Al-Ahkam, Vol. 35 No. 2 (2025): 287-312
DOI: 10.21580/ahkam.2025.35.1.25605

AL-AHKAM

The Transformation of Land Law in Indonesia: From Commodification to *Maqāṣid* and Social Justice

Firman Muntaqo,[1*] Mashudi Mashudi,[2] Alip Dian Pratama,[1] Abdullah Rosikh Fil Ilmi,[3] Iza Rumesten[1]

[1]Universitas Sriwijaya, Indralaya – Indonesia; [2]Universitas Islam Negeri Walisongo Semarang – Indonesia; [3]Abdelmalek Essaâdi University, Larache – Morocco
*Corresponding author. Email: firmanmuntaqo@fh.unsri.ac.id

Abstract:

This article examines the transformation of Indonesian land law from the paradigm of fundamental justice embodied in the 1960 Basic Agrarian Law (UUPA) to a market-oriented framework shaped by the Omnibus Law on Job Creation and decentralization policies. This shift generates tensions between constitutional mandates, Pancasila values, customary law, and politico-economic interests that often marginalize structural justice. The study aims to analyze how these foundational values interact with Islamic legal philosophy through the *maqāṣid* approach to construct a more equitable and sustainable agrarian system. Employing a qualitative normative legal method combined with interpretive and comparative analysis, the research finds that a dialogical integration of UUPA principles, *maqāṣid*, and the social function of land can generate an alternative paradigm of land governance. The novelty lies in proposing a model emphasizing *tawāzun* (balance), ecological protection, and social equality. Theoretically, the article enriches global law-and-development discourse, while practically providing normative grounds for reconstructing agrarian policy toward justice and sustainability.

Keywords:

commodification; land law; *maqāṣid*; social justice; transformation

How to cite:

Muntaqo, Firman, Mashudi Mashudi, Alip Dian Pratama, Abdullah Rosikh Fil Ilmi, and Iza Rumesten. "The Transformation of Land Law in Indonesia: From Commodification to *Maqāṣid* and Social Justice." *Al-Ahkam* 35, no. 2 (October 1, 2025): 287–312. https://doi.org/10.21580/ahkam.2025.35.2.25605.

p-ISSN: 0854-4603; e-ISSN: 2502-3209
Submitted February 10, 2025; Received in Revised Form June 15, 2025; Accepted September 15, 2025

Introduction

In the context of Indonesian national life, land is not merely an object of property law, but an integral part of the nation's identity, history, spirituality, and collective livelihood.[1] The 1960 Basic Agrarian Law (Undang-Undang Pokok Agraria or UUPA) explicitly declares that land, water, and natural resources are national assets controlled by the state for the greatest prosperity of the people. This conception embodies a deep spirit of populism while simultaneously rejecting the colonial legacy of the *domein verklaring*, which treated land as the absolute property of the state.[2] However, recent legislative and policy developments in Indonesia reveal a decisive shift in the governance of land: from its status as a national asset and people's right to its increasing commodification as an object of market transactions and corporate concessions.

This transformation is evident in the massive expansion of plantation areas—oil palm cultivation, for instance, grew from about 3 million hectares in 2000 to more than 13 million hectares by the early 2020s—and in the redefinition of "public interest" to facilitate large-scale land acquisitions for infrastructure and industrial projects.[3] These shifts have coincided with rising land conflicts and the growing influence of state–corporate arrangements in territorial control, underscoring how statutory reforms and policy practices enable market and corporate claims over land that was once more strongly protected as a communal or public resource.[4]

Scholars in Islamic legal theory further contend that these policies constitute *inḥirāf al-maqāṣid*—a deviation from the higher objectives of law, which

[1] Christina M. Kennedy et al., "Indigenous Peoples' Lands Are Threatened by Industrial Development; Conversion Risk Assessment Reveals Need to Support Indigenous Stewardship," *One Earth* 6, no. 8 (August 2023): 1032–49, https://doi.org/10.1016/j.oneear.2023.07.006; Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," *AlterNative: An International Journal of Indigenous Peoples* 20, no. 1 (March 8, 2024): 157–66, https://doi.org/10.1177/11771801241235261.

[2] Firman Muntaqo et al., "Adat Law as a Foundation for Advancing Indonesian Agrarian Law to Maximise Societal Welfare," *Sriwijaya Law Review* 8, no. 2 (2024): 376–92, https://doi.org/10.28946/slrev.Vol8.Iss2.3710.

[3] Iqra Anugrah, "Land Control, Coal Resource Exploitation and Democratic Decline in Indonesia," *TRaNS: Trans -Regional and -National Studies of Southeast Asia* 11, no. 2 (2023): 195–213, https://doi.org/10.1017/trn.2023.4.

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

demand the protection of religion, life, intellect, lineage, and property.[5] Comparative analyses highlight that integrating *maqāṣid al-sharīʿa* into national land governance can provide a coherent paradigm for reconciling economic growth with distributive justice and environmental stewardship.[6] Yet, empirical studies emphasize the persistence of jurisdictional conflicts, legal fragmentation, and the subordination of *ulayat* rights in favor of corporate interests.[7]

Against this backdrop, this article takes the position that Indonesia's agrarian legal system requires reconstruction through a dialogical integration of constitutional mandates, customary law, and *maqāṣid*-based values. Such an approach not only restores the constitutional vision of land as a collective right but also aligns with global debates in law and development that emphasize equity, sustainability, and justice in resource governance.[8]

The analysis employs a normative legal research method with a qualitative orientation, combining statutory, conceptual, and comparative approaches. First, statutory analysis is applied to examine constitutional provisions, the 1960 Basic Agrarian Law, and subsequent legislation such as the Job Creation Law and the Regional Government Law. Second, a conceptual approach draws on the framework of *maqāṣid al-sharīʿa* to interpret the higher objectives of law in relation to land governance, emphasizing the protection of religion, life, intellect, lineage, and property. Third, comparative insights are incorporated from international scholarship on land law and social justice to situate Indonesia's agrarian transformation within broader global debates. These methods are interpretative and descriptive in character, yet they also serve a normative function: to construct conceptual solutions for an agrarian legal system that is just, sustainable, and reflective of the unity of the state, the people, and the Divine.

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[5] Jasser Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach* (Herndon: The International Institute of Islamic Thought, 2010).

[6] Hans Kelsen, *Pure Theory of Law*, ed. trans. Max Knight (Berkeley: University of California Press, 1967).

[7] John F. McCarthy, "Land Reform Rationalities and Their Governance Effects in Indonesia: Provoking Land Politics or Addressing Adverse Formalisation?."

[8] Balakrishnan Rajagopal, "International Law, Third World Resistance, and the Institutionalization of Development: The Invention of the Apparatus," in *International Law from Below* (Cambridge: Cambridge University Press, 2003), 37–49, https://doi.org/10.1017/CBO9780511494079.005.

Agrarian Justice in the Perspective of the Basic Agrarian Law and Pancasila

The Basic Agrarian Law of 1960 (UUPA) emerged as a corrective framework to the colonial system that treated land as an object of exploitation by the state and foreign capital.[9] The UUPA abolished the *domein verklaring*[10] principle and redefined land as a collective right of the Indonesian people—a national asset entrusted to the state not as an absolute owner but as a regulator and manager. Article 2 paragraph (2) of the UUPA explicitly limits state authority to the regulation of land allocation, use, availability, and maintenance, as well as the legal relations between people and land, for the greatest possible prosperity of the people.[11]

The concept of Indonesia's national agrarian law, as articulated in the 1945 Constitution (UUD 1945) and the UUPA, reflects a clear orientation toward agrarian justice. This justice principle is rooted in the Fifth Principle of Pancasila—Social Justice for the Entire People of Indonesia—which demands the equitable distribution of land and resources as a foundation for national welfare.[12] The UUPA further embodies this mandate through its emphasis on the social function of land rights, preventing excessive land concentration and recognizing community and ulayat rights. Within this framework, Article 33 (3) of the Constitution affirms that land, waters, and natural resources are "controlled by the State" to be used "for the greatest benefit of the people,"

[9] Barid Hardiyanto, "Politics of Land Policies in Indonesia in the Era of President Susilo Bambang Yudhoyono," *Land Use Policy* 101 (February 2021): 105134, https://doi.org/10.1016/j.landusepol.2020.105134.

[10] The Domein Verklaring principle in agrarian law is a doctrine stating that lands whose ownership cannot be proven by an individual or legal entity are considered property of the state (state domain). This principle originates from the Dutch colonial legal system, particularly the Agrarische Wet of 1870 in the Dutch East Indies. According to Neilson (2020), domein verklaring is a colonial principle that stipulates that land not formally claimed by European or indigenous owners automatically belongs to the state, and is still used as the legal basis for state claims to land—including land claimed by indigenous peoples—in the contemporary era. Jeffrey Neilson, "Domein Verklaring: Colonial Legal Legacies and Community Access to Land in Indonesia," Georgetown Journal of International Affairs, 2020, https://gjia.georgetown.edu/2020/11/25/domein-verklaring-colonial-legal-legacies-and-community-access-to-land-in-indonesia/.

[11] Christian Lund, "An Air of Legality — Legalization under Conditions of Rightlessness in Indonesia," *Journal of Peasant Studies* 50, no. 4 (2023): 1295–1316, https://doi.org/10.1080/03066150.2022.2096448.

[12] Mas Subagyo Eko Prasetyo, "Agrarian Reform in the Perspective of Pancasila," *Legal: Jurnal Ilmiah Ilmu Hukum* 6, no. 2 (2020): 187–204, https://doi.org/10.35335/legal.v9i2.369.

positioning the State as a trustee rather than an absolute owner.[13] Contemporary scholarship underscores that the integration of Pancasila's normative values into agrarian law provides both a philosophical and constitutional basis for advancing distributive justice, strengthening indigenous rights, and ensuring sustainable land governance in Indonesia.[14]

Maqāṣid and Agrarian Assets in Islam

Maqāṣid is a foundational theory in Islamic legal thought that emphasizes the ultimate objectives of Sharia law: to promote public welfare (*maṣlaḥa*) and prevent harm.[15] Classical scholars such as al-Ghazzālī, al-Shāṭibī, and Ibn 'Āshūr formulated five essential principles (*al-ḍarūriyyāt al-khamsa*) as the universal aims of the Sharia.[16]

The first is *ḥifẓ al-dīn* (protection of religion) in this sense, is not merely a physical asset but also a sacred space that accommodates worship, tradition,

[13] Simon Butt and Tim Lindsey, "Economic Reform When the Constitution Matters: Indonesia's Constitutional Court and Article 33," *Bulletin of Indonesian Economic Studies* 44, no. 2 (August 2008): 239–62, https://doi.org/10.1080/00074910802169004.

[14] Kartika Winkar Setya, Abdul Aziz Nasihuddin, and Izawati Wook, "Fulfilling Communal Rights through the Implementation of the Second Principle of Pancasila towards the Regulation on Agrarian Reform," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 6, no. 1 (June 30, 2023): 89–102, https://doi.org/10.24090/volksgeist.v6i1.7867; Tania Murray Li, "Commons, Co-Ops, and Corporations: Assembling Indonesia's Twenty-First Century Land Reform," *The Journal of Peasant Studies* 48, no. 3 (2021): 613–639, https://doi.org/10.1080/03066150.2021.1890718.

[15] Saiful Badri, "Relevansi Maşlahah al-Ghazali Terhadap Konteks Fikih di Indonesia," *Indonesian Journal of Islamic Law* 1, no. 2 (December 30, 2018): 50–63, https://doi.org/10.35719/ijil.v1i2.336; Suciyani Suciyani and Faisol Mamaeng, "Exploring Maqāṣid al-Sharī'ah in the OIC's Role in Addressing Muslim Minority Conflicts: A Case Study of Pattani, Thailand," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 9, no. 1 (2024): 14–28, https://doi.org/10.22515/alahkam.v9i1.8141; Salman Abdul Muthalib et al., "Changes in Congregational Prayer Practices during the Covid-19 Pandemic in Aceh from Maqashid al-Sharia Perspective," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 16, no. 2 (December 31, 2021): 421–49, https://doi.org/10.19105/al-lhkam.v16i2.5250; Sugeng Dwiono, A. Kumedi Ja'far, and Slamet Haryadi, "An Analysis on the Omnibus Law and Its Challenges in Indonesia: The Perspectives of the Constitutional and the Islamic Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 2 (May 11, 2024): 706–25, https://doi.org/10.22373/sjhk.v8i2.22720; Husamuddin MZ and Harwis Alimuddin, "The Urgency of Maqāṣid al-Sharīa in Strengthening Religious Moderation in Aceh," *Al-Risalah Jurnal Ilmu Syariah dan Hukum* 22, no. 2 (November 30, 2022): 105–20, https://doi.org/10. 24252/AL-RISALAH.VI.29781.

[16] Saim Kayadibi, "The State as an Essential Value (Ḍarūriyyāt) of the Maqāṣid al-Sharī'ah," *Ahkam: Jurnal Ilmu Syariah* 19, no. 1 (July 9, 2019), https://doi.org/10.15408/ajis.v19i1.6256; Muḥammad Ṭāhir Ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Beirut: Dār al-Kitāb al-Lubnānī, 2004); Muḥammad Khālīd Mas'ud, *Islamic Legal Philosophy: A Study of Abū Isḥāq al-Shāṭibī's Life and Thought* (Delhi: International Islamic Publisher, 1989); Abū Ḥāmid Muḥammad ibn Muḥammad Al-Ghazzālī, *Al-Mustasfā min 'Ilm al-Uṣūl* (Beirut: Dār Iḥyā 'al-Turāth al-'Ārabi, n.d.).

and culture, inseparable from the transcendental values of both Indigenous communities and Muslims. This principle should not be narrowly interpreted as the preservation of ritual practices alone, but also as the guarantee of religious freedom and the protection of minorities.[17] The second principle, *ḥifẓ al-nafs* (protection of life), recognizes land as a fundamental source of existence. Losing land constitutes an existential threat to farmers and Indigenous peoples. While the classical scope of this principle focused on safeguarding human life and bodily safety, its contemporary application extends to the right to a dignified life, including access to healthcare, protection from structural violence, and the provision of social welfare.[18]

The third principle is *ḥifẓ al-'aql* (protection of intellect). Traditionally associated with the prohibition of intoxicants, this principle today entails a broader recognition of the right to education, freedom of thought, and protection against misinformation and disinformation—an expansion that is vital for nurturing critical public reasoning.[19] The fourth, *ḥifẓ al-nasl* (protection of lineage), has classically been linked to safeguarding family continuity and moral conduct. Contemporary discourse, however, calls for a reinterpretation that embraces the protection of children's rights, the promotion of gender equality, and the safeguarding of women from domestic violence, thereby ensuring the wellbeing of future generations.[20] Finally, *ḥifẓ al-māl* (protection of property) addresses the preservation of property rights and the promotion of equitable economic distribution. Within the current global neoliberal capitalist order, this principle demands a progressive redefinition that restrains exploitative accumulation, reinforces distributive justice, and strengthens the state's responsibility in managing public resources for the collective good.[21]

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[17] Fatimah Al-Zahra, "Melacak Landasan Hukum Pengelolaan Aset Tanah Negara Melalui Konsep Bank Tanah," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 2 (2018): 405, https://doi.org/10.19105/al-ihkam.v12i2.1306.

[18] Sayyid Qutb, *Keadilan Sosial dalam Islam* (Bandung: Pustaka, 1984).

[19] Chairul Fahmi et al., "The State's Business Upon Indigenous Land in Indonesia: A Legacy from Dutch Colonial Regime to Modern Indonesian State," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 3 (2024), https://doi.org/10.22373/ sjhk.v8i3.19992.

[20] Ajidar Matsyah et al., "Cultural Continuity and Legal Adaptation: The Evolution of Suluh in Aceh's Conflict Resolution System," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (June 11, 2025): 101, https://doi.org/10.31958/juris.v24i1.13272.

[21] M. U. Chapra, *The Future of Economics: An Islamic Perspective* (Leicester: Islamic Foundation, 2000).

In the agrarian context, *maqāṣid* firmly rejects land monopolization and promotes just and beneficial distribution. Land is an *amāna* (trust) that cannot be transferred except under considerations of justice and utility. The principles of *istislāḥ* (public welfare), *'adāla* (justice), and *tawāzun* (balance) provide a normative foundation that can reinforce the national legal framework.

According to the framework of *maqāṣid*, the state does not act as an absolute owner (*mālik ḥaqīqī*) of land,[22] but rather as a trustee (*mustakhlaf*).[23] In this capacity, the state assumes multiple roles that are essential for ensuring justice and collective welfare.[24] As a *nāṣir* (protector), the state is entrusted with the duty of defending people's land against corporate and market domination. This role requires the state to shield its citizens from structural injustices, particularly those arising from the excessive accumulation of capital and the unchecked influence of market forces. Within the logic of *maqāṣid al-sharī'a*, this protective function is deeply rooted in the principle of *ḥifẓ al-māl* (the safeguarding of property and wealth).[25]

Beyond this, the state must also act as a *muḍabbir* (administrator), managing land prudently and responsibly to promote collective welfare (*maṣlaḥa*).[26] As an administrator, the state carries the responsibility of designing land policies that not only regulate ownership and use, but also guarantee equitable access for all members of society. At the same time, the state is called upon to serve as a *ḥākim* (judge), ensuring that the distribution of land

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[22] Meanwhile, if we ask about the *mālik ḥaqīqī* concept, which refers to Allah as the sole and absolute owner of everything, including the earth and its contents. In many verses of the Qur'an, such as al-Baqarah [2: 284], explains that all ownership returns to Allah. According to Al-Ghazzālī (d. 1111) in *al-Mustaṣfā*, humans only have the right to benefit (*maṣlaḥa*) and not absolute ownership, because absolute ownership is the prerogative of Allah SWT. Iffatin Nur, Ali Abdul Wakhid, and Lestari Handayani, "A Genealogical Analysis on the Concept and Development of Maqaṣid Syarī'ah," *Al-'Adalah: Jurnal Syariah dan Hukum Islam* 17, no. 1 (November 30, 2020): 1–30, https://doi.org/10.24042/adalah.v17i1.6211.

[23] According to Fazlur Rahman, humans do not have absolute sovereignty over the earth; they are only appointed as caliphs to manage the earth fairly and responsibly. This means that the state must also view itself as an implementer of the mandate, not a full owner. Fazlur Rahman stated that, "Ownership, in the Islamic sense, is a trust (*amāna*), and man is only a vicegerent (*khalīfa*)". Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition* (Chicago: University of Chicago Press, 1982).

[24] Noer Fauzi, *Bersaksi untuk Pembaruan Agraria: Dari Tuntutan Lokal Hingga Kecenderungan Global* (Jogjakarta: Insist Press, 2003).

[25] Jasser Auda, *Reforming Islamic Law: Maqasid al-Shariah and Contemporary Muslim Thought* (London: Palgrave Macmillan, 2019).

[26] Ibn Khaldun, *The Muqaddimah: An Introduction to History*, ed. F. Rosenthal (Princeton: Princeton University Press, 2005).

and other resources is governed by the principle of *maṣlaḥa ʻāmmah* (public interest). In this judicial role, the state must enact and enforce laws that uphold fairness, prevent exploitation, and secure justice in agrarian governance.[27]

Accordingly, the integration of *maqāṣid* into Indonesia's agrarian legal system does not contradict the UUPA or the values of Pancasila; rather, it strengthens the spiritual, moral, and social dimensions of national land governance. This approach provides both a theological legitimacy and an ethical foundation for rejecting the commodification of land that exceeds the boundaries of public benefit (*maṣlaḥa*). Within the framework of *maqāṣid al-sharīʻa*, agrarian assets—such as land, water, and other natural resources—are regarded as fundamental elements for achieving the public good (*maṣlaḥa ʻāmmah*) and ensuring human sustainability. These assets fall under the category of *ḥifẓ al-māl*, one of the five essential objectives of Islamic law (*al-ḍarūriyyāt al-khamsa*), alongside the protection of religion, life, intellect, and progeny.

In the worldview of the Indonesian people—particularly among indigenous communities—land is never regarded merely as an inanimate object subject to the logic of individual ownership. Land is perceived as a mother who gives birth, nurtures, and sustains life. It is a sacred ancestral legacy, collectively guarded and respected. The relationship between humans and land in this context is magical-religious, embodying spiritual, emotional, historical, and social bonds that are inseparable from the identity of the community. Legal anthropologists and scholars of customary law refer to this as a sacred and enduring relationship between people and the land—one that transcends mere juridical-formal considerations.[28]

Maqāṣid al-Sharīʻa: Reinforcing the Spiritual Relationship between Humans and Land

The Islamic perspective, through the lens of *maqāṣid*, offers both a transcendental and normative dimension to the relationship between humans

[27] Ridwan, "Management of Abandoned Land in the Perspective of Islamic Law and National Law of Land," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 11, no. 1 (2016): 19–37, https://doi.org/10.19105/al-lhkam.v11i1.855.

[28] Herlindah Herlindah, Moh Anas Kholish, and Andi Muhammad Galib, "Suing the Oligarchy of Ownership and Control of Agricultural Land in Indonesia: A Maqashid Sharia Review of the Land of Agrarian Reform Objects (TORA) Exceeding the Maximum Boundary," *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial* 24, no. 2 (December 31, 2022): 222, https://doi.org/10.22373/jms.v24i2.12960.

and land. Numerous verses in the Qur'an affirm that the earth, the heavens, and all that lies between them belong to Allah. At the same time, human beings are designated as *khalīfa* (stewards) and *mustakhlaf* (vicegerents) entrusted with the mandate to cultivate the earth (*isti'mār al-arḍ*) and protect it from corruption (*fasād*).[29]

From the perspective of *maqāṣid al-sharī'a*, the relationship between human beings and land is not merely economic or commercial in nature, but deeply theological, ethical, and social. Islam does not regard humans as the absolute owners (*mālik ḥaqīqī*) of land; rather, they are *mustakhlaf* entrusted by God to protect, manage, and utilize the earth justly and sustainably.[30] Consequently, the concept of ownership in Islam is not an unbounded right to exploit, but one bound by the principles of *al-'adālah*, *maṣlaḥa 'āmma*, and ecological responsibility.

Table 1.
Intersection of Three Pillars: Customary Law, Pancasila, and *Maqāṣid al-sharī'a*

Relational Aspects	Customary Law (Magical-Religious)	Pancasila	*Maqāṣid al-Sharī'a*
Land Rights	Collective ancestral inheritance	Collective people's rights	Trust (*amāna*) and public property (*al-māl al-'ām*)
State Ownership	Not recognized in customary law	The state as manager	The state as *mustakhlaf* (vicegerent)
Management Objectives	Community sustainability	Social justice	Public welfare (*maṣlaḥa 'āmma*)
Human-Land Relationship	Spiritual and historical	Transcendental and social	Vicegerency and earth stewardship

Based on this framework, Table 1 is constructed based on a normative-comparative analysis of UUPA, Article 33 of the 1945 Constitution, the Five Principles of Pancasila, and contemporary scholarship on *maqāṣid al-sharī'a*. The synthesis highlights convergences between these frameworks in promoting social justice, communal land rights, and ecological sustainability. The table is

[29] Ulul Umami and Abdul Ghofur, "Human Rights in Maqāṣid al-Sharī'ah al-Āmmah: A Perspective of Ibn 'Āshūr," *Al-Ahkam* 32, no. 1 (April 28, 2022): 87–108, https://doi.org/10.21580/ahkam.2022.32.1.9306.

[30] Sukarni and Hafini Bin Mahmud, "Development and Concept of Environmental Fiqh in the Works of Banjar Scholars: Historical and Thought Analysis," *Syariah: Jurnal Hukum dan Pemikiran* 24, no. 1 (2024): 172–88, https://doi.org/10.18592/sjhp.v24i1.12906.

not descriptive of empirical data but rather a conceptual mapping developed from primary legal texts and supported by relevant academic studies.[31]

The relationship between the Indonesian people and land should not be reduced to mere economic transactions. The state must not act as an absolute owner, but rather as a public servant and a guarantor of *maqāṣid*. The intersection between Indonesian customary law, the national ideology of Pancasila, and the Islamic legal principle of *maqāṣid* reveals a critical normative synthesis that shapes the structure of pluralistic legal reasoning in agrarian justice and legal-social regulation in Indonesia.[32]

At the same time, Pancasila serves as the constitutional ethos that mediates between these normative systems. Through its second and fifth principles—"just and civilized humanity" and "social justice for all Indonesian people"—Pancasila offers a philosophical foundation that accommodates the metaphysical dimensions of customary law and the ethical teleology of Islamic law. These three frameworks converge in a shared vision: justice as balance, collective well-being, and morally grounded natural resource management.[33] However, epistemological tensions persist, particularly concerning sources of authority—customary tradition, divine revelation, and state philosophy. This underscores the urgency of a postcolonial legal pluralism approach, which not only recognizes legal hybridity but also positions it as a constitutive force within Indonesia's legal landscape.[34]

Land Law Transformation and the Erosion of Collective Rights in Indonesia

Three major statutes mark a turning point in this transformation. First is Law No. 6 of 2014 on Villages (the Village Law). In the context of agrarian policy grounded in the 1945 Constitution (particularly Article 33 [3]) and the UUPA, the Village Law introduces significant legal tensions, especially concerning *ulayat* (customary) land rights of indigenous communities. Second, Law No. 23 of 2014 on Regional Government (the Regional Government Law), which

[31] Anugrah, "Land Control, Coal Resource Exploitation and Democratic Decline in Indonesia."

[32] B. Z. Tamanaha, *Legal Pluralism Explained: History, Theory and Applications* (Oxford: Oxford University Press, 2017).

[33] Christian Lund, "An Air of Legality — Legalization under Conditions of Rightlessness in Indonesia."

[34] Auda, *Reforming Islamic Law: Maqasid Al-Shariah and Contemporary Muslim Thought*.

centralizes control over natural resources at the provincial level, poses a threat to village autonomy—especially with respect to land licensing and local-scale mining. Third, Law No. 11 of 2020 on Job Creation (the Omnibus Law), which facilitates the commodification of land, including forest land, *ulayat* land, and village territories.[35]

Table 2
Normative Conflicts in Indonesian Agrarian Law: A *Maqāṣid al-sharī'a* Perspective

Law	Issue/Substance	Conflict with 1945 Constitution	Conflict with UUPA	*Maqāṣid* Analysis
Law No. 6/2014 (Village Law)	Limited recognition of indigenous peoples (only as "customary villages")	*Art. 28I (2)*: Rights of indigenous peoples are recognized but limited by administrative criteria	*Art. 3 UUPA:* Ulayat rights are recognized only if formally proven, creating a risk of neglect for unacknowledged communities	*Ḥifẓ al-nafs* and *ḥifẓ al-māl* threatened due to weakened protection of collective land
Law No. 23/2014 (Regional Government Law)	Centralization of resource control to provincial authorities, which diminishes village autonomy	*Art. 33 (3):* Natural resources must be used for people's welfare, yet centralization excludes local communities	*Arts. 2 & 6 UUPA:* Land control is intended for public welfare, but this principle is overridden by provincial licensing systems	Violates *ḥifẓ al-dīn* and *ḥifẓ al-'ird* (justice and dignity of local communities)
Law No. 11/2020 (Omnibus Law)	Prioritizes investment, liberalizes spatial planning and environmental permits	*Art. 28H (1):* Right to a healthy environment, and *Art. 33 (3):* Resources for the people are compromised through commercialization	Ignores *ulayat* and collective rights; facilitates land dispossession	Threatens *ḥifẓ al-māl*, *ḥifẓ al-nafs*, and *ḥifẓ al-bi'a* (protection of property, life, and the environment)

Conflict of Norms in the Village Law

Based on the table above, we can see the conflict of norms that actually occurred between the Village Law, the Regional Government Law and the

[35] Ni Ketut Suartining and Benny Djaja, "Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960," *Journal of Social Research* 2, no. 6 (2023): 1775-1785., https://doi.org/10.55324/josr.v2i6.903.

Omnibus Law when linked to the Constitution, UUPA and the concept of *maqāṣid*. The Village Law distinguishes between "customary villages" and "administrative villages," indirectly limiting the recognition of customary law to the former.[36]

Critically, the Village Law tends to reduce the legal validity of customary law to a state-legitimated "customary village" framework, excluding autonomous customary law systems not integrated into administrative structures. This contradicts the spirit of recognition and respect enshrined in Article 18B (2) of the 1945 Constitution, which affirms the state's obligation to recognize and respect indigenous peoples and their traditional rights. Furthermore, Article 33(3) of the 1945 Constitution states that natural resources must be managed by the state for the greatest benefit of the people—not as a grant of absolute power, but as a trustee obligation to uphold social justice and popular sovereignty over agrarian resources.[37]

Conflict of Norms in the Regional Government Law

Law No. 23 of 2014 centralizes authority over natural resource management—especially in mining, forestry, and marine sectors—at the provincial level, diminishing the role of district and village governments. This centralization potentially undermines the decentralization mandate of Articles 18 and 18B of the 1945 Constitution, which guarantee local autonomy and recognition of indigenous communities.[38]

In practice, the Regional Government Law has led to tensions between village (including customary village) authorities and provincial governments regarding land permits and resource use, with local voices frequently excluded from licensing decisions. This contradicts the UUPA's provisions—particularly Article 3, which integrates *ulayat* rights into the national agrarian system, and Articles 2 and 6, which stress the social function of land and its use for the public good. As such, the law tends to weaken people's sovereignty over land,

[36] T. Abdullah, A., Hasan, K. S., Rumesten, I., & Pasyah, "Functionalization of the Village Head as Customary Leader in the Social Field in South Sumatra," *Brawijaya Law Journal* 7, no. 1 (2020): 57–69, https://doi.org/10.21776/ub.blj.2020.007.01.04.

[37] Fitrah Akbar Citrawan, "Konsep Kepemilikan Tanah Ulayat Masyarakat Adat Minangkabau," *Jurnal Hukum & Pembangunan* 50, no. 3 (2020): 601, https://doi.org/10.21143/jhp.vol50.no3.2583.

[38] Inosentius Samsul, *Perubahan Pengaturan Tentang Desa dan Pengakuan Kesatuan Masyarakat Hukum Adat sebagai Desa Adat dalam Undang-Undang Nomor 6 Tahun 2014 dalam Eksistensi Hak Ulayat dalam Sistem Hukum Nasional* (Jakarta: P3DI Setjen DPR Republik Indonesia dan Azza Grafika, 2013).

marginalize indigenous institutions, and dilute substantive decentralization as mandated by the Constitution and national agrarian law.

Conflict of Norms in the Omnibus Law

The Omnibus Law exacerbates these issues by providing legal incentives and access to land for investors, including the possibility of land rights for up to 190 years. This amounts to a form of concealed privatization of public land, undermining *ḥifẓ al-māl* and *ḥifẓ al-nafs*, as it endangers the livelihood of local communities, farmers, and vulnerable groups.[39] From the *maqāṣid* perspective, dispossession of community land constitutes a violation of *maṣlaḥa ʿāmma* and represents *fasād* (social harm), which must be prevented.

The law's business-oriented and licensing simplification provisions have expanded central government authority over land and space utilization, including in the mining, forestry, and plantation sectors. It weakens or nullifies various sectoral laws—such as the Environmental Protection and Management Law and the Forestry Law—which previously ensured public participation and recognition of *ulayat* rights. This is in conflict with Article 18B(2) of the 1945 Constitution, which mandates recognition and respect for indigenous communities and their traditional rights. Moreover, Article 33(3) reaffirms that natural resources must be managed by the state for the people's welfare—substantively including collective rights in agrarian resource control and utilization.[40]

Reconstructing Land as Collective Trust: State Ownership vs. *Mustakhlaf*

Article 33 of the 1945 Constitution and Article 2 of the UUPA stipulate that the state holds the Right to Control (HMN) over land, not ownership rights. Unfortunately, in practice, legal interpretation and public policy tend to treat HMN as a form of quasi-ownership, where the state acts as an absolute owner of land and the people are regarded merely as users or tenants subject to the will of the state. This interpretation stands in stark contrast to *the maqāṣid*

[39] Darmawan Darmawan, Iman Jauhari, and Suhaimi Suhaimi, "Resolving Land Disputes Through Land Offices and Customary Institutions: Perspectives from National and Customary Law in Aceh," *El-Usrah: Jurnal Hukum Keluarga* 8, no. 1 (2025): 366–88, https://doi.org/10.22373/tqcdmt70.

[40] Darmawan, Jauhari, and Suhaimi. 2025.

perspective, which views the state as a trustee (*mustakhlaf*), not as the rightful owner (*mālik ḥaqīqī*) of land.

The transformation of land into a commodity—through certification, business licensing, and liberalized ownership by legal entities—has shifted land from the hands of local communities to the free market. In many instances, local people are no longer regarded as legal subjects deserving protection but are seen as obstacles to investment. From the *maqāṣid* perspective, this constitutes a form of systemic deviation (*inḥirāf al-niẓām*) that must be corrected, as it violates the fundamental principles of justice in Islamic law.[41]

One of the most visible consequences of land law transformation under a market-driven logic is the emergence of systemic, widespread, and protracted agrarian conflicts. According to data from the *Konsorsium Pembaruan Agraria (KPA)*, more than 2,000 agrarian conflicts were recorded between 2015 and 2023, involving millions of hectares of land and displacing thousands of rural and indigenous households. These data indicate that agrarian disputes are not isolated incidents but rather structural outcomes of overlapping legal regimes and corporate-centered policies. These conflicts reflect not only disparities in land ownership but also the failure of the national legal system to safeguard people's rights to land in a just, dignified, and sustainable manner.[42]

Agrarian Conflict as a Manifestation of *Fasād* (Social Decay)

In the context of *maqāṣid*, agrarian conflicts resulting from land grabs, forced evictions without compensation, and the criminalization of farmers can be classified as manifestations of *fasād fī al-arḍ* (corruption or damage on earth).[43] This damage is not merely material but also multidimensional: first, because many people lose their sources of livelihood (*ḥifẓ al-nafs*); second, because

[41] Alfa Syahriar and Zahrotun Nafisah, "Comparison of Maqasid al-Shari'ah asy-Syathibi and Ibn 'Ashur Perspective of Usul al-Fiqh Four Mazhab," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 3, no. 2 (April 30, 2020): 185, https://doi.org/10.30659/jua.v3i2.7630.

[42] Rasmus Heltberg, "Property Rights and Natural Resource Management in Developing Countries," *Journal of Economic Surveys* 16, no. 2 (April 16, 2002): 189–214, https://doi.org/10.1111/1467-6419.00164.

[43] In the *maqāṣid al-sharī'a* framework, *fasād* refers to "social, moral, economic, or ecological damage" that disrupts the public balance (*iṣlāḥ*) and causes damage (*mafsada*) on the face of the earth. According to Ibn 'Ashūr, every effort to remove *fasād* and promote *maṣlaḥa* (attraction of benefit) is the highest goal of Sharia, because Sharia emerged to prevent damage (*fasād*) and uphold order (*iṣlāḥ*). Suparjo Suparjo, "On Land (Wealth) Distribution: A Cultural Approach to Justice in Indonesia," *Indonesia Law Review* 1, no. 3 (December 31, 2011): 106–13, https://doi.org/10.15742/ilrev.v1n3.60.

collective wealth is expropriated (*ḥifẓ al-māl*); third, because future generations are deprived of access to living space (*ḥifẓ al-nasl*); fourth, because local values and customary laws are marginalized (*ḥifẓ al-'aql*); and fifth, because the spirituality connected to land is stripped away (*ḥifẓ al-dīn*).[44] From a *maqāṣid* perspective, the state is obligated to prevent and eliminate *fasād*, and to act as a *ḥākim* who ensures the protection of citizens' fundamental rights.

In the context of agrarian conflict, *fasād* arises when corporations or legal regimes (such as the Job Creation Law or the Regional Government Law) exploit legal loopholes to seize indigenous lands without due process. A notable example is the *Seko* indigenous community in South Sulawesi, where state-issued mining and energy concessions overlapped with customary territories, triggering violent clashes and long-term displacement of residents. This case illustrates how the absence of legal harmonization between state and customary systems generates *fasād fī al-arḍ* in both its social and ecological dimensions. Such dynamics include licensing manipulation, the criminalization of local farmers, and the erosion of collective rights—all of which structurally produce inequality, injustice, and enduring conflict.[45] Oliver Leaman emphasizes that *fasād* also encompasses environmental degradation and the disruption of communal harmony. When land—as a collective trust and spiritual asset—is appropriated or commercialized without community participation, it not only undermines social structures but also threatens ecological sustainability and fundamental community rights.[46] Within the framework of *maqāṣid*, this constitutes a violation of *ḥifẓ al-māl*, *ḥifẓ al-nafs,* and *ḥifẓ al-bi'a* (protection of the environment). Reconstructing land as a collective trust must therefore aim at realizing Islamic land justice—an agrarian system that minimizes *fasād*, guarantees structural justice (*taqrīb al-'adl*), and promotes *tawāzun* (balance) and *istiqrār al-niẓām* (systemic stability).[47]

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[44] Yance Arizona, "Perkembangan Konstitusionalitas Penguasaan Negara Atas Sumber Daya Alam dalam Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 8, no. 3 (May 20, 2016): 257, https://doi.org/10.31078/jk833.

[45] Muh.Afif Mahfud and Naufal Hasanuddin Djohan, "The Expansion of Investor Access to Cultivation Rights: A Socio-Legal Analysis on Agrarian Injustice in Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 24, no. 2 (December 30, 2024): 55–67, https://doi.org/10.30631/alrisalah.v24i2.1500.

[46] Oliver Leaman, *Islamic Philosophy* (London: Routledge, 2009).

[47] Fahmi Makraja and Ramlah Ramlah, "Implementation of Environmental Fiqh in Indonesia from the Perspective of Maqāṣid as-Syarī'ah Jasser Auda," *Hukum Islam* 24, no. 2 (February 17, 2025): 277, https://doi.org/10.24014/hi.v24i2.31378.

Siloed Legal Approaches and Jurisdictional Conflicts

One of the major root causes of agrarian conflict in Indonesia lies in the fragmentation of laws governing land and natural resources, which stems from a sectoral and compartmentalized approach to legal development. Various laws—such as the Forestry Law, Water Resources Law, Plantation Law, Marine Law, Spatial Planning Law, and the Mineral and Coal Law—operate within their own domains, each carrying distinct legal logic and jurisdictional boundaries. However, there is no integrative legal framework capable of harmonizing the rights of citizens across these overlapping regimes.

This fragmentation becomes particularly evident in the persistent jurisdictional disputes between the Ministry of Environment and Forestry (KLHK) and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) regarding authority over land situated within forest areas. While the ATR/BPN possesses the mandate to issue land rights certificates, including Right of Management, the KLHK continues to regard all land within designated forest zones as falling under forestry jurisdiction—regardless of its certification status.[48] Such normative disharmony has led to overlapping authorities, delayed implementation of agrarian reform, and the creation of legal loopholes that are often exploited by corporate interests.

Indonesian agrarian law explicitly recognizes *ulayat* rights as part of the national legal system. However, in practice, customary law is granted space only within specific customary village territories (*Desa Adat*), whereas in state administrative regions, it is often subordinated to formal state law. In cases of conflict between corporate holders of Land Use Rights (HGU) and indigenous communities, the legal position of indigenous peoples is frequently weakened in the face of capital and state authority. Although the Constitutional Court Decision No. 35/PUU-X/2012 strengthened the recognition of customary forests, its implementation has been slow and uneven across the country. Within the framework of *maqāṣid al-sharīʿa*, the subordination of collective ownership constitutes a form of *mafsada niẓāmiyya* (structural harm), which

[48] King Faisal Sulaiman, "Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012," *Jurnal Konstitusi* 18, no. 1 (May 27, 2021): 091–111, https://doi.org/10.31078/jk1815.

must be urgently rectified by the state through harmonization among positive law, customary law, and Islamic legal values.[49]

The State's Failure as *Nāṣir* and *Muḥsin*: Toward a Just and Sustainable Agrarian System

Maqāṣid assigns the state two fundamental roles. First, it envisions the state as a *nāṣir*—a protector of the people's rights against the tyranny of power and the domination of market forces. Second, it positions the state as a *muḥsin*—a moral actor responsible for upholding not only formal-legal justice but also substantive justice grounded in human dignity.[50] However, in the context of agrarian conflicts, the state has often acted as a corporate proxy: issuing large-scale land concessions such as HGU, HGB, and other permits, or even deploying security forces to evict its own citizens.[51] Such practices represent a clear manifestation of *inḥirāf al-maqāṣid*—a deviation from the intended objectives of the law—which calls for urgent legal reform rooted in *maqāṣid* and principles of agrarian justice.

Agrarian conflicts and jurisdictional fragmentation in Indonesia's land law system reflect the state's failure to fulfill the *maqāṣid* in protecting property, life, lineage, and legal order. Restoring *maqāṣid* can only be achieved through three interrelated strategies. The first is the reconstruction of an integrative national legal system.[52] Syaukani (2006) emphasizes the necessity of rebuilding the epistemology of national law toward a comprehensive model that unites state law, customary law, and Sharia principles within a coherent functional framework. Legal fragmentation resulting from sectoral legislation has led to overlapping jurisdictions in agrarian matters, creating legal uncertainty and

[49] Amin Farih, "Reinterpretasi Maṣlaḥah sebagai Metode Istinbāṭ Hukum Islam: Studi Pemikiran Hukum Islam Abū Isḥāq Ibrāhīm al-Shāṭibī," *Al-Ahkam* 25, no. 1 (April 25, 2015): 43, https://doi.org/10.21580/ahkam.2015.1.25.193.

[50] A. Andjarwati, "Asumsi Dasar Pembentukan Lingkungan Peradilan Agraria dalam Pendekatan Sistem Hukum," *Jurnal Hukum & Pembangunan* 53, no. 4 (2023), https://doi.org/10.21143/jhp.vol53.no4.1543.

[51] Nur, Wakhid, and Handayani, "A Genealogical Analysis on the Concept and Development of Maqaṣid Syarī'ah."

[52] Dessy Artina et al., "Overlapping Regulation: Kepastian Hak Ulayat Atas Tanah Masyarakat Hukum Adat Muara Sakal Pelalawan Riau," *Masalah-Masalah Hukum* 53, no. 1 (March 28, 2024): 23–34, https://doi.org/10.14710/mmh.53.1.2024.23-34.

weakening the protection of people's rights.[53] This perspective is echoed by Muntaqo, Febrian, and Pratama (2024), who argue that current agrarian legal instruments "are not fully aligned with the constitutional mandate to promote public welfare" and must be developed within "a more comprehensive juridical framework that incorporates customary law."[54]

The second strategy involves harmonizing state law, customary law, and *maqāṣid* principles. Agus Rahmad (2024) argues that harmonization between customary and national law—particularly within strategic development projects—is not merely a matter of administrative synergy, but an integration of fundamental legal values and objectives. He notes that the Basic Agrarian Law (UUPA) from the outset (Article 5) provides a legal foundation for merging customary law with state law, provided it aligns with national interests, unity, and religious values.[55] This perspective is reinforced by Mukhlas (2024), who views *fiqh mu'āmala* as inherently flexible and capable of accommodating local elements as long as they remain within the bounds of Islamic law, thereby facilitating the integration of pluralistic legal systems.[56] Such harmonization is essential to ensuring the fulfillment of *maqāṣid*—particularly the protection of property, life, and lineage—and preventing exploitative land practices.

The third and final strategy is repositioning the state as the primary protector of people's rights rather than a mere facilitator of market interests. Muntaqo et al. (2024) reiterate that precision agrarian law must position the state as the primary guardian of people's rights—not merely as an investment facilitator—because without the state's protective function, agrarian justice becomes skewed and dominated by corporate interests.[57] This approach aligns with Notonagoro's (1987) analysis, which asserts that the state carries a

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[53] I. Syaukani, *Rekonstruksi Epistemologi Hukum Islam Indonesia dan Relevansinya bagi Pembangunan Hukum Nasional* (Jakarta: Raja Grafindo Persada, 2006).

[54] Firman Muntaqo et al., "Adat Law as a Foundation for Advancing Indonesian Agrarian Law to Maximise Societal Welfare."

[55] Agus Rahmad, "Harmonisasi Hukum Adat dan Hukum Pertanahan Nasional Terkait Kepemilikan Tanah dalam Rangka Proyek Strategis Nasional," *Jurnal Hukum & Keadilan* 1, no. 1 (2023): 10–12, https://doi.org/10.61942/jhk.v1i1.43.

[56] Oyo Sunaryo Mukhlas, "Harmonization of Islamic Legal Institutions into The Indonesian Legal System," *Adliya: Jurnal Hukum dan Kemanusiaan*, 2024, https://doi.org/10.15575/adliya.v16i1.22726.

[57] Ending Solehudin et al., "Learning from Malaysia's Progressive Islamic Law Framework on Online Gambling: Insights for Indonesia," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 20, no. 1 (2025): 1–27, https://doi.org/10.19105/al-lhkam.v20i1.14897.

"monodualistic" function—representing both public (state) and collective (people's) interests—particularly in managing public wealth.[58] If the state takes a subordinate role to market interests, then the functions of Sharia in *ḥifẓ al-māl*, *ḥifẓ al-nafs*, *ḥifẓ al-nasl* are bound to collapse.

Conclusion

This study reveals that the transformation of Indonesia's land law since the Reform era signifies a paradigmatic shift from the justice-oriented vision of the Basic Agrarian Law (UUPA) toward a market-driven framework that accelerates land commodification. Through the lens of *maqāṣid al-sharī'a* and grounded in the philosophical foundations of Pancasila and constitutional principles, this research offers a normative framework for reconstructing agrarian law that foregrounds social equity, ecological balance, and spiritual values. Its key contribution lies in integrating national legal norms, customary wisdom, and Islamic legal philosophy to formulate an alternative model of land governance that resists domination by state–corporate alliances and restores the moral purpose of land as a collective resource for the people.

Future research should move beyond normative and conceptual analysis by incorporating empirical and comparative approaches. In particular, studies could examine case-based evidence of agrarian conflicts and explore cross-national experiences to strengthen the contextual and practical relevance of the proposed framework. Such efforts would deepen understanding of how *maqāṣid*-based, justice-centered principles can be operationalized in Indonesia's evolving agrarian landscape, ensuring that future land governance models remain socially inclusive, environmentally sustainable, and ethically grounded.[a]

Author Contribution Statement

Firman Muntaqo: Conceptualization; Data Curation; Formal Analysis; Investigation; Methodology; Project Administration; Resources; Validation; Visualization; Writing Original Draft; Writing, Review & Editing.

Mashudi Mashudi: Data Curation; Funding Acquisition; Resources; Validation; Writing, Review & Editing.

[58] Notonagoro, *Pancasila: Dasar Filsafat Negara* (Jakarta: Bina Aksara, 1987).

Alip Dian Pratama: Conceptualization; Funding Acquisition; Project Administration; Validation; Writing, Review & Editing.

Abdullah Rosikh Fil Ilmi: Project Administration; Resources; Writing, Review & Editing.

Iza Rumesten: Methodology; Resources; Writing, Review & Editing.

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