an that the earth/land be prosperous in the form of utilization, management and ownership.

The Qur'an universally commands the prosperity of the earth as the ease and power of Allah *Subhanahu Wa Ta'ala* revives the land which was initially barren (*al-arḍ al-maitah*) then the land produces or produces seeds that can be eaten by humans. (QS: Yasin (36): 35. Then in QS: al-Rum (30): 41 it is stated that injuries on territory (*al-barr*) and sea is clearly caused by human behavior. QS: Yasin: (36): 35 This, directs his *maqashid* to the ability to utilize, manage and own *iḥyā' al-mawāt* if done wisely. This is emphasized in the munasabah verse starting from 32-34 of this verse. In verse 32 it talks about the polytheists of Mecca.

These three verses invite polytheists and all of us to pay attention to the natural surroundings after previously inviting us to learn from the historical experiences of previous people. If in the explanation of the previous verse it is emphasized that there is a day when all humans will be gathered (the day of resurrection) then this verse explains the evidence of Allah's power to resurrect and give life to the dead.

According to Ibn 'Assyria, the above verse is a 'athaf related sentence) with QS: Yasin (36): 13, because it is both a parable for the polytheists of Mecca. Quraish Shihab in Al-Misbah explains that the words *ahyayna* (we give life) and the words *akhrajna* (we bring out) in QS: Yasin (36): 33 using the first person plural, imply the involvement of other than Allah SWT in giving life to the earth and bringing forth plants. plant. The involvement referred to here is human involvement in revitalizing and caring for the earth from a dry state.

Apart from that, the certainty of the ability to utilize, manage and own *iḥyā' al-mawāt* is emphasized in the hadith of the Prophet *Sallallaahu Alaihi Wassalaam*:<sup>14</sup> among other things said:

من أعمار أرضا لست لأحد فهو أحق.

From the explanation of QS: Yasin (36): 35 and QS: Rum (30): 41, it is in line with the spirit built by *iḥyā' al-mawāt* to utilize, manage and own the earth in general and Indonesia in particular. In the language of *al-mawāt* in the context of land, it is interpreted as land that is no longer prosperous (managed, cultivated), not occupied, has no (known) owner, and is not used for cultivation. It is said to die when life has been cut off from life, the wind dies when it is still or calm, the fire dies when it goes out or becomes cold, the road dies when it has exhausted its route, and perhaps someone who is sleeping is also said to be dead because he has no power.<sup>15</sup> The *Al-mawāt* referred to in this article is for the context of land and (or) land. From the explanation of the verses and hadith above, it gives *maqashid sharia* space to *iḥyā' al-mawāt* for utilization, management and ownership provided that it is carried out in a manner that is carried out in a *ma'ruf* interpersonal and communication manner.

- 1) The orders of the *Fuqahā'* in the form of *ijtihad fardi* and *jama'* regarding the rights of individuals, legal entities, customary communities and the state to utilize, manage and own the earth/land in nature based on benefit. This is confirmed by the establishment of the law of *al-mawāt* by Umar bin Khatab, saying, 'Whoever gives life to dead land, then he has the right to that land.'<sup>16</sup> Egyptian *fuqahā'* in ancient times emphasized the ability to own land by *iḥyā'*, although there were differences regarding the requirements.<sup>17</sup>
- 2) The central MUI fatwa regarding *iḥyā' al-mawāt* is rejection-based. The author has not seen the central MUI fatwa regarding abandoned land.
- 3) The desire of the Indonesian people to utilize, manage and own *iḥyā' al-mawāt* for the benefit of welfare.

The facts on the ground that provide evidence of resistance to the prohibition on using, managing and owning *iḥyā' al-mawāt* in land law policies in Indonesia include the statement of Mr. Prof. Dr. H. Haedar Nasir, MA in a strengthening tone said that 'in principle, Allah orders

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<sup>14</sup> Muḥammad al-Qudah, "Iḥyā'al-Arḍ Al-Mawāt Wa Atharuhu 'Ala'l-Iqtisād Al-Waṭani Al-Ardan Namudhujan," *IUG Journal of Islamic Studies* 24 (2016): 247–71.

<sup>15</sup> al-Qudah.

<sup>16</sup> al-Qudah.

<sup>17</sup> al-Qudah.



humans to prosper the earth in various forms for the benefit of humans, including utilizing, managing and owning Allah's creation which is more productive and environmentally friendly'.

This was reinforced by Mr. Prof. Ghalib, MA firmly said that 'The earth on which we stand needs to be regulated in its use by humans to serve Him. For this reason, humans are given the authority to utilize, manage and even temporarily own this nature to use for charity to Him'. Likewise, Mr. Dr. Ahmad Sehri bin Punawan, M.A with a smile of rejection said that 'how much people need land with various uses, so in my opinion the state must provide leeway to utilize, manage and own it'.

## **3.2. Factors of *Ihyā' Al-Mawāt* Resistance to Land Law Policies in Indonesia**

### **3.2.1. Earth's Prosperity Factor**

Earth/land is one of the sources of human livelihood. That is why in the course of life and life, humans carry out trust as an obligation and responsibility imposed on them by Allah so that it is fulfilled, guarded and maintained as well as possible. Al-Maraghy, when interpreting the verse *'Innallaha ya murukum an tu'addu al-amanaati ila Ahliha*, he stated that this trust consists of: First, the trust of servants towards their Lord which must be maintained and guarded by humans in the form of following all His commands and avoiding all His prohibitions as well as using their potential tools and body parts in various activities that can bring benefits. for him and can draw closer to his God, so that if humans violate it, it means he is betraying his God. Second, the servant's trust towards fellow human beings in the form of returning entrusted items to their owners and not wanting to cheat, as well as protecting someone's secrets that are not suitable for publication. Third, man's mandate towards himself is to try to do things that are better and more beneficial for himself for the sake of his religion and the world, not to do things that endanger himself for the sake of the hereafter or the world, and try to protect and maintain his own health.

Ath-Thabathaba'i when interpreting this verse, he put forward five types of meaning of trust, namely burden of obligation, reason, monotheism to Allah, limbs, and ma'rifah to Allah. According to Ath-Thabathaba'i, the meaning of these body parts is closer to the truth. Al-Raghib al-Asfahani (an expert on the language of the Koran) put forward three meanings of trust, namely the words of tauhid, *al-'ilah*, and reason.<sup>18</sup>

From several opinions of these commentators, it can be understood that the task of human life is a mandate from Allah. The essence of trust is that there are two types, namely 'abdullah

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<sup>18</sup> Thabathaba'i, *Tafsir Al-Mizan* (Jakarta: Lentera, 2010).

(worshiping or serving Allah), and caliphate of Allah, both of which must be carried out with full responsibility. A human's duty as an 'abdullah is to maintain the burden/duties of obligation from Allah, maintain monotheism, and maintain the wealth of *ma'rifah* towards Him. Meanwhile, the task of humans as caliphs of Allah is to realize the mandate in the sense of maintaining, utilizing or optimizing the use of all parts of the body, sense organs, mind and heart or basic human potential, in order to uphold justice, prosperity and happiness in life.

Allah's words in QS: al-Baqarah (2): 30 provide insight into the role of humanity as His caliphs. When your Lord told the angels, "I will make a caliph on the face of the earth, I promise," they questioned why, despite the fact that we constantly exalt you by praising and sanctifying you, they wanted to create a khalifah who would harm the planet and bring bloodshed. I know what you don't know, God says. From the explanation above, it can be understood that, the presence of humans has a duty from the creator to prosper the earth, so if anyone obstructs it, including land law in Indonesia, resistance will arise everywhere. Thus, the argument becomes stronger that the resistance factor to the prosperity of the earth is a strong reason to make *ihyā' al-mawāt* efforts to utilize, manage and own.

### **3.2.2. Factors of Equal Human Welfare**

Reality conditions show that it is very difficult for many citizens from economically weak countries to own land, so many of them do not own land. Farmers are unable to own agricultural land as a place of business so they are forced to become farm laborers or farmers (conditions in rural areas) and many citizens also find it difficult to own land for residence and business premises (conditions in urban areas). This condition shows the imbalance and injustice in the land tenure structure. In rural areas there is still inequality in the structure of agricultural land tenure, while in urban areas it is increasingly difficult to control the development of physical development (buildings, housing, shops, etc.) which leaves almost no room for the poor. There are people who don't have a place to live, small traders/street vendors who are evicted all the time because they don't have space for a permanent place of business and other similar conditions that show injustice in land tenure opportunities.<sup>19</sup>

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<sup>19</sup> Maria SW Sumardjono, *Tanah Dalam Perspektif Ekonomi, Sosial Dan Budaya* (Jakarta: Kompas, 2008); Abidin, Tulus Suryanto, and Pertiwi Utami, "Beyond Muamalah Principles in Digital Payment Education and Its Impacts on Corruption Prevention in Indonesian Public Sectors," *Journal of Social Studies Education Research* 11, no. 3 (2020): 46–64. <https://jsser.org/index.php/jsser/article/view/2355/460>

The basic question related to the above is the function of the state to provide prosperity and justice for all people. Immanuel Kant (1724-1804), as a pioneer of the liberal school, argued that the ideal state is a legal state whose task is to maintain security and order in society (*rust en orde*). In this case, the state may not intervene in the affairs of the people's welfare because this is the people's own business. The state is passive as long as security and order are not disturbed.<sup>20</sup>

Control or ownership of land must be based on law, it cannot be illegal. In national agrarian law, several land control institutions are provided, one of which is land ownership with rights. To realize people's welfare which is the goal of national land politics. For this, space must be opened to enable and make it easier for everyone to control or own land with land rights.<sup>21</sup> Prosperity is sought after by humans, that is why if there is anything that obstructs it, including land law policies in Indonesia, then there will definitely be resistance everywhere.

### **3.2.3. Factor of Legal Certainty Over Land**

According to legal theory, a connection between individuals and things is known as a right. Accordingly, the property right to an object is the right to own it. When it comes to land entitlements, there is a procedure that must be followed, known as the process of control. In order to get that control, an act of occupation must be performed first, and after a specific amount of time, the right to control will turn into property rights. The 1945 Constitution's article 28 letter h paragraph (4), which declares that everyone has the right to rights to private property and that no one may take them away arbitrarily, and article 33 paragraph (3), which declares that "Earth and water-based and the natural assets contained therein are controlled by the state and used for the greatest prosperity of the people," can serve as the foundation for regulations governing land ownership rights. To implement these basic principles in relation to land, national agrarian law is stipulated in Law no. 5 of 1960 in article 2 in the form of the state's right to control over land which authorizes the state to: (1) regulate and carry out the allocation, use, supply and maintenance of earth, water and space; (2) determine and regulate legal relationships between people and earth, water and space; (3) determine and regulate legal relationships between people and legal actions concerning earth, water and outer space. The authority that originates from the right to control the

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<sup>20</sup> Wahyono and Ida Nurlinda, *Perlu Lembaga Rekonsiliasi Atau Peradilan Tanah Untuk Tangani Sengketa Tanah* (Bandung: Unpad, 2009).

<sup>21</sup> Henky Hotma Parlindungan, Anwari Masatip, and Hendra Manurung, "Tourism Investment and Financial Digital," *European Journal of Science, Innovation and Technology* 1, no. 4 (2021): 30–44, <https://www.ejsit-journal.com/index.php/ejsit/article/view/30>.

state is used to achieve the greatest prosperity of the people in the sense of nationality, prosperity and independence in society in an independent, united and sovereign Indonesian legal state.

Article 20 of the UUPA governs land ownership rights, stating that they are the most powerful, most comprehensive, and inherited rights that persons can possess over property, and they serve a societal purpose. Therefore, ownership rights to land which originate from the state's right to control are to realize community welfare. Ownership rights to land have the following special characteristics: (1) because they are inherited, they can be passed down through inheritance. (2) It can be granted further rights to land beyond the owner's ownership rights, and (3) its use is unrestricted and unrestricted as long as it does not violate statutory requirements.

The explanation of article 20 UUPA demonstrates the idea of property rights under fundamental agricultural law, as follows: This article states the characteristics of property rights which distinguish them from other rights. In the transitional provisions of article 56 of the UUPA it is stated that as long as the law regarding property rights as stated in article 50 paragraph (1) of the UUPA has not yet been formed, then what applies are the provisions of customary law and other regulations regarding existing land rights. grant authority as intended in article 20 paragraph (1) UUPA, as long as it doesn't go against the basic agricultural law's (UUPA) principles and spirit.<sup>22</sup> Legal certainty over land resulting from utilization, management and ownership of *ihyā' al-mawāt* efforts is also a factor of resistance. For this reason, it is necessary to fulfill these rights for the community.

### **3.2.4. Elements of Human-Earth, Water, and Space Legal Relations**

Reviving dead land is important because it has a legal relationship between people, water and space. To build a just and prosperous society as we aspire. The agrarian law currently in effect is one of the important tools for building a just and prosperous society. The prohibition on using, managing and owning *ihyā' al-mawāt* has implications for humans, water and space. Earth/land that functions well because it is utilized will have a good effect on humans, water and space. For

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<sup>22</sup> Desi Apriani and Arifin Bur, "Kepastian Hukum Dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah Di Indonesia," *Jurnal Bina Mulia Hukum* 5, no. 2 (2021): 220–39, <https://doi.org/10.23920/jbmh.v5i2.11>; Friend Henry Anis et al., "Utilization of State Land by Plantation Business Use Rights Holders in North Sulawesi," *The International Journal of Social Sciences World (TIJOSSW)* 5, no. 1 (2023): 237–49; Nikko Meyndo Arissa Putra Pratama, Iwan Permadi, and Hamidi Masykur, "Reformulation of the Limitation on the Maximum Area of Plantation Sector Land Use Rights for Legal Entities Based on the Public Welfare," *Path of Science* 10, no. 9 (2024): 2020–28. <http://dx.doi.org/10.22178/pos.108-8>

this reason, national land law through agrarian law needs to regulate it so that the symbiosis of humans, water and space is well established and beneficial.

### **3.3. Implications of *Ihyā' Al-Mawāt* Resistance on Land Law Policy in Indonesia**

There are at least three *ihyā' al-mawāt* resistances to land law policies in Indonesia, namely increasing people's welfare, a clean-healthy-beautiful environment, and land becoming more profitable quickly. Increased welfare can be achieved by changing land law policies in Indonesia by easing the conditions for utilization, management and ownership of *Ihya al-Mawat* land so that people compete to utilize, manage and own *Ihyā' Al-Mawāt*. Apart from that, a clean, healthy and beautiful environment can be obtained because abandoned, emergent and reclaimed land which is not functioning well becomes useful. Changes in Indonesia's land law policy in favor of *ihyā' al-mawāt* will bring the land to benefit more quickly.

After comparing the review literature information with these results, there is a conflict in the literature between the spirit of *ihyā' al-mawāt* and national legal policy in Indonesia. Likewise, there is a conflict in the literature between the spirit of *ihyā' al-mawāt* and the recommendations of general scientific experts and religious scientific experts with land practitioners in Indonesia regarding the prohibition of the use, management and ownership of *ihyā' al-mawāt* within the framework of land law in Indonesia.

Religious scholars view the permissibility of the use, management and ownership of *ihyā' al-mawāt* in Indonesia either by permission or following permission or not by the state for reasons of emergency-based use, management and ownership of *ihyā' al-mawāt*. Meanwhile, general land scientists view that the use, management and ownership of *ihyā' al-mawāt* in Indonesia is not permitted without state permission for any reason. The same thing stated by land practitioners in Indonesia also does not allow the use, management and ownership of the proceeds of *ihyā' al-mawāt* in Indonesia for reasons of welfare and regulation of legal certainty over land.

There is a meeting point between the maqashid implementation of *ihyā' al-mawāt* and land law policy in Indonesia in looking at the possibility of utilizing, managing and owning *ihyā' al-mawāt* land, namely for welfare and legal certainty over land. However, there are differences in terms of technical permits and conditions for utilization, management and ownership of *ihyā' al-mawāt*. Regarding common ground, the technical aspects are still maintained and developed in order to achieve the noble ideals of these two laws. However, it should be remembered that there

are differences in the meaning of welfare according to the *iḥyā' al-mawāt* version and the land law version in Indonesia.

Welfare according to *iḥyā' al-mawāt* is providing opportunities for professional use, management and ownership whether in emergency conditions or not through permission or following permission or no permission by the state. Meanwhile, welfare according to land law in Indonesia is the regulation of land with strict conditions for granting permission to the community. In addition, legal certainty in the view of *iḥyā' al-mawāt* is the provision of guarantees of legal protection for the status of land use, management and ownership of *iḥyā' al-mawāt*. Meanwhile, legal certainty over land in the view of land law in Indonesia is to provide land control based on the rights to the land.

Strengthening the implementation of *iḥyā' al-mawāt* in land law policy circles in Indonesia as per this research discussion can be done by bringing together the perception of drafting land laws in Indonesia based on *iḥyā' al-mawāt*. If necessary, help with concept design through the preparation of a land fiqh book (*fiqhul al-ardi*).

#### **4. Conclusion**

The results of the research show that there has been *iḥyā' al-mawāt* resistance to land law policies in Indonesia due to prohibitions on use, management and ownership even though the aims are the same, namely the prosperity of the community and legal certainty over land. The burden of this prohibition is predominantly on *iḥyā' al-mawāt* rather than land law policy in Indonesia. In fact, this *iḥyā' al-mawāt* effort is in the context of maximizing the function of the earth/land of Allah *Subhanahu Wa Ta'ala*.

The factors causing resistance are based on the prosperity of the earth, increasing prosperity, legal certainty, and resolving land legal relations with others. These two factors have implications for fulfilling human welfare, creating a clean, healthy and beautiful environment and accelerating the benefits of *Ihya al-Mawat* land in Indonesia. This resistance was carried out both privately and openly by the community supporting *iḥyā' al-mawāt*. Open resistance was carried out in the form of demonstrations against state land control, as was done in several places in Indonesia. Offering and enforcing the concept of *iḥyā' al-mawāt* continuously, expressing irritation and curses in the heart that are not known or displayed to others, acting badly, crying in private, and even closed resistance are examples of closed resistance. executed by craftily organizing retaliation.

Actions that must be taken against *ihyā' al-mawāt* resistance to land law policies in Indonesia are granting rights to use, manage and even own ownership of land resulting from the community's *ihyā' al-mawāt* in a professional and fair manner through permits or subsequent permits. What has not been researched in this paper is the emergency indicator of granting utilization, management and ownership rights to *ihyā' al-mawāt* within the framework of land law in Indonesia.

### **Acknowledgement**

The author would like to express his thanks to the parties who have supported the implementation of this research, including: (1) Prof. Dr. H. Sagaf S. Pettalongi, M.Pd., as Chancellor of UIN Datokarama Palu and all his staff, who have paid serious attention to the tridharma of higher education, one of which is the research aspect; (2) Chairman of the LPPM and all his staff, through their hard work research activities at UIN Datokarama Palu can be carried out well; (3) All parties who cannot be mentioned one by one, either directly or indirectly, have helped complete this research.

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