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Jurnal Ilmu-Ilmu Ushuluddin

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and Movement**

Syaifan Nur and Dudung Abdurahman

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**تنوع معاني اللباس في القرآن
(دراسة التفسير الموضوعي)**

صوفريانسدا

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Analysis on Hadis *Iḥyā' al-Mawāt***

Ahmad Suhendra

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Taymiyah**

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DAFTAR ISI

Sufism of Archipelago: History, Thought, and Movement <i>Syaifan Nur and Dudung Abdurahman</i>	123
The Face of Mountainous Islam: The Dynamic of Islam in the Dieng Mountains Wonosobo, Central Java, Indonesia <i>Ahmad Salehudin, Moch. Nur Ichwan dan Dicky Sofjan</i>	135
The Doctrine of <i>Logos</i> Within Ibn ‘Arabi Mystical Philosophy <i>Muzairi, Novian Widiadharna</i>	155
(دراسة التفسير الموضوعي) تنوع معاني اللباس في القرآن صوفريانسد	173
Models of Land Ownership in Islam: Analysis on Hadis <i>Ihyā’ al-Mawāt</i> <i>Ahmad Suhendra</i>	189
Religion, Radicalism and National Character: In Perspective of South Sulawesi Local Wisdom <i>Mahmuddin</i>	201
Exclusive Islam From The Perspective of Ibn Taymiyah <i>Siti Mahmudah Noorhayati and Ahmad Khoirul Fata</i>	213
The Role of Traditional Islamic Boarding School-Based Islamic Studies as Radicalism and Intolerance Flow’s Blocking Agent <i>Suryadi and M. Mansur</i>	225

Models of Land Ownership in Islam: Analysis on Hadis *Iḥyā' al-Mawāt*

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Abstract

This article discusses land ownership from the perspective of tradition, especially the tradition of the revival of the dead earth (Iḥyā' al-Mawāt). This relates to the land conflicts that often occur, so it requires a religious perspective in land ownership. Therefore, the issue raised is how the ownership of land in the Hadith? How Hadith provide a solution to the land dispute? To answer it used historical approach, hermeneutic, and sociology. Turns ownership in Islam there are three, namely individual ownership, common ownership and state ownership. Islam recognizes individual ownership is perfect (al-milk al-tāmm) and imperfect (al-milk al-nāqis). Criteria of land ownership in the Hadith oriented aspects of justice and benefits (maṣlaḥlah). Hadith Iḥyā' al-Mawāt give you an idea that the Prophet prevent conflicts caused by land disputes by explaining the status and ownership of land with cultural framework. Efforts were made persuasively by a cultural approach, in addition to the structural approach.

Keywords: *prophetic tradition, Iḥyā' al-Mawāt, land ownership, land conflicts*

Abstrak

Artikel ini membahas tentang kepemilikan tanah dari perspektif tradisi, terutama tradisi kebangkitan kembali bumi yang mati (Iḥyā' al-Mawāt). Hal ini berkaitan dengan konflik tanah yang kerap terjadi, sehingga membutuhkan perspektif agama dalam kepemilikan tanah. Karena itu, masalah yang diangkat adalah bagaimana kepemilikan tanah dalam Hadis? Bagaimana Hadis memberikan solusi terhadap sengketa tanah? Untuk menjawabnya digunakan pendekatan historis, hermeneutik, dan sosiologi. Ternyata kepemilikan dalam Islam ada tiga, yaitu kepemilikan individu, kepemilikan bersama dan kepemilikan negara. Islam mengakui kepemilikan individu sempurna (al-milk al-tāmm) dan tidak sempurna (al-milk al-nāqis). Kriteria kepemilikan tanah dalam hadis berorientasi aspek keadilan dan tunjangan (maṣlaḥlah). Hadis Iḥyā' al-Mawāt memberi Anda gagasan bahwa Nabi mencegah konflik yang disebabkan oleh sengketa tanah dengan menjelaskan status dan kepemilikan tanah dengan kerangka budaya. Upaya dilakukan secara persuasif dengan pendekatan budaya, disamping pendekatan struktural.

Kata Kunci: *Hadis, Iḥyā' al-Mawāt, kepemilikan lahan dan konflik*

Introduction

Land is the field in which human run all their activities, since housing until working. Zayyin Alfijihad unfolds five meanings embedded in land for human being. *First*, land is work field producing human needs. *Second*, land is field for humans to run their activities. *Third*, land is a place where their environment exists. *Fourth*, land is a part of history of human being. Hence,

human cannot live without land. This explains the reason causing social conflict over land.

In world history, social conflict over land first happened before Indonesia existed, even before the advent of Islam in Arab. At the time, human population was not as high as now it is, and demarcation of land was not yet obvious. The sanguinary was the case of struggle over the land, over the control of and right to use it.

Such a conflict remain in todays, even when all affairs concerning it are well regulated. In Indonesia, for example, many conflicts over land remain unsolved. In such conflicts, varying forms of violence appeared. However, these facts are plausible given its crucial role in development of society. It should be noted that conflicts undergone by modern society are much complicated than those undergone by traditional ones.

Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (Huma/ Association of Society- and Ecology-Based Renewal/Revision of Law) accounted 91.968 individuals with 315 varying background most of which are traditional society are victims in conflicts over natural resources and land just in the last three years. These conflicts (232 cases precisely) took place in 98 municipal/cities in 22 provinces.¹ This shows high intense of social conflicts over land, demanding us to focus on it.

At least, three elements of society get involved in the conflicts; mass people, capital owner, and state. Social conflicts over land always engage the three in all the cases,² hence ultimately transform into national conflict. The main cause is over the ownership of the land, which remain problematic even today.

The case comes worst once state stays in oppose to mass people, and in coalition with

capital owner, hence against mass people instead. Therefore, the solution, or alternative at least, is to know what religion says about this. This is due to the nature of religion as serving regulations nullifying such conflicts (and beyond) to happen. Religion is even able to touch very private stuffs, e.g. inheritance. Religion is demanding humanity in all aspects of life.

Ninian Smart, as Taufik Abdullah cited, asserts that religious studies should depart from the awareness of the multilayer nature of religion. For this reason such a study should be aspectual, determining soberly certain aspect(s) of religion one would explore academically.³ This article discusses soberly the land ownership in the Islamic view and its relevance on conflicts over land happening in todays.

In the Islamic literature (especially hadith/tradition and fiqh/Islamic jurisprudence), we would find the term *ihya' al-mawat*, resurrecting the (dead) land. Departing from that point, we could reflect to these days social conflict over the land, giving religion-based solution to the conflict.⁴ Hence, this article is of attempts to conceptualize religion-based, more specifically Qur'an and hadith-based, conflict resolution.

Hadis on *Ihyā' al-Mawāt* Variation

Hadis is of the main source of truth for Muslims, beside Quran. Hadith contains principals of religion, and is more technical compared to the Qur'an—the latter contains more universal principals. Hence, social problems reported in hadith are more technical than those in Qur'an.

Hadith concerning land ownership and the

³ Taufik Abdullah, "Agama Sebagai Kekuatan Sosial; Suatu Ekskursi di Wilayah Metodologi Penelitian" in Taufik Abdullah and M. Rusli Karim, *Metodologi Penelitian Agama: Suatu Pengantar* (Yogyakarta: Tiara Wacana, 2004), 37-38.

⁴ This is not justification, rather attempts to gain information about reality. Hence this is about to come with scientific approach, demanding objectivity. See Taufik Abdullah, "Agama sebagai Kekuatan Sosial," 37.

¹ <http://www.tempo.co/read/news/2013/10/28/063525269/Korban-Konflik-Pertanahan-Capai-91968-Orang>. accessed on 29 November 2013, at 09.50.

² Mansour Fakih, "Tanah sebagai Sumber Krisis Sosial di mana Mendatang: Sebuah Pengantar" in Untoro Hariadi and Masruchach (ed.), *Tanah, Rakyat dan Demokrasi* (Yogyakarta: Forum LSM-LPSM, 1995), 1. In the contribution, Fakih divide land conflicts into two models, bare/identifiable and unidentifiable (systemic and structural). The former represents as governmental decision positioning land as source of logging exploitation, taking over from the mass people for gardening, reclamation for industries and so forth. The latter represents as the long-term mechanism such as *swasembada* (self-supporting) program, Green Revolution or trading caused. The conflicts between mass people and capital owner or people and the state are obvious taking place in many regions. Mansour Fakih, "Tanah sebagai Sumber Krisis Sosial", 1-2.

encouragement of resurrecting (dead) land are numerous, among them are those in *Ṣaḥīḥ al-Bukhārī*, No. 2167, Kitāb: *al-Muzāra'ah*, Bāb: *Man Aḥyā Arḍā Mawātā*:

حَدَّثَنَا يَحْيَى بْنُ بُكَيْرٍ حَدَّثَنَا اللَّيْثُ عَنْ عُبَيْدِ اللَّهِ
بْنِ أَبِي جَعْفَرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ
عُرْوَةَ عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا عَنِ النَّبِيِّ صَلَّى
اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ أَعْمَرَ أَرْضًا لَيْسَتْ لِأَحَدٍ
فَهُوَ أَحَقُّ قَالَ عُرْوَةُ فَضَى بِهِ عَمْرُ رَضِيَ اللَّهُ
عَنْهُ فِي خِلَافَتِهِ

Yahya bin Bukair has reported to us, al-Lais has delivered to us, from 'Ubaidillah ibn Abi Ja'far, from Muhammad ibn 'Abd al-Rahman, from 'Urwah, from 'Aisyah ra., from the Prophet PBUH, that he prophet said: whoever take care of a land that is not in any ownership, he/she deserves the land.⁵

In other hadith, we find different wording, for example that of Ahmad ibn Hanbal, as follows:

حَدَّثَنَا عَبَادُ بْنُ عَبَّادٍ الْمُهَلَّبِيُّ عَنْ هِشَامِ بْنِ عُرْوَةَ
عَنْ وَهْبِ بْنِ كَيْسَانَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ
قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ أَحْيَا
أَرْضًا مَيْتَةً فَلَهُ مِنْهَا يَعْنِي أَجْرًا وَمَا أَكَلَتْ الْعَوَافِي
مِنْهَا فَهُوَ لَهُ صَدَقَةٌ

'Abbad ibn 'Abbad al-Muhallabi has reported to us, from Hisyam ibn 'Urwah, from Wahb ibn Kaisan, from Jabir ibn 'Abdillah, Jabir ibn 'Abdillah said, that the Prophet PBUH said: whoever takes care of the land, the land is his/hers. He/she deserves the reward and everything insects consume is considered zakat from him/her.⁶

⁵ al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, no. 2167, Kitāb: *al-Muzāra'ah*, Bab: *Man Aḥyā Arḍā Mawātā* in CD-ROM *Mausū'ah al-Ḥadīṣ al-Syarīf al-Kutub al-Tis'ah*, Global Islamic Software, 1997. It should be noted that the numbering of hadith used in this article is based on that in CD-ROM *Mausū'ah al-Ḥadīṣ al-Syarīf al-Kutub al-Tis'ah*. Hence, one might find different numbering in other sources than *Syamilah*.

⁶ Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, no. 13753, Kitāb: *Bāqī Musnad al-Mukāṣṣirīn*, bab: *Musnad Jābir ibn*

Beside these two, there are several hadiths explaining *Ihya' al-Mawat*, precisely 15 hadith with varying last transmitter (the youngest one, termed *mukharrij*) listed in the table below.

Table 1. Hadis on *Ihya' al-Mawat*

No	Mukharrij	Kitab	Number of Hadith	Chain of transmission through <i>sahabat</i>
1	al-Bukhārī	<i>Ṣaḥīḥ al-Bukhārī</i>	2167	1. 'A'isyah 2. Jābir ibn 'Abdullah
2	Aḥmad ibn Ḥanbal	<i>Musnad Aḥmad</i>	13753, 13842, ⁷ 13976, ⁸ 14109, ⁹ 14310, ¹⁰ 14383 ¹¹ and 14550 ¹²	3. Sa'id ibn Zaid 4. 'Umar ibn al-Khaṭṭāb 5. 'Urwah ibn al-Zubair
3	al-Tirmizī	<i>Sunan al-Tirmizī</i>	1303 ¹³ and 1299 ¹⁴	6. Sa'id ibn Mālik.

'Abdillāh in CD-ROM *Mausū'ah al-Ḥadīṣ al-Syarīf al-Kutub al-Tis'ah*.

⁷ Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, no. 13842, Kitāb: *Bāqī Musnad al-Mukāṣṣirīn*, bab: *Musnad Jābir ibn 'Abdillāh* in CD-ROM *Mausū'ah al-Ḥadīṣ al-Syarīf al-Kutub al-Tis'ah*.

⁸ Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, no. 13976, Kitāb: *Bāqī Musnad al-Mukāṣṣirīn*, bab: *Musnad Jābir ibn 'Abdillāh* in CD-ROM *Mausū'ah al-Ḥadīṣ al-Syarīf al-Kutub al-Tis'ah*.

⁹ Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, no. 14109, Kitāb: *Bāqī Musnad al-Mukāṣṣirīn*, bab: *Musnad Jābir ibn 'Abdillāh* in CD-ROM *Mausū'ah al-Ḥadīṣ al-Syarīf al-Kutub al-Tis'ah*.

¹⁰ Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, no. 14310, Kitāb: *Bāqī Musnad al-Mukāṣṣirīn*, bab: *Musnad Jābir ibn 'Abdillāh* in CD-ROM *Mausū'ah al-Ḥadīṣ al-Syarīf al-Kutub al-Tis'ah*.

¹¹ Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, no. 14383, Kitāb: *Bāqī Musnad al-Mukāṣṣirīn*, bab: *Musnad Jābir ibn 'Abdillāh* in CD-ROM *Mausū'ah al-Ḥadīṣ al-Syarīf al-Kutub al-Tis'ah*.

¹² Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, no. 14550, Kitāb: *Bāqī Musnad al-Mukāṣṣirīn*, bab: *Musnad Jābir ibn 'Abdillāh* in CD-ROM *Mausū'ah al-Ḥadīṣ al-Syarīf al-Kutub al-Tis'ah*.

¹³ al-Tirmizī, *Sunan al-Tirmizī*, no. 1303, Kitāb: *al-Aḥkām 'an Rasūlillāh*, bab: *mā ḥukira fī iḥyāi arḍi al-mawāt* in CD-ROM *Mausū'ah al-Ḥadīṣ al-Syarīf al-Kutub al-Tis'ah*, Global Islamic Software, 1997.

¹⁴ al-Tirmizī, *Sunan al-Tirmizī*, no. 1299, Kitāb: *al-Aḥkām 'an Rasūlillāh*, bab: *mā ḥukira fī iḥyāi arḍi al-mawāt* in CD-ROM *Mausū'ah al-Ḥadīṣ al-Syarīf al-Kutub al-Tis'ah*

4	Abū Dāwūd	Sunan Abī Dāwūd	2671 ¹⁵ and 2672 ¹⁶
5	Mālik	Muwatta' Mālik	1229 ¹⁷ and 1230 ¹⁸
6	al-Dārimī	Sunan al-Dārimī	2496 ¹⁹

Authenticity and Matn Analysis

There are few of the hadith deemed weak (*da'if*).²⁰ This status is caused by a transmitter, 'Ubaidillah (in al-Darimi no. 2493, and Ahmad ibn Hanbal no. 13842), of which the hadith specialists deem *majhul* (unknown).²¹ On the other hand, according to Ibn Hajar, the hadith reported by Abu Dawud from Sa'id ibn Zaid is authentic (*sahih*).²² Hadith 1300 in al-Tirmizi

¹⁵ Abū Dāwūd, Sunan Abī Dāwūd, no. 2671, Kitāb: al-kharāj wa al-imārah wa al-fai, bab: fi ihyā'al-mawāt in CD-ROM Mawsū'ah al-Hadīs al-Syarīf al-Kutub al-Tis'ah, Global Islamic Software, 1997.

¹⁶ Abū Dāwūd, Sunan Abī Dāwūd, no. 2672, Kitāb: al-kharāj wa al-imārah wa al-fai, bab: fi ihyā'al-mawāt in CD-ROM Mawsū'ah al-Hadīs al-Syarīf al-Kutub al-Tis'ah, Global Islamic Software, 1997.

¹⁷ Mālik, Muwatta' Mālik, no. 1229, Kitāb: al-aqḍiyyah, bab: al-qadlāfi 'imārah al-mawāt in CD-ROM Mawsū'ah al-Hadīs al-Syarīf al-Kutub al-Tis'ah, Global Islamic Software, 1997.

¹⁸ Mālik, Muwatta' Mālik, no. 1230, Kitāb: al-aqḍiyyah, bab: al-qadlāfi 'imārah al-mawāt in CD-ROM Mawsū'ah al-Hadīs al-Syarīf al-Kutub al-Tis'ah

¹⁹ al-Dārimī, Sunan al-Dārimī, no: 2496, Kitāb: al-buyū', bāb: man ahyā arḍā maitah fahiya lah in CD-ROM Mawsū'ah al-Hadīs al-Syarīf al-Kutub al-Tis'ah, Global Islamic Software, 1997.

²⁰ Weak hadith is the hadith which does not meet the conditions for being *sahih* (authentic) or *hasan* (semi-authentic). According to al-Khatib, a hadith is said weak for two reasons; in-continuity of the chain of transmission and the quality of the transmitters. See Muhammad 'Ajaj al-Khatīb, *Uṣūl al-Hadīs: 'Ulūmuh wa Muṣṭalahuh* (Libanon: Dār al-Fikr, 2006), 222 – 226.

²¹ See *jarh* and *ta'dil* analysis in CD-ROM Mawsū'ah al-Hadīs al-Syarīf al-Kutub al-Tis'ah, Global Islamic Software, 1997.

²² Abu Dawud also reported from Hannad ibn al-Sari through a new *mursal* chain. In the report, 'Urwah was reported saying "the reporter of the hadith narrated me two men had the law to the Prophet. One of them planted date in another's land. Nabi then decreed asserting the land remain belong to the latter, and the former should repeal his planting from the land. See Ibn Hajar al-'Asqalāni, *Fath al-Bārī fi Syarh Ṣaḥīh al-Bukhārī*, vol. 7 in CD-ROM al-Maktabah al-Syāmilah, Global Islamic Software, 1997, 192

is *hasan-sahih*.²³ While some of the hadith are deemed weak, other chains' transmitters are good according to *al-jarh wa al-ta'dil* specialists,²⁴ and the chains meet the continuity conditions.²⁵ Hence, these hadith are accepted (*maqbul*).

If we neatly observe the hadith, we found different wordings among them. In hadith reported by al-Bukhari, the emphasis is on the land managed by a particular individual, while that by Ahmad ibn Hanbal emphasizes on the resurrection (dead, unproductive) land. Al-Bukhari did not mention *man ahyā* (whoever resurrects) in the body of the hadith. He mentioned the phrase in the chapter title instead.²⁶ However this difference has no serious implication on the meaning.

Syarh Hadis: Towards an Authentic Meaning

From the two former hadith, there are several terms needs further explanation, namely *ahya*, *a'mara*, *ard maitah*, and *ahaqq*. *Ahya* is derived from *hayiya-yahyā-hayāh wa hayāā*, meaning live, clear or shameness. In al-Munawwir, the term means *ja'alah haya*, to resurrect, to bring something to life. It means to make something fertile when it comes beside *ard*.²⁷ *A'mara* is derived from *'amara-ya'muru-'amran wa 'amaran* which means resided, built, or fixed.²⁸

Al-Qazzaz explained, as cited by Ibn Hajar, resurrecting the land means taking care of

²³ Yūsuf al-Qaraḍāwi, *Sunnah Rasul: Sumber Ilmu Pengetahuan dan Peradaban*, trans. Abdul Hayyie al-Kattanie and Abdul Zulfidar (Jakarta: Gema Insani Press, 1998), 52.

²⁴ *Jarh* means the appearance of one's character sullyng one's reputation, including memorizing reputation. This caused the invalidation of the chain of which he is a part—hence the chain would belong to the weak or even rejected chains of transmission. *Ta'dil* means the positive assessment over a particular transmitter. See Muhammad 'Ajaj al-Khatīb, *Uṣūl al-Hadīs*, 168.

²⁵ Ahmad Suhendra, "Keseimbangan Ekologis dalam Hadis Nabi SAW: Studi Ma'ani al-Hadits" *Thesis*, Faculty of Ushuluddin, UIN Sunan Kalijaga, Yogyakarta, 2011, 77.

²⁶ Ahmad Suhendra, "Keseimbangan Ekologis, 78-79.

²⁷ Ahmad Warson Munawir, *al-Munawir: Kamus Arab Indonesia Terlengkap* (Surabaya: Pustaka Progresif, 1997), 315.

²⁸ Ahmad Warson Munawir, *al-Munawir*, 970.

certain land the owner of which is unknown, either by planting or building something on it.²⁹ Hence, to resurrect means to take care of un-owned land.

Ard maitah consists of two words; *ard* and *maitah*. The former term is derived from *arad a-yarūdu-ardā*, etymologically means weedy and pleasing in the eye. Yet in the hadith this means earth, ground, and land.³⁰ Whereas *maitah* is derived from *māta-yamūtu-maitah*, that means dead, un-resided, unproductive, and *maitah* means carcass.³¹ The term in this hadith means that the land has never been taken care of, as explained by al-Qazzaz and confirmed by Yusuf al-Qaradawi.³² Abu Zahrah defines the dead land as unplanted, unproductive land that has no wellspring and is far from the city.³³

The word *ard* is in *nakira* (general) form, meaning any land, wherever it is and to whomever it belongs. In al-Bukhari's work, in a *mauquf* way, 'Ali is reported to say that the hadith is about the crushed area in Kufah at the time.³⁴ However, building upon the principal *al-'ibrah bi 'umum al-lafzi la bi khususi al-sabab*, one could argue that the ideal moral of the hadith applies beyond the land in Kufah.

The explanation concerning the dead land is also in the Qur'an, for example in Fussilat (41): 39:

²⁹ Ibn Hajar al-'Asqalani, *Fath al-Bārī fī Syarh Ṣaḥīḥ al-Bukhārī*, vol. 7, 192.

³⁰ Ahmad Warson Munawir, *al-Munawir*, 18.

³¹ Ahmad Warson Munawir, *al-Munawir*, 1366.

³² Yusuf al-Qaradāwī, *Islam Agama Ramah Lingkungan*, 100.

³³ Muḥammad Abū Zahrah, *al-Milkiyyah wa al-Naẓrīyah al-'Aqd fī al-Syarī'ah al-Islāmiyyah* (Beirut: Dār al-Fikr al-'Arabī, 1977), 123; cf. Afzalur Rahman, *Doktrin Ekonomi Islam*, vol II, trans. Soeroyo Nastangin (Jakarta: Dana Bhakti Wakaf, 1995), 251.

There are several types of land considered dead in the early age of Islam; 1) the rocky or sandy land, 2) the far-flung, 3) arid land, 4) scrubby, swampy land, 5) under water, 6) that crushed by the erosion; and all the land surrounding a lake. Afzalur Rahman, *Doktrin Ekonomi Islam*, vol. II, 248-249.

³⁴ Ibn Hajar al-'Asqalāni, *Fath al-Bārī fī Syarh Ṣaḥīḥ al-Bukhārī*, vol. 7, 192.

وَمِنْ آيَاتِهِ أَنْكَ تَرَى الْأَرْضَ خَاشِعَةً فَإِذَا أَنْزَلْنَا
عَلَيْهَا الْمَاءَ اهْتَزَّتْ وَرَبَتْ إِنْ الَّذِي أَحْيَاهَا لَمُحْيِ
الْمُوتَى إِنَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرٌ

And among His Signs in this: thou seest the earth barren and desolate; but when We send down rain to it, it is stirred to life and yields increase. Truly, He Who gives life to the (dead) earth can surely give life to (men) who are dead. For He has power over all things.

The dead land would revert to fertile when the raining season comes. During the season, varying kinds of plants come to grow, and transform to cells and networks, and ultimately living organism. In such a way, the earth seems to live and grow.³⁵ *Ahaqq* is derived from *haqqa-yahuqqu-haqqan*, meaning real, certain, or permanent.³⁶ Terminologically it has two main meanings; *majmū'ah al-qawā'id wa al-nuṣūṣ al-tasyrī'iyyah al-latī tanzīmu 'ala sabīli al-ilzām 'ala'iq an-nās min al-aṣkhas wa al-amwāl*, and; *al-sultāh wa al-muknah al-masyrū'ah aw maṭlab al-lazī yajību li aḥadin 'ala ghairihi*. Mustafa Ahmad al-Zarqa, as cited by Abdul Jalil, defines the term as *ikhtisās yuqarriru bihi al-syar' sultātah aw taklifah*.³⁷ Besides, *ahaqq* is *tafdil*, embedding the sense of beyond. It thus means deserve more than others concerning certain affair.

Abdul Jalil then points out that the first meaning tends to be formal oriented, so Muslims jurists do not use it, whereas the second one is generally used in *fiqh*.³⁸ In the explanation before, the definition of rights includes things owned and the utility and the goods regulated in Islam (*i'tibāriyyah*). The technical definition of *haq* in *huquq al-irtifaq* is goods embedded in the

³⁵ M. Quraish Shihab, *Tafsir al-Mishbah: Pesan, Kesan dan Keserasian al-Qur'an*, Vol. 12 (Jakarta: Lentera Hati, 2002), 67.

³⁶ Ahmad Warson Munawir, *al-Munawir*, 282. Cf. Muhammad Mustafa Salabi, *al-Madkhal fī al-Ta'rif bi al-Fiqh al-Islami wa Qawa'id al-Milkiyyah wa al-'Uqud fih* (Beirut: al-Dar al-Jami'iyyah, 1985), 331.

³⁷ As cited by Abdul Jalil, *Teologi Buruh* (Yogyakarta: LkiS, 2008), 103-104.

³⁸ Abdul Jalil, *Teologi Buruh*, 103.

permanent things (not moving things) to benefit from other things in same category owned by other individuals.³⁹

Fiqh broadly acknowledges four kinds of *huquq al-irtifaq*, meaning 1) *haqq al-syurb*, the regulation to use the water, to pour the plants and other primary needs engaging other-owned water; 2) *haqq al-majra*, make new irrigation in other's land, 3) *haqq al-masil*, rights for making irrigation, and 4) *haqq al-murur*, the rights for passing other's land.⁴⁰ Hence the term's definition relates to the power and ability to control over something belonging to other.

Concept of Ownership in Islam

Geography of Arab is infertile and desert. This caused nomadic tradition among them. At that time, the regulation of bordering area and land ownership was yet to establish. For most of the land was still un-owned. The nomadic tradition also made them not to consider such regulation needed.⁴¹

Islam came with a set of rules over the ritual and social, including the land ownership which Islam contends that the highest level of ownership belongs to the State—yet still gives the rights to sell, buy, and bequeath to the land 'holder'. The 'holder' is granted the limited ownership, given the state is able to take the land over for the sake of the society.⁴²

According to Qur'an, the ownership of wealth belongs to an individual that works for it. Islam does not acknowledge the ownership resulting in labor exploitation, speculation, nor

³⁹ As Abdul Jalil cited in Abdul Jalil, *Teologi Buruh*, 104.

⁴⁰ Muḥammad Abū Zahrah, *al-Milkiyyah wa al-Naẓrīyah*, 86-87, cf. Muḥammad Muṣṭafā Ṣalābi, *al-Madkhal fi al-Ta'rīf*, 355-364; Abdul Jalil, *Teologi Buruh*, 104.

⁴¹ In the books of history of Arabs, the condition of the pre-Islamic Arab was nomadic. See Philip K. Hitti, *History of The Arabs: Rujukan Induk dan Paling Otoritatif tentang Sejarah Peradaban Islam*, trans. R. Cecep Lukman Yasin and Dedi Slamet Riyadi (Jakarta: Serambi, 2006), 28, cf. Khalil Abdul Karim, *Syari'ah: Sejarah, Perkelahian, Pemaknaan*, trans. Kamran As'ad (Yogyakarta: LKiS, 2003), 53.

⁴² Afzalur Rahman, *Doktrin Ekonomi Islam*, vol. I, 103.

the transaction on the yet-to-exist thing.⁴³ This is based on al-Hasyr (59): 7:

مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَى فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

What Allah has bestowed on His Messenger (and taken away) from the people of the townships, — belong to Allah, —to His Messenger and to kindred and orphans, the needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you. So take what the Messenger assigns to you, and deny yourselves that which he withholds from you. And fear Allah; for Allah is strict in Punishment.

The tradition of the prophet is in favor of this notion, represented in hadith on *ihya' al-mawat* explained above. The Prophet gave the land ownership to one taking care of that land. The context of the Prophet as a leader (of the nation) implying the attempts to avoid social conflict to happen. For people at that time often claimed and struggle over certain land to leave it slipshod. The irony is that this caused the conflicts even sanguinary.⁴⁴ Hence, problems concerning land called the attention from the Prophet and dynasties after.

Islam has set three kinds of ownership; individual, collective and formal (of the state). The individual ownership is allowed as long as it conforms to religious rules. Each individual has full yet limited rights to enjoy their properties, to productively use it, to protect and move it.⁴⁵ The collective/public ownership takes various forms. Natural resources (water,

⁴³ Asghar Ali Engineer, *Islam dan Pembebasan*, trans. Hairus Salim dan Imam Baihaqy (Yogyakarta: LKiS, 2007), 131..

⁴⁴ Asghar Ali Engineer, *Islam dan Pembebasan*, 131.

⁴⁵ Abdul Jalil, *Teologi Buruh*, 113..

weeds, mineral, and so forth) is an example of collective/public ownership.⁴⁶

The state ownership is basically the collective ownership. The head of the state only holds the mandate. Hence the state is obliged to issue it for the public sake. The state is not allowed to overuse its properties, moreover for the goal not oriented to public interest.⁴⁷ All kinds of ownership are oriented to public interest. They rather take public than certain individuals' interest as the main into consideration.

Bani Sadr, as Asghar Ali Engineer cited, divided land ownership into three categories. *First, malikiyyati khususi*, special ownership depended on one's performance. *Second, malikiyyati umumiyah*, public ownership. Asghar classified state ownership, even over the production means and such, into this second category. *Third, malikiyyati zar*, ownership gained through violence, exploitation, speculation, deception, deceitful, etc.⁴⁸ The orientation coined by Bani Sadr concerns the way one gain the ownership. The communal or public ownership is defined by the positive law.

This corresponds to report from 'Amr ibn 'Auf, from the Prophet, that beyond Muslims' rights, there is no rights rewarding perspiration of despotic.⁴⁹ The context is contained in the report from Yahya ibn Adam, from Sufyan, from al-Zuhri, from Salim, from his father, saying that people are massively demarcating their lands in the reign of 'Umar ibn al-Khattab.

⁴⁶ Abdul Jalil, *Teologi Buruh*, 114-115.

⁴⁷ Abdul Jalil, *Teologi Buruh*, 116.

⁴⁸ Bani Sadr explained that Islam does not acknowledge this third category of ownership. Yet it allows the performance-based ownership. See Asghar Ali Engineer, *Islam dan Pembebasan*, 133-134.

⁴⁹ The chain of transmission is on the authority of 'Amr ibn 'Auf, equipped with three (3) *mawsul* chains of Ishaq ibn Rahawaih, he said: 'Abu 'Amir al-'Aqadi, from Ksir ibn 'Abdillah ibn 'Amr ibn 'Auf, "my father narrated to me that his father narrated to him, that he heard Nabi saying whoever resurrects the land which no Muslims' has the right on the land, the land is his/hers, and no perspiration of the despotic has rights." See Ibn Hajar al-'Asqalāni, *Fath al-Bārī fī Syarḥ Ṣaḥīḥ al-Bukhārī*, vol. 7, 192.

The latter then decreed, whoever resurrects the land, the land is his/hers, as if 'Umar ignores the demarcation people have made, unless the people take care of the land.⁵⁰

Concerning the individual ownership, ulema divided it into two; *al-milk al-tamm* (full ownership), and *al-milk al-naqis* (partial ownership).⁵¹ The first category gives someone full rights to use, sell, and donate the land. Yet once one leaves his/her land in three years after resurrecting the land, the state has right to repeal his/her right.⁵²

The second category is the right to use, allowing the 'holder' to benefit the land, according the positive regulations. The right to use is gained by: 1) *tahjir*, claiming the free land by demarcating the land un-owned by any individual or institution. The state has rights to repeal the rights if one leaves this kind of land slipshod in three years. 2) *iqta'*, land donated from state to certain individuals or institutions to benefit. 3) *irtifaq*, the benefitting of the land, especially for public need such as road, bridge, river, and so forth.⁵³ Islam acknowledges the full ownership of the land for its 'holder'. However, the land should be conserved as productive as possible in accordance with the positive laws.

Relevance on Land Conflict

Industrialization development or the shift to industrialization affects the existence of social function. Although social function of land owner's right seems not to change, yet the social function of the rights has been abstractly entering the laws.⁵⁴ As the consequence, there

⁵⁰ Ibn Hajar al-'Asqalāni, *Fath al-Bārī fī Syarḥ Ṣaḥīḥ al-Bukhārī*, vol. 7, 192.

⁵¹ Muḥammad Muṣṭafa S|alabi, *al-Madkhal fī al-Ta'rīf*, 341.

⁵² Muḥammad Abū Zahrah, *al-Milkiyyah wa al-Naẓr riyah*, 74; cf. Tolchah Hasan, "Fiqh Pertanahan" in Masdar F. Mas'udi (ed.), *Teologi Tanah* (Jakarta: Perhimpunan Pengembangan Pesantren dan Masyarakat, 1994), 90-91.

⁵³ Tolchah Hasan, "Fiqh Pertanahan", 90-91.

⁵⁴ Yusriyadi, *Industrialisasi dan Perubahan Fungsi Sosial Hak Milik atas Tanah* (Yogyakarta: Genta Publishing, 2010), 32.

is a shifting towards individualistic land ownership. There is someone that owns hectares of the land, on the other hand there are many people who do not have enough economic ability to buy land. This causes these people reside lands with unclear status.

Nursyahbani Karjasungkana asserted that the conflict of interest concerning land would constantly increase. This is due to several factors; *first*, the increasing of the population and the development versus limited area available; *second*, the absence of laws concerning urban planning and regulating the utilization of land that accommodate varying interests on land utilization; *third*, the absence of public access in contributing the decision making in repealing rights on land.⁵⁵ As the consequence, the lower class is subject to victims, peasants for example. The struggle over the land for the sake of development and industrialization is the common issue in land conflicts.

'Land conflict' is the issue which raise heated debates. Land conflict is a kind of conflict that collides with the structure in dynamic society, between dominant and nominal structure, so to speak. The competition process getting through the monopoly and struggle over the land constitute the causes of social conflicts in society.⁵⁶

The expression of land conflict shows that one should view the conflict not only with conflict perspective *an sich*. Yet such a conflict needs to be viewed from perspective economic, dynamic majority-minority relations, people-rulers (government/state and capital owner) dimension, and control over the land.⁵⁷ State

often constitutes the shield of capital owner in the conflict. State often wins certain individuals' interests at the cost of public interest. Structural approach often used by the state in the conflict is deemed unstable. The injustice is causing roots for land conflict in Indonesia.⁵⁸

Hence the conflicts in Indonesia require victims, the current conflict in Bogor for example. The conflict has lasted for years, engaging people claiming to be the legitimate owner of the land and the residents of the land. The problem emerges when the owner does not take care of the land in many years, making the labeled dead land. The urban society then understands it as dead land. They then occupy it illegally for generations.

At the time when the owner is about to remove this urban society from the land, the residents claim themselves its owner, for they had resided the land for years and generations. To do so the owner employs 'premanism' and government through the court, etc. Whereas according to Islamic concept (hadith) once certain land is left slipshod for years, the ownership is automatically repealed. In this context, state has rights to do so. The ownership then could settled into another individual with more capacity in taking care of the land.

In this aspect, urban society that resided the land had mistaken in doing so, for the land's status remain unclear. They should have consulted government; observing the status and owners of the land. This is the case since the Undang-undang Pokok Agraria (UUPA/Main Laws on Agraria) only regulates the ownership,

Pertanahan di Luar Kodifikasi Hukum Pidana (Jakarta: Kencana, 2009), 45.

⁵⁸ Surya Adi Sahfutra asserted roots for the conflict as lying on the differentiation, either in terms of ethnic, religion, economy, social hierarchy, politic, language, knowledge and so forth. The conflict's causal factors are simply categorized as two; material and immaterial. The former includes wealth, power, and field, three of which are intertwining. The second one includes emotion, dignity, and justice. See Surya Adi Sahfutra, "Sensitivitas Konflik, 45-46.

⁵⁵ Nursyahbani Karjasungkana, "Lembaga Pembebasan Tanah dalam Tinjauan Hukum dan Sosial" *Prisma*, no. 4, year XVIII, 1989, 55.

⁵⁶ Surya Adi Sahfutra, "Sensitivitas Konflik: Upaya Mendeteksi dan Memperkuat Positivisme Konflik" in Moch Nur Ichwan and Ahmad Muttaqin, *Agama dan Perdamaian: Dari Potensi Menuju Aksi* (Yogyakarta: CR-Peace and Program Pascasarjana UIN Sunan Kalijaga, 2012), 46.

⁵⁷ Hambali Thalib, *Sanksi Pidana dalam Konflik Pertanian: Kebijakan Alternatif Penyelesaian Konflik*

rights to use and utilize. Time-limit and leaving procedure are not in the laws.

There also is an ownership model that is productive and legitimate. In building the public facility, such as flyover, or mining, state takes over the land from the people. This is often the case of Perum Perhutani and traditional society.

State (government) serves as partisan of capital owner, rather than the mediator for the conflict. The state misuses its legal power to win the conflict, avoiding to apply cultural approach to both sides involved. As the consequence, the conflict is solved superficially. The law is no longer social engineering that could make the attitude of the people better off.⁵⁹

State has the rights over all lands in its territory. The rights have public and private aspects. In other words, the resources state has should be the main supporting resource for the prosperity of the people and for the national development.⁶⁰ The fact shows that the phrase 'for development' is monopolized to maintain economical politic of the state and capital owner. The brutal take-over through violence, exploitation, speculation, deception, deceitful—all of which Islam has consider illicit and thus forbidden, has repealed the rights from the people. However, this does not apply for the government generally.

The Islamic history witnessed the existence of concepts concerning productivity and land ownership, as explained above. *Ihya' al-mawat* is one of the mechanisms of land ownership in Islam. According to the hadith mentioned above, we could argue that the ownership in Islam is not unconditional. The rights to own depend on conditions representing social justice.⁶¹ The existence of relational interactions

among individuals, between individuals and society, and between individuals and the state produce the ownership rights that conform to the pattern.⁶² The relation between the three should be egalitarian-functional and just. It protects public, rather than individuals' or certain groups' interests.

According to Abdul Jalil, rights produce relational interaction and demand the monopolistic power. Rights are built upon the equality over the belongings.⁶³ In Indonesia, the context shows that the winner is capital owner in disguised of public interest. This caused conflict of interests over the land.

Some ulema set certain conditions about *ihya' al-mawat*, including the management under the state's order. The state could not determine who can take care of which land. However, once the land is left slipshod in three years, the state could repeal the rights from the former owner and grant it to the new one.⁶⁴ Hence, resurrecting the land is the main reason for someone to 'own' the land. Therefore, if one owns a land but he/she leaves it slipshod, the state could repeal his/her rights.⁶⁵

The Prophet instructed the 'holder' of the land to plant on the land himself. Otherwise, he should grant the land, a part or the whole of it, to another Muslims able to take care of it without any compensation.⁶⁶ The Prophet's position as the head of the state sets an example for the wisdom and the justice contributing in minimalizing land conflict.

The head of state has rights to divide land gained from the battle (*ghanimah*) and give it to Muslims, to let people take care of it, and to

⁵⁹ Yusriyadi, *Industrialisasi dan Perubahan Fungsi Sosial Hak Milik atas Tanah* (Yogyakarta: Genta Publishing, 2010), 138-140.

⁶⁰ Hambali Thalib, *Sanksi Pemidanaan dalam Konflik Pertanahan: Kebijakan Alternatif Penyelesaian Konflik Pertanahan di Luar Kodifikasi Hukum Pidana* (Jakarta: Kencana, 2009), 41.

⁶¹ Asghar Ali Engineer, *Islam dan Pembebasan*, 133.

⁶² Abdul Jalil, *Teologi Buruh*, 112.

⁶³ Abdul Jalil, *Teologi Buruh*, 105.

⁶⁴ Cholil Bisri, "Kyai dan Kemelut Pertanahan", 96.

⁶⁵ Muḥammad Abū Zahrah, *al-Milkiyyah wa al-Naẓr riyah*, 129-130.

⁶⁶ This is based on the hadith reported by Muslim from Jabir bin 'Abdillah, cited by Asghar Ali Engineer, *Islam dan Pembebasan*, 133, cf. Afzalur Rahman, *Doktrin Ekonomi Islam*, vol. II, 250.

employ a professional to take care of it.⁶⁷ The history of Islam accounted six types of land in Islamic caliphate; conquered, contract, Muslims', states', infertile, and free land. These types of land used to be granted to 1) people contributing to the battle; 2) indigenous people, and 3) peasant having no occupation.⁶⁸

The history recorded the Prophet and caliphs, especially 'Umar ibn al-Khattab, tending to give the booties to indigenous people rather than the troops. The reason is to maintain their ownership over the land, in other word, public good. The income from the tax of the land is used to pay the troops, and pay office.⁶⁹

There are a lot of examples that show to us that the state has full power to take over the land ownership whenever the state want to do it, for the public good. Yet at the same time state is responsible to protect rights of each individual, so that their interests are not being ignored.

If certain land is left slipshod for three years, as mentioned above, the state could repeal the rights. This happened in the era of Caliph 'Umar, when he found people who left their land slipshod. 'Umar decreed whoever takes care of it is legally its owner. The right is granted by the state. This shows the state as mediator of social conflict over the land. In the hadith under the same theme, the land is explained as of Allah's and His messenger's

authority. Whoever takes care of dead land, he owns the land. The Prophet mediated the conflict by employing cultural approach in persuasive and psychological ways. Hence the hadith emphasizes on the conflict resolution.

Conclusion

Islam acknowledges the full ownership of land, belonging to its holder. However the land should be conserved to be the productive land, in accordance with positive regulations of either the state or religion. Islam acknowledges the private ownership, public/collective ownership, and state ownership as well. The first type of ownership is divided into two; *al-milk al-tamm* (full ownership) and *al-milk al-naqis* (partial ownership). *Ihya' al-mawat* is one of mechanisms in land ownership in Islam. The hadith concerning *ihya' al-mawat* shows that the process of land ownership is not unconditional. One should convince the state that he/she has adequate capacity to take care of the land. Hence the resurrection of the dead land is the main reason of the ownership. Therefore, doing otherwise enables the state to repeal the rights from him/her.

The Prophet mediated the land conflict he faced by employing cultural approach. The Prophet tended to employ persuasive and psychological, rather than structural approach. Hadith on resurrection of the dead land emphasizes on the conflict resolution. Hence, the state should have used cultural approach in mediating social conflict, especially over the land.

⁶⁷ Afzalur Rahman, *Doktrin Ekonomi Islam*, vol. II, 215-216.

⁶⁸ Afzalur Rahman, *Doktrin Ekonomi Islam*, vol. II, 213-214.

⁶⁹ Afzalur Rahman, *Doktrin Ekonomi Islam*, vol. II, 221-228. The case of Bilal al-Muzni shows the same meaning. Bilal ibn al-Haris al-Muzni once visited the Prophet PBUH, and asked for a land. The Prophet then gave him one. When 'Umar ruled as caliph, he said to Bilal: you asked for a land to the Prophet, and he gave you. However, you are not able to take care of the land now. Bilal replied: true. Umar continued: look, you could own the land as wide as you could take care of. We would give the rest to Muslims. Bilal Said: in the name of Allah, I would let what the Prophet gave me go. Umar said: by Allah, then you must take care of it. Umar then took the rest of the land that Bilal could not take care of, and gave it to Muslims. See also Ahmad Suhendra, "Keseimbangan Ekologis," 82.

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INDEKS ARTIKEL

Esensia, Vol. 18, 2017

No	Judul	Penulis	Halaman
1.	Struggle for Identity and Social Image of Haji: Study on Life History of Social Construction of Haji in Sasak Community, Lombok, NTB	Moh Soehadha	1
2.	Scientific Paradigm Towards <i>World-Class University</i> : Comparative Study on UIN Sunan Kalijaga Yogyakarta and UIN Maulana Malik Ibrahim Malang	Sekar Ayu Aryani, Sunarsih, Kurnia Rahman Abadi	13
3.	Claiming Abrogation of Pre-Islamic Religions; Contesting the Idea of Islam's Abrogation to Previous Religions	Sa'dullah Affandy	29
4.	Understanding Hadith of The Prophet: The Image and Variety of Muslims' Awareness in the Region of Gowa	Tasmin Tangngareng	39
5.	Zakaria Ouzon's Thought on Hadith	Muhammad Rikza Muqtada	59
6.	Religious Freedom In Indonesia: An Islamic Human Right Perspective	Linda Evirianti	71
7.	نشر دعوة التصوف الإجتماعي لمكافحة الإرهاب والتطرف	Rizqa Ahmadi	81
8.	Research Method for Exploring Discourse on the Rights for Religion for Transgender	Rr. Siti Kurnia Widiastuti	105
9.	Sufism of Archipelago: History, Thought, and Movement	Syaifan Nur and Dudung Abdurahman	123
10.	The Face of Mountainous Islam: The Dynamic of Islam in the Dieng Mountains Wonosobo, Central Java, Indonesia	Ahmad Salehudin, Moch. Nur Ichwan and Dicky Sofjan	135
11.	The Doctrine of Logos Within Ibn 'Arabi Mystical Philosophy	Muzairi, Novian Widiadharna	155
12.	تنوع معاني اللباس في القرآن (دراسة التفسير الموضوعي)	صوفريانسدا	173
13.	Models of Land Ownership in Islam: Analysis on Hadis <i>Ihyā' al-Mawāt</i>	Ahmad Suhendra	189
14.	Religion, Radicalism and National Character: In Perspective of South Sulawesi Local Wisdom	Mahmuddin	201
15.	Exclusive Islam From The Perspective of Ibn Taymiyah	Siti Mahmudah Noorhayati and Ahmad Khoirul Fata	213
16.	The Role of Traditional Islamic Boarding School-Based Islamic Studies as Radicalism and Intolerance Flow's Blocking Agent	Suryadi and M. Mansur	225

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2. Muhammad Alfatih Suryadilaga, *Metodologi Syarah Hadis Era Klasik Hingga Kontemporer (Potret Konstruksi Metodologi Syarah Hadis)* (Yogyakarta: Suka Press, 2012), 20.
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