

Legal Pluralism and the Disposition of Abandoned Properties: Assessing Baitul Mal's Custodial Authority over Tsunami Victims' Assets in Aceh

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Abstract

The tragedy of the earthquake and tsunami that struck the Province of Nanggroe Aceh Darussalam on 26 December 2004 created a humanitarian crisis as well as an unprecedented void in civil law within the Indonesian legal system. The hundreds of thousands of lives lost instantly triggered the phenomenon of *commorientes*, whereby the testator and all their heirs died simultaneously, thereby drastically severing the line of inheritance. This academic article comprehensively examines the legal framework established by Baitul Mal Aceh (BMA) in managing the assets of tsunami victims whose owners or heirs are no longer known (*harta kalalah* or *mafqud*), unravelling the legal and empirical issues encountered, and analysing the status of such heirless land through a comparison of the perspectives of Islamic Inheritance Law and National Agrarian Law. Using a normative legal research method with both *a statutory approach* and *a conceptual approach*, this study finds that the BMA's exclusive authority is established by the principle of *lex specialis derogat legi generali* through the provisions of Law No. 11 of 2006, Law No. 48 of

2007, and the Aceh Qanun No. 10 of 2018, as amended by Qanun No. 3 of 2021. The main issues on the ground include overlapping executive powers with the Inheritance Assets Office (BHP), the loss of authentic land certificates, and the stagnation in the utilisation of ‘escrow funds’ for urban reconstruction compensation. Under Islamic law, the Baitul Mal assumes ownership of public property based on the principle ‘*Baitul Mal waritsu man la waritsa lah*’. Within the framework of national law, Supreme Court Circular (SEMA) No. 1 of 2022 has harmonised jurisdictional disputes, ensuring that property without heirs belonging to Muslim beneficiaries () in Aceh is not confiscated as State Property under the authority of the BHP, but is instead administered as Religious Property under the BMA to be utilised for the public good and the sustainable alleviation of poverty amongst the community.

KEYWORDS: *Baitul Mal Aceh, Inheritance Assets, Islamic Law, State Law, Tsunami Victims*

Introduction

The natural disaster of a tectonic earthquake measuring between 9.1 and 9.3 on the Richter scale, followed by a massive tsunami at the end of 2004, was one of the most heart-wrenching yet transformative turning points in the history of modern Indonesian civilisation.¹ The province of Nanggroe Aceh Darussalam (now the Province of Aceh) and the Nias Islands in North Sumatra suffered destruction that paralysed the very fabric of life.² According to post-disaster data, this humanitarian tragedy claimed 126,741 confirmed lives, with a further 93,285 people declared missing without trace.³ The disaster also devastated physical infrastructure, leaving around 500,000 people without homes, whilst more than 750,000 people suddenly found themselves homeless.⁴

¹ Philia Christi Latue, Susan E. Manakane, and Heinrich Rakuasa, ‘Policy Review and Regional Development in Disaster Mitigation (Case Study: 2004 Aceh Tsunami and 2011 Tōhoku Tsunami)’, *International Journal of Multidisciplinary Approach Research and Science* 1, no. 03 (2023), <https://doi.org/10.59653/ijmars.v1i03.165>.

² Agus Danugroho, ‘Susilo Bambang Yudhoyono’s Government Policy in Handling The Aceh Tsunami: A Historical Research’, *JIP (Jurnal Ilmu Pemerintahan): Kajian Ilmu Pemerintahan Dan Politik Daerah* 6, no. 1 (2021), <https://doi.org/10.24905/jip.6.1.2021.1-12>.

³ Nurhadi Nurhadi, Hengky Akasse, and Ulfa Jemy, ‘Analisis Dampak Ekonomi Akibat Bencana Alam Gempa Bumi, Tsunami, Dan Likuifaksi Di Kota Palu’, *Jurnal Kolaboratif Sains* 4, no. 11 (2021), <https://doi.org/10.56338/jks.v4i11.1983>.

⁴ Halimatun Sakdiah and Evi Mauliza, ‘Pemulihan Pasca Tujuh Belas Tahun Tsunami Aceh Dari Tinjauan Sosial Dan Ekonomi Pada Masyarakat Kota Banda Aceh’, *Jurnal Sains Riset* 13, no. 1 (2023), <https://doi.org/10.47647/jsr.v13i1.980>.

The destructive impact of the tsunami did not stop at physical losses and psychological trauma, but also triggered a domino effect in the form of a massive civil law crisis.⁵ The most fundamental issue was the simultaneous loss of legal subjects, which triggered complex problems in the areas of guardianship of minors and the transfer of property rights, particularly the inheritance of land rights.⁶ Research published by *the United Nations Development Programme* (UNDP) estimates that around 30,000 children were instantly orphaned as a result of the tsunami, of whom 20,000 were identified as not yet having a legally recognised guardian under civil law.⁷ Furthermore, the extinction of an entire family line has resulted in thousands of plots of land, immovable property, valuable movable property (jewellery scattered amongst the rubble), and bank deposits being reclassified as unclaimed estates (*onbeheerde nalatenschap*).⁸

Within the framework of Western civil law inherited from the Dutch colonial era through the Civil Code (KUHPerdata), the principle of absolute succession (*le mort saisit le vif*) dictates that every heir automatically, by operation of law, acquires rights to all of the deceased's property and claims.⁹ However, if the heirs are absent (*afwezigheid*), their whereabouts are unknown, or they have all passed away, the Civil Code delegates the control and administration of the estate to the Estate Administration Office (BHP). This centralised paradigm clashes directly with the socio-cultural and legal particularities prevailing in the Province of Aceh, where the system of social norms is deeply rooted in the values of Islamic Sharia.¹⁰

In the tradition of Islamic law (*Fiqh Mawaris*), the state institution authorised to take over the assets of individuals who have no heirs (*kalalah*) is the

⁵ Iwandi Iwandi, Rustam Efendi, and Chairul Fahmi, 'THE CONCEPT OF FRANCHISING IN THE INDONESIAN'S CIVIL LAW AND ISLAM', *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 4, no. 2 (2023), <https://doi.org/10.22373/al-mudharabah.v5i2.3409>.

⁶ Chairul Fahmi, 'The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia', *Https://Doi.Org/10.1177/11771801241235261* 20, no. 1 (March 2024): 157–66, <https://doi.org/10.1177/11771801241235261>.

⁷ UNDPI, 'Indigenous Peoples' Rights to Lands, Territories and Resources', *International Land Coalition* 1 (2020).

⁸ Vitri Dini Artistry and Dewi Sulistianingsih, 'Analysis of Grondkaart as Land Ownership Rights in the Perspective of Land Law in Indonesia', *Journal of Private and Commercial Law* 8, no. 1 (2024): undefined-undefined, <https://doi.org/10.15294/jpcl.v8i1.454>.

⁹ 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 (August 2024): 1566–96, <https://doi.org/10.22373/SJHK.V8I3.19992>.

¹⁰ Wafa Ibra Syahra, Chairul Fahmi, and Shabarullah Shabarullah, 'Legal Review of Dumping Practices in Indonesia: A Comparative Study of International Economic Law and Sharia Economic Law', *Priviet Social Sciences Journal* 6, no. 1 (January 2026): 142–54, <https://doi.org/10.55942/pssj.v6i1.1464>.

Baitul Mal.¹¹ In Aceh, the Baitul Mal is not merely a philanthropic body distributing zakat, but is recognised as a regional body with delegated authority within the system of special autonomy.¹² To bridge the regulatory gap and prevent post-disaster land disputes, the Central Government responded by enacting Government Regulation instead of Law (Perppu) No. 2 of 2007, which was subsequently enacted as Law No. 48 of 2007 on the Handling of Legal Issues in the Context of the Implementation of Rehabilitation and Reconstruction of the Territory and Community Life in the Province of Nanggroe Aceh Darussalam and the Nias Islands.¹³

Although the legal framework (Law No. 48 of 2007 and regional organic legislation in the form of Qanun) has been enacted, the implementation of Baitul Mal Aceh's administration of unclaimed property is fraught with legal problems and practical difficulties. The Sharia Court's difficulties in issuing rulings on heirs or on *unclaimed* property are hampered by the destruction of archives and authentic land certificates at the local land office.¹⁴ On the other hand, the rehabilitation project and the Regional Spatial Plan (RTRW) for the City of Banda Aceh, which have led to land acquisition, have forced the local government to deposit billions of rupiah in 'compensation funds' into the Baitul Mal's coffers. The status of the disbursement of these deposited funds remains uncertain due to the lack of a comprehensive '*sunset clause*' () mechanism for the expiry of claims, alongside the lingering issue of overlapping jurisdictions with the Inheritance Assets Office.

Against this complex backdrop, this article explores in depth the three main dimensions of the issue. *Firstly*, it examines the legal framework and the expansion of Baitul Mal Aceh's powers to manage tsunami victims' assets. *Secondly*, it examines institutional challenges and jurisdictional conflicts, particularly the friction with the Balai Harta Peninggalan (Estate Administration Office) and the status of 'escrow funds'. *Thirdly*, it presents a comparative analysis of the status of heirless

¹¹ Qanun Aceh No.3 Tahun 2021 Tentang Baitul Mal Aceh (2021).

¹² Chairul Fahmi and Syarifah Riyani, 'ISLAMIC ECONOMIC ANALYSIS OF THE ACEH SPECIAL AUTONOMY FUND MANAGEMENT', *Wahana Akademika: Jurnal Studi Islam Dan Sosial* 11, no. 1 (July 2024): 89–104, <https://doi.org/10.21580/WA.V11I1.20007>.

¹³ Irfan Zikri, 'Social Transformation and the Change of Community Capacity of Post-Tsunami Aceh, Indonesia', *Pertanika Journal of Social Sciences and Humanities* 25, no. 3 (2017).

¹⁴ Oyvind Ravna, 'Links between Lands, Territories, Environment and Cultural Heritage - the Recognition of Sami Lands in Norway', in *Indigenous Peoples' Cultural Heritage: Rights, Debates, Challenges*, ed. Alexandra Xanthaki et al. (Leiden: BRILL, 2017).

land under the doctrines of Islamic Inheritance Law and National Agrarian Law, with a view to finding a legal solution that is both certain and just.¹⁵

This study is designed as a normative (juridical-normative) study that examines legal rules, principles, and doctrines in the legal literature and in positive regulations. The *research approach* employed integrates three main qualitative methods, namely:

1. *Statutory Approach*: Used to comprehensively review the hierarchy of regulations, starting from the 1945 Constitution, the Civil Code (KUHPerdata), Law No. 5 of 1960 concerning Basic Provisions on Agrarian Principles (UUPA), Law-Law No. 11 of 2006 on the Government of Aceh, Law No. 48 of 2007, Supreme Court Circular Letter (SEMA) No. 1 of 2022, right down to regional derivative regulations in the form of Aceh Qanun No. 10 of 2018 and Aceh Qanun No. 3 of 2021 on Baitul Mal.
2. *Conceptual Approach*: Applied to analyse the philosophical foundations of the concept of ownership in Islam, the doctrines of *kalalah* and *fai'* assets, the theory of *afwezigheid* and state control over inherited assets, as well as the principle of asymmetric decentralisation in Aceh.
3. *Legal Harmonisation Approach*: Aimed at identifying harmonisation or overlap in regulations, both vertically and horizontally, particularly between the authority of the Inheritance Assets Office (Ministry of Law and Human Rights) and the Aceh Baitul Mal.

Legal materials were collected through *library research*, comprising primary legal sources (laws, qanuns, court rulings) and secondary legal sources (academic journals, reference books, theses, monographs). All the legal materials collected were catalogued, systematised and analysed using deductive reasoning to address the research questions in a holistic and prescriptive manner.

The History, Existence and Legal Status of Baitul Mal in Aceh

Within the historical tradition of Islamic state administration and monetary treasury systems, the institution of *the Baitul Mal* (literally meaning 'House of Wealth') has had precedents dating back to the era of the Prophet Muhammad (peace be upon him). Initially, the Islamic treasury relied on the management of very

¹⁵ Anton Lucas and Carol Warren, *Land for the People: The State and Agrarian Conflict in Indonesia* (USA: Ohio University Press, 2013).

basic economic instruments, which were distributed in their entirety within a short period at the mosque, derived from *ghanimah* (war booty), *zakat*, and *sadaqah*.¹⁶ This institution reached a mature bureaucratic form during the reign of Caliph ‘Umar ibn al-Khaththāb, in tandem with the expansion of the Islamic realm, which led to the emergence of new sources of state revenue, such as *kharāj* (land tax on conquered territories), *jizyah*, and *ushur*.¹⁷

In Indonesia, the discourse on establishing the Baitul Mal as an official state institution was hampered by legal centralisation and a secularist administrative outlook for decades, until political reform finally led to the enactment of Law No. 11 of 2006 on the Government of Aceh (UUPA).¹⁸ The UUPA introduced asymmetric decentralisation, which accommodates the implementation of Islamic Sharia in Aceh within both the public and private legal systems. Article 191(1) of the UUPA provides an absolute formal legal basis stating that: “*Zakat, waqf assets, and religious assets shall be managed by the Baitul Mal and the Regency/Municipal Baitul Mal*”.

Based on the legal framework of the UUPA, the Government of Aceh issued autonomy instruments in the form of Aceh Qanuns. This institutional framework has evolved in response to the challenges of the times. Initially, the Aceh Qanun No. 10 of 2007 was enacted, subsequently fundamentally reformed by the Aceh Qanun No. 10 of 2018 on the Baitul Mal, and further refined by the Aceh Qanun No. 3 of 2021. Under this latest regulatory framework, Baitul Mal is explicitly defined not as a civil society organisation but as a non-structural regional institution with the authority to manage zakat, infaq, waqf assets and other religious assets, as well as to act *as a supervisory trustee*.¹⁹

The institutional structure of Baitul Mal Aceh (BMA) reflects that of a modern, multi-tiered government body. BMA comprises:

¹⁶ Raudhatul Jannah, Chairul Fahmi, and Azka Amalia Jihad, ‘Financing Micro, Small and Medium Enterprises (MSMEs) After the Implementation of Qanun LKS in the Perspective of Maqashid Syariah’, *AJIEL - Ar-Raniry Journal of Islamic Economic Law* 1, no. 1 (June 2024): 1, Indonesia, Asia.

¹⁷ Chairul Fahmi, ‘The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia’, *Jurnal Ilmiah Peuradeun* 11, no. 2 (May 2023): 667–86, <https://doi.org/10.26811/PEURADEUN.V11I2.923>.

¹⁸ Suadi Zainal et al., ‘The Policy of Local Government to Implement Peace Education at Secondary School Post Armed Conflict in Aceh Indonesia’, *Journal of Social Studies Education Research* 12, no. 2 (2021).

¹⁹ Mahdi Syahbandir et al., ‘State Authority for Management of Zakat, Infaq, and Sadaqah as Locally-Generated Revenue: A Case Study at Baitul Mal in Aceh’, *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 17, no. 2 (2022): 554–77, <https://doi.org/10.19105/AL-LHKAM.V17I2.7229>.

1. The BMA Board: Acts as a representative body comprising professionals and religious scholars who formulate strategic policies, determine the amount of distributions, and provide guidance to the nazirs.
2. Sharia Supervisory Board (DPS): Responsible for providing advice on Sharia compliance and *prudential principles* in the management and development of the community's assets.
3. BMA Secretariat: Functioning as an Aceh Government Agency (SKPA), it organises services, administrative management, data collection, and the operationalisation of the distribution of zakat and waqf, as well as the supervision of trusteeship.

The existence of the BMA, which is fully integrated into the Aceh Revenue and Expenditure Budget (APBA), signifies that the assets it manages—including post-tsunami *unclaimed assets*—are an integral part of state/regional finances, the use of which is strictly audited in accordance with the principles of accountability and transparency.²⁰

The Exceptional Legality of the Management of Tsunami Victims' Assets by Baitul Mal

The 2004 tsunami disrupted the normal course of inheritance law, thereby giving rise to the legal category of *mafqud* (a person who is missing and whose status—whether alive or dead—is unknown). In case law and *the Compilation of Islamic Law (KHI)*, Book II, Chapter III, Article 191, a normative principle is set out: “If the deceased leaves no heirs at all, or if the existence of any heirs is unknown, then such property— —shall, by order of the Religious Court, be transferred to the Baitul Mal for the benefit of Islam and the public welfare”.²¹

However, the KHI serves merely as a guideline through a Presidential Instruction and does not yet possess the enforceability of specific organic legislation for the mitigation of disasters such as the Aceh tsunami. To fill this gap in the hierarchy of norms, the Government issued an emergency instrument, namely Law No. 48 of 2007. This Law provides *lex specialis* legitimacy for the BMA to transform

²⁰ Syahbandir et al.

²¹ Nur Asnawi and Nina Dwi Setyaningsih, ‘MENINGKATKAN PEREKONOMIAN MASYARAKAT MELALUI KOPERASI SYARIAH: PENDEKATAN PARTICIPATORY ACTION RESEARCH’, *Khidmatuna: Jurnal Pengabdian Kepada Masyarakat* 2, no. 1 (2021), <https://doi.org/10.51339/khidmatuna.v2i1.199>.

from merely an ‘Amil Zakat’ (Zakat Collector) into a ‘Guardian and Supervisor’ for orphans and an ‘Asset Manager’ for *unclaimed* property.²²

Two key regulatory pillars within Law No. 48 of 2007 directly mandate the Baitul Mal:

- Article 8(1): Explicitly stipulates that “*Land for which there is no longer an owner or heir who is Muslim shall become religious property and shall be managed by Baitul Mal*”.
- Article 27(1): States that “*customers’ bank deposits and assets where the whereabouts of the owner or heir/guardian of the customer are no longer known shall, by law, be handed over to Baitul Mal or the Estate Administration Office to be supervised and managed after a ruling has been obtained...*”.

These regulations were subsequently incorporated into the local legal framework in Aceh. Within the structure of Aceh Qanun No. 10 of 2018 and Qanun No. 3 of 2021, the legal formulation regarding tsunami assets is crystallised in Article 1, Point 50, which defines *ownerless property* as “*the estate of a person who has no heirs*”. Through this exceptional legal provision, Baitul Mal has a legal basis to undertake safeguarding measures, storage and, ultimately, the utilisation of property belonging to heirs, to support post-conflict and post-disaster economic recovery in Aceh.²³

Overlapping Jurisdictions: The Dialectic between Baitul Mal and the Estate Administration Office (BHP)

One of the greatest empirical-institutional challenges in the administration of tsunami victims’ assets is the clash of jurisdiction between the Western civil law regime inherited from the colonial era and the local Sharia regime. Under the national legal system, the administration of a person’s assets whilst they are in a state of ‘*afwezigheid*’ (absence) and the handling of guardianship rights are the absolute mandate of the Estate Administration Office (BHP).²⁴

History records that the BHP, formerly known as *the Wees-en Boedelkamer* (Weskamer), was established by the Dutch colonial authorities in Batavia on 1

²² Zulfa Djoko Basuki, *Kompilasi bidang hukum kekeluargaan* (Jakarta: Badan Pembinaan Hukum Nasional, Departemen Hukum dan Hak Asasi Manusia RI, 2009).

²³ Qanun Aceh No.3 Tahun 2021 Tentang Baitul Mal Aceh.

²⁴ Iwandi, Efendi, and Fahmi, ‘THE CONCEPT OF FRANCHISING IN THE INDONESIAN’S CIVIL LAW AND ISLAM’.

October 1624 to manage the estates of deceased members of trading companies, and its distinct status has been preserved in the Civil Code.²⁵ Pursuant to Article 463 of the Civil Code, should a person leave their place of residence without granting power of attorney to manage their assets, the court, upon the prosecution's application, shall order the BHP to undertake the administration, sealing, defence of rights, and comprehensive inventory of *the estate*. This authority is vested absolutely under the Ministry of Law and Human Rights.²⁶

When compared, both the BHP and the BMA share the same ontological basis, namely the state's function of protecting the public's assets so that they do not fall into the hands of the mafia or come under illegal control.

Table 1: Legal structure and status of the estate of tsunami victims

Comparative Aspects	Estate Administration Office (BHP)	Aceh Baitul Mal (BMA)
Historical Roots / Norms	Western Civil Law (<i>Burgerlijk Wetboek</i> / Civil Code) was inherited from the Dutch colonial era, dating back to 1624.	Islamic Public Finance Law (<i>Fiqh Mawaris</i> , history of the classical caliphate).
Positive Legal Basis	Section 463 of the Civil Code, Ministry of Law and Human Rights Regulation No. 7 of 2021.	Law No. 11 of 2006 on Land, Law No. 48 of 2007, Article 191 of the Islamic Family Law (KHI), Aceh Qanun No. 10 of 2018 as amended by No. 3 of 2021.
Target Legal Subjects	The general population (non-Muslims in Aceh), Indonesian citizens of foreign descent.	Muslim residents of Aceh Province.
Mechanism for Final Acquisition of Rights	If no claim is made within 30 years, a district court order is sought to confiscate the property as State Property.	Pursuant to a ruling by the Sharia Court, the property is reclassified as Religious Assets for the welfare of the Muslim community.

²⁵ Alexander Claver, *Dutch Commerce and Chinese Merchants in Java: Colonial Relationships in Trade and Finance, 1800-1942* (The Hague: BRILL, 2014).

²⁶ Muhammad Siddiq Armia, 'Democracy through Election: A Study on the Conflict of Norms in Aceh's Election Process', *Journal of Southeast Asian Human Rights* 2 (2018), <https://heinonline.org/HOL/Page?handle=hein.journals/jseahr2&id=120&div=&collection=>.

Authority to Enforce Payment or Seize Assets	An administration fee of 2.5% is levied on the sale of estate assets. This is paid into the state treasury.	Held in reserve, converted into a Wakaf Istitsmar, or channelled as Zakat/Infak without individual sales fees.
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This jurisdictional conflict created acute ambiguity in the first decade following the tsunami. The courts, banks, and institutions such as PT Jamsostek (which holds Rp4.9 trillion in unclaimed Old Age Security Funds) were often reluctant to hand over the funds or assets of Muslim tsunami victims to the Baitul Mal treasury, given that the BHP had not yet been fully relieved of this function at the national level.²⁷

To break this chain of overlapping responsibilities, the Supreme Court issued *Supreme Court Circular (SEMA) No. 1 of 2022 on the Implementation of the Formulation of the Results of the Supreme Court Plenary Session*. In this SEMA—in response to the need to protect the share of missing heirs—it is emphasised that in the execution of inheritance cases involving Muslim heirs, there is a clear division of jurisdiction.²⁸ The portion of the inheritance in the form of cash must be deposited (*consigned*) with the religious court; whilst other tangible assets (such as land, jewellery and precious metals) are deposited with the Estate Administration Office (BHP); specifically for the Aceh region, they are deposited with the Baitul Mal. This Supreme Court ruling ensures that the existence of the BHP for Muslims in Aceh is superseded by the principle of *lex specialis*, thereby strengthening the autonomy of the Aceh Baitul Mal both *de facto* and *de jure*.²⁹

Dynamics and Empirical Issues on the Ground: The ‘Deposited Funds’ Land Conundrum

Behind the success of legal harmonisation at the macro level (SEMA and legislation), the Aceh Baitul Mal (BMA) faces highly complex bureaucratic and sociological complications at the grassroots level. The dominant issue arising from

²⁷ Rahmad Kurniawan, Nur Asnawi, and Chairul Fahmi, ‘Juridical-Philosophical Review of the Position of Sharia Compliance in Islamic Banking in Indonesia’, *Jurnal Ilmu Hukum Tambun Bungai* 9, no. 2 (December 2024): 531–45, <https://doi.org/10.61394/JIHTB.V9I2.497>.

²⁸ Rikart Maha Riskianti, ‘Kewenangan Pengadilan Agama Menjalankan Mediasi Sengketa Perbankan Syariah Di Kota Semarang’, *JURNAL USM LAW REVIEW* 2, no. 1 (2019), <https://doi.org/10.26623/julr.v2i1.2256>.

²⁹ Armia, ‘Democracy through Election: A Study on the Conflict of Norms in Aceh’s Election Process’.

the management of tsunami assets is the accumulation of ‘land escrow funds’ whose distribution status remains in limbo.³⁰

In the aftermath of the tsunami, the Banda Aceh City Government initiated a massive reconstruction project and the development of the Regional Spatial Plan (RTRW). This project necessitated the acquisition of land affected by green zones or road widening. Given that the owners of the majority of these plots had perished in the tsunami, leaving no surviving heirs, the city government was unable to carry out conventional sale-and-purchase transactions.³¹ As a procedural measure, following a ruling by the Sharia Court, the Banda Aceh City Government deposited billions of rupiah in compensation into the Banda Aceh City Baitul Mal account designated as the ‘Abandoned Land Escrow Fund’.³²

In their study, Suryadi et al. (2017) highlighted a critical finding: “Of the total escrow fund, only a small portion has been identified as belonging to known owners or heirs, and these funds have been withdrawn from the Banda Aceh Baitul Mal”. The process of utilising these dormant funds has encountered institutional *bottlenecks* due to several technical and legal obstacles:

1. Deficit in Land Certification Identification: The impact of the tsunami led to the loss of authentic evidence (land certificates/titles) from residents’ archives as well as the National Land Agency (BPN) *database*. The absence of certificates makes it difficult for Baitul Mal to conduct forensic verification of boundaries, actual area, and the historical ownership of the original owners. Should relatives eventually return to Aceh and claim their rights, the validation of their lineage becomes vulnerable to manipulation.
2. Absence of a Time Limit (*Sunset Clause*): Under the positive law of the Civil Code (KUHPerdata), *unclaimed* property is automatically transferred to the state after 30 years without any claim. However, Law No. 48 of 2007 and the Baitul Mal Qanun do not stipulate a rigid limitation period (for example, 10, 15 or 20 years) before such deposited funds are definitively transferred to become unencumbered Religious Assets. Baitul Mal cannot arbitrarily use these ‘deposited’ funds for capital expenditure or *charitable* grants, due to the risk of civil claims for damages from individuals who may, at some point, suddenly prove themselves to be lawful heirs through a new court ruling.

³⁰ Sakdiah and Mauliza, ‘Pemulihan Pasca Tujuh Belas Tahun Tsunami Aceh Dari Tinjauan Sosial Dan Ekonomi Pada Masyarakat Kota Banda Aceh’.

³¹ Mursyid Djawas et al., ‘Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism’, *Hasanuddin Law Review* 10, no. 1 (2024): 64–82, <https://doi.org/10.20956/halrev.v10i1.4824>.

³² Syahbandir et al., ‘State Authority for Management of Zakat, Infaq, and Sadaqah as Locally-Generated Revenue’.

3. Administrative Capacity of the Sharia Court: The transfer of ownership from ‘deposited’ status to ‘religious property’ requires a court ruling that has the force of law (*inkracht*). Submitting thousands of plots of land without heirs to the Sharia Court requires inter-sectoral cooperation (*a joint task force* comprising officials from the Public Prosecutor’s Office, the National Land Agency (BPN), the Police, and the BMA), something which in the past has been hampered by the bureaucratic weaknesses of sectoral egos.

This paradoxical situation implies hidden economic losses (*opportunity cost*). Instead of the trillions of rupiah in land compensation funds and Jamsostek Old Age Benefits being channelled to drive the economy of the Acehnese people, who are still plagued by poverty, these funds remain rigidly tied up (*idle funds*) within the banking system.³³

The Status of Land Without Heirs from the Perspective of Islamic Inheritance Law

Given the complexity of the mass *kalalah* phenomenon following the tsunami, the status of land without heirs must be examined through the lens of *Fiqh Mawaris* (Faraid), as the substantive law applied by the Shari’ah Courts in adjudicating inheritance disputes in Aceh is based on the principles of Shari’ah.³⁴

The framework of *Fiqh Mawaris* establishes the principle that individual ownership (*milkiyyah fardiyyah*) is respected even after the legal subject’s death, and is transferred to relatives based on three grounds: *nasab* (blood ties), *mushabarah* (marital ties), and *wala’* (the manumission of an enslaved person). The structure of inheritance distribution operates systematically and in stages. Rights to the estate are first distributed to the *Ashabul Furud*—that is, the primary heirs whose shares are qath’i (definitively) specified in the Qur’an (such as the husband, wife, daughters, father and mother). The remainder of the estate (*residue*) is entirely absorbed by the *Asabah* group (male heirs in the patrilineal line). If the *Ashabul Furud* and *Asabah* groups have absolutely ceased to exist, fiqh discourse permits the inheritance rights to pass to *the Dzawil Arham* (relatives through the female line, such as the grandchildren of a daughter or the nieces of a sister).³⁵

³³ Muhammad Alwi et al., ‘KONSEP MAQASID AS SYARIAH DALAM PERBANKAN SYARIAH’, *Al-Amwal: Journal of Islamic Economic Law* 7, no. 2 (December 2022): 56–80, <https://doi.org/10.24256/alw.v7i2.3549>.

³⁴ Pemerintah Aceh, ‘QANUN ACEH NOMOR 8 TAHUN 2014 TENTANG POKOK-POKOK SYARIAH ISLAM’, 2014, <https://www.regulasip.id/book/8967/read>.

³⁵ Sri Jaya Lesmana, *Hukum Keluarga dan Waris* (Jakarta: Berkah Aksara Cipta Karya, 2025).

The Aceh tsunami disrupted this hierarchical structure, as the entire chain—from *the Ashabul Furud* to *the Dzawil Arham*—was often swept away simultaneously by the deadly waves. In fiqh terminology, when *the asabah* and relatives by blood can no longer be identified as existing on earth, the status of private ownership of such wealth is ontologically severed and must be reintegrated into the public domain (*milkiyyah ammah*).³⁶

To prevent the assets from becoming abandoned property without a legitimate *owner*, the scholars base their jurisprudential solution on a fundamental principle agreed upon by the majority of schools of thought (particularly the Shafi'i school): *Baitul mal waritsu man la waritsa lah* (Baitul mal is the heir to an individual who has no heir).

From a Sharia perspective, the status of tsunami-affected land without heirs changes its classification from '*Tirkah*' (private inherited property) to '*Harta Fai*', or, in the modern lexicon of the Aceh Law, 'Islamic Religious Assets'. This change in status requires that the asset manager—in this case, the Baitul Mal—operate with integrity and accountability, and prioritise the public interest (*maslahah mursalah*) rather than serve the interests of the state's bureaucratic elite.³⁷

Based on this analysis, the legitimacy of the Aceh Baitul Mal, as established by Article 191 of the KHI and the Aceh Qanun No. 3 of 2021, is not merely a construct of positive law, but a real manifestation (*tajalli*) of medieval fiqh muamalah doctrine, revitalised to address modern sociological realities in Aceh. Therefore, land without heirs must not be taken over individually by occupation (secretly occupying abandoned land), as the Baitul Mal's divine and sharia prerogative over such land prevails.³⁸

The Status of Land Without Heirs from the Perspective of National Agrarian Law

When contrasted with the paradigm of Islamic Inheritance Law, the National Agrarian Law regime offers a philosophical interpretation based on the concept of the 'State's Right of Control', as mandated by Article 33 of the 1945

³⁶ S. Rahmanda, D. E. S. Putri, and A. D. Untari, 'Perlindungan Hukum Terhadap Penguasaan Harta Waris Anak Yatim Oleh Wali: Legal Protection Against the Control of the Inherited Property of an Orphan Child by ...', ... *FUQAH: Jurnal Bidang ...*, 2025, undefined-undefined.

³⁷ Lesmana, *Hukum Keluarga dan Waris*.

³⁸ Marieke Bloembergen, *Colonial Spectacles: The Netherlands and the Dutch East Indies at the World Exhibitions, 1880-1931* (Singapore: NUS Press, 2006).

Constitution and elaborated in detail in Law No. 5 of 1960 concerning the Basic Provisions of Agrarian Law (UUPA).³⁹

Fundamentally, the UUPA does not recognise the term ‘religious land’ to refer to assets that cannot be inherited. The concept recognised in this instrument is that if a holder of a Right of Ownership, a Right to Build (HGB), or a Right to Cultivate (HGU) dies *intestate* (without a will) and leaves no legitimate heir to claim their rights, then the property rights over that plot of land are, by operation of law, extinguished. Consequently, the status of the land plot changes to State Land, which is reclaimed by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN).⁴⁰

Meanwhile, if intervention is carried out by the Estate Administration Office (BHP) based on the Civil Code (BW), the land will be realised through the auction of the estate (with an administrative fee of 2.5 per cent levied on the proceeds of *each estate*) and deposited as Non-Tax State Revenue (PNBP) into the State General Treasury after a waiting period of several decades.

The contradiction between the statuses of ‘State Land’ (UUPA/BPN), ‘State Ownership Rights’ (Civil Code/BHP), and ‘Religious Assets’ (Law No. 48 of 2007/Baitul Mal) requires legal harmonisation. A conceptual solution within legal theory lies in the application of a higher legal principle, namely the principle of ‘*Lex Specialis Derogat Legi Generali*’ within the context of legal pluralism.⁴¹

As Law No. 48 of 2007 was enacted as *specific-purpose legislation to address* the sociological catastrophe in the Aceh region, the provision in the UUPA regarding the conversion of land into “State Land” must be annulled (*set aside*).

In the post-tsunami legal reality, land owned by Muslim heirs whose generation was wiped out does not automatically revert to the secular state (the Central Government/BPN/Ministry of Finance). Still, rather, its status is administratively transferred to become a Religious Asset under the Aceh Regional Government () under the control of the Baitul Mal. The logical consequence of this change in *the legal framework* is that the Aceh Regional Land Agency (BPN) must facilitate the administrative registration of the transfer of rights. The BPN is authorised to block fraudulent transfer registrations by land brokers, and to issue Certificates of Ownership (or Certificates of Use, Certificates of Management) in

³⁹ Syahbandir et al., ‘State Authority for Management of Zakat, Infaq, and Sadaqah as Locally-Generated Revenue’.

⁴⁰ Permen ATR/KBPN Nomor 14, ‘Peraturan Menteri ATR/KBPN Nomor 14 Tahun 2024 Tentang Penyelenggaraan Administrasi Pertanahan Dan Pendaftaran Tanah Hak Ulayat Masyarakat Hukum Adat’, *JDIH (Legal Documentation and Information Network) of Ministry of ATR/BPN*, 2024, undefined-undefined.

⁴¹ Djawas et al., ‘Harmonization of State, Custom, and Islamic Law in Aceh’.

the name of Baitul Mal Aceh based on a strong legal basis, namely the Ruling of the local Sharia Court declaring the absence of heirs to the tsunami victims.⁴²

Future Transformation and Utilisation of Assets by Baitul Mal

Moving beyond theoretical debates and clashes between administrative and judicial bodies, two decades after the tsunami, Baitul Mal Aceh is required to evolve organically; from merely acting as an emergency ‘gatekeeper’ (*custodian/escrow*) to becoming an institution that acts as an economic incubator for the community (*wealth and asset management*). The limitations of Qanun No. 10 of 2007 have been revitalised through innovations in Aceh Qanun No. 10 of 2018 and the second amendment to Aceh Qanun No. 3 of 2021, which provide extensive legal flexibility.

Article by article, the draft amending Qanun incorporates a new and highly progressive instrument, namely Wakaf Istitsmar (productive waqf). Wakaf Istitsmar is defined as “*the channelling of infaq (and other religious assets) into waqf assets intended to ensure the sustainability of funds and increase their value in accordance with Sharia principles*”. Under this flexible legal framework, abandoned land assets and the trillions in ‘deposited funds’ from land acquisition compensation in Banda Aceh—having been *definitively* ruled as *kalalah* assets by the Sharia Court—must not simply be left dormant in the regional treasury’s deposit accounts.

Baitul Mal Aceh is mandated to convert the value of these escrow funds into investments in real assets (*Productive Waqf*), such as Sharia-compliant securities (Sukuk), the establishment of Sharia-compliant microfinance institutions, *channeling* financing models, or *joint financing* with a proportional share of risk.

At the contemporary empirical level, BMA has pioneered a progressive philanthropy movement that has shifted the paradigm from traditional consumptive aid to down-to-earth socio-economic empowerment. For example, based on actual data from the implementation of its annual programmes, BMA has successfully distributed billions of rupiah sourced from Zakat, Infak and other religious endowments to inject momentum for real-sector MSME recovery. BMA channelled Rp2.145 billion in emergency aid to 825 beneficiaries affected by disasters. In the strategic empowerment sector, BMA implemented a programme providing working capital and tools to 6,666 underprivileged micro-entrepreneurs,

⁴² Zikri, ‘Social Transformation and the Change of Community Capacity of Post-Tsunami Aceh, Indonesia’.

with the distribution mechanism strictly filtered to prevent *moral hazard* (*fraud*) commonly associated with direct subsidies.

Equally crucial is BMA's humanitarian advocacy in targeting vulnerable demographics, particularly the empowerment programme for Female-Headed Households (PKK). The tsunami and the armed conflict that struck Aceh in the past have left tens of thousands of women (widows) suddenly shouldering the structural role of being the sole breadwinners of their households. The religious endowment funds collected in BMA's treasury are invested as *qardhul hasan* (benevolent loans) to help these women develop small grocery businesses, traditional cake-making enterprises, and local handicrafts. By utilising unclaimed *assets* as an unending source of incubation capital, Baitul Mal has transformed the historical grief of the mass loss of life caused by the tsunami into a spring of economic revival, restoring the dignity of low-income families whilst simultaneously breaking Aceh's dependence on external emergency funding.

Conclusion

The legal framework, institutionalisation and practical management of the assets of the Aceh tsunami victims in late 2004—particularly regarding wealth whose owners and all subsequent generations of heirs have been completely lost—represent the most complex intersection between humanitarian emergency response and legal pluralism in the Republic of Indonesia.

Based on this comprehensive study, the existential legitimacy and authority of the Baitul Mal Aceh (BMA) to assume ownership and manage *kalalah* (heirless) assets rest on an absolute legal foundation. This legitimacy is reinforced by the application of the principle of *'lex specialis derogat legi generali'*, rooted in the delegation of powers under the Aceh Government Act (Act No. 11/2006) and technically implemented through the emergency legal framework for tsunami relief, namely Act No. 48 of 2007. At the regional level, asset management procedures have been progressively modernised through Aceh Qanun No. 10 of 2018 and Aceh Qanun No. 3 of 2021, whereby this local treasury instrument has been established not merely as a collector of philanthropic zakat, but is fully legitimised as *the Guardian* Trustee for orphans and the principal administrator of all *Other Religious Assets*.

The practical issues that have long hampered the operations of the Baitul Mal—namely the confusion and friction arising from overlapping authorities with the colonial-era Estate Administration Office (BHP)—have been revolutionarily resolved through the issuance of Supreme Court Circular Letter (SEMA) No. 1 of

2022. This regulation establishes a clear division of jurisdiction: the BHP's authority has been nullified both *de facto* and *de jure* in the administration of estates for Muslim heirs in Aceh, transferring full supervisory and guardianship jurisdiction to the Sharia Courts and the BMA.

From a comparative perspective, the management of land and property without heirs reflects a solid harmony between religious dogmatic values and the certainty of the doctrine of the unitary state. Within the Islamic *Fiqh Mawaris* framework, *mafqud* assets that have lost their asabah right holders must be protected from the threat of private, self-serving occupation and converted into communal ownership, based on the universal principle of '*Baitul mal waritsu man la waritsa lah*'. Meanwhile, within the framework of national law, specific legislative provisions in Aceh ensure that an absolute exemption applies to the Land Law (UUPA); such land is no longer classified as 'State Land' under the vertical authority of the National Land Agency (BPN), but is instead legally transformed into 'Religious Assets' falling under the authority of the Baitul Mal.

The prospects for managing the hundreds of billions in 'escrow funds' for land compensation, as well as the remaining unclaimed plots of land belonging to tsunami victims, demand a collaborative and definitive initiative. Baitul Mal Aceh, in conjunction with the Public Prosecutor's Office and the Sharia Court, is required to devise a judicial mechanism in the form of a collective limitation period (*class action sunset clause*) to free these funds from administrative constraints. This transfer of ownership, *once finalised*, is essential for transforming dormant capital into instruments of Istitsmar Waqf (productive endowment), Sharia-compliant financing, and funding to empower female-headed households. Should this progressive scenario be realised, the assets and lives of those lost in the 2004 tsunami could become a source of perpetual charitable deeds, whereby the debris of loss can be transformed into the foundation for the future social welfare of the people of Nanggroe Aceh.

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