

Solution for Unclaimed Funds in Banks: An Islamic Economic Perspective

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ABSTRACT

Natural disasters that have occurred and resulted in quite a large number of victims include Aceh (2004) and Palu Sigi Donggala (2018). The inevitable loss of life in the event of a disaster causes unclaimed funds to settle in the bank because the owner of the account balance and their heirs are victims of a natural disaster, or their whereabouts are unknown. In previous studies, the handling of unclaimed funds in the banking system was carried out in three ways: left alone, resolved by returning to the owner, and becoming bank income. Meanwhile, according to the Fatwa contained in the Compilation of Sharia Economic Law, a custodian of property/muwaddi' funds or the custodian of assets/funds is not known, then the mustaudi' or those entrusted with the assets/funds shall keep the object of the assets/funds until it is known and/or proven that the muwaddi' has passed away. This study uses a literacy study method to solve the problem of unclaimed funds' property rights. Therefore, it is necessary to clarify the concept of property rights of unclaimed funds so that they can be managed by parties or institutions authorized to manage them and used for the benefit of the people.

Keywords: *Property Rights, Unclaimed Funds, Bank, Zakat*

INTRODUCTION

Geographically, the territory of Indonesia is located in the Ring of Fire, so conditions make it vulnerable to natural disasters, such as earthquakes and tsunamis. Natural disasters resulting in significant casualties include Aceh (2004) and Central Sulawesi (2018). The Aceh tsunami (2004) at least caused more than 165,000 deaths, the highest death toll in the last 20 years (BNPB, 2012). In the Central Sulawesi natural disaster (2018), based on the assessment and study by Puskas BAZNAS (2018), it was stated that the total number of victims died as many as 2,072.

Of the hundreds of thousands of people who died due to natural disasters, it is possible that they still have funds stored in bank accounts. For those whose heirs are still alive and know the whereabouts of the account, funds can be withdrawn. However, there may be victims who die from natural

disasters whose heirs are also victims of natural disasters or whose surviving heirs do not know the ownership of the victim's account. This raises the problem of ownership of the funds in the bank account. These funds will become unclaimed in a bank account and continue to settle without knowing their ownership.

In the banking system, an inactive account with no transactions for 6 (six) consecutive months will become a sleeper or passive account, commonly called a dormant account. The bank determines the procedure for handling dormant accounts. Research conducted by Khoirunnisa (2015) states that in one of the Islamic banks in Indonesia, there has been an increase in the number of passive accounts from Dec 2012 to 2014. In Dec 2012, passive accounts were 1.00%, then increased to 23.1% in Dec 2013 and 42.4% in Dec 2014. Passive accounts that tend to increase are not only caused by the factor of customers who died due to natural disasters

but also because of the loyalty factor of customers.

LITERATURE REVIEW

According to Uthman (2017), in his research entitled Status of No-Management Funds in Banks in the Perspective of Positive Law and Islamic Law, states that the potential for unclaimed funds in Bank Mega Syariah is the result of human error, system error, and inadequate procedures and control. The steps for handling unclaimed funds by the bank, among others: left, resolved by being returned to the owner and used as income by the bank. Unclaimed funds, which later became dormant accounts, will settle and be cut by the cost of maintaining a bank account, and over time it will decrease and become bank income.

The issue of property ownership after the disaster is interesting to study. Among them are problems that have arisen after the Aceh tsunami disaster (2004). Among others are cases in the land sector, primarily lands not owned by anyone because the land owner died and there were no heirs. The amount of land is relatively large and scattered. The existence of the land also cannot be left alone because it can lead to claims from other parties who are not entitled to it. Therefore, this issue needs to be resolved immediately so that the holder of land rights will be clear and get legal certainty so that the land becomes productive again (Alidar, 2010).

In line with land problems in post-natural disaster areas that cause relatively large casualties, the issue of unclaimed funds in banks must also be a concern. The nature of funds that tend to be more liquid needs to be resolved so that these funds are in the right hands by their property rights. Especially with banking rules regarding bank secrecy which is not easy to know that someone has funds in a bank account. In contrast to the land that can be understood generally, funds in a bank account cannot be known with

certainty except for the account owner. The disbursement of funds by the heirs must also meet specific requirements. It becomes a problem when both the account holder and the heirs become victims of a natural disaster so that no one can claim the disbursement of the funds.

METHODOLOGY

This research method uses a literacy study method by comparing the research results from research journals with concepts and theories about property rights in Islam, the compilation of Sharia economic law, and the provisions of the applicable legislation.

RESULTS AND DISCUSSION

Property Rights in Islamic Economic Concepts

Islam, as the religion of Allah SWT, regulates human life both in this world and in the hereafter. Islamic economy is an economic system based on the Qur'an and Hadith, which aims to meet human needs in this world and the hereafter (Huda et al., 2008). The position of the Qur'an and Hadith is absolute, so economic activities must rely on them. This includes property rights.

Islamic economics recognizes the concept of *istikhlaf*. In simple terms, the meaning of *istikhlaf* is representative. This concept views that Allah is the absolute owner of all His creations in the universe, including all assets owned and controlled by humans. As for humans, they are only the relative owners or temporary rulers of the said assets. Humans are called caliphs or "representatives" of God who are assigned to manage, maintain, and utilize them and will be held accountable for the mandate. Because humans are limited to being holders of trust, the use of assets must comply with the rules set by the owner (Junarsin et al., 2015). Thus, the concept of *istikhlaf* is that all property

management must be subject to Allah's law (sharia).

According to Huda et al. (2008), Islamic economic philosophy consists of three principles, namely:

1. Everything in the universe belongs to Allah SWT, and humans are only caliphs who hold a mandate from Allah to use His property so that everything must submit to Allah the Creator and Owner, as in QS An-Najm 31.
2. To carry out their duties as the caliph of Allah SWT, humans must help each other carry out economic activities that aim to worship Allah SWT.
3. Belief in the Day of Judgment is essential in an Islamic economic system. With this belief, human economic behavior will be controlled because he is aware that Allah SWT will hold all his actions accountable later.

Huda et al. (2008) also explained the fundamental value of ownership, including:

1. Ownership is not absolute control over economic resources, but every person or entity is required to have the ability to utilize these financial resources.
2. The length of human ownership of an object is limited to the length of time the human has lived in the world.
3. Resources that concern the public interest or become the livelihood of many people must become public property.

Ownership in Islam is classified into three groups (Amir, 2015), namely:

1. Individual ownership (private property), the provisions of syara' law that apply to certain substances or benefits (services), allows anyone who gets them to take advantage of the goods. According to An-Nabhani, quoted in Amir (2015), the causes of ownership are limited to five things: work, inheritance, the need for the property to sustain life, state-given assets given to the people, and assets obtained without expending any assets or energy.

2. Public ownership (collective property), namely as-syari' permission to a community to jointly take advantage of available objects. Islamic law prohibits the ownership of objects or property by one person or a small group of people. Thus, objects included in public ownership can be grouped into three: public facilities, vast amounts of mining materials, and objects whose nature of formation prevents them from being owned only by individuals. Management of ownership related to public ownership (collective property) is the state's right because the state is the representative of the ummah or the people.
3. State property is the right of all Muslims whose management is the state's authority to give it to some citizens, according to its discretion.

According to Ash-Shadr (2008), when relationships between humans are established and society is realized, various general needs of society will emerge. Islam has guaranteed the fulfillment of multiple needs and desires of the community through joint ownership of certain production sources. Many individuals are unable to meet their needs through private property. Islam gave rise to the third form of institutional ownership, namely state ownership, which with the head of state, could maintain the balance. Assets that are in the state's ownership, besides being able to be used for the benefit of the people as a whole, can also be used for specific purposes, such as the results obtained from them to members of the community in need.

According to Askari et al. (2015), the Islamic economic system is market-based, where the market is seen as the best and most efficient mechanism for resource allocation (production and consumption). But the efficiency of the market system cannot be confused with the market as an ideology, where the market, which is not limited by rules, is seen as the philosophy or basis of the

economic system. Something that will happen is respected, untouched, and placed on a pedestal. To be efficient, the market must have rules (such as disclosure of information) to protect market participants (workers, producers, investors, and consumers) and must be monitored with strict enforcement of the rules. Legally acquired private property rights are held sacred in Islam, and property rights are fully protected. However, according to Islam, Allah SWT is the Creator of everything on this earth, and His creation has been given to mankind from all generations by belief. So, land and other natural resources should be developed in a way that benefits all human beings of all generations fairly.

Property rights in Islam are highly protected. This is reflected in how Islam regulates contracts or contracts and good governance, as in QS Al-Maidah verse 1. Islam also prohibits humans from eating adequately mixed with other people's property, especially orphans, as explained in QS An-Nisa' verse 2.

According to Askari et al. (2015), there are eight Islamic principles regarding property rights, namely:

1. Allah the Almighty is the absolute and highest owner of all ownership, whether in the form of natural resources, assets, assets, and existing objects. Humans are given the conditional right to collectively own property to carry out the duties and obligations determined by the Lawgiver, Allah SWT.
2. Recognizes the transfer by Allah SWT of property rights to all mankind, which establishes collectivity rights over the creation of resources.
3. Giving everyone equal access to natural resources provided by Allah SWT, combined with their hard work to produce goods and services.
4. People can choose the products from the combination of their labor with these resources without losing the original collectivity of rights to either the resources or to goods and services by individuals.
5. Islam only recognizes two ways for individuals to acquire property rights:
 - a. Through their creative work; and/or
 - b. By transfer — by exchange, contract, grant, or inheritance — from others who have acquired rights to property or assets through their labor.
6. Sacred ownership, through the "eternal property rights," is the task of sharing by transferring it into the principle of property rights and obligations. Before any work is done on physical-natural resources, all human beings have equal rights and opportunities to access resources. When individuals apply their creative work to obtain resources, they gain the right to be prioritized in the ownership, use, and exchange of the resulting product without canceling its original ownership, i.e., the Creator's property rights or the rights He gave to all human beings in the final product or proceeds from its sale.
7. Distribution of income and wealth resulting from resource management relates to property rights as a belief. This rule is carried out through mandated tasks to humans that are imposed on income and wealth, which must be paid to clear income and wealth from the rights of others. This may be the reason why the Quran calls this charity zakat, from the root meaning "Purification and purification." This task is likened to pruning a tree, which simultaneously strips the tree of unwanted parts and allows it to grow further.
8. Recognizing the limitations on relinquishing property rights — absolute rights in the Western concept of property rights. In Islam, individuals are not obligated to squander, destroy property, use possessions for luxury, or violate the law. The prescribed ownership

obligations are carried out properly, including sharing in the prescribed amount and manner, the property rights to the residual income, wealth, and assets are sacred and unfringed, and no one can impose his confiscation or confiscation.

Sharia law is essential in maintaining Sharia property rights outlining obligations related to property rights (Askari et al., 2015). Among these obligations are the responsibility for sharing the proceeds or the use of ownership and not to squander, destroy, squander, or use ownership for purposes not permitted by the Shariah. This Shariah position is by the Islamic Conception of justice and the rights and obligations of individuals and communities. Violating property rights is not only a positive legal dimension but also contains ukhrawi values, namely sins that will be accounted for in the hereafter.

The Qur'an clearly and unequivocally condemns the acquisition by individuals of each other through the wrong means (see QS 2:188; 4:29, 161; 9:34). Islam recognizes two types of individual claims to property: (1) property rights which are the result of a combination of individual labor and natural resources; and (2) rights or claims to property acquired through exchanges, remittances of what Islam recognizes as rights (Askari, 2015). The transfer of ownership from one party to another, especially from one individual in a company, cannot be done unilaterally.

Property Rights According to the Compilation of Sharia Economic Law

According to the compilation of Sharia economic law, it is stated that the amwal (wealth) ownership principle is based on the following:

1. Amanah, the ownership of amwal is a deposit from Allah subhanahu wata'ala to be utilized for the benefit of life.

2. Infradiyah, that ownership of objects is individual, and the unification of things can be done as a business entity or corporation.
3. Ijtima'iyah, that ownership of objects does not only have the function of fulfilling the needs of the owner's life but at the same time, there are community rights.
4. Benefits, that ownership of objects is directed to increase the benefits and narrow the harm.

Whereas in the compilation of Sharia economic law, the definition of amwal is an object that can be owned, controlled, cultivated, and transferred, both tangible and intangible objects, both registered and unregistered objects, both movable and immovable objects, and rights that have economic value.

Concerning banking practices, third-party funds (DPK) in savings, demand deposits, and time deposits can be categorized as wadi'ah contracts. Wadi'ah is the safekeeping of funds between the owner and the recipient of the deposit, who is trusted to maintain the funds. Article 419 of the compilation of Sharia economic law states that if the whereabouts of the muwaddi' (custodian of funds or customers) are unknown, the mustaudi' (recipient of the deposit of funds or bank) must still keep the object of wadi'ah until it is known and/or proven that the muwaddi' has gone. To ensure this, the bank can verify the whereabouts of its customers when a natural disaster occurs, especially for priority customers who have large enough funds in the bank. Article 429 also states that if muwaddi' dies,

However, it is also not risk-free. Article 427 of the compilation of Sharia economic law states that (1) if the whereabouts of the muwaddi' are no longer known, the mustaudi' must submit the object of wadi'ah to the family of the muwaddi', after obtaining a decision from the court. (2) if mustaudi' gives the object of wadi'ah

without a court ruling, he must bear the consequences of his actions. This is what encourages banks to maintain the principle of prudence in their operational activities.

Inheritance Rights in Islam

Inheritance is a means to distribute wealth. According to An-Nabhani (2021), three conditions serve as guidelines for donating wealth in inheritance, namely:

1. The first condition is that the heirs spend all the inheritance left by the deceased by inheritance laws. So in this condition, all existing inheritance will be distributed to them.
2. The second condition is if no heir can spend all the inheritance, by the laws of *syara'*. For example, if the deceased only leaves a wife or only leaves a husband, then the abandoned wife is only entitled to the inheritance, and the rest is left to the Baitul Mal. If the husband is left behind, he is only allowed to the inheritance, and the rest is left to the Baitul Mal.
3. The third condition, if there are no heirs at all, then in this kind of condition, all existing inheritance is handed over to the Baitul Mal or the State.

Inheritance is all legal ownership of material or commercial property and rights left by the owner due to death. Thus, all legal and lawful wealth owned by a person will have the status of an inheritance that must be distributed only to those whom Allah SWT has determined. There is no right for anyone to use someone's inheritance except after it has been allocated based on *faraid* science and the provisions of Islamic law (Syakur, 2015).

According to the Compilation of Islamic Law, Book II, Chapter I, Article 171, quoted by Supardin (2020), the definition of inheritance law is the law that regulates the transfer of property rights to the inheritance (*tirkah*) of the heirs, determining who is entitled to become heirs and how much their respective parts. Thus inheritance is one of

the instruments in Islamic economics for transferring property rights.

Management of Unclaimed Assets According to the Islamic Economic Perspective

Contracts in Islam aim to fully protect property rights so that they are not controlled by unauthorized parties, both from an Islamic perspective and positive law. In principle, placing customer funds in the bank uses a deposit agreement as a contract for savings products, demand deposits, and time deposits. Thus, the bank does not have the authority to transfer customer funds into bank income for any reason, even if the customer dies and the heirs are not known. The threat of deviation from an agreement is quite severe. Ash-Sadr (2008) quotes the hadith of the Prophet Muhammad narrated in Sunan Abu Dawud, which reads, "Beware, anyone who wrongs people who have an agreement with him, or cuts off his rights, or burdens him with tasks beyond his ability.

According to An-Nabhani (2021), if a Muslim dies, while the person concerned has no heirs, then his assets are the property of the *baitul mal* (state treasury) as *kharaj*, *jizyah*, and other assets obtained using *Haq*. *Baitul Mal* owns the other. What belongs to the *baitul mal* belongs to the state, except for *zakat*, so the state can distribute its assets according to its will while still adhering to the *syara'* laws. *Syara'* has also explained the causes of ownership that can be owned by a person, as well as specific conditions that determine the ownership of the *ummah*, including the causes owned by the state. *Syara'* also prohibits following other than these provisions.

An-Nabhani categorizes assets that have no heirs or excess assets from the remaining inheritance (*amwal al-fadha*) into types of state ownership according to *as-syari'*, in addition to *ghanimah*, *anfal*, *fai*, *khumus*, *kharaj*, *jizyah*, grants (taxes), *ushur*, assets left by apostates, assets obtained illegally by the authorities, and assets

obtained from BUMN (Sulistiawati & Fuad, 2017). Regarding the ownership of this country, Allah has given authority to the government to regulate the affairs of the Muslims to achieve benefit. This is intended to protect against fundamental problems, namely: excessive possession of property by a person so that it becomes unlimited and the emergence of poverty and other negative effects.

In Aceh Province, the term "religious treasure" is known. It is called religious property because the property has no owner and heir, so the management and ownership are returned and become the collective right of Muslims. The term religious property is intended to mean that the authority to regulate these assets is left to religious institutions, namely God's rules, which are the source/owner of the law (Alidar, 2010). Judging from its function, religious institutions become "containers/umbrellas" where all people's problems are returned. Therefore, being made property with no owner as a religious treasure can be interpreted as the property's owner is the people. Thus, religious property with people's property becomes a term of ambiguity (*musytarak*),

In Salim's research (Salim, 2006), the large number of victims who fell as a result of the Aceh tsunami (2004) created a situation where there is a possibility that several plots of land in the *gampongs* (administrative area divisions at the village level in Aceh Province) have no heirs anymore at all or the whereabouts of his heirs are no longer known. The Ulama Consultative Council immediately responded to this through Fatwa No 2 of 2005, issued on February 7, 2005 (the same fatwa item was repeated in fatwa number 3 of 2005, dated April 17, 2005), which reads: "Land and property left by the victim The earthquake and tsunami waves that leave no heirs belong to the Muslims through the Baitul Mal".

According to Salim (2006), Aceh's customary law regarding the fate of land with no owner or heirs is not much different from the Fatwa mentioned above. Aceh's customary law stipulates that for land owned by people whose whereabouts are no longer known, including their heirs, the management of the land is carried out by the *geuchik* (village head) and other *gampong* officials, while the proceeds obtained from the land are used for *meunasah* and other purposes residents of the village concerned. Such lands are categorized as Baitul Mal assets. Baitul Mal handed over the management of these lands to a poor person who lived in the village. The results of the land management are then distributed to the local community.

BAZNAS as the State Baitul Mal

Management of unclaimed property because the owner dies and the whereabouts of the heirs are not known is not limited to the object of property in the form of land but can also be in the form of unclaimed funds in the bank account. Using the same approach as in Aceh, the management of unclaimed funds in the bank can be left to the State Baitul Mal. The current function of the State Baitul Mal is more accurately carried out by the National Amil Zakat Board (BAZNAS) or an institution appointed by the Government based on the Act. According to Law No. 23 of 11, the Government established BAZNAS to carry out the duties and authorities in the management of zakat nationally. Explaining the law provides flexibility in mentioning Provincial BAZNAS or regency/city BAZNAS with the term Baitul Mal.

In the explanation of Law No. 23 of 2011, it is also explained that in addition to receiving zakat, BAZNAS can receive *infaq*, alms, and other religious social funds (DSKL). DSKL managed by BAZNAS includes *nazar*, trust assets or deposits, *qurban*, *kafarat*, *fidyah*, confiscated assets from religious courts, and inheritances with

no heirs. Thus, unclaimed funds deposited in the bank can be classified into the DSKL.

In its distribution activities, BAZNAS is actively involved in disaster response activities. One aspect of the distribution carried out by BAZNAS is in the humanitarian field, which includes handling survivors of natural disasters, accident victims, victims of persecution, and victims of other humanitarian tragedies. Thus, managing unclaimed funds distributed through DSKL to BAZNAS can increase the role of BAZNAS distribution for communities affected by natural disasters.

CONCLUSION

Based on the discussion presented above, it can be concluded that: *First*, In the perspective of Islamic Economics, the unclaimed funds in the bank belong to the people who, in this case, are managed by the state. These funds can be used for handling natural disasters, especially those that occur in the owner's location of the unclaimed funds. *Second*, the state may appoint BAZNAS as a state institution to manage unclaimed funds channelled to mustahik or parties in need, especially survivors of natural disasters.

The bank should play an active role in ensuring the existence of its customers when a major disaster may cause most of its customers to die. The bank should add a clause in the account opening agreement regarding whether the holder dies due to a natural disaster. No heirs claim during a specific period since the natural disaster. The balance in the account is considered unclaimed funds whose ownership and management have changed to the state and can be used for the benefit of the people.

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