



10 Frequently Asked Questions on Inheritance Law in Post-Tsunami Aceh

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International Development Law Organization
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Introduction

The following guide provides basic information on the legal principles, processes and institutions relevant to the resolution of Inheritance disputes in post-tsunami Aceh. It has been designed to promote awareness and understanding regarding the applicable law, how to access the legal system, and the rights of women and children in the judicial process. This document is intended as a guide only. The jurisprudence applicable to Aceh is evolving rapidly and many of the judicial institutions involved in dispute resolution have only recently been established. As such, this guide is presented, not as an authority on *Sharia* or the applicable law in Aceh, but rather as a practical tool to assist tsunami-affected communities address the many and complicated legal issues which now shape their lives. At the end of this publication you will find a matrix summarizing key Indonesian laws, *adat* laws and Islamic legal opinion relating to inheritance. It must be highlighted that Indonesian laws referred to have not been translated literally and that modifications have been made in the interests of enhanced readability and where Indonesian legal concepts do not easily translate into English. There is also a directory of the courts in Aceh and the various institutions where persons requiring legal assistance can obtain advice.

Question 1 : How do you calculate a deceased's estate?

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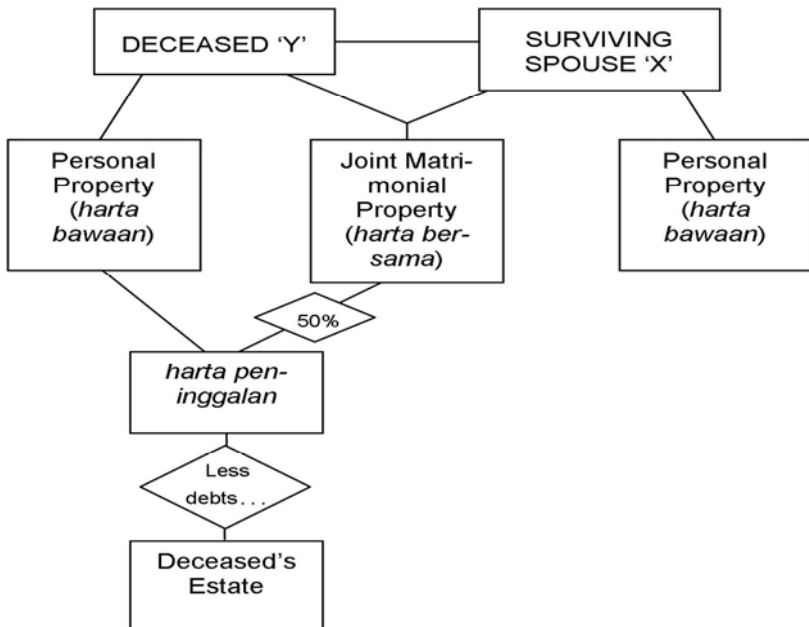
Question 1

How do you calculate a deceased's estate?

The deceased's property is referred to as *harta peninggalan*, and comprises both material assets and entitlements, such as pensions or superannuation.¹ *Harta peninggalan* must be distinguished from the deceased's estate (*warisan*), which is *harta peninggalan* less debts, medical bills and gifts bestowed to relatives'.² Under Indonesian law, where debts and expenses exceed the value of the deceased's estate, residual debts do not pass to heirs.³

Scenario 1

X's husband, Y, lost his life in the tsunami. The following diagram illustrates how Y's warisan is calculated.



¹ Art 171(d) KHI.

² Art 171(e) KHI.

³ Art 175(2) KHI.

Question 2

How are eligible heirs identified?

The Compilation of Islamic law (KHI) identifies three primary groups of heirs:

- Male heirs: Father, son, brother, uncle and grandfather
- Female heirs: Mother, daughter, sister and grandmother
- Heirs through marriage: Widow or widower.⁴

Where all of the abovementioned heirs are alive, only the deceased's spouse, children, father and mother have a right to inherit. Only if the deceased had no sons, or these son(s) are dead, will other relatives (siblings, uncles or grandparents) be eligible to inherit.⁵ If there are remaining assets after primary heirs have received their inheritance entitlement, other heirs will be called upon to inherit the remaining property. These are called residuary heirs (*'asabah*), and they will receive any remaining property according to the following hierarchy:

1. Son
2. Grandson
3. Father
4. Grandfather
5. Biological brother
6. Brother with the same father
7. Son of biological brother
8. Son of brother with the same father
9. Biological brother of father and then of the same father
10. Son of biological brother of father.⁶

Heirs will lose their inheritance rights if they apostate from Islam, are convicted of murdering or attempting the murder of the deceased, or have unjustly accused the deceased of having committed a crime which carries a penalty of more than 5 years imprisonment.⁷

⁴ Art 174 KHI.

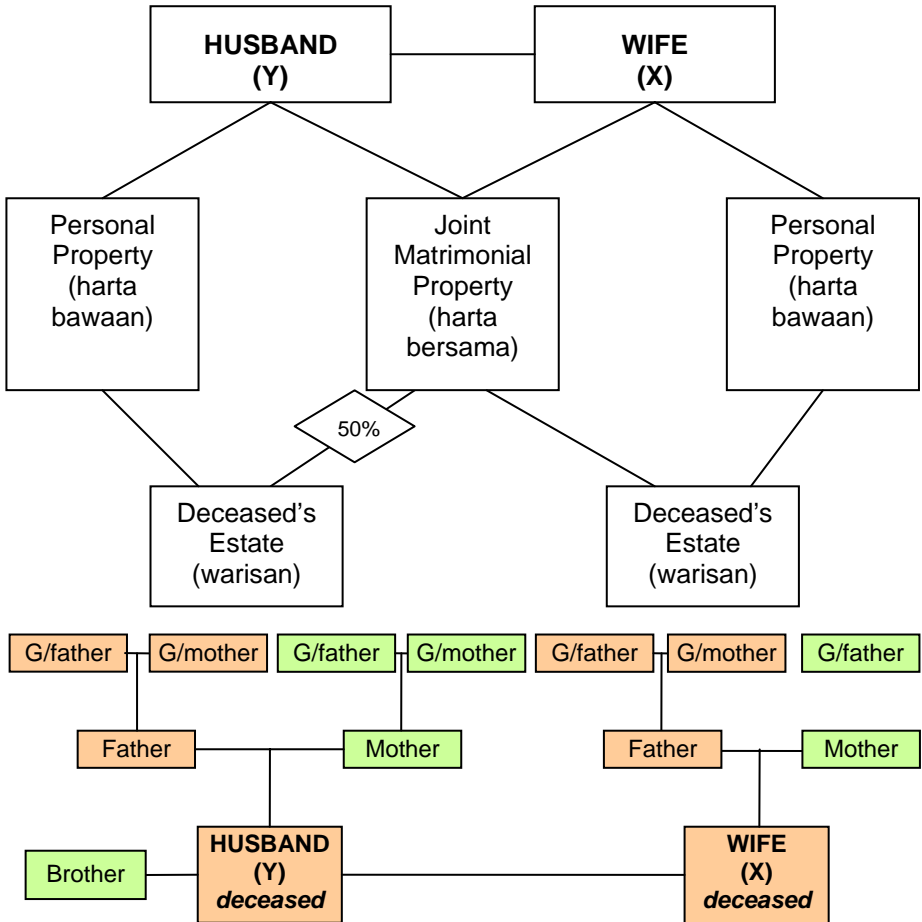
⁵ Art 174 KHI

⁶ See Modul Tatacara Penyelesaian Hak Waris/Pembagian Harta Warisan dalam Masyarakat Aceh, (Banda Aceh: Majelis Permusyawaratan Ulama, 2006), 8.

⁷ Art 173 KHI.

Scenario 2

Scenario: Both X and Y died in the tsunami, they had no children. X's surviving relatives are a brother, sister, mother, maternal grandmother and maternal grandfather. Y's surviving relatives are a brother, mother, maternal grandfather and maternal grandmother. Because X and Y have no children, their estates will be divided separately. Because X and Y had no sons a 'residuary heir' will be necessary.



- X's Heirs : Mother, sister, brother (residuary heir);
Step 1 : Mother receives $\frac{1}{3}$ X's *warisan*;
Step 2 : Remaining *warisan* is divided into 3 portions (reflecting that brothers receive double the portions of sisters);
Step 3 : Sister receives 1 portion, brother receives 2 portions.
Y's Heirs : Mother and brother (residuary heir);
Step 1 : Mother receives $\frac{1}{3}$ *warisan*;
Step 2 : Brother receives remaining *warisan*.

Question 3

What is personal property (*harta bawaan*)?

Harta bawaan (*hareuta tuha* in Acehnese) consists of assets acquired by either a man or a woman prior to marriage, plus any gifts, bequests or inheritance received from a third party during marriage.⁸ Unless displaced by a prenuptial agreement, *harta bawaan* remains the property of the individual and under their control throughout the marriage.

Indonesian law provides that 'in principal, there is no mix of wealth between husband and wife that happens because of marriage', and further that 'the wife's wealth will stay as her right and is under her full management and so does the husband's wealth'.

Art 86 KHI

Certain districts in Aceh (such as Aceh Besar and Aceh Pidie) recognize a form of *bawaan* property named *hareuta peunulang*. *Hareuta peunulang* is a bequest of non-movable property (either a house or land) to daughters by their parents upon marriage. The custom evolved to compensate for the fact that inheritance distributions are weighted heavily towards male heirs.⁹ Receiving *peunulang* property does not displace a daughter's normal inheritance rights. In practice, this means that *peunulang* property is *bawaan* and should not be shared with other heirs.¹⁰

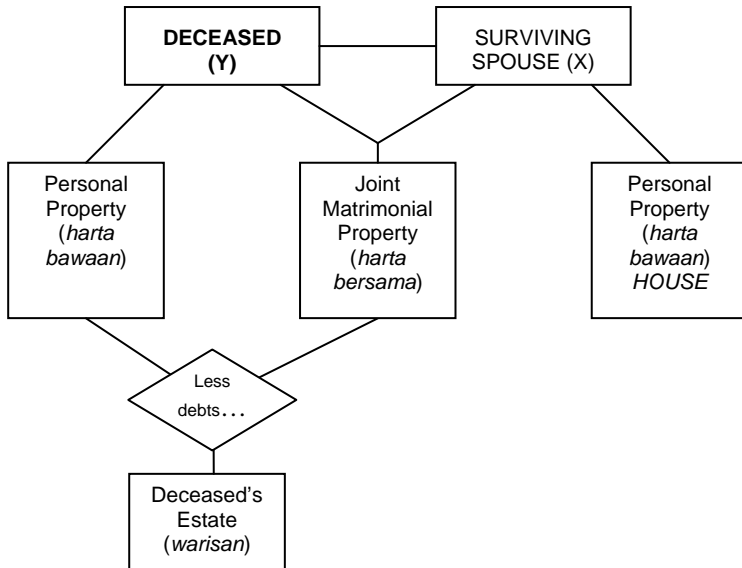
⁸ Art 35(2) UU No. 1/1974.

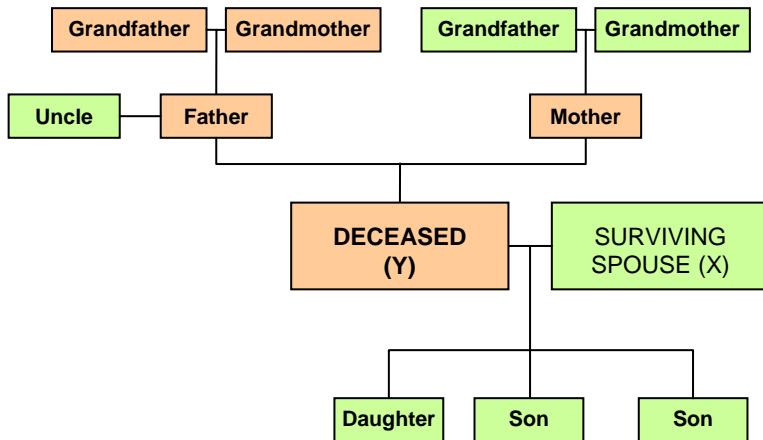
⁹ Interview with T.I. El Hakimy (26 April 2006).

¹⁰ Syahrizal, *Hukum Adat dan Hukum Islam di Indonesia: refleksi terhadap beberapa bentuk integrasi hukum dalam bidang kewarisan di Aceh*, 267, 218-219.

Scenario 3

Prior to the tsunami X and her family (2 sons and 1 daughter) lived in a house that was inherited by X from her parents who died several years earlier. X's husband Y died in the tsunami, along with other relatives. X's brother-in-law is told her that the house became joint matrimonial property when X and Y got married, and because of this, 50% of the house should be distributed amongst Y's heirs.





Deceased relatives: mother, father, maternal grandfather, maternal grandmother, sister.

Surviving relatives: wife, sons (2), daughter (1), uncle, paternal grandfather, paternal grandmother

Legitimate heirs: wife, daughter (1), sons (2)

Step 1 : X receives $\frac{1}{2}$ the couple's joint matrimonial property (JMP) and retains her *harta bawaan*;

Step 2 : X receives $\frac{1}{8}$ of Y's *warisan*;

Step 3 : The remaining *warisan* is divided into 5 portions (reflecting that fact that brothers receive double the shares of sisters);

Step 4 : Each son receives 2 portions and the daughter receives 1 portion.

Resolution: As demonstrated in the above diagram, Y's warisan comprises half the couple's joint matrimonial property, plus Y's bawaan property, less debts. X retains the family house as it is her harta bawaan.

Question 4

What is joint matrimonial property (harta bersama)?

Indonesian law recognizes the concept of joint matrimonial property, or 'wealth acquired during marriage'.¹¹ Joint matrimonial property may consist of tangible assets or entitlements. It does not matter whether such assets were purchased or registered in the name of the husband or the name of the wife. Indonesian law prevents such property from being sold, transferred or used as collateral without the consent of both husband and wife.¹²

The law requires that joint matrimonial property be divided equally between husband and wife, whether they separate through divorce or death.¹³ Where one spouse dies, therefore, 50% of the joint matrimonial property will be transferred to the surviving spouse, and the remaining 50% will be added to the deceased's *harta bawaan* and be distributed among that spouse's heirs (including the surviving spouse).



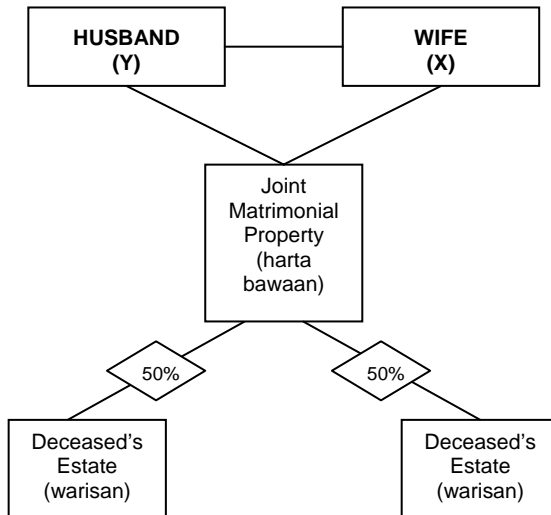
¹¹ Art 35(1) UU 1/1974 *Perkawinan*.

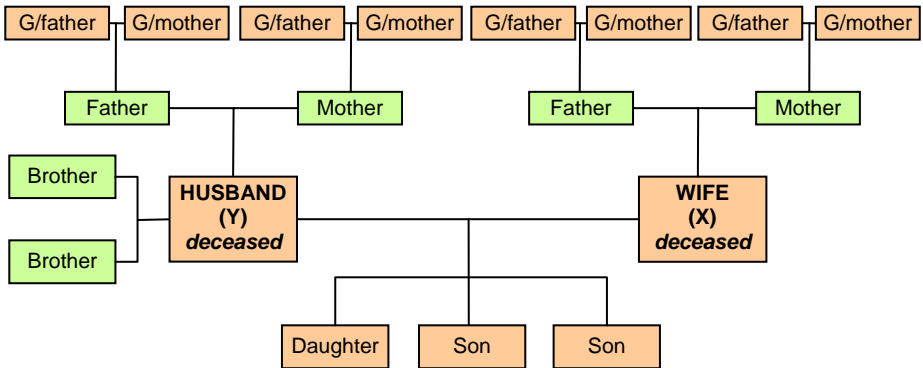
¹² *ibid* art 36;art 91-92 KHI.

¹³ Art 97 KHI.

Scenario 4

X, Y and their children died in the tsunami. The only surviving relatives of the family are X's parents, Y's parents, and Y's brothers. X and Y got married when they were very young and neither brought any harta bawaaan to the marriage. During the marriage, X and Y purchased property and a car, both of which are registered in Y's name. Y's brothers obtained the land certificate from the geuchik which clearly states that Y is the property's owner. They also have the contract for sale of the car, which has Y's name on it. X's mother and father believe that they are entitled to a portion of X and Y's joint assets. Y's brother's claim that such assets are Y's harta bersama as X did not work during the marriage and hence must have been purchased with Y's personal income.





X's Heirs: Mother, father.

Y's Heirs: Mother, father, brothers (2).

Step 1 : All joint matrimonial property should be divided equally between X's *warisan* and Y's *warisan*;

Step 2 : X's mother receives 1/3 of X's *warisan*;

Step 3 : X's father receives the remaining portion of X's *warisan*;

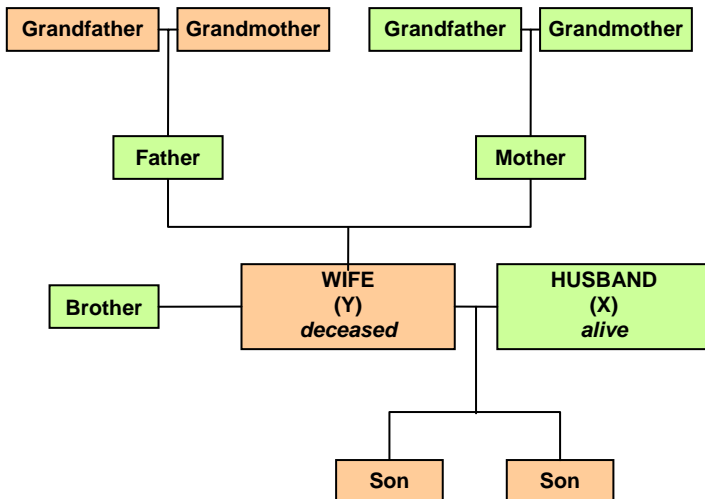
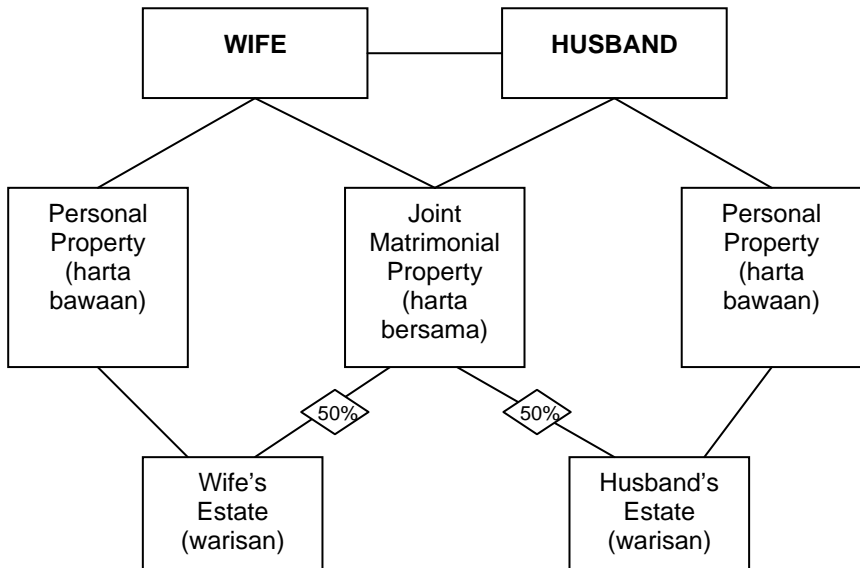
Step 4 : Y's mother receives 1/6 of Y's *warisan*;

Step 5 : Y's father receives the remaining portion of Y's *warisan*;

Step 6 : Y's brothers do not receive any inheritance as they are blocked by Y's father.

Resolution: In this case, XY's assets (property and car) are classified as joint matrimonial property as they were purchased after they were married. The fact that they were purchased in the name of Y or with income earned solely by Y is immaterial. X played an equal role in the marriage by raising XY's children and hence contributed to the purchase of such assets.

Scenario 5



Deceased Relatives: paternal grandparents, sons (2);

Surviving Relatives: husband, brother, father, mother, maternal grandparents;

Heirs: husband, father, mother and father ('residuary heir').

Step 1: Husband receives $\frac{1}{2}$ JMP;

Step 2: Husband receives $\frac{1}{2}$ of the remaining *warisan*;

Step 3: The mother receives $\frac{1}{3}$ of *warisan*;

Step 4: The father receives the remaining *warisan*.

Question 5

What if there are no surviving heirs?

In the event that there are no surviving heirs, or heirs cannot be located, the deceased's property will be transferred to the *Baitul Mal* (Islamic treasury) to be used for the interests of Islam and public welfare.¹⁴

In Aceh, where the benefactor's estate consists of land, the *Baitul Mal* will usually transfer the management of such land to a person within the village. Any benefit derived from this land (for example income generated through cultivation) will be divided amongst the community annually, for example in the form of congee porridge, during the month of *Ramadhan*.



Baitul Mal, Perada, Banda Aceh

¹⁴ Art 191 KHI.

Question 6

How is the inheritance of missing persons distributed?

Where a spouse is missing, Indonesian law requires that the division of joint matrimonial property be postponed until death is confirmed or the Religious Court certifies that death is presumed (a *mafqud* case).¹⁵ While there is not a complementary provision in the law regarding the distribution of the *harta bawaan* of missing persons, it is generally accepted that the same principle applies. Since the tsunami, the *Mahkamah Syar'iyah* have issued many such certifications both separately and in conjunction with certifications which confirm heirs. Information on how to obtain a certification from the *Mahkamah Syar'iyah* is provided on pages 20-22 of this booklet.

Mafqud Cases at the Mahkamah Syar'iyah

	Certification of presumed death provided by the Banda Aceh <i>Mahkamah Syar'iyah</i>	Certification of presumed death provided by the Jantho <i>Mahkamah Syar'iyah</i>
Jan 2005	-	-
Feb 2005	-	-
Mar 2005	-	-
Apr 2005	1	-
May 2005	1	-
June 2005	-	2
July 2005	1	23
Aug 2005	2	-
Sept 2005	2	1
Oct 2005	1	-
Nov 2005	3	-
Dec 2005	4	1
Jan 2006	2	1
Feb 2006	-	-
Mar 2006	-	-
TOTAL	17	28

¹⁵ Art 96(2) KHI.

Question 7

Can inheritance distributions be modified?

Under Indonesian law, heirs may agree to distribute inheritance in a way that is different from their legal entitlements.¹⁶

But if at the time of division other relatives, or orphans, or poor are present, feed them out of the (property), and speak to them words of kindness and justice.

Q.S. An-Nisa 8

It should be noted that, in practice, the law regarding inheritance (both formal and customary law) is not strictly applied. The manner in which inheritance is divided is highly dependant on the perspectives of the adat elders, agreements which children may make between themselves, relative economic status of heirs and their place of residence. The extraordinary positions that people have been placed in following the tsunami, also appears to have affected decision-making. IDLO's research has identified several cases in which solutions resolved were inconsistent with *adat* and even *Sharia* principles. Such departures are, however, more reflective of the post-tsunami context than any significant shifts in *adat* decision-making.



Lhok Nga Barracks July 2006

¹⁶ Art 183 KHI.

Question 8

What are women's inheritance rights?

(i) Daughters:

Under both Indonesian and customary law, when there are no sons, a single daughter will receive 1/2 of the benefactor's estate and where there is more than one daughter, 2/3 of the estate will be shared between those daughters.¹⁷ If the benefactor has both sons and daughters, the share received by the daughter will be half of that which is received by her brother.

It should be recalled that in certain districts of Aceh, daughters will have received *peunulang* property from their parents when they entered into marriage. This custom evolved to compensate for the fact that daughters receive less inheritance than their brothers.¹⁸ It should also be highlighted that while *harta peunulang* may be classified as inheritance, the receipt of such property will not affect a daughter's inheritance rights.

Finally, it is important to explain the concept of *'asabah* (residuary heirs). Females cannot be *'asabah*, meaning that they cannot inherit a whole estate, or a remaining estate. The most common situations in which *'asabah* is relevant are when a daughter or widow is the only surviving heir. In such situations, other residuary heirs will be called upon to inherit the remaining estate, after the daughter or widow has received their share. If there are no surviving relatives, the remaining estate will be transferred to the *baitul mal*. It is important to note, however, that post-tsunami the *Mahkamah Syar'iyah* has issued decisions allowing a sole surviving daughter to inherit an entire

¹⁷ Art 76 KHI.

¹⁸ Interview with T.I. El Hakimy (26 April 2006).

estate, despite the existence of a paternal uncle.¹⁹ It is also important to recall that under Indonesian law, heirs may agree among themselves to modify inheritance distributions. In the aftermath of the tsunami, many families are choosing to do this to ensure that inheritance distribution is fair and equitable.

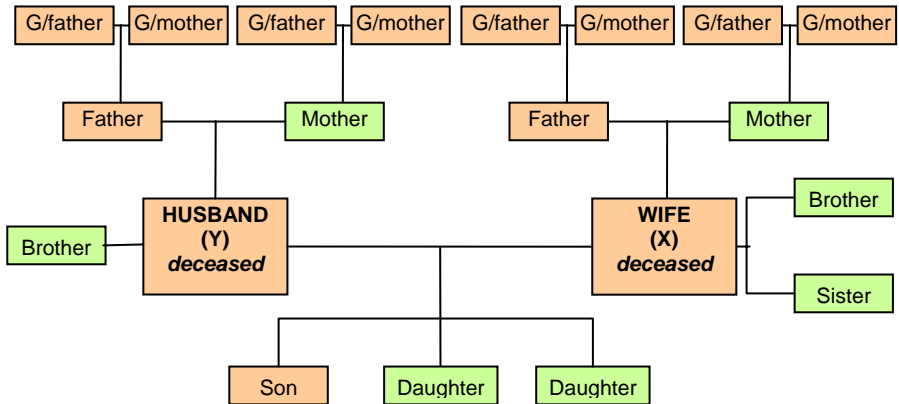
Heirs may agree to distribute inheritance in a way that is inconsistent with their entitlements, provided that each heir is aware of their entitlement.

Art 183, KHI

¹⁹ Interview with Rafiuddin, Head of Syariah Council Jantho (27 April 2006). IDLO's research also identified cases resolved at the village level where sole surviving daughters have been permitted to inherit a residual estate, and in effect be *'asabah*. Such decision-making seems to be very much related to the context of the tsunami; Interview with Geuchik Kajhu (May 7, 2006).

Scenario 6

Scenario: X and Y die in the tsunami, as does their son. They have two surviving daughters. The only other surviving relatives are X's brother, sister and mother, and Y's brother and mother. In this situation, X and Y's joint matrimonial property and harta bawaan will usually be consolidated and distributed at the one time. Y's brother argues that he is entitled to a share in the estate, as neither X and Y's daughter nor their mothers are 'asabah ('residuary heirs').



Heirs : Daughters (2), X's mother, Y's mother, Y's brother ('residuary heir'), X's brother ('residuary heir').

Step 1 : Daughters receive 2/3 of XY's *warisan* to share between them;

Step 2 : X's mother and Y's mother each receive 1/6 of XY's *warisan*;

Step 3 : While both X and Y's brother are residuary heirs, the estate has been completely distributed therefore neither brother receives inheritance.

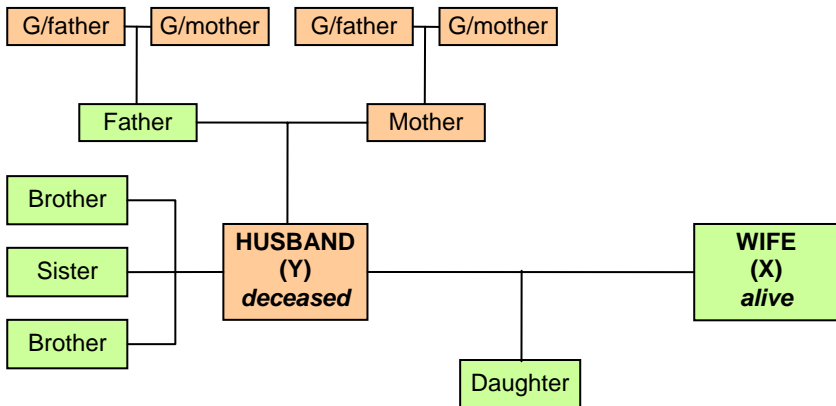
Resolution: Under customary (and Islamic) law, it is correct that neither the daughters, nor the mothers are 'asabah and thus cannot be residuary heirs. Although Indonesian law does not formally recognize the concept of 'asabah, its provisions support the custom. However, as demonstrated above, when the estate is fully distributed between primary heirs, the residuary heirs (X and Y's brothers) will not receive any inheritance.

(ii) Widows:

Under Indonesian law, a widow will receive $\frac{1}{4}$ of the estate if there are no living children, and $\frac{1}{8}$ if there are living children.²⁰ In addition, a widow will be entitled to 50% of all joint matrimonial property.²¹

Scenario 7

'Y' died in the tsunami. Y is survived by his wife, daughter, father, brother (2) and sister. Y's wife, 'X', is unsure what her inheritance entitlements are. She is concerned that her husband's estate will be primarily distributed among his brothers and father because she and her daughter are 'asabah'.



- Surviving Relatives: Wife, daughter, sister, brothers (2), father;
Deceased Relatives: Mother, maternal grandparents, paternal grandparents;
Heirs : Wife, daughter, father, brother (2), sister;
Step 1 : Wife receives 50% joint matrimonial property;
Step 2 : Wife receives $\frac{1}{8}$ *warisan*, father receives $\frac{1}{6}$ *warisan*, daughter receives $\frac{1}{2}$ *warisan*;
Step 3 : Remaining *warisan* is divided into 5 portions (reflecting that brothers receives double the portions of sisters);
Step 4 : The sister receives 1 portion, brothers receives 2 portions each.

²⁰ Art 180 KHI.

²¹ Art 96(1) KHI.

(iii) Mothers:

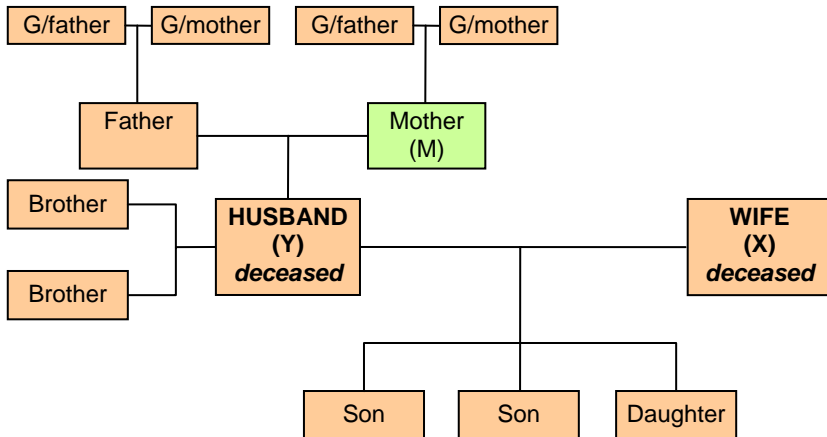
Under Indonesian law, mothers receive 1/3 of the estate if the deceased leaves no children and has 2 or more siblings and 1/6 of the inheritance if the deceased has a child and 2 or more siblings.²²

From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, a determinate share.

Q.S. An-Nisa 7

Scenario 8

M's husband, children and grandchildren died in the tsunami. She has no other living relatives. In this situation there are no residuary heirs to inherit the remaining warisan. M is unsure whether this additional inheritance will be transferred to the Baitul Mal, or to her.



Heirs : Mother

Distribution : The mother will receive 1/3 *warisan*. While Indonesian law does not specify who will receive the remaining *warisan*, case law indicates that it will most likely be transferred to the mother.

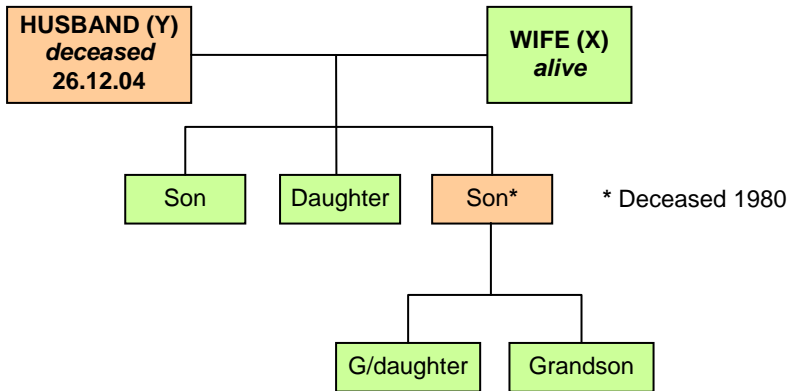
²² Art 178(1) KHI.

(iv) Grandchildren:

Under Indonesian law, when an heir predeceases the benefactor, this heir can be replaced by their children (male or female). In practice this means that, for example, a daughter and a son could (collectively) replace their predeceased father to inherit from their grandmother or grandfather. The total benefit that these heirs receive cannot exceed that which their parent would have been entitled.²³

Scenario 9

Y was killed in the tsunami. He is survived by his wife and children (son and daughter). Y had one additional son, who died many years ago. The grandchildren believe that they are entitled to share the inheritance their father would have been entitled to.



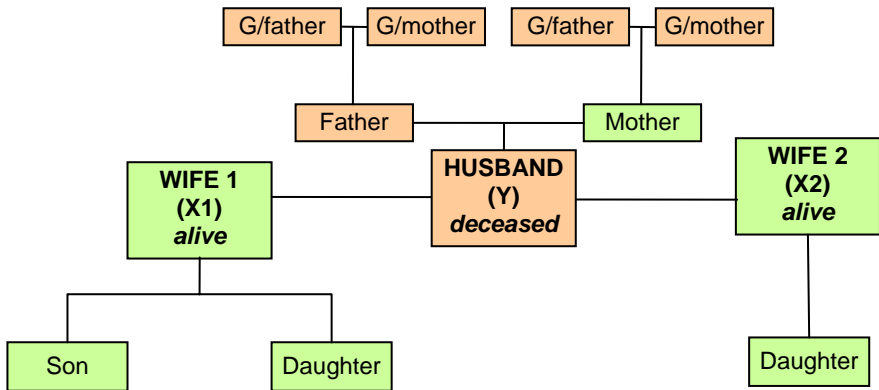
- Heirs : Wife, son, daughter, deceased son (replaced by the granddaughter and grandson).
- Step 1 : Wife receives 50% joint matrimonial property;
- Step 2 : Wife receives 1/8 *warisan*;
- Step 3 : Remaining *warsian* is divided into 5 portions;
- Step 4 : The son receives 2 portions, the daughter receives 1 portion, and the remaining 2 portions (attributed to the predeceased son) are divided equally among the granddaughter and grandson.

²³ Art 185(1)-(2) KHI.

(v) *Widows from Polygamous Marriages*

Polygamy is recognized under Indonesian and customary law. Where the husband dies, the *bawaan* property of each wife is identified and separated from joint matrimonial property. A husband's *bawaan* is divided among surviving heirs, including surviving wives. Joint matrimonial property is divided separately for each marriage according to the length of that marriage.²⁴ A husband's share of joint matrimonial property will be distributed amongst his heirs (including surviving wives).²⁵

Scenario 10



Heirs : Mother, son, daughters (2), wives (2);

Step 1 : Joint matrimonial property is apportioned between each marriage based on the length of marriage. 50% of the joint matrimonial property for each marriage is transferred to the surviving wife;

Step 2 : Mother receives 1/6 *warisan*, wives each receive 1/8 *warisan*;

Step 3 : The remaining *warisan* is divided into 4 portions (reflecting that sons receive double the portions of daughters)

Step 4 : Each daughter receives 1 portion and the son receives 2 portions.

²⁴ (KHI 94:1-2).

²⁵ (KHI, 190).

Question 9

How should I resolve an inheritance dispute?

According to article 49 of Law No. 7 of 1989 on the Religious Courts and Qanun No. 10 of 2002 on the Islamic Syar'iyah Courts, the resolution of inheritance disputes falls within the jurisdiction of the *Mahkamah Syar'iyah*.

Fatwa MPU 3/2005 which states that matters relating to land ownership and inheritance can be referred to the *Mahkamah Syar'iyah* with valid evidence.²⁶

At law, inheritance disputes generally have a 30 year statute of limitations.²⁷

Fatwa MPU 2/2005 (8) states that matters regarding entitlement to inheritance and land should be brought before the courts within a period of 5 years after the tsunami. Cases involving children, however, may be brought before the courts until such children reach the age of 19 years.

²⁶ Note that a Fatwa is a legal opinion concerning Islamic law, issued by an Islamic scholar. It does not have binding effect at law.

²⁷ All legal actions (relating to both property and people) have an expiry limit of 30 years. As such, if a person occupies property or is in possession for longer than 30 years, he/she does not have to prove entitlement (KUH Perdata, Buku Keempat, 1967). The 30 year expiry period does not apply to children who have not reached adulthood and for those under guardianship, except in a number of exceptional cases as outlined in the law (KUH Perdata, Buku Keempat, 1987). The 30 year expiry period applies to unmanaged (abandoned) inheritance property, except for that which is under guardianship (KUH Perdata, Buku Keempat, 1991). The 30 year expiry period applies to all heirs who are still in the process of negotiating their inheritance (KUH Perdata, Buku Keempat, 1992).

The Mahkamah Syar'iyah will hear the following types of cases:

1. **Confirmation of Heirs:** Upon application, the *Mahkamah Syar'iyah* will issue an order which identifies legal heirs. Such orders are necessary to access a benefactor's financial assets, such as money held in bank accounts. The court will hear evidence from witnesses regarding the deceased's relatives to ensure that all heirs are included in the order. Heirs who are missing or presumed dead will usually be included in the order. An individual who believes that they are a legal heir, but who has not been included in the court's order, can apply to the court to have their status recognized, even if the inheritance has already been distributed. This might include individuals who were living in other parts of Indonesia and were not well known to other surviving relatives.
2. **Presumption of Death (*mafqud* cases):** Where a spouse is missing, Indonesian law requires that inheritance distribution be postponed until death is confirmed or the Religious Court certifies that death is presumed.²⁸ In Aceh, legal heirs of the person who is presumed dead may submit an application to the *Mahkamah Syar'iyah* for an order confirming that death is presumed.
3. **Distribution of Inheritance:** Where there is a dispute regarding how inheritance is to be distributed, or the inheritance division is complex, heirs can request that the *Mahkamah Syar'iyah* make a determination specifying how inheritance should be distributed. Such a request can be lodged, regardless of whether inheritance has already been distributed, or whether a decision regarding distribution has already been made under *adat* law. If an applicant is dissatisfied with the court's decision, an appeal can be lodged.

²⁸ Art 96(2) KHI.

Question 10

What Will Happen at the Mahkamah Syar'iyah?

1. **Referring Non-Contested Cases to the *Mahkamah Syar'iyah*:** Non-contested cases, for example heir confirmation and *mafqud* orders, can be lodged by any legal heir at the district *Mahkamah Syar'iyah*. First, the applicant should write a letter to the court explaining the situation. The Chief Justice will then appoint a judge to hear the case who will set a date and time for the hearing. The court clerk will contact the applicant and inform them of when the hearing will take place. The hearing should occur within 30 days of the application being filed with the court. On the day of the hearing, the judge will examine the application and supporting documentation and hear witness testimony. Applicants should bring witnesses, such as relatives, community members, or the *geuchik*, who can provide testimony to support the application. If the case is successful, the judge will then issue an order.
- 2.
3. **Referring Contested Cases to the *Mahkamah Syar'iyah*:** The procedure for resolving contested cases, such as disputes regarding inheritance distribution, is similar to non-contested cases. The applicant should write a letter to their district *Mahkamah Syar'iyah* requesting that they distribute a deceased's estate in accordance with law. The Chief Justice will appoint a judge to hear the case and a date for the hearing will be set. On the day of the hearing both parties should be present and should bring with them witnesses and other evidence. At this hearing the judge may first try to assist the parties reach a dispute was solved peacefully and specifying the terms of the settlement.²⁹ If a mediated settlement is not possible, the judge will receive evidence from both parties and then issue a decision based upon relevant law and *Qanun*. It should be noted that for all tsunami-

²⁹ Interview with Hafidah Ibrahim, Banda Aceh *Mahkamah Syar'iyah* (16 May 2006).

related guardianship cases, applicants are not required to pay any fees to the court or to the judges. Given the simplicity of the process, applicants should not need the assistance of lawyer. If required, the court can conduct the hearing in an Acehese language.n agreement through mediation. If this is successful, the judge will issue an order stating that the

Let those (disposing of an estate) have the same fear in their minds as they would have for their own if they had left a helpless family behind: Let them fear Allah, and speak words of appropriate (comfort).

Q.S. An-Nisa: 9

MATRIX ON RELEVANT INHERITANCE LAW

NO	TOPIC	A. FORMAL LAW	B. NOTES	C. CUSTOMARY PRINCIPLES AND NORMS	D. NOTES	E. ISLAMIC LEGAL OPINION / PRINCIPLES
1	HEIRS	<p>An heir is a person who has a blood or marriage relationship to the deceased person, is Moslem, and has no legal barrier to be legitimate heir (KHI, 171c).</p> <p>a. Father, son, brother, uncle and grandfather (KHI 174:1a)</p> <p>b. Mother, daughter, sister and grandmother (KHI 174:1b)</p> <p>c. Widow or widower (the surviving spouse) (KHI 174:1c).</p> <p>Where all the abovementioned heirs are alive, only the</p>		<p>Heirs are blood relatives or those related through marriage to the deceased who are still living at the time of the benefactor's death:</p> <p>a. Father, son, brother, uncle and grandfather;</p> <p>b. Mother, daughter, sister and grandmother;</p> <p>c. Widow or widower (the surviving spouse).</p> <p>Where all of the abovementioned heirs are alive, only the sons/daughters, father, mother and the surviving spouse have a right to inherit.</p> <p>In the event that the benefactor has only daughters, other male relatives, particularly from the father's side of the family, will also become heirs.¹ In situations where the only living heirs are daughters, the portion of the estate remaining after such</p>		<p>According to a Dinas Syariat publication, heirs are required to be alive at the time that the benefactor dies. As such, when relatives, who would normally have inherited from each other, die simultaneously, the chain of inheritance is severed. The implication is that surviving heirs can only inherit from direct relatives, and cannot replace such relatives in an inheritance capacity.³</p>

¹ T.I. El-Hakimy (Interview, 26 April 2006); Cf. Syahrizal, *Hukum Adat*, p. 275.

		sons/daughters, father, mother and the surviving spouse have a right to inherit (KHI 174:2).		daughters receive their inheritance, will be transferred to the <i>Baitul Mal</i> . ²		
2	THE CONDITIONS FOR BEING AN HEIR	Heirs must be Muslim (KHI 171c) as evidenced by an heir's identity card, a confession, through religious practice, or by a witness (KHI 172).		Under customary law, heirs must be Muslim. In the event that a person apostates from Islam (<i>murtad</i>) s/he lose all inheritance rights. ⁴		
3	REVOCAION OF INHERITANCE RIGHTS	<p>If an heir is found guilty of murdering, attempting to murder or torturing the deceased (KHI 173a).</p> <p>If an heir is found guilty of making baseless accusations regarding the benefactor, equivalent to accusing the benefactor of having committed a crime that carries a jail sentence of five years or more (KHI 173b).</p>		If an heir is found guilty of having murdered, tortured or committed a crime towards the deceased. ⁵		Under Islamic Law, a person cannot inherit where they are of a different religion to the benefactor. ⁶

² Syahrizal, *Hukum Adat*, p. 229.

³ See *Al-Indzar*, special publication by Dinas Syariat Islam, number 1 (1 August 2005), pp. 3-4.

⁴ Badruzzaman Ismail (Interview, 8 May 2006).

⁵ Hoesin, *Adat Atjeh*, pp. 103, 164; Syahrizal, *Hukum Adat*, p. 212.

4	OBLIGATIONS OF HEIRS	<p>Heirs are required to:</p> <ol style="list-style-type: none"> a. Finalize all issues relating to the burial of the deceased (KHI, 175:1a). b. Pay all debts of the deceased (including debts relating to medical treatment and care received) and collect the debts of the benefactor (KHI, 175:1b). c. Execute the will of the deceased (KHI, 175:1c). d. To distribute the deceased's estate between legitimate heirs (KHI, 175:1d). <p>The responsibility of heirs regarding the debts of the deceased is limited to the value of the deceased's estate (KHI, 175:2).</p>				
5	A BENEFACTOR'S	A benefactor's estate		A benefactor's estate comprises	It should be noted	

⁶ Prophet's *hadith* narrated by Bukhari and Muslim that says, "a non-Muslim does not inherit anything from Muslim and otherwise". This *hadith* was cited in Syahrizal, *Hukum Adat*, p. 211.

	ESTATE	<p>comprises property and entitlements (KHI 171d).</p> <p>A benefactor's estate comprises the deceased's <i>bawaan</i> property (property brought into marriage) plus a half portion of any joint matrimonial property (property acquired during marriage), less accrued medical costs, burial costs, debts and gifts bestowed (KHI 171e).</p>		<p>tangible (<i>bawaan</i> and joint matrimonial property) and intangible property.⁷</p> <p>Prior to the distribution of inheritance, all debts will be deducted from the benefactor's estate.</p>	<p>that in Acehese society, the payment of debts is a cultural imperative.</p>	
6	JOINT MATRIMONIAL PROPERTY	<p>Property acquired during marriage shall become joint matrimonial property (UU 1/1974, 35:1).</p> <p>Where a man has more than one wife, joint matrimonial property is divided separately for each marriage (KHI 94:1) according to the length of each</p>	<p>In practice (particularly post-tsunami), the <i>Mahkamah Syar'iyah</i> will require certainty that a spouse is dead before an estate can be divided amongst</p>	<p>Joint matrimonial property is divided equally between a husband and wife, whether they part through divorce or death. Following the death of a husband or wife, therefore, half of the joint matrimonial property is transferred to the surviving spouse and the remaining half is divided among the surviving heirs.⁸</p> <p>If a man has more than one wife, the <i>bawaan</i> property of each wife is</p>	<p>It should be noted that according to Badruzzaman Ismail, Chairman of the Aceh Adat Council, where a husband or wife dies and the surviving spouse does not remarry, all inheritance should remain under the control</p>	

⁷ T.I. El-Hakimy (Interview, 26 April 2006).

⁸ Badruzzaman Ismail (Interview, 8 May 2006); T.I. El-Hakimy (Interview, 26 April 2006).

⁹ Badruzzaman Ismail (Interview, 8 May 2006).

		<p>marriage. (KHI 94:2).</p> <p>In cases where a spouse is missing, the distribution of inheritance must be avoided until there is a definite indication of death or the Religious Court makes a ruling regarding death (KHI 96:2).</p>	<p>surviving heirs (a <i>mafqud</i> case).</p> <p>It is interesting to note that the court must declare a missing husband dead in order for a widow to remarry (<i>mbolehkannyanya untuk menikah lagi dengan pria lain</i>).</p> <p>However, for a widower to remarry, such 'legal certainty' is not required.</p>	<p>identified and separated from joint matrimonial property. Joint matrimonial property must be calculated separately for each marriage and distributed accordingly.⁹</p>	<p>of the surviving spouse until their children become independent/self-sufficient. Only at that time, will the inheritance be distributed.¹⁰</p> <p>It should also be noted that in certain districts in Aceh (such as coastal areas in Aceh Besar), joint matrimonial property is divided into three shares with 2 shares being transferred to the husband, and one share being transferred to the wife.¹¹</p>	
7	BAWAAN PROPERTY	The existence of joint matrimonial property does not necessarily deny the fact that either		Husbands and wives have the right to own property and to exercise control over such property. ¹²	In certain districts of Aceh, including Aceh Besar and Aceh Pidi, the	

¹⁰ Badruzzaman Ismail (Interview, 8 May 2006); Cf. Badruzzaman Ismail, "Wali Perempuan dari Aspek Hukum Adat di Provinsi Nanggroe Aceh Darussalam", a paper presented at Lokakarya Perwalan Anak, 9-11 September 2006.

¹¹ Syahrizal, *Hukum Adat*, p. 276.

¹² T.I. El-Hakimy (Interview, 26 April 2006); T. Djuned (Interview, 27 April 2006).

		<p>husband or wife may have individual property (KHI, 85).</p> <p>Property obtained prior to marriage, by a man or woman, or property acquired through gift or inheritance shall remain their property (<i>bawaan</i>), unless a pre-nuptial agreement states otherwise (UU 1/1974, 35:2).</p> <p>The property of the wife (<i>bawaan</i>) remains her possession and her right, and the property of the husband (<i>bawaan</i>) remains his possession and his right. Each has the right to exert full control over such property (KHI, 86:2).</p> <p>Property of the husband or wife obtained prior to marriage, or after the marriage by way of gift or inheritance remains under their individual and exclusive control</p>			<p>custom of <i>harta peunulang</i> is common. <i>Peunulang</i> property is a gift from parents to a daughter upon marriage, generally in the form of a house and its yard.¹³ This house often becomes the family home, however remains the <i>bawaan</i> property of the wife.</p>	
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¹³ *Peunulang* property given to a daughter may exceed 1/3 of the testator's total estate. The rationale is that the relationship between parents and daughter is usually strong and because daughters usually provide their parents with significant assistance during the time they live with them.

		(KHI, 87).			
8	INHERITANCE PROPERTY IN THE FORM OF LIFE INSURANCE AND JAMINAN KEMATIAN (MOURNING PAYMENTS) ¹⁴	Life insurance [for civil servants] is paid to the family of the deceased for the period that the deceased would have been working as well as in the form of pension payments. Family is defined as the surviving spouse and children (PP 25/1981, 9:2). <i>Jaminan Kematian</i> (mourning payments) are paid to surviving heirs (UU 40/2004, 43:2). The order of receivership for those receiving <i>Jaminan Kematian</i> is: a. surviving spouse; b. children; c. parents; d. grandchildren; e. siblings; f. parents-in-law. (UU 3/1992, 9(B), 12-	The Supreme Court has held that financial contributions to an insurance policy and life insurance payments were the property of the widow and do not form part of a deceased's estate. ¹⁵		

¹⁴ *Jaminan Kematian* is technically understood as 'uang duka' or 'mourning payment'. Families of employees who die because of non-work related causes are entitled to *Jaminan Kematian*. *Jaminan Kematian* usually covers funeral fees and a lump sum cash payment. Jamsostek, for example, pays 1 million rupiah for funeral expenses plus a 5 million rupiah lump sum 'mourning' payment.

¹⁵ Decision of the Supreme Court no. 198K/AG/1992

		13).				
9	INHERITANCE PROPERTY IN THE FORM OF SUPERANNUATIO N	<p>Upon death, superannuation payments or contributions are transferred to the surviving spouse or children. (UU 3/1992, 14:2).</p> <p>Those entitled to receive superannuation are:</p> <ul style="list-style-type: none"> a. A contributor who resigns from the job with pension right or resigns before his/her retirement; b. A wife/husband, children or legitimate heirs in the event that the contributor has passed away. <p>Superannuation benefits are paid once in cash at the time a contributor retires, passes away or is completely disabled (UU 40/2004, 37:1).</p>				

		If a contributor dies, the legitimate heirs are entitled to receive superannuation (UU 40/2004, 37:4).				
10	INHERITANCE PROPERTY IN THE FORM OF PENSIONS	Those entitled to receive pension payments ¹⁶ are: b. A surviving spouse of the contributor, and surviving spouse of the receiver of the pension ¹⁷ ; or c. Surviving children of the contributor, and surviving children of the receiver of the pension. ¹⁸ d. Parent of the contributor who died without leaving a spouse or children. (PP 25/1981, 10:1).				

¹⁶ Note that in Indonesia there is a difference between pension payments and payments of superannuation. Pension payments are received by the retired civil servants every month, while superannuation is paid to the retired civil servants and the retired private employee (if their workplace included them in the superannuation scheme) in the form of a lump sum payment.

¹⁷ These payment will continue until the surviving spouse remarries or dies.

¹⁸ This money will continue to be received by the surviving children until they reach 23 years old, have permanent job or have married.

¹⁹ So far, particular stipulation in relevant regulations is not yet available that deals with this issue.

		<p>Pension payments will be provided on a monthly basis to:</p> <ul style="list-style-type: none"> c. Surviving spouse: until he/she dies or remarries; d. Children who are heirs of the contributor: until they are 23 years old, permanently employed or enter into marriage; e. Parents of an unmarried contributor: the time limit specified in the regulations.¹⁹ <p>(UU 40/2004, 41:1).</p> <p>The right of child heirs to receive pension payments will continue until such children enter into marriage, have permanent jobs, or reach 23 years old (UU 40/2004, 41:6)</p>				
11	INHERITANCE PROPERTY	If an estate includes farmlands of less than 2		Customary law mirrors the principles enshrined in s.189 KHI and may be		

	CONSISTING OF FARMLANDS LESS THAN 2 HECTARES IN AREA	<p>hectares in area, it is preferable for such land to be kept as one parcel and cultivated in the best interests of the heirs (KHI, 189:1).</p> <p>If keeping land as one parcel is not possible (eg if one of the heirs is in need of money), that heir's portion of the farmlands can be purchased by other heirs in accordance with its size (KHI, 189:2).</p>		<p>extended to other types of property including houses. For example, if parents cannot afford to provide each daughter with a house upon marriage (<i>peunulang</i>), one house will be purchased and each daughter will receive one room. If one of the daughters is not willing/able to live in this house, her portion of the home will become the property of another daughter, and the non-recipient daughter will be compensated.²⁰</p>		
12	INHERITANCE MADE THROUGH GIFT	<p>A gift (<i>hibah</i>) made to a child by their parent can be considered inheritance (KHI, 211).</p> <p>Where a gift (<i>hibah</i>) is bestowed at the time a testator is sick and close to death, this act must be agreed to by all heirs (KHI, 213).</p>		<p>Gifts (<i>hibah</i>) or <i>peunulang property</i> given during the benefactor's lifetime to a daughter may be considered part of their inheritance.²¹</p>		
13	INHERITANCE RIGHTS FOR	In the case that there are only daughters and	In practice, in situations	Customary inheritance law largely follows Islamic law. ²³ If there are	Note, however, that according to	

²⁰ T.I. El-Hakimy (Interview, 26 April 2006); Rusydi Sufi (Interview, 27 April 2006)

²¹ Syahrizal, *Hukum Adat*, pp. 219-220; Syahrizal (Discussion, 6 June 2006)

	DAUGHTERS	<p>no sons, the following provisions apply:] if there is one daughter, this daughter will receive ½ of the total estate. If there is more than one daughter, such daughters will receive, between them, a total of 2/3 of the estate (KHI 176).</p> <p>In the case that there are daughters and sons, daughters will receive half the share received by sons (KHI 176).</p>	<p>where there are only daughters and no sons, the <i>Mahkamah Syar'iyah</i> are likely to transfer the remaining inheritance (be that the ½ or 1/3 of the estate) to such daughter(s), rather than transfer such inheritance to other surviving heirs.²²</p>	<p>daughters and sons, then the daughter receives a half portion of the amount received by the son. In the event that there is only one daughter as heir, she will receive a half portion of the estate. If there is more than one daughter, they will collectively receive 2/3 of the estate. The rest of the property will be transferred to other legitimate heirs.²⁴</p> <p>It should be noted that it is because of such imbalances between the inheritance distributed to sons and daughters, that the custom of <i>peunulang</i> property has developed.²⁵</p> <p>It also must be noted that heirs may agree to distribute inheritance differently from that which is prescribed above.²⁶</p>	<p>Badruzzaman Ismail, Chairman of the Aceh Adat Council, where husband or wife dies and the surviving spouse does not remarry, all inheritance should remain under the control of the surviving spouse until their children become independent/self-sufficient. Only at that time, will the inheritance be distributed.²⁷</p>	
14	INHERITANCE RIGHTS FOR FATHERS	<p>If the benefactor has no children but has a husband and a mother,</p>				

²² Rafiuddin (Interview, 26 April 2006)

²³ Hoesin, *Adat Atjeh*, p. 165.

²⁴ Hoesin, *Adat Atjeh*, pp. 102-103.

²⁵ T.I. El-Hakimy (Interview, 26 April 2006)

²⁶ Badruzzaman Ismail (Interview, 8 May 2006); Syahrizal, *Hukum Adat*, p. 227.

²⁷ Badruzzaman Ismail, "Wali Perempuan dari Aspek Hukum Adat di Provinsi Nanggroe Aceh Darussalam", a paper presented at Lokakarya Perwalian Anak, 9-11 September 2006; Badruzzaman Ismail (Interview, 8 May 2006); Cf. Syahrizal, *Hukum Adat*, pp. 226-227.

		<p>the testator's father will be entitled to 1/3 of the estate (KHI, 177 and SEMA 2/1994).²⁸</p> <p>If the testator has children, the testator's father will be entitled to 1/6 of the estate (KHI, 177).</p>				
15	INHERITANCE RIGHTS FOR MOTHERS	<p>If the benefactor has children, and 2 or more siblings, the testator's mother will be entitled to 1/6 of the estate (KHI, 178:1).</p> <p>If the benefactor has no children and no siblings, the testator's mother will be entitled to 1/3 of the estate (KHI, 178:1).</p> <p>[If the deceased has no children], and the deceased's mother and father are alive,²⁹ the mother will receive 1/3</p>				

²⁸ The father receives one third not because the law grants him one third, as such, but because one third is what remains for the father as the residuary heir after the husband takes his fixed share of one half and the mother takes her one third share as there is no children and siblings.

²⁹ Father will be a residuary heir in this case.

		of the estate after the widow or widower has received their entitlement (KHI, 178:2).				
16	INHERITANCE RIGHTS FOR WIDOWS/WIDOWERS	<p>If the testator has no children, a widower receives $\frac{1}{2}$ the estate (KHI, 179).</p> <p>If the testator has children, a widower receives $\frac{1}{4}$ of the estate (KHI, 179).</p> <p>If the testator has no children, a widow receives $\frac{1}{4}$ of the estate (KHI, 180).</p> <p>If the testator has children, a widow receives $\frac{1}{8}$ of the estate (KHI, 180).</p>			Note that according to Badruzzaman Ismail, Chairman of the Aceh Adat Council, where husband or wife dies and the surviving spouse does not remarry, all inheritance will remain under the control of the surviving spouse until their children become independent/self-sufficient. Only at that time, will the inheritance be distributed. ³⁰	
17	INHERITANCE RIGHTS FOR A SURVIVING SPOUSE WITH	In the event that one spouse dies, the surviving spouse is entitled to a half portion		Joint matrimonial property is divided equally between a husband and wife, whether they part through divorce or death. Following the	Note however that in certain districts of Aceh (such as in the	

³⁰ Badruzzaman Ismail, "Wali Perempuan dari Aspek Hukum Adat di Provinsi Nanggroe Aceh Darussalam", a paper presented at Lokakarya Perwalian Anak, 9-11 September 2006; Badruzzaman Ismail (interview, 8 May 2006).

	RESPECT TO JOINT MATRIMONIAL PROPERTY	of all joint matrimonial property (KHI 96:1).		death of a husband or wife, therefore, half of the joint matrimonial property is transferred to the surviving spouse and the remaining half is divided among the surviving heirs. ³¹ If a man has more than one wife, the <i>bawaan</i> property of each wife is identified and separated from joint matrimonial property. Joint matrimonial property is calculated separately for each marriage and distributed accordingly. ³²	coastal areas of Aceh Besar), joint matrimonial property is divided into three shares with one share transferred to the wife, and two shares to the husband. ³³	
18	INHERITANCE RIGHTS FOR BIOLOGICAL BROTHERS AND SISTERS OF THE SAME MOTHER (AND DIFFERENT FATHER)	If a testator has no children and no father, the deceased's siblings (from the same mother) receive 1/6 of the estate (KHI, 181). If a testator has 2 or more siblings (from the same mother), they will (together) receive 1/3 of the estate (KHI, 181).				
19	INHERTANCE RIGHTS FOR	If a testator has no children and no father,				

³¹ Syahrizal, *Hukum Adat*, p. 275.

³² T.I. El-Hakimy (Interview, 26 April 2006)

³³ Syahrizal, *Hukum Adat*, p. 276.

	BIOLOGICAL SISTERS AND SISTERS OF THE SAME FATHER (AND DIFFERENT MOTHER)	<p>a biological sister (from the same father) will receive ½ of the estate (KHI, 182).</p> <p>If the deceased has more than 1 biological sister (from the same father), those sisters will (together) receive 2/3 of the estate (KHI, 182).</p> <p>If the aforementioned sisters have biological brother/s, these brothers will receive double that which the sisters will receive (KHI, 182).</p>				
20	INHERITANCE RIGHTS FOR HEIRS WHO PRE-DECEASED THE BENEFACOR	<p>The inheritance rights of heirs who pre-decease the testator may be transferred to their children (KHI 185:1).</p> <p>The portion transferred to the substitute heirs cannot exceed that which would have been</p>	The Supreme Court has broadened the number of situations in which s.185 KHI applies to allow children to also replace a predeceased	The inheritance rights of heirs who pre-decease the benefactor may not be transferred to their children. This custom is referred to as <i>patah titi</i> . ³⁴	<i>Patah titi</i> is not an Acehese concept, but is derived from the Shafi'iyya <i>mazhab</i> (one of four Sunni Islamic legal schools) that has greatly influenced Islamic inheritance	

³⁴ Armia Ibrahim, "Ahli Waris Pengganti Ditinjau dari Aspek Hukum dan Penerapannya dalam Praktek Peradilan", paper presented at the Workshop on Islamic Inheritance Law, held by Lamjabat Foundation, Banda Aceh, 18-20 Oktober 2005. p.7

		received by the original heir (KHI, 185:2).	parent so as to inherit from an uncle or aunt (their parent's brother or sister). Note, however, that according to the Chief Justice Saleh, the <i>Mahkamah Syar'iyah</i> in Aceh does not follow this precedent.		practice in Aceh. Over time, this influence has translated into a local norm recognized under customary law. ³⁵	
21	INHERITANCE RIGHTS FOR ADOPTED CHILDREN	Where an adopted child is not bequeathed a portion of an estate, a compulsory bequeathment shall be made to a maximum amount of 1/3 of the estate of their adoptive parent (KHI, 209:2). ³⁶		Adopted children do not have any inheritance rights unless a portion of the estate has been bequeathed to them through written will and testament. ³⁷	In Acehese society, if parents do not make provision in their will for an adopted child, heirs will commonly provide a portion of the estate to such	According to Islamic law, an adopted child cannot inherit property from his/her adoptive parent. ³⁹

³⁵ *ibid.*; T. Djuned and Badruzzaman Ismail's comments in IDLO Workshop (30 May 2006)

³⁶ Compulsory bequeathment (*wasiat wajibah*) was introduced in KHI to reflect indigenous Indonesian values, especially Javanese values, which allow adoptive children to inherit property from his/her adopted parent. This concept was borrowed from Egyptian Law and served as a mechanism to provide an estate share for adopted children who has no link of entitlement (blood or marriage) to the deceased. The drafters of KHI made the bequest obligatory because the adoptive parents do not bequeath

					an adopted child in return for his/her services to the deceased ³⁸	
22	INHERITANCE RIGHTS FOR CHILDREN BORN OUT OF WEDLOCK	Children born out of wedlock are entitled to inherit only through their mother and their mother's extended family (KHI 186).		Children born out of wedlock may only inherit through their mother. ⁴⁰	Note that in Acehese society, if a woman becomes pregnant out of wedlock all attempts will be made to ensure that the couple marries. ⁴¹	
23	THE PROCEDURE FOR DIVIDING INHERITANCE	Heirs, either collectively or individually may nominate an executor from among the heirs. If the heirs cannot agree upon an executor, the matter may be referred to the Religious Court (KHI, 188).		Heirs who are independent/self-sufficient or married can request for the distribution of a benefactor's estate. Where heirs are not yet independent/self-sufficient or married, their guardian will request distribution. ⁴² It should be noted that the value of	In Aceh, inheritance distribution generally occurs 44 or 100 days after the testator's death. At the same time a <i>kenduri</i> (festive	

anything to the adopted child. See Syahrizal, *Hukum Adat*, pp. 282-283. Roihan A. Rasyid, "Pengganti Ahli Waris dan Wasiat Wajibah", *Mimbar Hukum* 23 (1995), pp. 54-67.

³⁷ Syahrizal, *Hukum Adat*, pp. 287-288.

³⁸ Syahrizal, *Hukum Adat*, p. 287.

³⁹ Asaf A.A. Fyze, *Outlines of Muhammadan Law*, (Delhi: Oxford University Press, 1974), p. 189.

⁴⁰ Badruzzaman Ismail (Interview, 8 May 2006).

⁴¹ Hoesin, *Adat Atjeh*, pp. 184-186.

⁴² Badruzzaman Ismail (Interview, 8 May 2006).

				the portions provided to sons and daughters is not calculated in a financial sense, but instead according to its utility value. Houses and yards will usually be inherited by daughters, while sons will receive ricefields, farmlands, livestock, shops and/or other income-yielding property. If division was calculated in financial terms, it may be the case that daughters receive larger portions than sons. ⁴³	meal) is held and prayers are made asking for salvation, to ensure that the heirs will live together in peace and harmony. ⁴⁴	
24	MODIFYING INHERITANCE DISTRIBUTION	Heirs may agree to distribute inheritance in a way that is inconsistent with their entitlements, provided that each heir is aware of their legal entitlement (KHI, 183).		It must be noted that while customary law generally mirrors the KHI, in practice share apportionment is conducted between the heirs through a process of <i>musyawarah</i> (reaching agreement through discussion and consensus) witnessed by the <i>geuchik</i> , <i>imam meunasah</i> , <i>tua peut</i> and other figureheads in the community. Through this discussion process heirs can agree to modify their respective entitlements. ⁴⁵		
25	TESTATORS WITH NO HEIRS	In the event that a testator leaves no heirs, or heirs cannot be located, the deceased's		Where a testator leaves no heirs, the estate is transferred to the <i>Baitul Mal</i> . Where this estate consists of land (referred to as <i>Meusara</i> land),	Communities in Aceh Besar call such land <i>tanoh ie-bu</i> (congee	Pursuant to Fatwa MPU 3/2005, land and property belonging to tsunami victims who

⁴³ Interview T.I. El-Hakimy (26 April 2006)

⁴⁴ Hoesin, *Adat Atjeh*, pp. 99, 163.

⁴⁵ Badruzzaman Ismail (Interview, 8 May 2006); Cf. Syahrizal, *Hukum Adat*, pp. 227-228.

		property, on decision of the Religious Court will be transferred to the <i>Baitul Mal</i> (Islamic treasury) to be used for the interests of Islam and public welfare (KHI 191). ⁴⁶		the <i>Baitul Mal</i> will transfer the management of this land to a person in the village. ⁴⁷ Any benefit derived from this land (for example through income generated through cultivation) is generally divided amongst the community annually in the form of congee porridge for every villager during the month of <i>Ramadhan</i> . ⁴⁸	porridge land).	have no heirs will be transferred to the Muslim community through the <i>Baitul Mal</i> (see also art 6 Fatwa 2/2005). Prior to transfer, the relevant <i>Baitul Mal</i> should obtain the agreement of the <i>Mahkamah Syar'iyah</i> . ⁴⁹
26	THE ESTATE OF A POLYGOMOUS MAN	Where a man has more than one wife, joint matrimonial property is divided separately for each marriage according to the length of each marriage. (KHI 94:1-2). A husband's share of joint matrimonial property will be distributed amongst his heirs [including surviving wives] (KHI, 190).		Polygamy is recognized under customary law. Where the husband dies, the <i>bawaan</i> property of each wife is identified and separated from joint matrimonial property. The husband's <i>bawaan</i> property is identified divided between his wives and other heirs. Joint matrimonial property is calculated separately for each marriage and distributed accordingly.		

⁴⁶ With respect to the KHI provisions, the *Baitul Mal* to which an estate is transferred is the *Baitul Mal* at the *gampong* level

⁴⁷ T. I. El-Hakimy (Interview, 26 April 2006); *Pola Penguasaan Pemilikan dan Penggunaan Tanah secara Tradisional Propinsi Daerah Istimewa Aceh*, edited by Syamsidah dan Sugiarto Dakung, (Jakarta: Direktorat Sejarah dan Nilai Tradisional, 1984/1985), p. 66; Cf. also Hoesin, *Adat Atjeh*, pp. 104.

⁴⁸ T. I. El-Hakimy (Interview, 26 April 2006); Cf. *Pola Penguasaan*, p. 66.

⁴⁹ According to the Governor's decision 18/2003 no. 10 the *Teungku Imam* or *imam meunsa* is the head of the *Baitul Mal* at the village level. In practice, not all villages have a *Baitul Mal*. An estate for which there are no heirs is hence looked after by village elders who serve an interim *Baitul Mal* role.

27	BESTOWING INHERITANCE PROPERTY THROUGH WRITTEN WILL AND TESTAMENT	<p>The maximum amount of property that can be bequeathed according to a will is 1/3 of the combined property of the individual. If the amount of bequeathed property is more than 1/3, all heirs must demonstrate their agreements (KHI, 195:2).</p> <p>If the amount of property bequeathed according to a will exceeds 1/3 of the estate, and the heirs object, the amount bequeathed in the will shall be reduced to 1/3 of the estate (KHI, 201).</p> <p>A bequeathal of inheritance property made to an heir is valid only with the agreement of all other heirs (KHI, 195:3). A statement of</p>		Testators may bequeath up to 1/3 of their estate through written will and testament provided that all heirs are in agreement. ⁵⁰	In practice, where a testator bequeaths part of their estate through written will (including to an heir or for the public interest), it is unlikely that heirs would contest such distribution. ⁵¹ In Acehnese society, respecting the wishes of the testator is considered a cultural imperative. ⁵²	
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⁵⁰ Hoesin, *Adat Atjeh*, p. 162; Badruzzaman Ismail (Interview, 8 May 2006).

⁵¹ Hoesin, *Adat Atjeh*, p. 162; Badruzzaman Ismail (Interview, 8 May 2006).

⁵² Hoesin, *Adat Atjeh*, pp. 162-163.

		agreement between heirs must be made orally, in writing in front of two witnesses, or in the presence of a notary (KHI, 195:4).				
28	GIFTS AND GRANTS	Those who have reached the age of 21 years, are in sound health and who are not under duress, may bestow a gift (<i>hibah</i>) provided that this gift does not exceed 1/3 of their total estate. Gifting must be done in the presence of two witnesses (KHI, 210:1).				
29	DISPUTES INVOLVING INHERITANCE IN THE POST-TSUNAMI CONTEXT	According to article 49 of Law No. 7 of 1989 on the Religious Courts and Qanun No. 10 of 2002 on the Islamic Syar'iyah Courts, the resolution of inheritance fall within the jurisdiction of the <i>Mahkamah Syar'iyah</i> . All legal actions	Fatwa MPU 3/2005 (1:3) states that a matter brought in relation to land ownership disputes and land inheritance can be referred to the			

⁵³ A decision in the appeal division of the *Mahkamah Syar'iyah* provincial level (37/Pdt.G/2004/MS Prov.) rejected an action brought claiming inheritance after 33 years had passed. This decision, however, was based on a classical Islamic legal book (*Al-Nasyiah*, vol. 7:485).

		<p>(relating to both property and people) have an expiry limit of 30 years. As such, if a person occupies property or is in possession for longer than 30 years, he/she does not have to prove entitlement (KUH Perdata, Buku Keempat, 1967).⁵³</p> <p>The 30 year expiry period does not apply to children who have not reached adulthood and for those under guardianship, except in a number of exceptional cases as outlined in the law (KUHPerdata, Buku Keempat, 1987).</p> <p>The 30 year expiry period applies to unmanaged (abandoned) inheritance property, except for that which is under guardianship (KUH Perdata, Buku Keempat, 1991).</p> <p>The 30 year expiry period applies to all</p>	<p><i>Mahkamah Syariah</i> with official evidence.</p> <p>However, Fatwa MPU 2/2005 (9) requires the <i>Mahkamah Syariah</i> to give the <i>geuchik</i> and the <i>mukim</i> (together with the <i>tuha peut</i> and others) the opportunity to resolve disputes peacefully before they are referred to the <i>Mahkamah Syariah</i>.</p> <p>Fatwa MPU 2/2005 (8) states that matters regarding entitlement to inheritance and land can</p>			
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		<p>heirs who are still in the process of negotiating their inheritance (KUH Perdata, Buku Keempat, 1992).</p>	<p>only be brought before the courts within a period of 5 years after the tsunami. Cases involving children, however, may be brought before the courts until such children reach the age of 19 years.</p>			
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Directory of Courts In Aceh

Mahkamah Syar'iyah	Pengadilan Negeri
NAD Jln Tgk. Syech Mudawali No. 4 Post Code: 23242 Tel: (0651) 22427 Fax: (0651) 23151	NAD Jln S. Alaidin Mahmudsyah No. 10 Tel: 0651 22101
Banda Aceh Jln Tgk. Syech Mudawali No. 2 Post Code: 23242 Tel: (0651) 22431 Fax: (0651) 22431	Banda Aceh Jln Cut Meutia No. 23 Tel: (0651) 22141
Sabang Jln. Agussalim No. 5 Post Code: 21301 Tel: (0652) 21294 Fax: (0652)21294	Sabang Jln Ahmad Yani Tel: (0652) 21305
Sigli Jln. Mahkamah/Pertemuan Tel: (0653) 21301	Sigli Jln Tgk. Chik Di Toro No. 48 Tel: (0653) 21309
Meureudu Jln Banda Aceh-Medan Km 158 Post Code: 24186 Tel: (0653) 51107	
Bireuen Jln Letkol Alamsyah 11 No. 1 Post Code: 24211 Tel: (0644) 324 598	Bireuen Jln Pengadilan I Tel: (0644) 323040/21040
Takengon Jln Sentosa Tel: (0643) 21597 Fax: (0643) 21597	Takengon Jln Kplk L. Yos Sudarso No. 154 Tel: (0643) 21606/21968
Lhoksemawe Jln Malahayati No. 22 Post Code: 24313 Tel: (0645) 43925 Fax: (0645) 41809	Lhoksemawe Jln Iskandar Muda Post Code: 23315 Tel: (0645) 43049/45355
Lhoksukon Jln Imam Bonjol No. 1 Post Code: 24382 Tel: (0645) 31198 Fax: (0645) 31198	Lhoksukon Jln Pamglima Polen No. 3 Post Code: 24382 Tel: (0645) 31025
Idi Jln Sultan Iskandar Muda Post Code: 24454 Tel: (0646) 21270	Idi Jln Petua Husin Post Code: 24454 Tel: (0646) 21843/21144

<p style="text-align: center;">Langsa Jln Prof. A. Majid Ibrahim Tel: (0641) 21507 Fax: (0641) 21507</p>	<p style="text-align: center;">Langsa Jln WR. Supratman No. 10 Tel: (0641) 21449/21114</p>
<p style="text-align: center;">Kualasimpang Jln Ir. H. Juanda Karang Baru (0641) 31517</p>	<p style="text-align: center;">Kualasimpang Ir. H. Juanda Tel: (0641) 31128/21023</p>
<p style="text-align: center;">Blangkejeren Jln Kuta Panjang No. 83 (0642) 21083 Fax: (0642) 21083</p>	<p style="text-align: center;">Blangkejeren Jln Kong Bur No. 52 Post Code: 24653</p>
<p style="text-align: center;">Singkil Jln Utama No. 44 Post Code: 23785 Tel: (0658) 21155</p>	<p style="text-align: center;">Singkel Jln Merdeka Tel: (0658) 21024</p>
<p style="text-align: center;">Kutacane Jln T. Badussamad No. 259 Tel: (0629) 21202 Fax: (0629) 21202</p>	<p style="text-align: center;">Kutacane Jln Cut Nya Din No. 174 Tel: (0629) 21105/21563</p>
<p style="text-align: center;">Tapakuan Jln T. Ben Mahmud No.20A Post Code: 23717 Tel: (0656) 21092</p>	<p style="text-align: center;">Tapaktuan Jln Letjen Supratman No.11 Post Code: 23714 Tel: (0656) 21248/21015</p>
<p style="text-align: center;">Meulaboh Jln Gajah Mada No.33 Post Code: 23617 Tel: (0655) 7006 140 Fax: (0655) 7551021</p>	<p style="text-align: center;">Meulaboh Jln Dr. Sutomo No. 5 Tel: (0655) 21010</p>
<p style="text-align: center;">Sinabang Jln Baru Air Dingin Tel: (0650) 7000487 Fax: (0650) 7000487</p>	<p style="text-align: center;">Sinanbang Jln T. Jiujung No. 406 Post Code: 23691 Tel: (0650) 21042/21043</p>
<p style="text-align: center;">Calang Jln Mon Tujoeh Tel: (0654) 700 6903</p>	<p style="text-align: center;">Calang Jln Pelabuhan No. 3 Tel: (0654) 21008/21069</p>
<p style="text-align: center;">Jantho Jln T. Bachtiar Panglima Polem Tel: (0651) 92417 Fax: (0651) 92417</p>	<p style="text-align: center;">Jantho Jln T. Bachtiar Panglima Polem SH. 3 Tel: (0651) 92121/92147</p>

Where Can I Get Help?

There are several NGOs operating in Aceh which provide legal assistance to individuals free of charge. These include:

KKTGA: Kelompok Kerja Transformasi Gender Aceh is a gender, justice and civil society organization based in Banda Aceh, and with close connections to other NGO's throughout Aceh. KKTGA provides free legal and counseling services to women, with a focus on domestic violence, marriage law, land matters, inheritance and guardianship. Telephone: 0651 - 740 8922.

LBH Banda Aceh: is a local branch of the national Legal Aid Institute network located in Leung Bata. Its program areas are the provision of legal services (litigious and non-litigious), legal public education, policy research, network development as well as public Telephone: 0651 22940

LBH APIK: Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan is the branch of the national Legal Aid Institute devoted to women's legal issues. The organization's primary goal is to strive for gender equality and justice in Indonesia. LBH APIK gives direct legal aid to women who are victims of violence and discrimination, conducts legal advocacy and training and initiates research. LBH Apik is based in Lhokseumawe, and can be contacted on 0645 - 43150

LBH Anak: Lembaga Bantuan Hukum Anak is the branch of the national Legal Aid Institute devoted to defending children and their legal rights. LBH Anak provides legal services to children and represents children in litigious matters. They also work on advocacy of children's legal rights and conduct community training. LBH Anak is located in Banda Aceh and can be contacted on 0651 7411587.



International Development Law Organization
Organisation Internationale de Droit du Développement



MINISTRY FOR FOREIGN
AFFAIRS OF FINLAND



Irish Aid

Department of Foreign Affairs
An Roinn Gnóthaí Eachtracha

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