

The Legal Protection on the Uninhabited Wealth of the Tsunami Victims in Aceh Province, Indonesia

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Abstract

The protection on individual property is a human right that should have attention from state, government institution and also public. Although the property is known that the owner is not known because of missing due to disaster like Tsunami in Aceh province, Indonesia. Islam as a religion also admits the right of personal ownership, but if it has determined that the property has no heir referring to the court decision, so according to Islamic teaching, the property is owned together which is managed by Baitul Mal as a religious property. In Aceh province, the properties which have no heir found in many places after it destroyed by a huge Tsunami in December 2006. But the properties, mostly lands, until recently after 10 years the disaster, have no law protection yet as it is directed by constitution No. 48, 2007. And others law regulations which are issued by government to handle the properties without heir after the tsunami. Based on this condition, this study tries to find out the causes and the law consequence due to not yet make the law protection on the properties without heir.

A. Introduction

The disaster of earthquake and tsunami happened on 26 December 2004 in Aceh province and Nias North Sumatra, Indonesia have bring about many victims both to properties and human life. Based on the data from Bakornas (National Coordination Board), PBP-Depkes (Disaster Mitigation Board) Health Department, Depsos (Social Department), and Media Center Lembaga Informasi Nasional (LIN) (National Information Board), the lost of human life in Aceh was 17.3741.⁵

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⁵ http://acehpedia.org/data_korban_tsunami, downloaded, date 2 Februari 2015.

While Rehabilitation and Reconstruction Board (BRR) stated that the loss of life caused by the disaster reached 126.741 and 93.285 declared lost.⁶ The area of Aceh region that is affected by Tsunami covered 2.250.993,6 hectare, while the total area that is directly affected by the disaster is 68.966,60 Ha (3,06%) of total area of the province. Due to the area that was hit by Tsunami is very large, it caused 600.000.⁷ Lands got problems such as:

1. Destroyed and damaged the lands including the lost of their technical border.
2. The subject (the owner) is lost, dead, exoduses, unknown address and no heir.
3. The lost of land document such as certificate, bank note and certificate at the office of land affair office.⁸

The total destroyed and suffering of financial loss caused by the earthquake and tsunami disaster covered more than 97% of product domestic regional bruto (PDRB) of Aceh province.⁹ Based on evaluation of National Development Planning Board (BAPENAS) and World Bank, the disasters in Aceh province and Nias (North Sumatra) has brought about toward some sectors such as:

1. Social sector are included housing, education, health, religion and culture, the total facility destroyed was 13.567 and detriment 532, which the total of 16,186.
2. Infrastructure sectors are included transportation, communication, energy, water and sanitation and dam, the destroyed is 5.915 and detriment 2.238, the total is 8.154.
3. Production sectors are included agribusiness, fishery, industry and trading, the destroyed was 3.273, detriment was 7.721, and the total was 8.154.

⁶ Disaster Mitigation Board (Badan Rehabilitasi dan Rekonstruksi) Aceh-Nias, 2009; *Perumahan Membentang Atap Berpilar Asa*, BRR Book series-Book 7th, Published by BRR cooperated with Multi Donor Fund dan UNDP, Jakarta, page. viii.

⁷ This prediction is contained in head of BPN's decision, No. 114-II. 2005 about Manual land registration of tsunami disaster area in Nanggroe Aceh Darussalam Province and North Sumatera Province.

⁸ head of Regional Office of National Land Board, Aceh Province, this paper presented at the National Meeting of Defence Board, Indonesian Republic. Year 2009, Page. 5.

⁹ Indonesia Republic, March 2005; Major Plan for Rehabilitation and Reconstruction Aceh dan Nias Area, North Sumatera, page. 2.

4. Multisectors are included environments, government, Bank and financial institutions, the destroyed was 2.346, detriment was 3.718, and the total was 6.064.¹⁰

Due to the great destruction and many victims affected by the disaster, it caused many properties left unknown the owners and the heirs. Hence, the law protection towards the properties is absolutely needed. Meanwhile, it has been 10 years after the disaster passed in Aceh and Nias (North Sumatra), the problem of law protection towards the properties without heirs especially towards the piece of lands is not done as it is directed by constitution. If this condition keeps going, so the bad and unexpected thing might be happen in the future. To anticipate this condition, it needs serious effort from all public component and government, mainly Baitul Mal to do the law protection maximally towards such properties in Aceh province. This writing would find out the causes why the law protection towards the properties without heir caused by tsunami has not yet done in Aceh Province, its law implication, and its alternative solution. These are considered important due to some reasons: First, some of the tsunami victims left their properties but they didn't leave their heirs or their heirs were unknown so the properties were neglected or unorganized. Second, the evidences of personal belonging of the properties without heirs from the tsunami victims such as land certificates lost, and until recently they are not replaced by the new ones by National Land Affair Board (BPN), so it is quite probable to be misused by certain party illegally. Third, the law protection toward the properties of tsunami victims is not only to protect merely the importance of religion and Muslims but also to protect the importance and the law enforcement toward the right of personal owned of the tsunami victims and their heirs toward their properties. Fourth, the potential asset value of properties without heirs from the tsunami victims is predicted to be very big. The properties are economic resource that can be used for both to the importance of religion and specifically for the Muslims prosperity, and for national and public in general. Fifth, the treatment and the law protection toward the properties without heirs of the tsunami victims in Aceh, if it is done by Baitul Mal maximally, on the future, it can be taken as a model by other districts or provinces in Indonesia, or even by other countries in the world in managing the problem of the properties without heirs if their countries hit by tsunami as it happened in Aceh province.

¹⁰ Planning and Development board (BAPPENAS) and Word Bank, 2005; Damage and Loss Assesment.

B. The Concept of Law Protection toward the Property without Heir Based on Islamic Law and State Law of Indonesia

In the term of Islamic inheritance law, property without heir is called *amwal al-fadilah*.¹¹ It is the property from a muslim who passed away without leaving any heir.¹² While from the perspective of State Law the term of property without heir from the constitutional book of court of justice (KUHPdt) in addendum 1126 defines as "neglected property" (*onbeheerde nalatenschap*) it is "if an open legacy it is nobody prosecute, or if all heirs who are known refuse, so the properties is considered neglected".

The more concrete and clear definition on the property without heir can be seen in addendum 27 constitution number 48 2007,¹³ it is "the property that owner and heir are not known for their existence". According to the concept of Islamic law, the property without heir is catagorized as religious property,¹⁴ which is owned together by muslims (*public ownership*). Essentially and socially significance, basically the religious property is the same as state owned property, but in its usage, the property is mainly used for the importance of religious service and muslims prosperity. It is slightly different from state owned property (state ownership), where the use of this property might be in a wider scope, not only for the purpose of worship and for muslims prosperity but also to other purposes in accordance with the needs of the country.¹⁵ All properties owned by Baitul Mal from any source which have been decided by religion, are considered as muslims property.¹⁶

¹¹ Some people termed by tirkah or al-tarikah.

¹² Osman Bin Haji Khalid, 1992; *Pengurusan di Zaman Rasulullah*, in *Pentadbiran dan Pengurusan Dalam Islam*, Former Students of Middle East Union (PBMIT), Kuala Lumpur, page 17.

¹³ Law 48 Year 2007 about government regulation in lieu of law declaration No. 2 Year 2007 became the law of handling the legal issue of the implementation of rehabilitation and reconstruction area and community life in Nanggroe Aceh Darussalam Province and Nias, North Sumatera Province.

¹⁴ Religious property is a number of the Muslims' property comes from zakat, infaq, shadaqah, wakaf, hibah, meusara, probate property, inheritance, and given to Baitul Mal to be managed and developed under the provision of syari'at.

¹⁵ Muhammad Baqir al-Shadr, 2008; *Buku Induk Ekonomi Islam*, Terj. Yudi, 1st edition, Zahra, Jakarta, page 206.

¹⁶ Study Centre and Islamic Economic Development, UII Yogyakarta, 2008; *Ekonomi Islam*, PT. Raja Grafindo Persada, Jakarta, page 492.

One of source of property that can be owned by Baitul Mal in line with criteria decided by religion as it has been discussed in various books of Islamic Law (Fiqh) is the inheritance of a muslim who does not have heirs, or properties from a muslim who left his country or who is lost (*mafqud*).¹⁷ Ibnu Taimiyah said that the goods or personal owned properties which then are not known the owner like missing goods or other unowned property are owned by state and placed in Baitul Mal.¹⁸ In line with that, Mustafa Hj. Daud also said that the inheritance that is not finished divided to the heirs, and the property without heirs is one of legal income for Baitul Mal.¹⁹

As a consequence that Baitul Mal is regarded as the heir of every muslim who passed away without leaving any heir, Baitul Mal also should responsible to all muslims without heir including to those who do not leave property when they passed away.²⁰ Besides that, state or government represented by Baitul Mal, according to Islamic concept is the most responsible institution toward continuity of its people, including the continuity of people who do not have families, the weak and the poor and those who are not able to work.²¹ Although Islam has placed that inheritance without heir as the right of public through Baitul Mal, it does not mean that government can do it arbitrarily merely based on what it wants. The right of ownership of the missing persons (*mafqud*) toward their properties which are left while they are missing is protected and guaranteed by Islam, until it is clear enough about the status of the missing person. Since the status of the person is unclear yet, so Islam is prohibited that the property is given to other persons including to Baitul Mal.²²

¹⁷ Talks about the people's right *mafqud* for the remained property in islamic inheritance law as regard to two points, first, for *mafqud* people, the property owner position is considered as a heir, that relates to the transfer the property to the heirs. Second, the position as the heirs relates to the transfer of the property to him as the heirs. Amir Syarifuddin, *Hukum Kewarisan Islam*, Cet. 1, Kencana, Jakarta, 2004, page 132. See also Pusat Pengkajian dan Pengembangan Ekonomi Islam UII Yogyakarta, *Ekonomi Islam*, Page. 490.

¹⁸ A.A. Islahi, 1997; *Konsepsi Ekonomi Ibnu Taimiyah*, Terj. Anshari Thayib, PT. Bina Ilmu, Surabaya, page 144.

¹⁹ Mustafa Hj. Daud, 2004; *Tamadun Islam*, Utusan Publication & Distributors Sdn. Bhd, Kuala Lumpur, page 71.

²⁰ Dato' Dr. Haron Din, tt.; *Islam: Keadilan Membebaskan manusia*, Zafar Sdn. Bhd, Selangor, Malaysia, page 130.

²¹ Abdul Sami' al Mishri, tt.; *Pilar-pilar Ekonomi Islam*, Terj. Dimyauddin Djuwaini, 1st edition, Pustaka Pelajar, Yogyakarta, page 55.

²² Amir Syarifuddin, 2004; *Hukum Kewarisan Islam*, 1st edition, Kencana, Jakarta, page. 131. The same point is also stated by Muhammad Jawad Mughniyah in his book, 1999; *al- Fiqh 'ala al-Mazahib al-Khamsah*, Terj. Masykur A.B., et al, 4th edition, PT. Lentera, Jakarta, page 613.

To reach to the conclusion that someone has been missing (*mafqud*), Islamic scholars have different opinions, some stated that someone is considered really missing if it is beyond of normal human age. Syafi'i, Abu Hanifah and Hambali agreed on the limit of the normal human age is 90 years.²³ This opinion was also agreed by Al-Zuhaili, besides that it can be seen from the fact that all the friends at the same age of the missing person had passed away.²⁴ While Islamic scholars (*ulamas*) of Malikiyah stated that the time limit that can be considered that someone has been missing or passed away is 70 years. This opinion is based on Muhammad tradition (Hadis) from imam At-Tirmizi "the ages of my people is between 60-70 years".²⁵ Arab people said that the age of 70 *daqqaqah al-a'naq*.²⁶ Besides of maximal limit of human ages above, someone is considered lost based on Islamic law is after 4 years this is taken from Hadis stated that "each of wife who is left by her husband and she doesn't know his existence, so she should wait for 4 years..."²⁷

In this case, Iman Syafi'i also said that he agreed with Umar bin Khattab who decided the law toward the wife whose husband is lost is 4 years.²⁸ Islamic scholars from Hambali sect underlined that usually the lost person will be annihilate, such as lost in the war or sinking while sailing, so he is decided to be lost *mafqud* after passing time of 4 years.²⁹ Although the time limit to decide the one is considered lost is different among Islamic scholars, but they have one agreement that the final decision about the lost *mafqud* should be decided by judge in the court.³⁰ Islam really appreciates the right of personal ownership, and it hates people, institutions, or even states that take the property of people through bad deeds or arbitrarily such as through deceive robbery, or decreasing scale, the practice of usury and etc. In this case Ibnu Khaldun said that "once someone has owned something, others should not take it except he should give other thing that has the same value to replace it".³¹

²³ Beni Ahmad Saebeni, 2009; Fiqh Mawaris, CV. Pustaka Setia, Bandung, page 227.

²⁴ Muhammad al-Zuhaili, 2000; al-Mu'tamad fi al-Fiqh al-Syafi'i, Volume IV, Dar al-Qalm, Damsyiq, page 484-485.

²⁵ Ibnu Hajar al-Asqalani, 2009; Bulughul Maram, Pustaka Imam adz-Dzahabi, Jakarta, page 510.

²⁶ Syari'ah Universitas al-Azhar comittee faculty, 2004; Hukum Waris, Terj. Addlys Aldizar, Senayan Abadi, Jakarta, page 377.

²⁷ Sayyid Sabiq, 1987; Fiqh Sunnah, Volume XII, Alma'arif, Bandung, page 306.

²⁸ Muhammad Idris al-Syafi'i, 2001; al-Um, Juz. V, Dar al-Wafa' Littibaah wa al-Tauziu, al-Mansurah, hlm. 153.

²⁹ Fatchur Rahman, Ilmu Waris, Alma'arif, Bandung, 1994, page 508.

³⁰ Beni Ahmad Saebeni, Op. Cit., Page 228.

³¹ Abd. Ar-Rahman Ibn Khaldun, 1993; al-Muqaddamah, ad-Dar at-Tunisiyah li an-Nasyr, page 459.

The right of personal ownership gives the owner the authority to master and to make use the goods he owned conveniently, and can be defended toward anybody who disturb the pleasure of the mastery and the use of the goods.³² Everybody, institution or even state is demanded to appreciate the right of personal ownership, state cannot do arbitrarily like robbery, confiscation or taken over the right of personal ownership of its people. If the appreciation to the right of personal ownership is not run well by everyone, institution or even state, it will have bad impact toward human life from the perspective of law, social, politic and economy.³³ Some verses of Quran and Muhammad traditions (Hadis) stated clearly and explicitly about the obligation of each individual to respect and protect the properties owned by others such as:

a. Quran Surah (QS) Al Baqarah verse 188 stated:

And don't you eat the property of each other through badness, and don't you bribe the judge with the property by the purpose that you can eat other's property trough sinful way whereas you know the matter.

b. Quran Surah (QS) Asy-syu'ara verse 183 stated:

And don't you harm mankind on their right, and don't you make the damage on the world. In some Muhammad traditions (hadis) can be found the teachings about obligation of human being to respect and to protect other property:

a. Hadis from Bukhari:

Anyone who tyrannically takes a span of the land of other ownership, so it will hang seven layers of ground to his neck.³⁴

³² Kartini Mulyadi and Gunawan Wijaya, 2003; *Kebendaan Pada Umumnya*, Kencana, Bogor, page 191.

³³ Anwar Abbas, 2010; *Bung Hatta dan Ekonomi Islam*, PT. Kompas Media Nusantara, Jakarta, page 166-167.

³⁴ *Ibid*, hlm. 589.

b. Hadis from Muslim:

Your soul and your property are proscribed for each other individual until you meet your God in thereafter.³⁵ In line with admission, respecting and protection of Islam toward the right of individual ownership, Indonesian constitution of 1945 has put the foundation about admission on constitutional right of each citizen, including the admission on the right of individual ownership in some sections from Chapter X A about human right.³⁶ The admission on the right of individual ownership is also interpreted as the admission toward the property which is owned together, public ownership and state ownership. Related to the description of this study about protection toward the property without heir, the law foundation to be taken as the basis is Indonesian constitution of 1945 (UUD 1945) article 28 G verse (1) stated "Everyone has right on personal protection, family, honor, prestige and property which is under his authority and then has right on security and protection from threat of fear to do or not to do something which is his right". Next, article 28 verse (4) is strengthening about the protection which is given by state to the property owned individually by the resident: "everyone has right to have personal ownership, and the right cannot be taken over by anyone". Constitution number 39/2009 about human right as the further description and more detail of general concept of constitution of 1945, also regulates about protection on personal ownership of the people. In article 3 verse (2) stated the general concept about the right of each resident to have protection and law treatment which is fair and no discrimination, as stated: "everybody has right on admission, guarantee, protection and equitable law treatment and has law enforcement in the spirit in front of the law". On verse (3) at the same article stated that: everybody has right on human right protection and human freedom, without discrimination". Specifically, toward the protection on personal ownership (property) constitution of human right stated on article 29 verse (1) and article 36 verse (1) and (2) as follows:

³⁵ Syekh Syaikat Hussain, 1996; Hak Asasi Manusia Dalam Islam, translated by Abdul Rochim C.N., Jakarta, page 61.

³⁶ Article 28 D verse (1) law of 1945 states that "everyone has his own right about equitable confession, assurance, protection, and legal certainty as well as equal treatment in the law's view. Article 28 G verse (1) "everyone has his own right about personal protection, family, respectibility, prestige, and property owner, as well as they have right in safety and protection from threat of fear to do or not to do anything that is included the human right". Article 28 G verse (4) "everyone has his own right to have individual property and the ownership right cannot be taken out by anyone".

Article 29 verse (1):

“Everybody has right on individual protection, family, honor, prestige and his owned property”.

Article 36 verse (1):

“Everybody has right to have property, either individually or together with other in order to develop himself, family, nation, resident in a way which is not against the law”.

Article 36 verse (2):

“Nobody is allowed to be robbed his possession (property) arbitrarily and against the law”. The protection on the property without heirs is also directed by the article 1126 jo article 1127 of the book of civil law (KUHPT) which is highlighted that any of property that doesn't have heirs, it is categorized unmanaged property. In this condition, The board of inheritance (Balai Harta Peninggalan) without commanding from the judge, is obligate to manage the property.³⁷ Constitution number 48, 2007 issued by Indonesian government to solve the problems of rehabilitation and reconstruction of Aceh Province after tsunami is also contain regulation about protection toward inheritance without heir of tsunami victims whose religion is Islam is given to Baitul Mal like it is written in Chapter III about the ownership and land management on article 8 stated:

- (1) The land which is no owners and heirs whose religion is Islam is to be religious property and it is managed by Baitul Mal.
- (2) The decision on the availability of the owner or heir and the management of the land by Baitul Mal as stated on article (1) is done by the court.³⁸

³⁷ The phrase “wajib mengurus/management obligation” on Article 463 KUHPT can be translated as the obligation of the Board of Inheritance to protect the law towards the un-inherited wealth in order to avoid the miss-used by irresponsible people until there is a certainty of the law on the existence of the owner of the wealth or the heir.

³⁸ The court for the post-tsunami land problems for moslems in Nanggroe Aceh Darussalam Province is Mahkamah Syar'iyah, based on the Law No. 11, Year 2006 on the Aceh Government. See also the explanation on Article (8) Law No. 48, Year 2007.

- (3) The decision proposal as meant by article (2) can be proposed by family, society or Baitul Mal staffs.

Then, in the Decree of Head of National Land Board (BPN) No. 114-II/2005 about the Registration of Land Based on Society in an open location devastated by tsunami in Nanggroe Aceh Darussalam Province states that: "In case that an area of land with no owner and the heir is anonymous, the thing which can be prepared is the establishment of land book, while its certificate will not be released until there is a certainty of the ownership, and the land will be handed to Baitul Mal Board after getting the decision from Mahkamah Syar'iyah". From the above explanation, it is clear that Islamic Law and Positive Law in Indonesia regulate clearly the law protection on individual wealth although it is lost and unknown its availability. The law protection on the individual property is done by Baitul Mal at least until it is expired as determined in Law No. 48 Year 2007, Chapter 10 Article (10) states that: "If before passing the duration of 25 (twenty five) years since the Court Decision on Land with no owner or the heir, there is someone who claims that the land is his, and he has got a decision from the court, so the Baitul Mal is to give back the land to him"³⁹

C. The Objections on Un-Inhabited Wealth of the Tsunami Victims in Aceh Province

Until today, in the governmental institutions, there is no concrete data about the tsunami victims' inheritance and its heir. We still cannot find in any places for example, in Baitul Mal, Land National Board and other institutions which have no direct correlation such as Statistical Board, Regional Board for Planning and Development, Research Centre in Higher Education, Board for Transportation and Communication or other governmental agencies. Namun dari hasil penelusuran yang dilakukan sendiri dengan melakukan wawancara terhadap beberapa pengurus Baitul Mal Gampong dan Baitul Mal Mukim, di wilayah yang terkena langsung bencana tsunami Kota Banda Aceh dan Kabupaten Aceh Besar. However, it is said that several Baitul Mal controlled land of tsunami victims with no owners or heirs.⁴⁰

³⁹Based on the explanation of Chapter 10 article (1) Laws No. 48/2007, decision on period of 25 (twenty five) years as time limit of the ownership proposal is due to the public beneficial consideration and law certainty.

⁴⁰Tgk. Nurkhalis, Head of Baitul Mal Mukim Alue Naga, interview done on March 14, 2015, at 4.30 p.m. This was also confirmed by Tgk. Syamsuddin, Tgk. Basri, and Tgk. Husni.

Besides, there are some land areas of tsunami victims with no heirs that are unmanaged/neglected or unmanaged by Baitul Mal, such as the coastal ponds located in sub district of Meraksa, Banda.⁴¹ Until now, the whole uninhabited land colonized or the ones that have never been managed by Baitul Mal can be sure that they have not any law protection as it has been mandated by the Laws, that is through the decision from Mahkamah Syar'iyah its book of land by National Land Board (BPN).⁴² The administration by Baitul Mal Gampong, especially on the uninhabited wealth is only based on the authorization by the traditional Laws which determined that any inhabited land or land with no is categorized be religious wealth so that it has been the property of Baitul Mal to administrate and to manage.⁴³

Furthermore, it is necessary to track the lands that have been freed by the government in case of building the infrastructures after tsunami, especially during the Reconstruction and Rehabilitation in Aceh Province as within the period there are many uninhabited land areas that have been used to build infrastructure. The problem is that whether the land areas has been paid by the authority (person in charge), if the answer is "not yet", Baitul Mal is responsible to ask for repayment to the person in charge of the project or the company used the land areas, because it is apart of Baitul Mal tasks to protect the uninhabited wealth until there is a certainty of the ownership of the land areas.⁴⁴ According to one of persons in charge at National Land Board Regional Aceh, it is easy enough for Baitul Mal to track such land. What Baitul Mal needs to do is by visiting the governmental agencies that freed the land areas, and by asking for data about the freed land areas due to the project development then they are deducted by the data of the land areas that have been paid the project companies. If the difference between the land areas that have been paid and the whole land areas for project development is found, then the difference of the land areas that have not been paid will be the uninhabited wealth of tsunami victims which can be categorized as religious wealth that needs to ask the reimbursement from the companies freed the the land areas. This should be done by the current Baitul Mal.⁴⁵

⁴¹Tgk. Basri, Imam Masjid/Head of Baitul Mal Gampong Lampaseh, interview done on March 5, 2015, at 10.30 a.m.

⁴²The Information has been cross checked to Mahkamah Syar'iyah and BPN.

⁴³Badruzzaman Ismail, Head of Baitul Mal Aceh, interview done on March9, 2015, at 10 a.m.

⁴⁴Salahuddin Hasan, The Formerly Head of Baitul Mal Kota Banda Aceh, interview done on November12, 2014, at 4.30 p.m.

⁴⁵Mazwar, Formerly Head of Administration National Land Board (BPN) Aceh. Now he is Head of BPN Kota Lhokseumawe.

D. The Problems in Implementation of Law Protection on Uninhabited land of the Tsunami Victims.

There are several factors that may be considered as the problems in the implementation of law protection on uninhabited land of the tsunami victims in Aceh Province, they are:

4.1. Regulation problems

Out of all law regulation mentioned before, from the view of the sufficiency and the strength of law regulation regulates law protection on uninhabited wealth of the tsunami victims, it has been available and representative enough as in Aceh province there is a law regulation that regulates the uninhabited wealth which has been booked in several Provincial Rules such as Qanun No. 10 year 2007 regulates Baitul Mal and the Governor Rules No. 11 Year 2010 regulates the management of religious wealth with anonymous ownership or heir. However, in case of content, there is something that needs to have certain attention from the government, that is the the Laws No. 48 year 2007 and other Laws regulation related to the management of the land protection on the uninhabited land of the tsunami victims. The difference management of law protection on uninhabited wealth of static wealth is also considered important because this difference is really correlated to the claim period from the owners and the heirs. The management of these kind of wealth should be separated as it is has been regulated in the law regulation such as KUHPdt and laws No. 5 year 1960 on the Agrarian clauses. This has to be communicated because the forms of uninhabited wealth of the tsunami victims is not only land areas but also in other forms such as bank deposits and gold jewelry found on dead bodies of tsunami victims evacuated by the volunteers.

4.2. The Implementation Problems faced by Baitul Mal

There has been no land area of the tsunami victims with unanimous heirs that has been protected by the laws as regulated by the laws, that is by asking the decision on the status of uninhabited wealth with no heirs from the Mahkamah Syar'iyah and also the establishment of land book from BPN. It can be a proof that there is obstacle faces by Baitul Mal in the implementation of protecting the uninhabited wealth with no heirs.

Main factor caused the low performance of Baitul Mal in implementing their authority in case of protecting the uninhabited wealth with no heirs in Aceh province is the bad coordination between Baitul Mal staffs in high levels and the lower ones. Besides, the bad coordination among Baitul Mal and other related institutions such as BPN Mahkamah Syar'iyah and society is another obstacle faced by Baitul Mal in implementing their works. According to head of Baitul Mal of Aceh Province, the task to manage the uninhabited land areas has been fully delegated to Baitul Mal in each village implement the law protection both to ask the decision from Mahkamah Syar'iyah related to the decision of the tsunami victims land status as the uninhabited wealth and to propose the establishment of land book from local BPN.⁴⁶After being cross checked, whether there is a policy to give a priority to Village Baitul Mal in protecting the uninhabited wealth by provincial Baitul Mal and Baitul Mal in each district to the management of Village Baitul Mal they said that hierarchically there has not been any spoken or written mandate from Baitul Mal in districts/cities to register do the steps of law protection on the uninhabited wealth from the tsunami victims in the way of asking the decision from the Mahkamah Syar'iyah and the establishment of Land Book from BPN. Even there were some Village Baitul Mal staffs who said that they have never known about the regulations that it was an obligation to protect the uninhabited wealth by Village Baitul Mal⁴⁷ From the investigation at some village Baitul Mal, it is found that there has not been any effort to protect the uninhabited wealth in line with the procedures and mechanism as stated in Laws No. 48 Year 2007 is caused by some factors, they are:

1. Baitul Mal staffs did not there were laws regulated the obligation to protect the uninhabited wealth from the tsunami victims. Besides, as it has been mentioned before that Village Baitul Mal has never received any information to register the uninhabited wealth to either provincial Baitul Mal or District/city Baitul Mal.
2. There has been no agreement between Village Baitul Mal and the village society related to the necessity of proposing the land status of the tsunami victims to be the religious wealth managed by the village. Moreover, the management of village Baitul Mal tends to manage the wealth by using traditional law without the formal decision from the formal institution.

⁴⁶Armiadi, Head of aitul Mal Aceh Provinsi interview done on Februari 15, 2015,at 10.30 a.m.

⁴⁷Tgk. Nurkhalis Head of Baitul Mal Mukim Deyah Alue Naga, interview done on March 4, 2015, at 4.30 p.m. This was also confirmed by Tgk. Syamsuddin, staff of Baitul Mal Gampong Kajhu, Tgk. Basri, head of Baitul Mal Gampong Lampaseh, and Tgk. Husni, head of Baitul Mal Gampong Lam Keumok..

3. Besides, there is a dualism in the management of Village Baitul Mal has become another problem. This has caused society not to trust the performance of Village Baitul Mal and also caused personal interest in the Village level.
 4. Up to the current time, the management of Baitul Mal is still doubt in case of the certainty of the status of the land areas as it is very possible that the land areas have been mandated to other people by the owners before tsunami happened. Besides, there were some land owners were new comers in the areas who lived in the village that was devastated by tsunami. This condition makes the management of Village Baitul Mal do not know the real of the land owners and their heirs in the area.
 5. Another problem is related to the cost of processing the decision by Mahkamah Syar'iyah and the cost of proposing the establishment of land book because the free charge establishment periode after tsunami within the Aceh Rehabilitation and Reconstruction is period is expired in 2009, while Village Baitul Mal do not have budget for such activity. It is also caused by the prolonged period in processing land book and needs more efforts from Baitul Mal, such as to find the right time to present the witnesses in the court and so on.⁴⁸
- 4.3. Obstacles faced by National Land Board/Badan Pertanahan Nasional (BPN)

The obstacles faced by BPN can observed that there was no land book of uninhabited or heirs, although laws no. 48 year 2007 has mandated BPN to register land areas with no inhabited or heirs and to establish their land books and the to hand them to Baitul Mal. However, BPN has never done what have been mandated in the laws and during the Rehabilitation and Reconstruction period and even it still happens until today. The reason stated by BPN is that the period by the country to solve such problems was so short; ideally BPN is only to reconstruct the identities of part of land areas for the period of 1.5 years within the Rehabilitation and Reconstruction of Aceh post tsunami. On the other hand, the scope of works of BPN are to broad so BPN is only able to construct the land areas with the certain/clear owners.⁴⁹ It was only done until the Rehabilitation and Reconstruction period is expired.⁵⁰

⁴⁸ Summary of interview with the heads of Village Baitul Mal, such as: Tgk Syamsuddin, Tgk. Basri, and Tgk. Husni.

⁴⁹Mazwar, the former Head of Administration affairs, Regional BPN of Aceh, now he is Head of BPN Lhoksemawe. Interview done on January 18, 2015, at 9 a.m.

⁵⁰Iskandar Usman, one of society whose land certificate was not completed by BPN during the Reconstruction and Rehabilitation period in Aceh.

4.4. Lack of Society Participation

Laws No. 48 Year 2007 give the right to individuals and groups of society to process and asking for the decision of the uninhabited wealth to Mahkamah Syar'iyah, as it is stated in Chapter 8, Article (3), that is "The proposal of the decision of uninhabited wealth to the court can be done by family , society or Baitul Mal. However, until the present time, there is no one or family and society that has taken part in the process of law protection of uninhabited wealth voluntarily although it is permitted by the law. The lack participation of the society might happen due to the lack of socialization on the laws related to the matter. Besides, it might be the society considers that it is merely the tasks of Baitul Mal without being need the involvement of the society.

E. The Impacts of not being Implemented the Laws Protection on the Uninhabited Wealth

The authorization and management on the uninhabited wealth are not based on the formal legal right and cause the wealth of tsunami victims which are not managed and handled by Baitul Mal. Formally, this will create unbeneficial laws impacts for the Moslems necessity represented by Baitul Mal. It will not also, formally, give benefit to the wealth protection and their heirs which are supposed to be uninhabited. Several impacts that might happen to uninhabited wealth of the tsunami victims is that there is still no law protection by Baitul Mal based on the laws are as follows:

1. The authorization on the uninhabited wealth though it is dedicated to the public necessity and moslems, it is formerly wrong and it cannot be categorized as illegal actions as such authorization by Baitul Mal has not got a decision from Mahkamah syar'iyah.
2. There is no law protection on the uninhabited wealth of the tsunami victims by baitul Mal which will be very unbeneficial for Baitul Mal and moslem in general. As it is has been decreed by Law No.48 Year 2007 that the time limit for the tsunami victims and their heirs is 25 (twenty five) years, starting from the decision from the court the land areas are uninhabited. If, for example, the decision proposal has been proposed by Baitul Mal to Mahkamah Syar'iyah in 2006, then the uninhabited wealth will be expired in 2031. Therefore, the uninhabited wealth can be proposed to have a certificate of the wealth of religious and Baitul Mal by Baitul Mal to BPN.

3. There is no formal law protection in line with existing law on the uninhabited wealth of the tsunami victims by Baitul Mal which may cause dispute in the future such as disputes on border and ownership disputes. This condition may also be used by irresponsible parties who admit as the owners of the land areas or the heirs of the wealth for their personal purposes, such as by establishing an ownership certificate on the uninhabited wealth that should belong to the wealth of Religion or Baitul.
4. Besides, the absence of the law protection on the uninhabited wealth of the tsunami victims may also cause Baitul Mal be sentenced by the land owners/heirs of the land areas if in the future time the owners are identified because they are accused to illegally authorize and use others wealth or even they (Baitul Mal and its staffs) might be sentenced by formal law.
5. If the uninhabited wealth has been authorized by Baitul Mal and it has been used for building facilities for worship or other public facilities while Baitul Mal has not got any right that can be the law basis to manage the land based on the Mahkamah Syar'iyah decision, then they ask for their wealth to be given back to them, so Baitul Mal has to give the land back to them. It will be different case if the authorization and the use of the land areas has a clear licence, then Baitul Mal may refuse their demand of getting back their land areas, but Baitul Mal can give back in different from with the balance value as it is stated in law No. 48 Year 2007.

F. Alternative Solutions on the Efforts of law Protection on the Uninhabited Wealth of the Tsunami Victims

There are some solutions which can be offered to Baitul Mal in line with the law protection of the uninhabited wealth of the tsunami victims in Aceh Province are as follows:

1. Provincial Baitul Mal and District/City Baitul Mal have to socialize well to all Baitul Mal staff in every level on the matter of laws that oblige the existence of the legal right that have to be owned by Baitul Mal if they want to authorize the uninhabited wealth of the tsunami victims which are handed by society or other properties which have been authorized by Baitul Mal based on the traditional law in each region. The right foundation needed is the decision from Mahkamah Syar'iyah on the status of the wealth that is called uninhabited wealth.

2. Baitul Mal is expected to investigate soon on the entirely uninhabited wealth of the tsunami victims in entirely Aceh Province both the ones that have been authorized by Baitul Mal and the ones that have not been authorized by Baitul Mal but the existence the status have been identified. The implementation of the registration can be done under the coordination and observation of District Baitul Mal/City.
3. If all data have been collected and identified the ones with no law protection as mandated in the laws, Baitul Mal should process them in order to get the certainty of the law on the wealth by proposing the status decision to Mahkamah Syar'iyah as well as by asking the right to manage them. If the uninhabited wealth is in form of land, Baitul Mal should ask to get the land book to Mahkamah Syar'iyah as soon as possible.
4. Baitul Mal is expected to improve and evaluate their performance, especially the weaknesses in coordination among Baitul Mal institutions from the highest level to the lowest ones. This is very important because, so far, it seems that the coordination among the institutions is not as expected, especially in the process of the protection of uninhabited wealth of the tsunami victims. Hence, until today, there are some law problems in case of law protection that have not been overcome by Baitul Mal although the tsunami has gone more than ten years. Oleh Baitul Mal sebagai lembaga yang ditugaskan negara untuk melakukan perlindungan hukum atas harta tak berwaris di Provinsi Aceh.
5. Baitul Mal should not use the uninhabited wealth although it is considered to fulfill the religious and public needs until they get the law certainty on them. Moreover, it is very risky to use for the need of physical building because it may cause unbeneficial for Baitul Mal as well as Muslims if the future the heirs or the owners ask the wealth to be returned to them in the original form.

By considering the above solutions, it is expected that the law problems that can inflict the needs of Muslims and will also inflict the needs of the tsunami victims and their heirs as the actual owners which also might appear in the future to be avoided and minimized.

References

- A.A. Islahi, 1997; *Konsep Ekonomi Ibnu Taimiyah*, Terj. Anshari Thayib, PT. Bina Ilmu, Surabaya, Indonesia.
- Abd. al-Rahman Ibn Khaldun, 1993; *al-Muqaddimah, ad-Dar at-Tunisiyah li an-Nasyr*.
- Abdul Sami' al-Mishri, tt; *Pilar-pilar Ekonomi Islam*, Terj. Dimyauddin Djuwaini, Cet. 1, Pustaka Pelajar, Yogyakarta.

- Abdullah Alwi Hj. Hassan, dkk. ed., 2005; *Teori dan Aplikasi Kontemporari Sistem Ekonomi Islam di Malaysia*, Utusan Publication & Distributors Sdn Bhd, Kuala Lumpur, Malaysia.
- Amir Syarifuddin, 2004; *Hukum Kewarisan Islam*, Cet. 1, Kencana, Jakarta, Indonesia.
- Anwar Abbas, 2010; *Bung Hatta dan Ekonomi Islam*, PT. Kompas Media Nusantara, Jakarta, Indonesia.
- Badan Rehabilitasi dan Rekonstruksi Aceh Nias, 2009; *Perumahan Membentang Atap Berpilar Asa*, Seri Buku BRR-Buku 7, Penerbit BRR bekerjasama dengan Multi Donor Fund dan UNDP, Jakarta, Indonesia.
- Badan Perencanaan Pembangunan Nasional (BAPPENAS) dan World Bank, 2005; *Demageand Loss Assesment*.
- Beni Ahmad Saebeni, 2009; *Fiqh Mawaris*, CV. Pustaka Setia, Bandung, Indonesia.
- Dato' Dr. Haron Din, tt; *Islam: Keadilan Membebaskan Manusia*, Zafar Sdn. Bhd, Selangor, Malaysia.
- Fatchur Rahman, 1994; *Ilmu Waris*, Alma'arif, Bandung, Indonesia.
http://acehpedia.org/data_korban_tsunami.
- Ibnu Hajar al-Asqalani, 2009; *Bulūghul Marām*, Pustaka Imam adz-Dzahabi, Jakarta, Indonesia.
- Kartini Mulyadi dan Gunawan Wijaya, 2003; *Kebendaan Pada Umumnya*, Kencana, Bogor, Indonesia.
- Komite Fakultas Syari'ah Universitas al-Azhar, 2004; *Hukum Waris*, Terj. Addlys Aldizar, Senayan Abadi, Jakarta, Indonesia.
- Muhammad al-Zuhaili, 2000; *al-Mu'tamad fi al-Fiqh al-Syafi'i*, Jilid IV, Dar al- Qalm, Damsyiq.
- Muhammad Baqir al-Shadr, 2008; *Buku Induk Ekonomi Islam*, Terj. Yudi, Cet. 1, Zahra, Jakarta, Indonesia.
- Muhammad Idris al-Syafi'i, 2001; *al-Ūm*, Juz. V, Dar al-Wafa' Littibaah wa al-Tauziu, al-Mansurah.
- Mustafa Hj. Daud, 2004; *Tamadun Islam*, Utusan Publication & Distributors Sdn. Bhd, Kuala Lumpur, Malaysia.
- Muhammad Jawad Mughniyah, 1999; *al- Fiqh 'alā al-Mazāhib al-Khamsah*, Terj. Masykur A.B., dkk., Cet. 4, PT. Lentera, Jakarta, Indonesia.
- Osman Bin Haji Khalid, 1996; *Pengurusan di Zaman Rasulullah*, dalam *Pentadbirandan Pengurusan Dalam Islam*, Persatuan Bekas Mahasiswa Islam Timur Tengah (PBMIT), Kuala Lumpur, Malaysia.
- Pusat Pengkajian dan Pengembangan Ekonomi Islam UII Yogyakarta, 2008; *Ekonomi Islam*, PT. RajaGrafindo Persada, Jakarta, Indonesia.
- Republik Indonesia, 2005; *Rencana Induk Rehabilitasi dan Rekonstruksi Wilayah Aceh dan Nias*, Sumatera Utara, Maret 2005.
- Sayyid Sabiq, 1987; *Fiqh Sunnah*, Jilid XII, Alma'arif, Bandung, Indonesia.
- Syekh Syaukat Hussain, 1996; *Hak Asasi Manusia Dalam Islam*, Penerjemah Abdul Rochim C.N., Jakarta.
- UU Nomor 48 Tahun 2007 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2007 Menjadi Undang-Undang tentang Penanganan Permasalahan Hukum Dalam Rangka Pelaksanaan Rehabilitasi dan Rekonstruksi Wilayah dan Kehidupan Masyarakat di Provinsi Nanggroe Aceh Darussalam dan Kepulauan Nias Provinsi Sumatera Utara