



## Recovery of Wakaf Assets Post Natural Disasters according to Islamic Law and Positive Law

Siska Lis Sulistiani, Intan Nurrachmi, Ramdan Fawzi

Universitas Islam Bandung

Corresponding email: [siska.sulistiani@unisba.ac.id](mailto:siska.sulistiani@unisba.ac.id)

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### Abstract

This study aims to ascertain and evaluate the processes followed by national and Islamic law to recover waqf assets following a calamity. The 1945 Constitution, Law No. 41 of 2004 on Waqf, and other regulations are among the key legal data sources used in this qualitative study employing a normative juridical method from the viewpoint of Islamic law, which is derived from the Quran, the Hadith, and the views of relevant scholars. Periodicals and other pertinent articles are examples of secondary legal sources. Next, using descriptive analytic techniques, the data was gathered through library research and examined to determine the synchronization stage and compliance with legal norms and principles. The study's findings demonstrate that waqf assets—such as damaged land and buildings—can be recovered. In Islamic law, as long as there is no proof of someone's ownership, the assets return to the state. This is almost the same as positive law in Indonesia, namely if the affected waqf assets are destroyed or damaged and previously had a waqf certificate, efforts can be made to identify the waqf assets, and if important files related to the waqf are lost, you can contact BPN to get a copy, but if the assets are destroyed according to the UUPA the land returns to the state. Financing can be done by optimizing the funding of cash waqf and cash waqf for efforts to repair and rebuild these assets.

### Kata Kunci:

*Pemulihan; Aset;  
Wakaf;  
Bencana; Hukum*

### Abstrak

Tujuan dari penelitian ini adalah untuk mengetahui dan mengevaluasi proses yang diikuti oleh hukum nasional dan hukum Islam untuk memulihkan aset wakaf setelah terjadinya bencana. Undang-Undang Dasar 1945, Undang-Undang No. 41 Tahun 2004 tentang Wakaf, dan peraturan lainnya merupakan sumber data hukum utama yang digunakan dalam penelitian kualitatif yang menggunakan metode yuridis normatif ini. Dari sudut pandang hukum Islam, yang berasal dari Al-Quran, Hadis, dan pendapat para ulama yang relevan. Majalah dan artikel-artikel terkait lainnya merupakan contoh sumber hukum sekunder. Selanjutnya, dengan menggunakan teknik deskriptif analitis, data dikumpulkan melalui penelitian kepustakaan dan diperiksa untuk menentukan tahap sinkronisasi dan kepatuhan terhadap norma dan prinsip hukum. Temuan penelitian ini menunjukkan bahwa aset wakaf—seperti tanah dan bangunan yang rusak—dapat dipulihkan. Dalam hukum Islam, selama tidak ada bukti kepemilikan seseorang, aset wakaf kembali ke negara. Hal ini hampir sama dengan hukum positif di Indonesia, yaitu jika aset wakaf yang terkena musibah hancur atau rusak dan sebelumnya memiliki sertifikat wakaf, maka dapat dilakukan upaya untuk mengidentifikasi aset wakaf tersebut, dan jika berkas-berkas penting yang berkaitan dengan wakaf tersebut hilang dapat menghubungi BPN untuk mendapatkan salinannya, namun jika aset tersebut musnah menurut UUPA tanah tersebut kembali kepada negara. Aspek pembiayaan dapat dilakukan dengan mengoptimalkan pendanaan wakaf uang dan wakaf tunai untuk upaya perbaikan dan pembangunan kembali aset-aset tersebut.

## INTRODUCTION

In recent decades, waqf has emerged as a sought-after Islamic financial instrument driven by regulation, innovation, and management advancements. The concept of waqf assets predates Indonesia's independence, as evidenced by the extensive land holdings the Ministry of Religion recorded. While the ministry's data indicates that waqf land covers 57.2 hectares across 440.5 thousand points, it is essential to note that this represents only a portion of the total waqf assets in the country. Many waqf assets remain undocumented, particularly those donated personally or pledged verbally. Furthermore, only 57.42% of waqf assets have been certified, a common occurrence in regions where public awareness regarding the significance of administration and certification is limited. These shortcomings can increase the vulnerability of waqf assets to disputes and natural disasters.

Every human being will inevitably face various challenges, including natural disasters. As the Quran, states:

وَلَنَبْلُوَنَّكُمْ بِشَيْءٍ مِّنَ الْخَوْفِ وَالْجُوعِ وَنَقْصٍ مِّنَ الْأَمْوَالِ وَالْأَنْفُسِ وَالثَّمَرَاتِ وَبَشِّرِ الصَّابِرِينَ

*"And indeed, we will give you a trial, with a little fear, hunger, lack of wealth, soul and fruit. And give good tidings to those who are patient." (Al-Baqarah: 155)*

The West Java Regional Disaster Management Agency (BPBD) reported a staggering 2,400 disasters in 2021, the highest recorded number to date. Indonesia's geographical position as an archipelago at the convergence of four tectonic plates—the Pacific, Indian, Asian, and Australian plates—renders the country highly susceptible to natural hazards such as earthquakes, tsunamis, floods, landslides, and volcanic eruptions.<sup>1</sup>



Figure 1 Disaster Prone Index Map

Source: admin, "Inilah Alasan Mengapa Indonesia Harus Bersahabat Dengan Bencana Alam – PUI STGI," November 12, 2020, <https://cest.itb.ac.id/2020/11/12/inilah-alasan-mengapa-indonesia-harus-bersahabat-dengan-bencana-alam/>.

Given Indonesia's geographical characteristics and geological activity, nearly all regions are susceptible to various natural disasters. The devastating earthquake that struck Cianjur, West Java, in November 2022 is a stark reminder of the potential consequences of such events. The disaster caused significant damage to buildings, including places of worship and

<sup>1</sup> admin, "Inilah Alasan Mengapa Indonesia Harus Bersahabat Dengan Bencana Alam – PUI STGI," November 12, 2020, <https://cest.itb.ac.id/2020/11/12/inilah-alasan-mengapa-indonesia-harus-bersahabat-dengan-bencana-alam/>.

educational facilities constructed on waqf assets. At least 540 educational institutions and 272 religious sites were affected.<sup>2</sup>

To revitalize social, economic, educational, and religious stability within the community, it is imperative to restore waqf assets following disasters in accordance with both Islamic and national laws. Indonesia's abundant human resources, recognized as the most generous country in the world by the Charities Aid Foundation in 2022, present a valuable asset in these recovery efforts.<sup>3</sup>

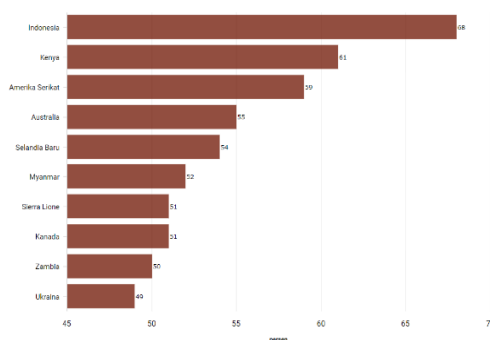


Figure 2 The Most Generous Country in the World.

Source: Databoks, "Indonesia Kembali Dinobatkan Sebagai Negara Paling Dermawan Di Dunia," 2022, <https://databoks.katadata.co.id/datapublish/2022/10/24/indonesia-kembali-dinobatkan-sebagai-negara-paling-dermawan-di-dunia>.

Beyond the demographic bonuses and the spirit of generosity, this presents an opportunity to leverage waqf to restore damaged or destroyed waqf assets and revitalize affected communities' socio-economic and religious activities. Consequently, from Islamic and national law perspectives, the author is keen to explore the efforts to recover waqf assets after natural disasters. This research is particularly significant as there is a dearth of literature addressing waqf managers' actions when disasters impact their assets. Given the vulnerability of many waqf assets to natural disasters and the prevalence of uncertified assets, this research is crucial for safeguarding and restoring waqf endowments.

## RESEARCH METHODS

The research methodology employed in this study is a doctrinal legal research approach, also known as normative juridical. This method utilizes secondary data sources, including primary legal materials such as Law No. 41 of 2024 on Waqf, Law on Natural Disaster Management, related regulations, and the Quran, hadith, relevant journals, and books. Data was gathered through a combination of literature review and interviews. The collected data was analyzed using descriptive qualitative methods, assessing the level of legal conformity.

## RESULTS AND DISCUSSION

<sup>2</sup> Kata Data, "Data Jumlah Bangunan Rusak Akibat Gempa Cianjur," Katadata.com, n.d., <https://databoks.katadata.co.id/datapublish/2022/12/08/update-jumlah-bangunan-rusak-akibat-gempa-cianjur-per-7-desember-2022>.

<sup>3</sup> Global Charities Aid Foundation, *CAF World Giving Index 2021 (A Global Pandemic Special Report)* (Charities Aid Foundation, n.d.).

## The Concept of Disaster Management in Indonesia

Disaster mitigation is a synonymous term for disaster management, encompassing proactive measures implemented prior to a disaster. Such actions include identifying earthquake-prone areas, constructing earthquake-resistant structures, reforestation efforts, providing counseling services, and raising awareness among residents of vulnerable regions.<sup>4</sup>

The term "disaster" originates from two ancient Greek words: "dus," meaning bad, and "aster," signifying star.<sup>5</sup> This combination describes astronomical occurrences with negative implications. The Quran references "calamity" or "disaster" ten times, appearing in verses such as Al-Ma'idah: 106, al-Taubah: 50, al-Qashash: 47, al-Syura: 30, Ali 'Imran: 165, al-Nisa: 62, and 72.

Al-Raghib al-Ashfahani posits that "*mushibah*" initially meant "*al-ramyah*," a term now used to denote peril, misfortune, or natural disasters. Al-Qurthubi defines a disaster as any event that causes harm or distress to individuals or communities regardless of its magnitude.<sup>6</sup>

In the Quran, "disaster" encompasses a broad range of occurrences, including property loss and moral and spiritual challenges that can impact individuals and communities.<sup>7</sup>

Despite its vast territory and strategic location on the equator at the intersection of two continents and two oceans, Indonesia faces numerous challenges due to its position in a region characterized by geological, hydrological, demographic, and other instabilities. This region's frequent occurrence of disasters necessitates a methodical, comprehensive, and coordinated response. Public expectations for government assistance in disaster recovery are paramount following each event. The government is widely regarded as the primary entity responsible for addressing these issues, from early warning systems to managing the aftermath of disasters.<sup>8</sup>

Article 1 Paragraph 1 of the Disaster Management Law defines a disaster as an event or series of events that endanger and disrupt people's lives and livelihoods, resulting from natural, non-natural, or human factors. These events can lead to human casualties, environmental damage, property loss, and psychological effects.

Paragraph (2) of the same law categorizes natural disasters as catastrophes caused by events or sequences of natural occurrences, including earthquakes, tsunamis, volcanic eruptions, floods, droughts, hurricanes, and landslides.

Furthermore, paragraph (5) defines disaster management as a comprehensive set of actions encompassing emergency response, rehabilitation, disaster prevention measures, and developing policies that address vulnerabilities to catastrophes.

<sup>4</sup> Erisandi Arditama and Puji Lestari, "JOGO TONGGO: MEMBANGKITKAN KESADARAN DAN KETAATAN WARGA BERBASIS KEARIFAN LOKAL PADA MASA PANDEMI COVID-19 DI JAWA TENGAH," *Jurnal Pendidikan Kewarganegaraan Undika* 8, no. 2 (2020): 157–67.

<sup>5</sup> Miftahul Jannah Khalifah Muhammad Ali, Irfansyauqi Beik, "The Role of Waqf Forests in the Prevention of Natural Disasters in Indonesia," *BWT Working Paper Series (BWPS)* BWPS No.2/, no. 2 (2021): 1–11.

<sup>6</sup> Arditama and Lestari, "JOGO TONGGO: MEMBANGKITKAN KESADARAN DAN KETAATAN WARGA BERBASIS KEARIFAN LOKAL PADA MASA PANDEMI COVID-19 DI JAWA TENGAH."

<sup>7</sup> M. Quraish shihab, *Tafsir Al-Misbab* (Jakarta: Lentera Hati, 2012).

<sup>8</sup> A Sani, "Implementasi Peran Nazhir Dalam Pengelolaan Tanah Wakaf Secara Produktif," *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan* 1, no. 1 (2017).

While the government plays a pivotal role in disaster management, historical evidence suggests that the state often falls short in fulfilling its obligations on issues with catastrophic consequences. Even in the face of natural or human-induced disasters, elements of state accountability, particularly in relation to human rights, cannot be entirely eliminated. Human rights provide a framework for understanding how disaster victims should be protected, regardless of the state's actions. State administrators must actively assert these rights; if the state fails to do so, disaster victims must be able to advocate for their own rights.

### The Concept of Waqf in Islam

The term "waqf" originates from the Arabic word "*waqafa*," meaning "to stop." Aligned with Article 1 of Law No. 41 of 2004, waqf is defined as "the legal act of a *waqif* (donor) to separate or surrender a portion of their property for perpetual or time-bound use, following Islamic law, for the purposes of worship and general welfare."<sup>9</sup>

In Islamic jurisprudence, waqf assets are also referred to as *Mauquf bih*. A *mauquf bih* is considered genuine if it is a valuable asset with a long useful life and originates from a pure *waqif* (donor). The validity of a waqf object is determined by its adherence to the following criteria:<sup>10</sup>

1. The object must have a use value. Legally, something that is not an object is illegal, such as rights related to objects, such as irrigation rights, passing rights, usufructuary rights, and so on. It is also not valid to donate worthless objects, according to *Syara'*, namely objects that cannot benefit from the donation, such as intoxicants and other illicit objects.
2. The waqf object must be either a fixed or movable asset. Generally, the Shafi'i scholar of Islamic law determines the validity of a waqf based on the permanence of the property's function or benefits, regardless of whether it is immovable, movable, or jointly owned.
3. The waqf object must be clearly specified at the time of waqf contract. This can be determined by a specific amount, such as one hundred million rupiah, or by a certain quantity, such as half of the land owned. Waqf donations that do not clearly state the assets to be donated are invalid, such as donating a portion of land or a number of books.
4. The waqf object must be the property of the *waqif* at the time of waqf contract. Donating objects that are not or do not belong to the *waqif*, even if they will become their property later, is invalid. For example, endowing land that is still in dispute or guarantees of sale and purchase are not valid.

According to KHI Article 217 paragraph 3, waqf articles, as mentioned in 215 paragraph 4, must be free from all encumbrances, obligations, confiscations, and disputes. While Law No. 41 of 2004 comprehensively regulates waqf procedures, the KHI also provides specific regulations for waqf.

<sup>9</sup> Abu Zahra, *Mubadarat Fi Al-Waqf* (Cairo: Al-Fikr Al-'Arabi, 2004).

<sup>10</sup> Siska Lis Sulistiani, "The Legal Position of Waqf for Non-Muslims in Efforts to Increase Waqf Assets in Indonesia," *Samarah* 5, no. 1 (2021): 357–71, <https://doi.org/10.22373/sjhk.v5i1.9161>.

Following Law No. 41 of 2004, any asset that meets the criteria outlined in Article 16 can be donated, including both movable and immovable property. This means that land and buildings are not the only eligible waqf assets. In this context, the term "waqf assets" refers to properties, such as land and buildings, susceptible to natural calamities.

### Recovery of Waqf Assets according to Fiqh and Positive Law

Waqf is an endeavor to preserve assets with economic value for maximum benefit while upholding the fundamental nature of the waqf endowment. In managing waqf assets, various challenges may arise, hindering their optimal utilization. Consequently, it is crucial for *nadzhir*, as waqf managers, to recover unproductive or destroyed waqf assets caused by diverse factors.<sup>11</sup>

The following outlines several *fiqh*-based approaches to waqf asset recovery:<sup>12</sup>

1. *Taghyir al-waqf* refers to alterations made to the terms of a waqf endowment. These modifications can encompass changes to beneficiary allocations, the level of benefits provided, the physical or form of the assets, or the requirements set by the *waqif*. According to the Hanafi scholar, *taghyir al-waqf* is generally not permissible unless there is a change in the terms specified by the waqif. In contrast, Maliki scholar allows for *taghyir al-waqf* if the changes are beneficial and lead to increased productivity of waqf. This view is supported by al-*Dasuqi's* statement that modifying certain aspects of a waqf is permissible if it results in benefits, such as relocating a place of ablution within the same area. Shafi'i scholar considers *taghyir al-waqf* as an illegal action that violates the original provisions set by the *waqif*. However, exceptions may be made if the *waqif* explicitly allows for changes deemed beneficial to the waqf. Hanbali scholar permits *taghyir al-waqf* if it leads to more advantageous outcomes.
2. *Istibdal al-waqf* refers to replacing waqf goods under certain conditions, such as selling them in emergencies with specific terms and conditions. The following are the requirements for replacing waqf assets:
  - 1) The donated goods are completely unusable.
  - 2) There are no waqf proceeds available to improve the goods.
  - 3) The sale of waqf assets is not conducted through fraudulent means.
  - 4) The person who replaces the waqf assets is a pious and righteous judge.
  - 5) The replaced assets are physical objects, such as land or buildings, and not monetary units like dirhams or dinars, to prevent misappropriation by supervisors.
  - 6) The judge must not sell the waqf assets to individuals whose testimony is not accepted or those in debt.

*Taghyir al-waqf* can be applied to waqf assets such as buildings or land. For instance, a building donated for waqf purposes may initially be used as a waqf operational site.

<sup>11</sup> Ifa Senjiati, Siska Lis Sulistiani, and Itsnaina Lathifah Ridwan, "Pemulihan Aset Wakaf: Tinjauan Fikih Dan Akuntansi," *Hayula: Indonesian Journal of Multidisciplinary Islamic Studies* 4, no. 2 (2020), <https://doi.org/10.21009/004.2.05>.

<sup>12</sup> Wahbah Az-Zuhaili, "Fiqhul Islam Wa Adillathuhu," in *Fiqhul Islam Wa Adillathuhu*, 2011.

However, due to high local unemployment rates, portions of the building could be repurposed for community businesses. Another example is converting waqf rice fields into plantations. The *waqif* must approve changes to the management of waqf assets.

*Istibdhal* can be applied if it is suitable for machines or vehicles because machines and vehicles quickly experience a decrease in value, so if the asset is damaged and does not provide proper benefits, then the asset can be sold and buy a new asset with a similar function.<sup>13</sup>

According to Article 41 of the Waqf Law,<sup>14</sup> waqf assets donated for public purposes that align with the general spatial layout plan (RUTR), as stipulated by relevant laws and regulations, and do not contradict Islamic law, are exempt from the restrictions outlined in Article 40 letter f. However, implementing these exemption provisions requires formal approval from the Minister and Indonesian Waqf Board.

In such cases, the waqf assets must be exchanged for assets whose benefits and exchange value are at least equivalent to the original waqf assets. This exchange is necessary to ensure that the value of the waqf endowment remains intact despite the change in status.

Government regulations provide further details on the provisions outlined in paragraphs (1), (2), and (3) regarding modifications to the status of waqf assets.

The aforementioned article emphasizes the importance of preserving the permanence of waqf products as long as their conditions remain normal and advises caution when trading waqf goods. While the process of *Istبدال* (replacement of waqf assets) is not to be underestimated or taken lightly, it does open the door for certain transactions. This becomes even more apparent when examining the waqf regulations in Government Regulation 42 of 2006.<sup>15</sup>

### Recovery of Post-Disaster Waqf Assets according to Positive Law

Natural disasters in Indonesia, such as earthquakes, landslides, and floods, often result in significant material and non-material losses. One notable impact is on waqf assets, including land and buildings such as mosques, schools, Islamic boarding schools, and other public facilities. Waqf aims to preserve and perpetuate waqf assets, including land and buildings, even in adverse conditions like natural disasters.

One of the primary challenges waqf land and building assets face after natural disasters is the destruction or damage of buildings, displacement of assets, and loss of crucial documents related to ownership and waqf certificates. These vulnerabilities can lead to the misuse of waqf assets, resulting in loss of ownership and property.

The 1945 Constitution of the Republic of Indonesia, Article 33 paragraph (3), stipulates that the state controls land, water, and natural resources and should be utilized for the

<sup>13</sup> Abidullah Khana, Muahmmad Hakimi Mohd Shafiaib, and Shabeer Khan, "The Rise and Fall of Cash WAQF Crowdfunding: Exploring the Shortcomings," *International Journal of Innovation, Creativity and Change*, 8, no. 9 (2020).

<sup>14</sup> Marina Abu Bakar et al., "THE SWOT ANALYSIS OF WAQF GOVERNANCE IN BRUNEI DARUSSALAM," *International Research Journal of Shari'ah, Muamalat and Islam* 2, no. 3 (2020), <https://doi.org/10.35631/irjsmi.23001>.

<sup>15</sup> Makhrus Makhrus, "Dinamika Kebijakan Negara Dalam Pengelolaan Wakaf Di Indonesia," *JSSH (Jurnal Sains Sosial Dan Humaniora)*, 2019, <https://doi.org/10.30595/jssh.v2i2.3137>.

prosperity of the people. This constitutional provision provides a framework for land ownership rights in Indonesia.<sup>16</sup>

Specific laws and regulations pertaining to waqf and basic agrarian law have been enacted to ensure the proper regulation of waqf land in Indonesia. Implementing the Basic Agrarian Regulations Act (UUPA) significantly altered agrarian law in Indonesia, particularly in the land sector. One of the primary objectives of enacting Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) was to establish legal certainty regarding land rights for all Indonesian citizens. This objective was pursued through two key strategies:

1. Providing Comprehensive Legal Instruments: The development of written, comprehensive, and clear legal instruments to define land rights and related matters.
2. Implementing Land Registration: Establishing a land registration system that enables land rights holders to prove their ownership and facilitates the government's implementation of land policies.

In the aftermath of disasters that result in damage, displacement, destruction, or loss of important files related to waqf assets, recovery efforts should prioritize the following two aspects:

1. Aspects of recording waqf assets

Article 27 of Law Number 5 of 1960 concerning basic regulation on agrarian principles outlines two classifications of land: land that has fallen to the state and destroyed land. These provisions do not stipulate that property rights can be revoked due to natural disasters. If the land of disaster victims is not destroyed, it implies that there are avenues for them to reclaim their land.

In such cases, *waqif* and *nadzhir* can pursue legal measures to maintain the continuity of waqf assets, including land and buildings affected by the disaster. Legal aspects are essential to obtain financial assistance for the development and restoration of waqf assets through a recording mechanism that produces ownership and waqf certificates.

The National Land Agency (BPN) is responsible for land registration; the Head of the Land Office implements this responsibility with assistance from the Land Deed Making Officer (PPAT) and other officials designated to complete certain tasks. The following are the purposes of land registration as stated in Article 9 Paragraph 1 of PP Land Registration: Plots of land that are owned by property rights, business use rights, building use rights, and usufructuary rights; Land management rights; Waqf land; Land owned by an apartment unit; Mortgage rights and State land.

The primary purpose of land registration is to provide legal certainty in land-related matters. Land registration is important in Indonesia as it ensures that every individual has the right to legal protection. By establishing legal

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<sup>16</sup> Mirza Sheila Mamentu, "Perlindungan Hukum Terhadap Pemegang Sertifikat Hak Atas Tanah Berkaitan Dengan Adanya Peristiwa Alama Gempa Bumi Menurut Undang-Undang No.5 Tahun 1960," *Lex Privatum* V, no. 9 (2017): 14–22.



certainty, land registration provides a strong foundation for protecting the rights of land owners.

Legal certainty for land rights holders has far-reaching implications for community and state life. It is essential to approach land-related matters objectively based on legal norms to avoid negative impacts on national development.<sup>17</sup>

The National Land Agency (BPN) plays a crucial role in land registration following natural disasters. BPN identifies land ownership, including land use systems, before the disaster, tracing the land's ownership to heirs and affected families.

Regarding post-earthquake land ownership, the state cannot directly claim land ownership even if the original owner has passed away. Land ownership should be returned to the community. In areas inhabited by indigenous communities, the communal land ownership system should be respected, preventing land division.

The state, particularly BPN, should limit its role to post-disaster land management rather than attempting to transition land into state property. The IASC Operational Manual on Human Rights and Natural Disasters highlights the loss or damage of property documents due to disasters, making it difficult to recognize land boundaries. In such cases, the state should facilitate affordable procedures for victims to regain their original land and property ownership without delay.

The state must guarantee the restoration of human rights for disaster victims, including the re-measurement of unclear land boundaries caused by earthquakes. Article 6 of Government Regulation in Lieu of Law Number 2 of 2007 stipulates that land, whether registered or unregistered, identifiable or not, should be re-measured and its boundaries determined based on the designations of land rights holders, joint heirs, local officials, and the Head of the Land Office. This provision emphasizes the importance of allowing land rights holders to re-establish their ownership status as long as the land parcel is not destroyed.

If the state neglects its duty to guarantee human rights, disaster victims risk losing their right to recover pre-earthquake conditions and becoming vulnerable to further hardship. Moreover, a lack of immediate state presence to provide maximum protection can lead to prolonged risks for disaster victims. One such risk is the potential loss of basic rights for those living in disaster-prone areas, particularly the right to land ownership. As outlined in Article 27 of the Basic Agrarian Constitution, the abolition of property rights can occur under the following circumstances:

- 1) Land Falling to the State

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<sup>17</sup> Mamentu.

Revocation of rights under Article 18 was due to the voluntary surrender by the owner, as the item was deemed to have been abandoned under the provisions outlined in Article 21, paragraph 3, and Article 26, paragraph 2.

## 2) Land Destruction

In the event of an earthquake that results in the destruction of land, ownership of that land may be forfeited or nullified. However, if an earthquake only confuses land boundaries without destroying the land, the owner's rights to the property may not necessarily be lost. If the disaster does not completely destroy the affected area, victims may still be able to reclaim their land and redraw boundaries.

## 2. Aspects of financing waqf assets

After legal procedures to trace and record waqf assets, particularly for those who have lost important documents related to their status, boundaries, and location, are completed, the next step is to address the reconstruction of damaged waqf buildings.<sup>18</sup>

Waqf assets can only be utilized for specific purposes to fulfill waqf's objectives. These purposes include (1) Religious Facilities and Activities: Supporting religious facilities and activities; (2) Education and Health: Funding facilities and programs related to education and health; (3) Aid to the Underprivileged: Providing aid to the underprivileged, abandoned children, orphans, and scholarships; (4) Economic Development: Promoting economic development and enhancement; and (5) Public Welfare: Supporting other public welfare initiatives that do not contradict Islamic law or legal requirements.

Waqf serves a paramount social purpose. God has bestowed upon humanity diverse skills and attributes, leading to unique circumstances and environments for each individual. This diversity encompasses wealth and poverty, intelligence and folly, power and weakness. Underlying this diversity is the profound understanding that God enables the wealthy to assist the poor, the wise to guide the foolish, and the powerful to support the helpless. Through these acts of compassion and assistance, human connection becomes intertwined with righteous deeds, serving as a means to seek Allah's favor.

The disparities in social conditions naturally influence the forms and patterns of learning about wealth. Learning can be compulsory, voluntary, permanent, or temporary. However, the most crucial approach is to spend assets permanently and systematically, with well-defined goals. This is where the social function of waqf becomes evident.<sup>19</sup>

<sup>18</sup> Khairul Hidayatullah Basir and Mohd Hairul Azrin Besar, "Unlocking Islamic Social Finance to Assist Micro Small Medium Enterprises in Brunei Darussalam," in *COVID-19 and Islamic Social Finance*, 2021, <https://doi.org/10.4324/9781003121718-16>.

<sup>19</sup> Tawat Noipom and Aris Hassama, "WAQF IN A NON-MUSLIM COUNTRY: A PRELIMINARY SURVEY OF WAQF IN THAILAND," *Share: Jurnal Ekonomi Dan Keuangan Islam*, 2017, <https://doi.org/10.22373/share.v6i1.1517>.

According to Article 4 of Law No. 41 of 2004, the purpose of waqf is to utilize waqf property in accordance with its intended function. The KHI Article 216 defines the function of waqf as the perpetuation of benefits derived from waqf objects in alignment with their designated purpose. Article 5 of Law No. 41 of 2004 also states that waqf serves to realize the potential and economic benefits of waqf assets for worship and public welfare.

As outlined in KHI Article 216 and Article 5 of Law No. 41 of 2004, the function of waqf is to establish facilities and infrastructure for public benefit, promoting shared prosperity in both religious and economic aspects. Waqf is vital in assisting individuals living below the poverty line and enabling other Muslims to utilize waqf objects as public facilities while benefiting from them.

Cash waqf collected through Islamic financial institutions (LKS PWU), in collaboration with registered *nadzhir*, can be utilized for various purposes, including recovering waqf assets in the form of buildings in specific locations. Alternatively, communities can work directly with *nadzhir* as waqf managers to collect funds from the community through waqf instruments, which can be channelled toward developing and repairing waqf assets damaged by natural disasters. These efforts align with the objectives of cash waqf, which aim to contribute to the recovery and preservation of waqf assets and promote public welfare.

## CONCLUSION

Post-disaster recovery of waqf assets involves restoring damaged, destroyed, or displaced waqf assets to optimize their functions. Waqf assets directly affected by natural disasters often include land and buildings. Islamic concepts such as *taghyir al-waqf* and *ruslaig waqf* are relevant to the recovery of waqf assets.

The first step in recovering waqf assets is to identify their status. If the land is destroyed according to UUPA regulations, it may revert to the state. However, recovery efforts can be pursued if the land is merely damaged and its boundaries or characteristics are still identifiable. Waqf certificates can serve as important evidence in such cases.

One of the challenges in recovering waqf assets is the lack of legal evidence for some assets, making identification difficult. Optimizing the collection of cash waqf instruments and waqf through monetary contributions is essential to address the financial aspect of reconstructing damaged waqf buildings. Given the generosity of the Indonesian people, integrating cash waqf instruments with land waqf can benefit both waqf and the wider community.

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