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Settlement of Rejection of Land Acquisition Activities According to Fiqh and Indonesian Law

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ABSTRACT

This research aims to formulate a mechanism for resolving objections from land rights holders to land procurement activities intended for public purposes. Employing a qualitative approach and literature study, this research is guided by Maslahat Theory with a comparative approach. It relies on secondary data, including primary, secondary, and tertiary legal materials. The study reveals that objections to land procurement activities have existed since the early period of Islam, notably during the times of Prophet Muhammad SAW and al-Khulafā' ar-Rāshidun. Fiqh does not provide a standardized mechanism for resolving land rights holders' objections to land procurement, instead leaving resolution to government policy based on the broader benefits of the state and religion, ensuring land rights holders are not oppressed or harmed. Based on resolutions used by early Islamic caliphs, this research identifies three resolution methods: discussion and dialogue, tahkim (arbitration), and court proceedings. Implementing these three methods is entrusted to the government, tailored to local customs (uruf) and the evolving dynamics of land procurement regulations for public purposes. In Indonesia, objections to land procurement activities are comprehensively regulated, notably through Law No. 2 of 2012 on Land Procurement for Development in the Public Interest.

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1. INTRODUCTION

Land acquisition for the public interest is one of the important aspects of sustainable infrastructure development in Indonesia. As a developing country, Indonesia has an urgent need for infrastructure, including toll roads, railways, and other public facilities that require large amounts of land. However, the land acquisition process is often faced with a variety of challenges, including rejection from land rights holders. Data from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency

(ATR/BPN) shows that cases of disputes and rejections of land acquisition in Indonesia are increasing every year, especially in areas that are strategic for infrastructure development. In 2021, for example, there were more than 1,200 land disputes that occurred due to problems with land acquisition for the public interest. This condition creates urgency for the government to find an effective and fair settlement mechanism, both through positive legal approaches and through the principles in Islamic law (fiqh).

On the other hand, in the context of Islamic law, land acquisition and rejection of it are governed by various principles of jurisprudence, which essentially prioritize the public benefit but also respect individual rights. In fiqh, the government or leader is given the authority to take certain steps in the public interest, but this must be done without disregarding the rights of landowners. The principle of maslahat (benefit) in fiqh prioritizes the wisdom of leaders in maintaining a balance between public interests and individual rights. Thus, this study tries to examine how the mechanism for resolving rejection of land acquisition according to fiqh and Indonesian legislation.

One of the main problems in land acquisition in Indonesia is the resistance of land-rights holders who refuse to release their land. This rejection can be influenced by a variety of factors, including dissatisfaction with the amount of compensation, disagreements over land allocation, or even the perception that the project does not bring direct benefits to the surrounding community. In this context, Islamic law or fiqh offers a different perspective in dealing with this problem of rejection. On the other hand, Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest provides a comprehensive and detailed legal framework in the land acquisition process, but often encounters obstacles in implementation, especially related to community revenue.

The formulation of the problems proposed in this study is how the principles of fiqh regulate the mechanism for resolving rejection of land acquisition activities, how Law Number 2 of 2012 regulates the mechanism for resolving the rejection, whether there is harmony or difference between fiqh and the law in resolving the problem of land acquisition for the public interest, what is the ideal policy in resolving the rejection of land acquisition in Indonesia based on the synergy between fiqh and law. Meanwhile, the objectives of this research are to know and understand the mechanism for resolving rejection of land acquisition from the perspective of fiqh, examining the existing regulations in Law Number 2 of 2012 concerning land acquisition in the face of rejection from the community, analyzing the differences and similarities between fiqh and Indonesian law in regulating the settlement of land acquisition rejections, and formulating ideal policies for the settlement of land acquisition rejections by integrating the principles of fiqh and positive law.

This study uses a qualitative method with a descriptive, analytical, and literature study approach. The data used are secondary data in the form of primary legal materials (Law Number 2 of 2012), secondary legal materials, and tertiary legal materials. In collecting data, the researcher relies on sources from fiqh books, laws and regulations, scientific journals, and other relevant literature. The analysis method used is content analysis, which is an in-depth analysis of texts from sources of Islamic law and positive law to find key concepts that can be applied in solving land acquisition problems.

Several previous studies related to land acquisition and its completion have been carried out by various researchers. A study conducted by Debora and Rizkianti revealed that the settlement of agrarian conflicts regarding land acquisition between PT Perkebunan Nusantara III and the Gurilla community in Kampung Baru, Pematang Siantar highlights the importance of balancing the public interest and individual land rights. The study shows that, although Indonesian law mandates fair compensation under the 2012 Land Acquisition Act, disputes often arise when affected residents feel that compensation is inadequate. The use of coercive methods by PT Perkebunan Nusantara III caused resistance from the Gurilla community who felt that their rights were ignored. Conflict resolution is carried out through legal approaches, such as negotiation, mediation, and, if necessary, litigation. The case emphasizes the importance of a transparent process and meaningful involvement of affected communities to achieve a just outcome, while respecting public needs and individual rights. Meanwhile, research by Yusri Romadhon explains that the *Fiqh Siyasah perspective* on the process of

acquiring plantation land for the development of public infrastructure, such as roads, emphasizes the balance between public welfare and private property rights. *Fiqh Siyasah*, which is rooted in Islamic jurisprudence, emphasizes that private property rights must be respected, and that any land acquisition should be aimed at the public benefit (*maslahah*) with fair and transparent procedures. This process should involve dialogue, fair compensation, and consent from landowners to avoid injustice. This approach is in line with Islamic principles that prioritize collective well-being as long as individual rights are upheld, and provides a framework for equitable land procurement that takes into account community needs as well as individual property rights.

This study complements the previous findings by bringing together the perspectives of jurisprudence and law in one comprehensive study, so as to fill the existing literature gap related to the settlement of rejection of land acquisition. Theoretically, this research is based on the theory of benefits that emphasizes the common good as a basic principle in decision-making. This theory is used as the main foundation in analyzing how fiqh provides flexibility in solving problems related to the public interest. On the other hand, this research also refers to the theory of individual rights listed in positive legislation, in which ownership rights over land are still respected and considered in the procurement process for the public interest. From the perspective of research novelty, this study tries to make a new contribution in the field of Islamic law and land law in Indonesia by formulating an integrative settlement mechanism between fiqh and laws and regulations. By combining these two perspectives, this research is expected to be able to provide guidance for policymakers in drafting regulations that are more effective, humane, and in accordance with local values and religious norms held by the community. Through this research, it is hoped that a more comprehensive understanding can be obtained of how fiqh and Indonesian law can work synergistically to solve the problem of land acquisition rejection. With this synergy, the land acquisition process in Indonesia is expected to be more efficient, transparent, and fair, so that sustainable national development can be achieved without causing conflicts that are detrimental to the community and the government.

2. METHOD

This research uses the library *research* method, which is a method carried out through searching, collecting, and analyzing various written sources relevant to the topic being studied. The literature study was chosen because the focus of this research is on normative studies, namely comparing the perspective of Islamic jurisprudence with laws and regulations in Indonesia regarding the settlement of rejection of land acquisition activities. The approach used in this study is a *comparative approach*. This approach is used to examine and compare two legal systems, namely Islamic law (fiqh) and positive law in Indonesia, especially related to land acquisition issues and settlement mechanisms when there is rejection by the affected parties. In this approach, the researcher examines the principles and rules of fiqh regarding land acquisition for the public benefit (maslahah 'ammah) and compares it with applicable regulations in Indonesia, such as Law Number 2 of 2012 concerning Land Acquisition for Development for the Public Interest and its derivative regulations.

The data sources in this study were obtained from primary and secondary literature, such as classical and contemporary jurisprudence books, laws, government regulations, scientific journals, books, and relevant legal articles. Data analysis is carried out in a descriptive-comparative way, namely describing the concepts and rules in both legal systems, then comparing the similarities and differences to see common points and potential conflicts in resolving land acquisition disputes. With this method, it is hoped that the research can provide a deeper understanding of the position of fiqh and positive law in answering contemporary problems related to land acquisition in Indonesia.

3. RESULTS AND DISCUSSION

Definition of Land Acquisition

Talking about land acquisition means discussing one of the things that causes the termination of the legal relationship between the subject of rights and the object of the land he controls. The termination of the legal relationship between the subject of the right and the object of the land can be done in various ways depending on the ruler and the right holder or other reasons beyond the will of the parties. Land acquisition is a term that contains a mechanism used in laws and regulations in Indonesia as a way to break the legal relationship. In fiqh, the term "land acquisition" can be identified through another term used by jurists to denote land acquisition activities, namely *al-istimlāk* or *attamalluk al-jabarī*, or what is known today as *intizā' al-milkiyyah* which when translated literally means the *revocation of property* rights; which of course regulates a mechanism that is different from the land acquisition mechanism. Since there is no term that is truly commensurate with the term land acquisition, the term *intizā' al-milkiyyah* is used with the same purpose and purpose as the term land acquisition as understood in laws and regulations in Indonesia.

In jurisprudence, *al-istimlāk* is formulated as the act of controlling land by providing fair compensation to its owners due to emergency conditions or for the public interest, such as the expansion of mosques, building roads, and so on (Az-Zuḥailī, 1989). Thus, *al-istimlāk* in fiqh aims to provide land for the public interest through control first and then the government determines fair compensation for the landowners. If you look closely, both *al-istimlāk* and land acquisition aim to provide land for the public interest. Both terms require the provision of fair compensation to landowners. The difference between the two terms, according to researchers, lies in the way of controlling the land to be freed. In land procurement, the government follows the process and mechanism of land acquisition that has been established in laws and regulations so that in the end it reaches the stage of relinquishment or surrender of rights, where the government pays compensation first, and along with the granting of compensation, the holder of land rights relinquishes his rights. Meanwhile, in *the istimlāk* , the government prioritizes the aspect of control over the land, then pays compensation to the holder of land rights. Thus, land acquisition in fiqh can be defined as the activity of providing land for the public interest by releasing the legal relationship between the landowner and the land he owns first followed by the provision of fair compensation.

In Indonesia, the activity of providing land for the public interest has undergone a development process since the unification of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles. The provision of land for the public interest in the development of land law in Indonesia was initially carried out through the mechanism of revocation of rights as stipulated in Law Number 20 of 1961 concerning the Revocation of Rights to Land and Objects on it. However, in practice, the provisions of this law cannot run smoothly. To overcome this, the government issued provisions on the exemption of land rights which was marked by the issuance of the Regulation of the Minister of Home Affairs Number 15 of 1975 concerning Provisions on Land Acquisition Procedures. In its implementation, this provision also causes many problems so that it cannot run effectively. Based on this reality, the government issued a presidential decree regarding the release or surrender of land rights through a mechanism for the provision of land for the public interest called land acquisition, as stipulated in Presidential Decree Number 53 of 1993 concerning Land Acquisition for the Implementation of Development for the Public Interest.

The term 'land acquisition' emerged in line with the issuance of the Regulation of the Minister of Home Affairs (PMDN) Number 15 of 1975 concerning Provisions Regarding Land Acquisition Procedures. With the issuance of this regulation, it also revokes the provisions of *Bijblad* Number 11372 jo. Number 12476 (Lubis & Lubis, 2011). In Article 1 paragraph (1) it is determined that, *"What is meant by land acquisition is the release of the legal relationship that originally existed between the rights holder/ruler over the land by providing compensation.*"In this sense, there is implicitly an impression that land acquisition is a unilateral action from the Government (through the Land Acquisition Committee) to the land rights holder. Indeed, in the following articles there are the words "based on the principle of

deliberation" (Article 1 paragraph (3), "hold negotiations with the rights holders" (Article 3), or "must hold deliberations with the owners/holders of land rights (Article 6 paragraph (1)), but from the deliberation there is no word "agree with the land owner", but the word agreement only exists among the members of the committee, while the holders of land rights are "paid attention to their will" (Article 6 paragraph (3).

Commenting on the above fact, Muhammad Yamin Lubis said that this land acquisition regulation still adheres to the principles of *Bijdblad* number 11372 *jo.* Number 12476, and has not adhered to the principle of 'deliberation' as implied in the fourth precept of Pancasila. This factor is often a problem in the future in land acquisition because negotiations or deliberation only require an agreement between the members of the land acquisition committee while the landowner concerned is only the party who receives the determination of the compensation price (Lubis & Lubis, 2011).

Along with the issuance of Presidential Decree Number 55 of 1993 concerning Land Acquisition for the Implementation of Development for the Public Interest, the activity of providing land for the public interest is carried out through a mechanism of release (handing over rights) through an activity called "land acquisition". Land acquisition is a series of land acquisition activities carried out by a committee through systematic stages. In Article 1 paragraph (1) of Presidential Decree Number 55 of 1993, it is stated that what is meant by land acquisition is: *"Setiap kegiatan untuk mendapatkan tanah dengan cara memberikan ganti kerugian kepada yang berhak atas tanah tersebut."* The definition of land acquisition then changed in line with the issuance of Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest which revoked Presidential Decree Number 55 of 1993, which in Article 1 paragraph (3) states that land acquisition is: *"Setiap kegiatan untuk mendapatkan tanah dengan cara memberikan ganti kerugian kepada yang melepaskan atau menyerahkan tanah, bangunan, tanaman, dan benda-benda yang berkaitan dengan tanah atau dengan pencabutan hak atas tanah."*

The provisions of Article 2 paragraph (1) of Presidential Regulation No. 65 of 2006 concerning Amendments to Presidential Regulation No. 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Public Interest again change the meaning of land acquisition above, where land acquisition in its new sense is formulated as: *"Setiap kegiatan untuk mendapatkan tanah dengan cara memberikan ganti kerugian kepada yang melepaskan atau menyerahkan tanah, bangunan, tanaman, dan benda-benda yang berkaitan dengan tanah."* The definition of land acquisition has also changed again along with the issuance of Law Number 2 of 2012 concerning Land Pawnshops for Development for the Public Interest, which in Article 1 paragraph (2) land acquisition is defined as: *"Kegiatan menyediakan tanah dengan cara memberikan ganti kerugian yang layak dan adil kepada pihak yang berhak."* (Law Number 2 of 2012 concerning Land Pawning for Development for Public Interest., 2012). Meanwhile, Presidential Regulation Number 19 of 2021 concerning the Implementation of Land Acquisition for Development for the Public Interest provides a shorter definition of land acquisition, where Article 1 paragraph (2) states that what is meant by land acquisition is: *"Kegiatan menyediakan tanah dengan cara memberi ganti kerugian yang layak dan adil."* This definition is substantially no different from the definition contained in Law Number 2 of 2012 where the difference between the two lies in the deletion of sentences "kepada pihak yang berhak" in the definition contained in Presidential Regulation Number 19 of 2021.

Principles of Protection of Land Rights

Based on istiqra' on the nash of the Qur'an and hadith, jurists agree that land rights, especially property rights, are recognized and protected in Islamic law. Not only acknowledging, Islamic law actually encourages Muslims to work, cultivate land, buy and sell, and other businesses as a way to get land. In addition, sharia also allows inheritance, grants, waqf, gifts and wills as other ways to obtain land. The basis for the recognition of land rights in the Qur'an comes from general verses and special verses. The general verses in question are those that generally acknowledge the existence of property and ownership without mentioning a specific type or form of the property. Based on these general

verses, it can be inductively concluded that land rights are also recognized because land is a type of property that can be acquired, either individually or together. The verses that fall into the first category can be classified into 3 (three) categories, namely:

First, the verses that attribute property to the owner, for example, Qs. al-An'am/6: 152, Qs. at-Taghābun/64: 15, Qs. al-Baqarah/2: 274, Qs. Yūnus/10: 71-73, and Qs. an-Nūr/24: 27-28.

Second, the verses about inheritance, e.g. Qs. an-Nisā'/4: 7, 11 and 176 which explain the share of each heir so that it can be concluded that there is a recognition of the heir's ownership (*al-muwarrits*) of the property he inherits, and the heir's ownership (*al-wārits*) of the property he inherits.

Third, the verses that command Muslims to pay zakat and infak in the way of Allah SWT, for example Qs. al-Baqarah/2: 3, Qs. al-Muzammil/73: 20, and Qs. al-Hadīd/57: 7 which show that the person who gives infak (*al-muwāqif*) has the property that is infaked so that he has the power to act legally on the property, for example by infaqing it in the way of Allah SWT.

In the verses mentioned above, Allah SWT attributes property to its owner which shows that they are the owner of the property, and the Qur'an acknowledges the ownership of the person who controls the property. The above verses can be said to be indirect evidence that recognizes the existence of land rights in the Qur'an because they do not specifically point to land rights. Then, are there verses that explicitly acknowledge the existence of land rights in the Qur'an? To answer this question, it is necessary to search for the term land in the Qur'an. Based on the research carried out, the Qur'an uses several terms to reveal about the land. In this case, the Qur'an uses three terms to refer to land, namely: *al-arḍ, at-ṭīn*, and *at-turāb.*

The word *al-arḍ* in the Qur'an is mentioned 461 times (An-Najjār, 2005). While the word *at-ṭīn is mentioned 12 times* ('Abd al-Bāqī, 1945). The word *at-turāb* is used 4 times ('Abd al-Bāqī, 1945). The word *al-arḍ* in the Qur'an is used to designate different meanings, namely: (1) the earth as a whole, as opposed to the heavens; (2) the land that is the place where people live (planet earth); (3) a part of the earth, namely a country or region, and (4) sand or dust that covers the land or soil. Thus, not all of the words *al-arḍ* in the Qur'an are used to declare land as land occupied by humans which is the object of ownership in this study. As for the word *at-ṭīn* in the Qur'an, for example in Qs. as-Ṣāfāt/37:11 and Qs. Ṣād/38:76, it means dust mixed with water or soil mixed with water (Al-Aṣfahānī, 1992). Thus, the word *at-ṭīn does not indicate land as a land where human life is the object of ownership as referred to in this study.*

The word *at-turāb* in the Qur'an, e.g. Qs. ar-Ra'd/13:5 and Qs. Fāṭir/35:11, is often interpreted as land. In linguists and commentators, the meaning of the word *at-turāb* is well known among the Arabs. Therefore, they tend not to give a specific meaning when explaining it, as al-Rāghib al-Aṣfahānī does by saying that the meaning is already known in general (*ma'rūf*) (Al-Aṣfahānī, 1992). The same thing was done by Ibn Manẓūr, but by implying that the meaning is the same as the meaning *of al-arḍ* (Manẓūr, 1994). Verses that explicitly acknowledge the existence of property rights over land, it can be said that there are a number of verses in the Qur'an that explicitly acknowledge human ownership of land. The verses in question can be grouped into 2 (two) categories, namely:

First, the verses that directly attribute the ownership of land to humans, e.g. Qs. al-Aḥzāb/33:27 which means, *"And He bequeaths to you their lands, houses, and possessions, and (likewise) the land that you have not trodden on. And Allah is Omnipotent over all things."* In this verse, Allah SWT. explicitly declares the land to the People of the Book (Bani Quraizah) as its owners, which Allah SWT. then grants to the Muslims. Commentators differ in their opinions about the location of the land in question between the land of Hunain, the land of Mecca, the land of Persia and Rome, and some even have the opinion of all the land that was liberated by Muslims until the Day of Resurrection (Al-Qurṭubī, 1964). Another example is Qs. al-A'raf/7:110 which means, *"Who wants to expel you from your country..."*. The land in this verse is a reflection of a large amount of land, namely the land of Egypt because the context of the verse is related to the power of Pharaoh in Egypt. In this verse, Allah SWT. attributed the land of Egypt to Pharaoh and his followers which shows that the ownership of land in the Qur'an is acknowledged as having it. The other verses are found in Qs. Ṭāhā/20:57 and 63, Qs. as-Shu'arā'/26:35, Qs. Ibrāhīm/14:13, and Qs. al-Qaṣaṣ/28:57.

Second, the verses that show that Allah SWT made the earth for mankind, such as Qs. al-Baqarah/2:22 which means, *"(He is) the one who made the earth a bed for you...,* and Qs. Ghāfir/40: 64 which reads, *"It is Allah who made the earth for you a dwelling place..."*, Qs. al-Mā'idah/5:21 which means, *"O my people! Enter the holy land (Palestine) that Allah has appointed for you...*", Qs. Ibrāhīm/14:14 which reads, *"And We will surely place you in those lands after them..."*, Qs. Ṭāhā/20:53 which means, *"(God) who has made the earth a stretch for you..."*, and Qs. az-Zukhrūf/43:10 which means, *"Who made the earth a dwelling place for you..."*. In these verses, Allah SWT. bestows land on humans so that it can be understood that the bestowal is a form of direct "inheritance" from Allah SWT. to humans to be owned by humans and used for their survival.

Like the Qur'an, the hadith also acknowledges the existence of land rights. This can be inferred inductively from a large number of hadiths that attribute property and land to their owners. The transfer of property to its owner in the hadith, although it does not specifically refer to the right to land, is indirectly a postulate for the recognition of land rights because land is the main property for humans. Thus, a hadith that acknowledges the existence of property indirectly becomes a postulate that acknowledges the existence of land rights. In addition, there are also a number of hadiths and atsars that specifically recognize the right to land, both in the form of *qaulī* hadith and *fi'lī hadith.Among the* qaulī *hadiths* that specifically recognize the right to land is the Prophet PBUH's Saying, which means, *"Whoever revives the dead land, the land belongs to him"* (At-Tirmiżī, 1975). In another hadith the Prophet PBUH said: *"Whoever prospers a land that does not belong to a person, then he has a better right to it"* (Al-Bukhārī, 1442a). While the basis derived from atsar, for example, is the words of 'Umar Ibn al-Khaṭṭāb Ra.: *"Indeed, whoever gives life to the dead land, he has more right to the land*" (Shaybah, 1409).

The recognition of land rights is also reflected in the actions of the Prophet (peace and blessings of Allaah be upon him) who paid the price of the land of the Banu Najjār according to the standard, even though the landowner was willing to give it away for free. All of this shows the recognition of land ownership in fiqh. The hadith and atsar mentioned earlier directly attribute land to its cultivator or manager, which shows that ownership of land is recognized in fiqh.

In addition to the specific hadiths mentioned earlier, there are a number of hadiths that attribute property to the owner, where land indirectly enters into the meaning of the hadith, for example the words of the Prophet (peace be upon him) which means, *"Every Muslim towards other Muslims is haram and his blood, property and honor are preserved*" (Muslim Ibn al-Hujjāj, n.d.-b). In another hadith, the Prophet (peace and blessings of Allaah be upon him) said: *"I am commanded to fight mankind until they testify that there is no God but Allah and that Muhammad is the Messenger of Allah, to establish prayer, to pay zakat. If they do that, their blood and property will be protected except by the right of Islam and their reckoning is with Allah SWT"* (Al-Bukhārī, 1442). Another example, for example, is the words of the Prophet (peace *be upon him): "Indeed, your blood, treasure, and honor are highly glorified, as is the glory of this day (Arafah), this month (Dhul-Hijjah) and this land (Mecca)*" (Muslim Ibn al-Hujjāj, n.d.-a). In the hadiths mentioned earlier, the Prophet PBUH attributed property to its owner which shows that the ownership of property, including land, is recognized in jurisprudence.

In addition to the above naqli evidence, the existence of land rights is also recognized based on the evidence of aqli, where one of the primary purposes of the sharia (*maqāṣid asy-syarī'ah ḍarūriyyah*) is to protect the soul from various things that harm and destroy it. One way to protect the soul is to provide food for the body. The various types of food that humans can consume today are nothing but the result of the soil thanks to the hard work of farmers. The various foods that humans need to protect the soul will not be available if the ownership of the land is not allowed by the Shari'a, so the purpose of the Shari'ah to protect the soul becomes a burden on something impossible because the will is not allowed (*taklīf bi al-muḥāl).* Therefore, the recognition of land rights is not only permissible, but it is obligatory to be allowed because if something that is obligatory is not perfect except for the other wills, then the will becomes obligatory (*mā lā yatimmu al-wājib illā bihi fahuwa wājibun*).

In Indonesian law, the earth, water, and angksa space, including the natural resources contained in them, are at the highest level controlled by the state as the organization of power of all the people

(Law No. 5 of 1960 concerning the Basic Regulations of Agrarian Principles, 1960). The right of domination by the state authorizes the state to: (1) regulate and organize the designation, use, provision and maintenance of the earth, water and space; (2) determine and regulate the legal relations between people and the earth, water and space; (3) to determine and regulate the legal relations between persons and legal acts concerning the earth, water and space. On the basis of the right to control that it has, the state then determines the existence of various rights to the earth's surface (called land) that can be given to and owned by people either alone or together with other people and legal entities (Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles., 1960). The various rights to land are: property rights, business use rights, building use rights, use rights, lease rights, land clearing rights, forest product collection rights, and other rights that are not included in the above rights that will be stipulated by law (Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles, 1960).

Based on the description above, it is clear that the control and use of land either individually, jointly, or by legal entities is possible and allowed as long as the possession and use is in accordance with the provisions of the applicable laws and regulations. Specifically related to land rights, the law expressly states that it is one of the rights that can be owned by Indonesian citizens, both men and women, as stated in Article 9 paragraph (2) which reads: *"Tiap-tiap warga negara Indonesia, baik laki-laki maupun wanita mempunyai kesempatan yang sama untuk memperoleh sesuatu hak atas tanah serta mendapat manfaat dari hasilnya, baik bagi diri sendiri maupun keluarganya."*

The basis of land ownership is also found in Article 28 H paragraph (4) of the 1945 Constitution which reads: *"Setiap orang berhak mempunyai hak milik pribadi dan hak milik tersebut tidak boleh diambil alih secara sewenang-wenang oleh siapapun."* One of these types of individual property rights is private ownership of land. In addition, Articles 21, 29, 36, 42, and 45 of Law Number 5 of 1960 also show the principle of individual land control and use. However, in the individual land rights according to the Basic Agrarian Law, there is an element of togetherness. The element of togetherness or community element exists in each land right, because all land rights directly or indirectly come from the Nation's Rights, which are common rights. The individual nature of land rights which at the same time contains elements of togetherness or community, in Article 6 of Law Number 5 of 1960 has been affirmed, where all land rights have a social function (Sutedi, 2008).

In addition to recognizing the existence of land rights as above, fiqh and Indonesian law also seek to protect these rights. In fiqh, the land is the earth itself. In the Qur'an, land is defined as a *mustaqar place,* which is a place of residence where humans settle during their life in the world. Not only that, the land is where man comes, where man stands, and where man returns in death. From the ground, plants, trees, and a number of animals live and multiply. Thus, soil is very important for human life, not only because some food comes from the soil, but can also be used as a purification tool for the purpose of worship and a source of water out. The earth is also referred to in the Qur'an as *matā'*, which is a place that provides comfort for humans as long as it is not tampered with by greedy human ignorant hands. It is called a place of comfort (*matā'*) because the earth provides all the necessities of life that will ensure the survival of humans. The earth and all its contents are raised to the subject of the Qur'an in order to get serious attention from mankind as in Qs. al-Mā'idah/5:10 and Qs. al-A'rāf/7:24. It is from the earth that the needs of food, drink, clothing, food, and all other life, including petroleum and its mines, can be dug up and obtained. All of these are God's blessings that support the survival of human beings and life on earth (Yafie, 2006).

Departing from the importance of land in human life, it is not surprising that the right to land is not only recognized for its existence but also protected strictly and completely. According to Yūsuf al-Qarḍāwī, the protection of property is a form of shari'a recognition that the desire to own something is human instinct and nature on the one hand, but on the other hand it is the basis of distinction between free people and slaves, even between humans and animals, as shown by Qs. an-Naḥl/16: 75 which reads (Al-Qarḍāwī, 2010).

﴿ضَرَبَ اللَّهُ مَثَلًا عَبْدًا مَمْلُوكًا لَا يَقْدِرُ عَلَى شَيْءٍ وَمَنْ رَزَقْنَاهُ مِنَّا رِزْقًا حَسَنًا فَهُوَ يُنْفِقُ مِنْهُ سِرًّا وَجَهْرًا هَلْ يَسْتَوُونَ الْحَمْدُ لِلَّهِ بَلْ أَكْثَرُهُمْ لَا يَعْلَمُونَ﴾

Allah (also) made a parable of two men, whom a mute man could not do so that he became his bearer. Wherever he is told (by the insurer), he cannot bring any good at all. Is that the same as the one who commands to do what is right, and he is on the straight path?

The concept of protection of land rights is the result of drawing inductive conclusions from a number of verses of the Qur'an and hadith that prohibit humans from eating their neighbor's property in a wrong way, as well as a number of verses and hadiths that provide punishment both in this world and the hereafter for a number of crimes aimed at property in general, and land in particular. Based on the istiqra' of the Qur'an and the hadith, the ushul fiqh experts then agreed that the protection of property is one of the primary objectives of sharia that must be carried out by both individuals, community groups and the government. Therefore, in order to protect property from various threats of crime, sharia applies various rules related to property, ranging from how to get the right property, how to spend it to apply various sharia provisions in order to protect the property.

In addition to recognizing halal efforts made by humans as a way to obtain land, for example by reviving dead land, Islamic law also stipulates various provisions in order to protect land rights so that these rights are not lost in vain. The protection of land rights is reflected in the words of Allah SWT. which prohibits people from consuming their neighbor's property in a null manner as stated in Qs. al-Baqarah/2: 188 which reads,

﴿وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ﴾

And do not eat the wealth among you in an unlawful way, and (do not) bribe the judges with it, so that you may eat some of the wealth of others in a sinful way, when you know it.

According to some narrations, the reason for the above verse is related to the land dispute that occurred between Imra'u al-Qais Ibn 'Ābis al-Kindī and 'Ābdān Ibn Asywa' al-Haḍramī, both of whom complained to the Prophet PBUH about the land dispute. In this case, Imra'u al-Qais as the defendant and 'Ābdān as the plaintiff. So this verse came down, and the Messenger of Allah (peace and blessings of Allaah be upon him) decided that the land claimed by 'Ābdān was rightfully his, so the Messenger of Allah (peace and blessings of Allaah be upon him) decided the land for himself, and Imra'u al-Qais accepted the decision of the Prophet (peace be upon him). This verse shows the great Islamic concern for the protection of land rights so that Allah SWT. "intervenes" to decide the land dispute directly, to ensure that the property rights to land are properly protected (Al-Qurṭubī, 1964; An-Naisābūrī, 1992).

The same prohibition is found in Qs an-Nisa/4:29 which reads,

﴿يَاأَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا﴾

O you who have believed! Do not eat each other's property in a wrong way, except in a trade that takes place on the basis of mutual consent between you. And do not kill yourselves. Indeed, Allah is Merciful to you.

According to commentators, the methods that are void in both verses are non-shari'a methods, such as usury, gambling, fraud, deprivation of rights, and other ways that the owner is not pleased, or the owner is pleased but forbidden by the Shari'a, such as the wages of prostitutes, the wages of shamans, the price of khamar, and so on (Al-Qurṭubī, 1964). The prohibition applies to all types of property, including property in the form of land so that a person's right to land cannot be arbitrarily seized and taken including for and in the name of the public interest. Because, as Abū Zahra said, the

act of taking someone else's property in a null way will kill the ummah, because it spreads damage, takes away rights, does not respect justice, spreads tyranny so that it will destroy the ummah and take away its power in front of other ummah (Zahra, n.d.).

Not only does the hadith recognize the right to land, but the hadith also provides protection for these rights. Because, the principle of ownership of land is a privilege (*al-ikhtiṣāṣ*) given by the sharia to the holder of land rights to carry out various actions or transactions and to benefit from the land. The privilege would not exist, if the object of the privilege itself was not protected. Therefore, the sharia pays great attention to the protection of land rights, especially property rights. In fact, the protection was openly stated by the Prophet (peace be upon him) by the largest human gathering of his time, namely the day of Arafah, so that the treatise on the protection of property in general, and the right to land in particular reached all mankind. This is as stated in a hadith which means, *"Indeed, your blood, treasure, and honor are highly glorified, as is the glory of this day (Arafah), this month (Dhul-Hijjah) and this land (Mecca)*" (Muslim Ibn al-Hujjāj, n.d.-a). In another hadith the Prophet PBUH said: *"Every Muslim against other Muslims is haram and guards his blood, property and honor"* (Muslim Ibn al-Hujjāj, n.d.-b). In another hadith, the Prophet (peace and blessings of Allaah be upon him) said: *"I am commanded to fight mankind until they testify that there is no God but Allah and that Muhammad is the Messenger of Allah, to establish prayer, to pay zakat. If they do that, then their blood and property will be protected except by the right of Islam and their calculation is with Allah SWT."* (Al-Bukhārī, 1442b).

In the hadiths mentioned above, the Prophet (peace and blessings of Allaah be upon him) explicitly provides protection for property, including land equivalent to the protection of the soul and the protection of honor which indicates the high level of protection provided by the sharia for property in Islamic jurisprudence. In a specific hadith, the Prophet (peace and blessings of Allaah be upon him) threatened someone who took another person's land in a tyrannical way with a heavy threat. As in a hadith narrated by Aisha Ra the Prophet PBUH said: *"Whoever takes an inch of land unjustly, then seven layers of land will be laid on him*" (Al-Bukhārī, 1442a). The threat of punishment for someone who takes land owned by another person unjustly shows the illegality of the act as well as reflects the protection of land ownership in Islamic jurisprudence. So, make it clear that the right to land is a right that is recognized and protected in jurisprudence. The concept of protection includes protection of the physical land from seizure or encroachment by other parties, as well as protection for land rights holders to benefit from land according to the type of rights they have. This also refutes the words of Joseph Schacht who said that although the protection of property is mentioned many times in Islamic law, the concept of property protection is not contained in it (Schacht, 2010). The prohibitions contained in the nash of the Qur'an and hadith in the form of prohibitions on eating usury, stealing, robbing, seizing, taking other people's property without the consent of the owner, and so on, are forms of protection for ownership in Islamic law (fiqh).

As an implementation of the values of justice that are demanded by the world community, the protection of property rights is important in today's world. This can be seen in one of the contents *of the Universal Declaration of Human Rights* declared on December 10, 1948 where article 17 states that, *"(1) Everyone has the right to own property, either alone or jointly with others. (2) No one should be deprived of his property arbitrarily."* Long before that, there was *the Declaration of Human Rights and Citizens* (*Declaration des droits de l'homme et du citoyen*) which was initiated in France in 1789, one of its 15 contents was the recognition of the independence of property rights. If we look back, long before the two declarations above, the recognition and protection of property rights can be found in the *Magma Carta* Charter initiated in England in 1245, in which it was stated that,

> "No county police chief or bailiff, or any other person, shall take a horse or wagon of any color of a free country for transportation duties, contrary to the will of such free citizens. Neither we nor our bailiff will take for our palace or for our other work, wood that is not ours, against the will of the owner of the wood."

Historically, the *Magma Carta* Charter has been a milestone for the recognition of human rights in the world, including the recognition and protection of property rights (Darmodiharjo & Shidarta, 2006;

Stahnke & Martin, 1998). What is stated in the *Universal Declaration of Human Rights* related to the protection of property rights has also been well contained in the formulation of the Preamble to the 1945 Constitution. This connection can be seen in the last paragraph of the Preamble to the 1945 Constitution which contains the intention of establishing the Indonesian State Government. As stated by Darji and Shidarta, the last clause of the Preamble to the 1945 Constitution contains human rights in the political, civil, economic and socio-cultural fields. The purpose of the establishment of the Indonesian State Government is to protect these rights, including property *rights* which include the right to own something, the right to transfer these property rights, such as selling, gifting, granting, and so on, as well as the right to use them (Darmodiharjo & Shidarta, 2006). In article 28H paragraph (4) of the 1945 Constitution 2nd Amendment clearly states that,

> "Everyone has the right to the protection of his or her personal life, family, honor, dignity, and property, and to the right to a sense of security and protection from the threat of fear to do or not do something that is a human right."

Article 28H of the 1949 Constitution above is a mandate that contains a prohibition for anyone to carry out actions of revocation or reduction of land rights, arbitrary acquisition of proprietary land, which has an impact on the loss of residence, employment, dignity and dignity, decent livelihood, or the enjoyment of property rights over the land they own. The revocation or reduction of land rights can only be carried out if it is in accordance with the norms of law, propriety and fairness, a very urgent and urgent need for the public interest accompanied by a proper compensation, or a transfer to another suitable location where the place of destination of the transfer is available public and social facilities, such as the availability of educational places for school children, markets, entertainment venues, mosques, hospitals, asphalt roads, traffic infrastructure, hospitals, and so on, which are needed by landowners or other affected communities (Sutedi, 2008).

The protection of property rights is also expressly stated in Article 29 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which states that, *"Setiap orang berhak atas perlindungan diri pribadi, keluarga, kehormatan, martabat, dan hak miliknya"*. The existence of the protection of property rights is an acknowledgment that human existence cannot be separated from property rights in its various forms: land, houses, food, clothing, vehicles, and so on. Because most of the desires of human life depend on property rights, and with that property rights can also be fulfilled various needs; primary, secondary, and tertiary. From a piece of land of property, for example, a farmer can enjoy various agricultural products that are useful to meet the needs of his people and the people who depend on him. Property rights are an infrastructure to meet the needs of life which at the same time means maintaining life itself, because without property rights human beings will not be able to survive.

Property rights are also a means of achieving prosperity and happiness in life as well as being the basis for the expectations of a person and those who depend on him regarding the future. Moreover, as Thomas Aquinas said, individual property rights are the basis of human individual development. In other words, property rights allow humans to develop as human beings, both physically, psychologically, and ethically. This means that only with property rights, humans can develop into complete human beings. By mastering and developing property rights, humans can develop their physical life and at the same time develop as individuals psychologically and morally (Keraf, 2001). In addition to having its intrinsic value, property also has the value of affection, because it is an inheritance from parents, a reward for hard work, or a future basis for their children. Jeremy Bentham reveals that in essence everything related to ownership represents a part of a person's self (attention, effort and economy) that cannot be taken away without tearing apart his feelings (Bentham, 2006). Therefore, it is not surprising that many disputes, even wars occur because of this crime and violation of property rights.

In accordance with the provisions of Article 570 of the Civil Code, property rights to a property give birth to automatic legal protection. Thus, the owner of property automatically has the right to enjoy the benefits of a property he owns without being violated by others. He also has the right to act freely over the material thing with complete sovereignty. In the context of land ownership, the

landowner is free to sell, grant, or give the land he owns to anyone as long as it does not contradict the provisions that are coercive or violate the public interest, or the rights of others. It also includes the right to charge or collateral the land as debt collateral (Muljadi & Widjaja, 2005; Usman, 2011).

The right to enjoy property rights as mentioned above will only be fulfilled if the property and its owner are protected from various forms of crime and violations directed at it. Otherwise, these rights will not be able to be enjoyed by their owners, and on the contrary, they will bring suffering economically, physically, and psychologically. The impact in a broader scope is that the prosperity, peace and happiness of the people of a country will be disturbed and even completely lost if various crimes against property rights and property holders are allowed to continue without adequate legal protection (i.e. legal and legal protection). In this regard, Jeremy Bentham states that "a nation cannot prosper except with an inviolable respect for property" (Bentham, 2006).

Settlement of Land Acquisition Rejection in Fiqh and Law

From the history that is interesting about the rejection of land owners to land acquisition activities above, it can be seen that each caliph has a different policy and approach in responding to the rejection in accordance with the consideration of the benefits according to each caliph. From these cases, three mechanisms for resolving the rejection of land acquisition in fiqh are hinted, namely

First, settlement through deliberation. Deliberation is one of the ways that can be used in resolving the problem of rejection of land acquisition activities for the public interest. Deliberation is the negotiation or exchange of opinions on a problem or asking for opinions from various parties to be considered and taken for the common good (Ismā'īl al-Anṣārī, 1990). The essence of deliberation in the time of the Prophet was the exchange of thoughts and opinions in solving and testing various problems by a group of people who had expertise in these problems in order to obtain ideas and opinions that were closest to the truth or that were seen as the best solution (Praja, 1995).

In Islam, musyarawah is one of the ways to solve a problem or dispute, both in the personal realm between individual communities, solving problems in the family (al-Baqarah/2: 233), solving community problems as a community group (Qs. as-Shura/42: 38), and to solve problems related to the relationship between individuals and communities with the government (Qs. Ali 'Imran/3: 159) where the problem of refusal to acquire land can be included into the third category.

In resolving the problem of rejection of land acquisition, deliberation can be carried out between fellow citizens, for example in the case of land rights holders who do not agree on land acquisition activities carried out by the government, either because of differences in interests by each land rights holder, or because the land to be freed is common property, or because land acquisition activities will have an impact on the environment in the land rights holder community stay. Deliberation can also be carried out to resolve the problem between the land rights holder and the government in case there is a difference of desire between the government and the land rights holder. Then how is the deliberation conducted?

Answering the above question, it can be said that even though deliberation is one of the main teachings of Islam, but the deliberation activity itself is not determined through certain technical mechanisms. This means that the technical implementation of the deliberation is completely left to the parties who will deliberate or the party appointed to lead the deliberations. However, there are general guidelines that are guidelines so that the implementation of deliberation can produce an agreement that brings common good, namely: (1) a gentle attitude in deliberation, especially for a leader. Therefore, harsh speech and stubbornness must be avoided, because otherwise, the deliberation partners will scatter away; (2) forgive each other when mistakes occur; and (3) readiness to implement decisions or the results of deliberations (Shihab, 1998).

Second, the solution is through the mechanism *of taḥkīm.* From the case of 'Abbās ibn 'Abd al-Muṭāllib Ra.'s rejection of 'Umar Ra.'s plan to free up his land for the expansion of the Prophet's Mosque, it can be seen that *taḥkīm* is one of the alternative solutions to the rejection of land acquisition activities. As mentioned earlier, when 'Umar Ra. planned to liberate the land of al-'Abbas Ra., the plan

was rejected by 'Abbās Ra. on the grounds that the land is a direct gift from the Prophet (saw) so that it has historical value that cannot be eliminated. As a result, there was a dispute between 'Umar Ra. and al-'Abbas Ra. until they agreed to appoint Ubay ibn Ka'ab (the leader of the Muslims at that time) as a mediator or mediator who would mediate their disputes. The agreement of the two disputing parties appointing a fair and neutral leader of society to decide the disputed matter is called *taḥkīm.*

In Article 1790 of *the Majallah al-Aḥkā al-'Adliyyah, taḥkīm* is defined as "an expression of the agreement of the two disputing parties to appoint a judge at the pleasure of both to decide disputes and lawsuits between the two." (Majallah al-Aḥkām al-'Adliyyah, n.d.). In short, *taḥkīm* is the action of two disputing parties to appoint a judge to establish the law for both (Al-Miṣrī, n.d.). In fiqh, the implementation *of taḥkīm* is not determined through a specific mechanism. This can be done based on the agreement of the disputing parties. In fiqh, the decision of the hakam (mediator) is binding so that it must be implemented by both parties to the dispute without the need for the consent or consent of both parties to the dispute. Thus, the decision of hakam in *taḥkīm* is the same as the decision of a judge in the court system (Al-Miṣrī, n.d.).

In fiqh, *taḥkīm* is widely practiced as a way to resolve disputes and disputes between parties to disputes, especially when the court institution does not exist as it is today. Some of the *taḥkīm* practices that have occurred include: (1) the settlement of the dispute between 'Umar Ra. and Ubay ibn Ka'ab regarding the ownership of date palms where both agreed to appoint Zaid ibn Ṡābit as hakam (mediator); (2) the settlement of a dispute between 'Umar Ra. and an unnamed man regarding a war horse that 'Umar Ra. bought on the condition of khiyar, in which both agreed to appoint Shura'ah; (Al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah, 1427). and (3) the settlement of the dispute between 'Ali ibn Abī Ṭalib Ra. and Mu'āwiyyah ibn Abī Sufyān in which both agreed to appoint Abū Mūsā al-Ash'arī and Amr ibn 'Āṣ as hakam.

In the modern era, the mechanism *of taḥkīm* is actually still relevant to be practiced in resolving disputes between two parties in dispute, including the problem of refusal to acquire land for the public interest. With regard to the issue of rejection of land acquisition activities, *taḥkīm* can be practiced in the form of an agreement between the government and the land rights holder to appoint someone who is considered fair and neutral in accordance with the cultural and cultural characteristics of the community whose land will be liberated, for example: traditional chiefs, tribal chiefs, religious leaders: kiyai, tengku, buya, tuan guru, and so on. The settlement of the problem of refusal of land acquisition through *the taḥkīm* mechanism should be regulated in the law as one of the alternative settlements considering that the settlement of rejection through the courts tends to be avoided by the general public because it is related to complicated and time-consuming judicial procedures.

Third, settlement through the courts. In accordance with one of the functions of the court in jurisprudence, which is to decide disputes between the parties to the dispute, the issue of refusal to acquire land can also be resolved through the courts (Al-Māwardī, n.d.). Settlement through this court can be considered as a last resort if both previous methods of settlement are unsuccessful. In this case, land rights holders who object to the government's plan to release or revoke their rights to the land can file their objections with the court. If the court accepts the objection of the land rights holder, then the decision that has been in force is still binding and must be obeyed by the government (Al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah, 1427). In this case, the government that needs land can move the location of the construction of public interest infrastructure to another location. On the other hand, if the court rejects the objection of the land rights holder, then the government can proceed with the development as planned by compensating the land rights holder, either directly to the land rights holder or through custody in court.

If in practice the government does not heed the court's decision by continuing to revoke property rights and continue development, then according to the provisions of fiqh, the holder of land rights can file his lawsuit with a special judicial institution called *wilāyah al-maẓālim* (Djalil, 2012). This is in accordance with one of the duties *of wilāyah al-maẓālim* in jurisprudence, which is to prevent the confiscation of property, both by the government and by "strong people". The duty *of naẓīr al-maẓālim*

is to prevent wrongdoing if it has not been done, and if it has been done, it depends on the complaint of the wronged person (Al-Māwardī, n.d.).

In contrast to fiqh which does not clearly regulate the mechanism for resolving rejection of land acquisition activities, laws and regulations in Indonesia have regulated this comprehensively. According to the provisions of Article 16-17 of Law Number 2 of 2012, at the preparation stage, agencies that need land together with the provincial government based on the land acquisition planning document that has been prepared in the first stage (planning) carry out the following: (1) notify the development plan to the community at the location of the development plan, either directly (e.g. socialization) or indirectly (e.g. through print or electronic media); (2) conducting initial data collection of the location of the development plan; and (3) conducting public consultation on development plans.

The public consultation of the development plan mentioned above aims to obtain agreement on the location of the development plan from the right parties (who own or control the land). In this case, public consultation is carried out by involving the right parties and affected communities at the development plan site or at the agreed place. If an agreement is reached with the right party in the public consultation, it will be stated in the form of the minutes of the agreement. So, on the basis of the agreement, the agency that needs the land submits an application for a location determination to the governor. The Governor then determines the construction location within a maximum of 14 (fourteen) working days from the receipt of the submission of the determination application by the agency that needs the land. This public consultation lasts for a maximum of 60 (sixty) working days. If up to a period of 60 (sixty) working days of the implementation of the public consultation on the development plan there are still parties who object to the development site plan, then a public consultation will be held again with the objecting party for a maximum of 30 (thirty) working days (Law Number 2 of 2012 concerning Land Pawning for Development for the Public Interest., 2012).

If in the public consultation there are still parties who object to the development location plan, then the agency that needs the land reports the objection to the local governor. The Governor formed a team to conduct a study on objections to the development site plan consisting of: a. the provincial regional secretary or an official appointed as chairman and member; b. Head of the Regional Office of the National Land Agency as secretary and member; c. agencies that handle affairs in the field of regional development planning as members; d. Head of the Regional Office of the Ministry of Law and Human Rights as a member; e. Regent/Mayor or officials appointed as members; and f. academics as members. The team formed by the governor is tasked with: a. inventorying the problems that are the reason for objections; b. conduct a meeting or clarification with the objecting party; and c. make recommendations to accept or reject objections. The results of the team's study in the form of recommendations are accepted or rejected objections to the construction site plan within a maximum of 14 (fourteen) working days from the receipt of the application by the governor. Furthermore, the Governor based on the recommendation of the objection assessment team issued a letter of acceptance or rejection of objections to the development site plan. In the event of rejection of objections to the development site plan, the governor determines the construction location. However, if objections are received, the governor notifies the agency that needs the land to submit a development location plan in another place (Law Number 2 of 2012 concerning Land Pawning for Development for the Public Interest., 2012).

If after the determination of the location of the builder by the governor there are still objections, then the entitled party can file a lawsuit with the local State Administrative Court no later than 30 (thirty) working days from the issuance of the determination of the location. Furthermore, the State Administrative Court decides whether the lawsuit is accepted or rejected within a maximum of 30 (thirty) working days from the receipt of the lawsuit. Parties who object to the decision of the State Administrative Court within a maximum of 14 (fourteen) working days may file an appeal to the Supreme Court. The Supreme Court is obliged to give a decision within a maximum of 30 (thirty) working days from the receipt of the cassation application. A court decision that has legal force remains

the basis for whether or not to continue the acquisition of land for development for the public interest (Law Number 2 of 2012 concerning Land Pawnshop for Development for the Public Interest., 2012).

4. CONCLUSION

This study concludes that what is meant by land acquisition is any activity of providing land for the public interest which is carried out by releasing the legal relationship between the right holder and the land he or she owns through the provision of proper and fair compensation. This study concludes that fiqh uses 3 (three) approaches in resolving the problem of rejection of land rights holders to land acquisition activities for the public interest, namely: (1) through a deliberation mechanism; (2) through the mechanism of taḥkīm; and (3) through the court mechanism. The use of these three methods adjusts the level of complexity of the problem of rejection of land acquisition activities based on considerations of the benefits and mechanisms chosen by land rights holders in resolving their disputes with the government.

The settlement of rejection of land acquisition activities in the national law is explicit through the mechanisms and stages that have been determined by the law. Briefly, two settlement mechanisms can be concluded, namely: (1) settlement through deliberation between land rights holders and the land procurement committee which as a whole lasts within 90 (ninety days); and (2) settlement through the court, in the event that the holder of land rights still objects to land acquisition activities even though the objection has been expressly rejected and the governor has determined the land for the public interest. The authority to resolve this rejection or lawsuit lies with the State Administrative Court and the Supreme Court (in the event that the land rights holder files an appeal against the decision of the State Administrative Court).

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