

LAND GOVERNANCE AND THE UNFULFILLED PROMISE OF ACEH'S SPECIAL AUTONOMY: LEGAL SCHISM AND POLITICAL STRESS

GOVERNANÇA FUNDIÁRIA E A PROMESSA NÃO CUMPRIDA DA AUTONOMIA ESPECIAL DE ACEH: CISMA JURÍDICO E TENSÃO POLÍTICA

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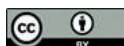
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Abstract

Aceh province is designated as a region with special status, as outlined in the Indonesian Law No. 11 of 2006 on the Governance of Aceh. A distinguishing feature of Aceh is its autonomous jurisdiction over land rights administration, necessitating the establishment of an Aceh Land Agency by the government. Nonetheless, in practice, this authority remains governed by the National Land Agency. This article seeks to analyse the central government's dedication to transferring central power over land issues to the Aceh government. This study utilises a normative legal research methodology, with primary data sourced from legislation and interviews with pertinent stakeholders. Secondary data is derived from relevant journals for this study. The study's findings reveal that the central government has failed to enforce Law No. 11 of 2006, which requires the creation of a Land Agency in Aceh, as outlined in Article 253(1) of the Aceh Government Law. The lack of commitment from the central government has created ambiguity in land management in Aceh, resulting in a loss of legal clarity necessary for

Resumo

A província de Aceh é designada como uma região com status especial, conforme delineado na Lei Indonésia nº 11 de 2006 sobre a Governança de Aceh. Uma característica distintiva de Aceh é sua jurisdição autônoma sobre a administração de direitos fundiários, o que exigiu a criação de uma Agência Fundiária de Aceh pelo governo. No entanto, na prática, essa autoridade permanece regida pela Agência Nacional de Terras. Este artigo busca analisar a dedicação do governo central em transferir o poder central sobre questões fundiárias para o governo de Aceh. Este estudo utiliza uma metodologia de pesquisa jurídica normativa, com dados primários provenientes da legislação e de entrevistas com as partes interessadas pertinentes. Os dados secundários são derivados de periódicos relevantes para este estudo. Os resultados do estudo revelam que o governo central não conseguiu implementar a Lei nº 11 de 2006, que exige a criação de uma Agência Fundiária em Aceh, conforme delineado no Artigo 253(1) da Lei de Governo de Aceh. A falta de comprometimento do governo central criou



effective land administration among the public. The restricted jurisdiction of the Aceh Land Office, coupled with ongoing supervision of land issues by the Regional Office of the National Land Agency, has impeded the realisation of the advantages of land autonomy as mandated by law.

Keywords: Aceh. Community Rights. Legal Uncertainty. National Land Agency. Land Management and Special Autonomy Region.

ambiguidade na gestão de terras em Aceh, resultando em uma perda de clareza jurídica necessária para uma administração fundiária eficaz perante o público. A jurisdição restrita do Escritório de Terras de Aceh, juntamente com a supervisão contínua das questões fundiárias pelo Escritório Regional da Agência Nacional de Terras, tem impedido a concretização das vantagens da autonomia fundiária, conforme previsto em lei.

Palavras-chave: Aceh. Direitos da Comunidade. Incerteza Jurídica. Agência Nacional de Terras. Gestão de Terras e Região de Autonomia Especial.

1 INTRODUCTION

The administration of land is a prominent example of the complexity and frequently tense relationship between the Aceh province and the central government of Indonesia.¹ Land is a source of livelihood and an essential part of identity.² However, the central government's refusal to fully enforce land management regulations in Aceh's special autonomy law has led to serious legal and administrative divisions.³ Furthermore, the central government's actions have weakened the effectiveness of land management, and this failure has created institutional dualism, legal uncertainty, and political tensions that erode the trust necessary for long-term peace following the conflict.⁴ This article carefully analyses the fundamental legal disputes, examines the unfulfilled legislative mandates, the resulting regulatory disharmony, the dualistic administrative structure that has emerged, and the significant constitutional issues that have arisen due to this prolonged deadlock.

Law No. 11 of 2006 on the Government of Aceh (LoGA) establishes the legal

¹ Chairul Fahmi et al., "The Role of the State in Customary Land in Indonesia: A Legacy from the Dutch Colonial to Modern Indonesia," *Samarah: Journal of Family and Islamic Law* 8, no. 3 (August 2024): 3, <https://doi.org/10.22373/sjhk.v8i3.19992>.

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

³ Amal Ahmad, "Land for Peace? Game Theory and Strategic Obstacles in the Resolution of the Israeli-Palestinian Defence and Peace Economics," forthcoming, 2022, <https://doi.org/10.1080/10242694.2022.2031445>.

⁴ Kathrin Bachleitner, "The Legacy of War: Narratives of the Syrian Cooperation and Conflict 57, no. 1 (2022), <https://doi.org/10.1177/00108367211032691>.

framework for Aceh's unique land authority. This law was enacted to grant autonomy to the people of Aceh within the framework of the unitary state of the Republic of Indonesia, by establishing a comprehensive framework. This is a direct implementation of the Helsinki Memorandum. The Regional Office of the National Land Agency in Aceh Province and the Land Offices in districts/cities will become local government agencies by the beginning of the 2008 fiscal year, as stipulated in Article 253(1), which is a crucial part of this framework.⁵

The importance of this provision in a legal context cannot be overstated. This provision is intended as a fundamental transfer of authority, not merely an administrative reorganisation, giving the Aceh government direct control over the management of crucial resources. Given that disputes over control of resources and territory were a significant cause of previous conflicts, this transfer is an essential requirement and a key foundation of the peace agreement. The LoGA operates as a *lex specialist*, or special law, within the Indonesian legal system, meaning that its provisions are intended to supersede national laws applicable in other provinces. Government Regulation No. 38 of 2007 on the Division of Functions explicitly acknowledges this, stating that special autonomous regions such as Aceh must have special laws governing the division of functions.⁶ Therefore, the mandate of Article 253 is a legal obligation that the central government must fulfil, not a proposal subject to debate. The failure to transfer this authority before the 2008 fiscal year deadline marks the beginning of a continuous disregard for the letter and spirit of the law.⁷

The president's subsequent initiative did not remedy the failure to implement Article 253; instead, it exacerbated it. Article 253(2) of the LOGA itself states that a Presidential Regulation will be used to further regulate the implementation of the transfer. As a result, executive delays became possible. The central government's approach to many sensitive areas of the LOGA, particularly those related to resource control, has been characterised by a pattern of delay, as evidenced by the absence of essential implementing

⁵ Syaiful, "Agrarian Law Land Ownership and Land Disputes *Faculty of Law, UMA, Best* 22 March 2025, <https://hukum.uma.ac.id/2025/03/22/hukum-agraria-kepemilikan-tanah-dan-sengketa-pertanahan/>.

⁶ Government of Indonesia, "Law No. 11 of 20 2006 the Government of Aceh," Indonesian Legal Regulations accessed on 26 July 2023, <https://www.peraturan.go.id/id/uu-no-11-tahun-2006>.

⁷ Pierluigi Chiassoni, "Kelsen on Natural Law Theory. An Enduring Critical Affair," *Revus. Journal for Constitutional Theory and Philosophy of Law / Revija Za Ustavno Teorijo in Filozofijo Prava*, no. 23 (November 2014): 135–63, <https://doi.org/10.4000/revus.2976>.

regulations for years.⁸

Presidential Regulation No. 23 of 2015, which regulates the transfer of the National Land Agency (BPN) to the Aceh Land Agency (BPA), is the first relevant regulation.⁹ However, instead of being implemented, the regulation has become a tool for powerlessness. Articles 17 and 18 of the same regulation, which set a one-year deadline for drafting the necessary regional regulations (Qanun) and transferring the institutional status, staff, assets, and documents, have not been implemented. The changes mandated by the LoGA in 2006 and those implemented by this presidential regulation in 2015 remain unfinished, more than a year after their issuance.

This pattern of regulatory disharmony and executive impotence reflects deeper political dynamics. Since the law was passed, Jakarta and the Aceh government have been engaged in a lengthy and challenging process of consultation and drafting of implementing regulations for the LoGA. To maintain control over Aceh's overall autonomy, the central government has repeatedly emphasised its right to regulate and set national norms and standards through institutions such as the Ministry of Home Affairs. As a result, the executive's refusal to develop and effectively implement the necessary implementing regulations nullifies the clear legislative mandate of parliament, leaving the promised transfer of land authority mired in perpetual legal and administrative uncertainty.¹⁰

According to Presidential Regulation No. 20 of 2015, Article 1 paragraph (1), the National Land Agency (*Badan Pertanahan Nasional* [BPN]) is a government agency responsible to the President, not to ministers.¹¹ However, because Aceh has special autonomy, Aceh is subject to Presidential Regulation No. 23 of 2015 and is exempt from national regulations. The Aceh Government Regulation No. 11 of 2006 governs legislation in the province of Aceh. According to Article 253 (1) of this regulation, the Aceh BPN Office and the Land Offices at the district/city level shall become local government agencies by the beginning of the 2008 fiscal year.¹²

⁸ Indonesia.

⁹ "Presidential Regulation No. 23 of 2015," Regulation| JDIH BPK, accessed on 5 August 2025, <http://peraturan.bpk.go.id/Details/41749/perpres-no-23-tahun-2015>.

¹⁰ Laurens Bakker and Sandra Moniaga, "The Space between: Land Claims and the Law in Indonesia," *Asian Journal of Social Science* 38, no. 2 (2010): 187–203, <https://doi.org/10.1163/156853110X490890>.

¹¹ "Presidential Regulation No. 20 of 2015," Regulation| JDIH BPK, 2025, <http://peraturan.bpk.go.id/Details/41743/perpres-no-20-tahun-2015>.

¹² Supriadi Supriadi et al., "The Practice of Land Pawn in Aceh Besar Customary Law," *Opcion* 35, no. Special Issue 22 (2019): 791–806.

Paragraph (2) stipulates that the Presidential Regulation shall regulate further provisions regarding the implementation of the matters referred to in paragraph (1). These technical regulations resulted in Presidential Regulation No. 23 of 2015, which transferred the Aceh Regional Office of the National Land Agency and the District/City Land Offices to the Aceh Land Agency and the Aceh District/City Land Offices, in accordance with Article 253(1) of the Aceh Government Regulation. On August 15, 2005, the government and the Free Aceh Movement signed a Memorandum of Understanding (MoU), marking the beginning of special regulations governing land issues in Aceh. It is essential to recognise that this Memorandum of Understanding represents a form of reconciliation that respects and seeks to foster the long-term social, political, and economic development of Aceh.¹³

The success of the legal system, which is an integral and interrelated whole, depends heavily on the suitability and consistency of the applicable laws and regulations. The establishment of institutions capable of implementing the established rules is essential for achieving successful regional autonomy. This is because the establishment of such institutions must be carried out using a systematic and controlled approach to demonstrate their validity and legality in the eyes of the law. Following the 1945 Constitution, the objectives of local governments must be articulated within the political, formal, operational, and administrative frameworks of governance. These objectives cannot be separated from national objectives.¹⁴

The legal framework consists of regulations designed to facilitate access and use in resolving various legal disputes that arise in society. According to Jellinek's statement on the importance of state institutions in carrying out government responsibilities, institutions formed by the state serve as a forum for executing various government activities. The Aceh Government Law and relevant presidential regulations must be cited when discussing the formation of land institutions in Aceh. This is important to ensure that the institutions established do not conflict with higher legal standards. According to Presidential Regulation No. 23 of 2015, the Aceh Land Agency is being transformed into a regional organisation to resolve land disputes and facilitate public access to land rights. However, the inconsistency between this Presidential Regulation and the LoGA raises

¹³ Chairul Fahmi, "The European and Peacebuilding in Aceh-Indonesia: Lessons Learned for Strengthening Security Policy in Civilian Mission Approaches" *Journal of Political* 9, no. 2 (2016).

¹⁴ Armia, "Democracy Through General Election on Normative Conflicts in the General Election

serious concerns that could threaten legal certainty and hinder Aceh's efforts to implement special autonomy. The research conducted by the Aceh Institute for Governance on the functions and operations of the Aceh National Land Agency in the context of Aceh's special autonomy as a regional body is of great importance.

2 DATA AND METHOD

This study employs a normative legal approach, also referred to as the doctrinal approach.¹⁵ The purpose of this approach is to analyse and understand relevant legal standards and their implications for legal practice.¹⁶ Library research is the initial stage of normative legal research, which involves gathering information from various relevant sources, including primary, secondary, and tertiary legal materials.¹⁷ Primary legal materials are authoritative and binding, including court decisions, official legislative records, and enacted laws, which serve as references in legal practice. Meanwhile, secondary legal materials provide additional context and explanations for primary materials, such as versions of laws, research results, and relevant scientific works, including books, research reports, seminar papers, and articles related to the subject of the research. Additionally, tertiary legal materials encompass supplementary sources, such as legal dictionaries and commentaries on court rulings, which contribute to a more comprehensive understanding of specific legal issues. To obtain comprehensive library data, this research was conducted in various libraries. It is hoped that this research will produce an in-depth analysis and make a positive contribution to the development of legal science in Indonesia by utilising these diverse sources.¹⁸

¹⁵ Muhammad Siddiq Armia, *PENENTUAN METODE & PENDEKATAN PENELITIAN HUKUM*, ed. Chairul Fahmi (Banda Aceh: Lembaga Kajian Konstitusi Indonesia, 2022).

¹⁶ Amrit Kharel, "Doctrinal Legal Research" *SSRN Electronic Journal*, ahead of print, 2018, <https://doi.org/10.2139/ssrn.3130525>.

¹⁷ Mátyás Bódig, *Legal Doctrinal Scholarship* (London: Edward Elgar Publishing Limited, 2021), <https://china.elgaronline.com/monobook/9781788114059.xml>.

¹⁸ Wahyudin Darmalaksana, "Metode Penelitian Kualitatif Studi Pustaka Dan Studi Lapangan," *Pre-Print Digital Library UIN Sunan Gunung Djati Bandung*, 2020.

3 RESULTS AND DISCUSSION

3.1 Dualism in practice: conflicting authorities between the national land agency (bpn) and the aceh land agency

The presence of two dysfunctional and perplexing systems in the Aceh land sector arises directly from failures in execution. The authority of the centrally governed National Land Agency (BPN) is at odds with the newly constituted institutions of the Aceh government under this dualistic framework.¹⁹ The BPN and the Aceh Land Administration (BPA) continue to operate independently. They implement national policies at the regional level, adhering to the principle of reconcentration, which signifies their role as an extension of the central government. The BPN possesses ultimate jurisdiction over essential elements of land administration, encompassing formal land registration and the issuance of legally enforceable land title certificates. The designation of the BPN as a non-ministerial government body under the President, tasked with national land affairs, is bolstered by new national rules, including Presidential rules No. 47 and 48 of 2020, which enhance existing central oversight. In contrast, the Aceh government has created a land management group to uphold its rights under the LOGA. The Aceh Land Agency (BPA) was constituted as a local government work unit (SKPA) according to Qanun Aceh No. 13 of 2016. The Aceh Land Agency (BPA) and its district/city departments are designated as the official administrators of land matters under the special autonomy framework.²⁰

This ultimately leads to an ineffective and disjointed system for the community. A BPN official cited in the research stated that the responsibilities of the two organisations are complementary, not overlapping. The BPN is tasked with granting administrative and legal rights, whereas the BPA concentrates on pre- and post-legalisation services and other assigned responsibilities. This complementary connection results directly from the imperfect transmission of authority. The BPA is unable to fulfil its core role as the principal land authority, while the BPN maintains decision-making authority. The issue is exacerbated by the institutional vulnerabilities identified by the

¹⁹ Zaki 'Ulya, "Eksistensi Badan Pertanahan Aceh Sebagai Perangkat Daerah Di Aceh Dalam Aspek Kepastian Hukum Bidang Pertanahan," *Jurnal Konstitusi* 12, no. 3 (2016): undefined-undefined, <https://doi.org/10.31078/jk1237>.

²⁰ Supriadi et al., "The Practice of Land Pawn in Aceh Besar Customary Law."

BPN, which are not limited to Aceh. The agency faces challenges, including inadequate cooperation with other government bodies, financial constraints, and a nationwide shortage of human resources. The BPA has faced criticism for data errors that have led to the issuance of duplicate and overlapping ownership certificates for the same land, rather than resolving disputes successfully. These institutional frictions have positioned Acehnese citizens between two concurrent bureaucracies, neither of which can function with complete legitimacy or optimal efficiency.²¹

3.2 Constitutional implications and executive accountability

The executive's persistent failure to implement laws enacted by the legislature raises significant concerns regarding constitutional governance and the executive branch's responsibility.²² This paper argues that this failure may constitute grounds for the president's impeachment. This bold assertion strongly suggests profound unhappiness and serious concerns about the central government's violations of its legal and political responsibilities.²³

From a constitutional law standpoint, the president's intentional and substantial neglect to enforce legislation required by the legislature may constitute a breach of his oath of office and constitutional duties.²⁴ This argument posits that if deliberate disregard for the Land Law's provisions is demonstrated to have substantially harmed the public, it may fulfil the criteria for impeachment proceedings, which in Indonesia encompass the House of Representatives, the Constitutional Court, and the People's Consultative Assembly.

However, analyzing this argument solely from a limited legal perspective would overlook its broader political implications. The impeachment assertion is not a viable

²¹ Akhyar Tarfi et al., "Agricultural Land Redistribution for Sustainable Peacebuilding in Aceh, Indonesia," *International Journal of Sustainable Development and Planning* 18, no. 9 (2023): 2923–31, <https://doi.org/10.18280/ijstdp.180930>.

²² Muhsin Aseri, "POLITIK HUKUM ISLAM DI INDONESIA," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan*, ahead of print, 2018, <https://doi.org/10.35931/aq.v0i0.57>.

²³ Chairul Fahmi, "PRILAKU POLITIK PADA DEMOKRASI TRANSISI: Studi kasus di Provinsi Aceh pada pemilu 2014," *ARICIS PROCEEDINGS* 1, no. 0 (January 2017): 0, <https://doi.org/10.22373/aricis.v1i0.950>.

²⁴ Agsel Awanisa, Yusdianto Yusdianto, and Siti Khoiriah, "The Position of Constitutional Complaint in the Constitutional Court of the Republic of Indonesia," *Pancasila and Law Review* 2, no. 1 (April 2021): 61–78, <https://doi.org/10.25041/plr.v2i1.2308>.

legal tactic, but rather an indication of political desperation.²⁵ It signifies a profound sense of betrayal among Aceh stakeholders, who perceive the LoGA not simply as legislation, but as a hard-won peace accord. Aceh's special status was conferred to address a protracted and violent conflict and to preserve the unity of the Indonesian state.²⁶ The inability to execute essential components of autonomy is considered a significant breach of the post-conflict agreement. This converts an administrative matter into a question of constitutional validity and the nature of the relationship between Aceh and the central government. A global comparative review of impeachment indicates that it is frequently utilized not solely for specific criminal offenses, but as a mechanism to address profound political crises in which an incumbent leader has forfeited their political legitimacy.²⁷

The incorporation of this concept into the discussion of land rights in Aceh signifies that, for numerous stakeholders, the existing stalemate has escalated to a crisis level. This legal dualism is not merely bureaucratic disorder; it means a profound political conflict in which the national development objective and the central government's resource control appear to overshadow its legal and moral obligations to Aceh's distinctive autonomy.

3.3 Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 95 of 2016 on the Regional Apparatus of Aceh

This rule oversees land matters by decentralising land administration, allowing Regional Land Offices to oversee each region. In the absence of these offices, regional leaders would forfeit a crucial mechanism for resolving significant land conflicts.²⁸ A substantial association exists between land decentralisation and an increase in regional revenue (*Pendapatan Asli Daerah* [PAD]). In modern Indonesia, enhancing PAD is

²⁵ Anggreany Arief and Rizki Ramadani, "Omnibus Law Cipta Kerja Dan Implikasinya Terhadap Konsep Dasar Perseroan Terbatas," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 2 (July 2021): 2, <https://doi.org/10.35673/ajmpi.v6i2.1550>.

²⁶ Neilul Masyitah et al., "Factors of Exchange of Waqf Property According to Positive Law and Islamic Law in Indonesia: A Case Study in Pidie District of Aceh Province," *AJIEL - Ar-Raniry Journal of Islamic Economic Law* 1, no. 2 (December 2024): 2, Indonesia, Pakistan.

²⁷ Indri Dwi Apriliyanti and Stein Oluf Kristiansen, "The Logics of Political Business in State-Owned Enterprises: The Case of Indonesia," *International Journal of Emerging Markets* 14, no. 5 (November 2019): 709–30, <https://doi.org/10.1108/IJOEM-08-2018-0433>.

²⁸ Sunawardi Sunawardi, Suhendrayatna Suhendrayatna, and Teuku Muhammad Jamil, "THE ROLE OF ACEH GOVERNMENT THROUGH LAND CONFLICT SETTLEMENT IN ACEH," *Al-Ijtima'i: International Journal of Government and Social Science* 7, no. 2 (2022): 89–98, <https://doi.org/10.22373/jai.v7i2.1451>.

essential; insufficient PAD signifies a region's lack of readiness for autonomy, whereas augmented regional autonomy fortifies the unity of the Republic of Indonesia (NKRI). Zulkarnain Karim elucidates the inherent connection between land decentralisation and the augmentation of Regional Original Revenue (PAD) in an area, highlighting that land is universally available in all autonomous regions, in contrast to other natural resources like minerals (oil, coal, natural gas, tin, iron, nickel, copper) and marine resources. The delegation of land services to local governments will empower districts or towns with extensive regions, such as those conducive to industrial zones, tourism, fisheries, and agroindustry, to attract investors and collaborations.²⁹

Consequently, specific procedures have been instituted for the Aceh Government to address land disputes and conflicts, as outlined in Regulation of the Minister of Home Affairs No. 95 of 2016 regarding the Regional Apparatus of Aceh. According to Article 7 of the regulation, the Aceh Land Office is directed by the Head of the Office. The Head of the Aceh Land Office reports to the Governor via the Regional Secretary of Aceh.³⁰ The Aceh Land Office comprises a Secretariat and a maximum of three divisions. The Secretariat comprises a maximum of three subdivisions. Each division consists of a maximum of three sections. Technical Implementation Units (*Unit Pelaksana Teknis* [UPT]) may be established inside the office to execute technical operational activities and/or specialised technical support activities. The UPT comprises one administrative division and a maximum of two sections. Article 16 of the rule stipulates the organisational structure of the Land Office at the district and city levels, stating: "(1) The Head of the District/City Land Office is directed by the Head of the District/City Land Office." The Head of the District/Municipal Land Office is directly accountable to the Regent/Mayor via the Secretary of the District/Municipality. The District/Municipal Land Office comprises a Secretariat and a maximum of three sections. This law constitutes a decentralization mechanism authorized by the central government, empowering local governments to administer and utilize land for the benefit of their communities, with the

²⁹ Cut Afra, Nahara Eriyanti, and Nasr Mohamed Arif, "SETTLEMENT OF DEFECTS IN MURABAHAH FINANCING AT BANK ACEH SYARIAH REGIONAL BIREUEN, INDONESIA," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (December 2023): 201–21.

³⁰ Dinas Pertanahan Aceh, "TIM KOORDINASI PENYELESAIAN SENGKETA DAN KONFLIK PERTANAHAN ACEH FASILITASI PENYELESAIAN PERMASALAHAN HAK GUNA USAHA DI KABUPATEN KOTA," 2021, <https://pertanahan.acehprov.go.id/berita/kategori/pertanahan/tim-koordinasi-penyelesaian-sengketa-dan-konflik-pertanahan-aceh-fasilitasi-penyelesaian-permasalahan-hak-guna-usaha-di-kabupaten-kota>.

primary aim of enhancing welfare.³¹

The Aceh Government has integrated the Regional Government Work Unit (*Satuan Kerja Pemerintah Aceh* [SKPA]) into its organisational structure and Work Procedures to manage land administration issues in Aceh. The enactment of Aceh Qanun No. 13 of 2016 regarding the Formation and Structure of Aceh Government Agencies designates the Aceh Land Agency to oversee land administration, categorised as an essential governmental function, with distinct attributes. The formation of the Aceh Land Agency is governed by Article 3 of Aceh Regulation No. 13 of 2016, which specifies in paragraph (2) that the organisational structure of Aceh entities is categorised according to governmental functions or ancillary roles in governmental affairs, as well as the unique attributes of Aceh, including: a) Supporting Government Affairs; b) Government Affairs; c) Additional Mandatory Government Affairs with Distinctive Characteristics.

Moreover, Article 3, paragraph (5), letter d of Aceh Regional Regulation Number 13 of 2016 mandates that the Aceh entities specified in paragraph (2), letter c, which pertain to other obligatory government affairs with unique characteristics, shall be executed by the Aceh Land Agency as the designated authority for land matters in Aceh. Additionally, to perform the responsibilities and powers of the Aceh Land Agency, the Governor of Aceh promulgates rules according to Article 13(5)(d) of Aceh Regulation No. 13 of 2016. This regulation is Governor Regulation No. 133 of 2016 about the Position, Organisational Structure, Duties, Functions, and Work Procedures of the Aceh Land Agency, promulgated on December 29, 2016. This Governor's Regulation is founded on Article 12 of Aceh Regulation No. 13 of 2016, which mandates the establishment of supplementary provisions concerning the positions, organisational structure, duties, functions, and procedures of Aceh's administrative bodies and their subordinate units within a Governor's Regulation.

The formation of the BPA is governed by Law No. 11 of 2006 concerning the Government of Aceh and Presidential Regulation No. 23 of 2015 regarding the Transition from the BPN to the Aceh land agency, as referenced in the "considerations" section of Qanun Aceh No. 13 of 2016 on the Establishment and Structure of the Aceh Government. The responsibilities of the Aceh Land Agency, as outlined in Article 6 of Aceh Governor

³¹ Anne Casson, Yohanes I. Ketut Deddy Muliastira, and Krystof Obidzinski, *Land-Based Investment and Green Development in Indonesia: Lessons from Berau District, East Kalimantan* (Indonesia: CIFOR, 2015).

Regulation No. 133 of 2016, encompass: a) managing administrative and secretarial functions; b) planning and developing programmes; c) regulating land control and utilisation; d) facilitating land rights acquisition and management; e) addressing land-related issues; f) conducting training and outreach on land matters; g) performing research, monitoring, evaluation, and reporting on land management; h) supervising technical implementation units (*Unit Pelaksana Teknis Dinas* [UPTD]); and i) coordinating with pertinent agencies and institutions in the land sector. Article 18 of the rule mandates that the Land Purchase and Rights Management Division oversee land purchase and the administration of land rights for governmental entities and individuals.³²

The Aceh Land Agency aims to improve the welfare of the Aceh population through equitable and sustainable farming practices.³³ The mission concurrently underscores the development of land policies designed to enhance community welfare, secure land acquisition for public interests, ensure legal certainty concerning land rights, mitigate agrarian conflicts, establish a dependable land information system, and augment the transparency of public information on agricultural reform. The 2018 work plan encompasses objectives such as delivering quality land services, achieving sustainable agricultural reform, eradicating poverty, enhancing community access to economic resources, and ensuring land availability for public development. The organisational structure of the Aceh Land Agency, as delineated in Article 3 of Governor Regulation No. 133 of 2016, comprises: 1) Head of the Agency; 2) Secretariat, which includes the General and Administrative Division, the Human Resources Division, and the Finance, Programme, and Evaluation Division; 3) Division of Regulations, Supervision, and Land Utilisation; 4) Division of Land Rights Acquisition and Management; and 5) Division of Land Dispute Resolution, Training, and Extension, along with functional groups and UPTDs.

3.4 The authority of the aceh government in land affairs

The jurisdiction of the Aceh Government over land issues, as outlined in Article 3 of Presidential Regulation No. 10 of 2006 concerning the National Land Agency, is

³² Sunawardi, Suhendrayatna, and Jamil, "THE ROLE OF ACEH GOVERNMENT THROUGH LAND CONFLICT SETTLEMENT IN ACEH."

³³ Aceh, "TIM KOORDINASI PENYELESAIAN SENGKETA DAN KONFLIK PERTANAHAN ACEH FASILITASI PENYELESAIAN PERMASALAHAN HAK GUNA USAHA DI KABUPATEN KOTA."

governed by Law No. 11 of 2006 on the Government of Aceh.³⁴ The law stipulates that the National Land Agency holds 22 authorities in land management, of which 11 have been delegated to the Aceh Government, as per Presidential Decree No. 34 of 2003 regarding the National Policy in Land Affairs. The Aceh Government currently contends that land management authority should be entirely allocated to Aceh, including all 22 jurisdictions specified by the Regional Office of the National Land Agency.³⁵ The Aceh Government requests that the Central Government delegate all tasks presently managed by the Regional Office of the National Land Agency to the Aceh Land Agency, a component of the Aceh Regional Government Work Unit (SKPA).

The Central Government's provision of special autonomy to the Province of Aceh aims to integrate Aceh into the Unitary State of the Republic of Indonesia while enhancing the welfare of its inhabitants. Consequently, the Central Government must ensure the preservation of peace and stability in Aceh, as evidenced by the implementation of Law No. 11 of 2006 concerning the Special Autonomy Law for the Province of Aceh (LOGA). This legislation requires the conversion of the Regional Office of the National Land Agency (BPN) into a local government entity in Aceh, thereby formalising land management under the jurisdiction of the Aceh Government, encompassing all associated institutions, functions, and management responsibilities. Consequently, the Central Government shall abstain from promulgating technical rules that contradict the legal provisions, which possess a superior hierarchical standing compared to Presidential regulations issued by the Central Government. The central government and the Aceh government currently exercise authority in Aceh. The Central Government administers land authority via the principle of decentralisation at the Provincial BPN Office and the Land Office at the district or municipal level. The Aceh Government exercises land power through the concurrent functions of the Aceh Land Agency and the district and city Land Agencies.³⁶

The land administration services offered to the public by the Aceh Regional BPN Office, District/Municipal Land Offices, and the Aceh Land Agency are not redundant; instead, they complement and enhance one another. The Aceh Regional BPN Office

³⁴ Indonesia, "UU No. 11 Tahun 2006 Tentang Pemerintahan Aceh."

³⁵ Aceh, "TIM KOORDINASI PENYELESAIAN SENGKETA DAN KONFLIK PERTANAHAN ACEH FASILITASI PENYELESAIAN PERMASALAHAN HAK GUNA USAHA DI KABUPATEN KOTA."

³⁶ GERARD PERSOON, "Isolated Groups or Indigenous Peoples: Indonesia and the International Discourse," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 154, no. 2 (1998): 281–304, JSTOR.

performs duties and functions concerning administrative matters and the allocation of legal land rights. Conversely, the Aceh Land Agency emphasises services governed by regional legislation. The BPN continues to offer direct land services to the public, offering legal certainty and protection through the issuance of land title certificates, transfer of rights, and other land-related legal activities. Conversely, the BPA provides services on the pre- and post-legalisation of land rights.³⁷

The establishment of land administration authority by regional land offices and land offices, as components of the central government, is predicated on Presidential Regulation No. 47 of 2020 about the Ministry of Agrarian Affairs and Spatial Planning and No. 48 of 2020 regarding the BPN.³⁸ These regulations specify that the BPN is a non-ministerial government agency under the President, tasked with executing governmental responsibilities in land issues under existing laws and regulations. The duties encompass: a) formulating and instituting land policies; b) developing and executing policies on land measurement and mapping; c) ascertaining land rights and registration; d) land redistribution, community empowerment, and land use management via spatial planning; e) land acquisition and the advancement of land management; f) overseeing and regulating land ownership and utilisation; and g) addressing and mitigating land disputes and conflicts.³⁹

Nonetheless, the delegation of land authority to ensure legal certainty and protection has not been entirely conveyed from the Central Government to the Aceh Government, as the National Land Agency continues to retain responsibility at both provincial and district/city levels. The Aceh Land Agency performs various land authority functions, including: a) issuing location permits; b) designating land acquisition sites for public purposes; c) adjudicating land disputes; d) addressing compensation matters in land development; e) identifying subjects and objects of land redistribution; f) designating customary land; g) resolving issues about vacant land, including inventory and utilisation; h) planning land use; i) managing small islands outside Indonesia's territorial boundaries; j) granting land use rights; and k) granting building use rights. While some functions have

³⁷ Chairul Fahmi and Peter-Tobias Stoll, "Measuring WTO Approaches in Resolving Palm Oil and Biofuel Trade Disputes from Indonesia," *BESTUUR* 12, no. 2 (December 2024), <https://doi.org/10.20961/BESTUUR.V12I2.94203>.

³⁸ Mohammad Hazyar Arumbinang, Yordan Gunawan, and Andi Agus Salim, "Prohibition of Child Recruitment as Soldiers: An International Regulatory Discourse," *Jurnal Media Hukum* 30, no. 1 (July 2023): 21–32, <https://doi.org/10.18196/JMH.V30I1.19322>.

³⁹ Armia, "Democracy through Election: A Study on the Conflict of Norms in Aceh's Election Process."

been successfully executed in Aceh, several remain unimplemented due to the absence of operational rules.⁴⁰

The Aceh Land Agency plays a crucial role in land management, promoting the well-being of the Aceh population. These jobs are perceived not as a transfer of authority, but as a distribution of responsibility, by the notion of decentralisation. The effective execution of the Aceh Land Agency's duties and those of district/city offices is essential for ensuring legal clarity and safeguarding land rights, which are fundamental to achieving the welfare of the Acehnese population. All facets of land authority must be meticulously organised to guarantee fairness and the well-being of the Acehnese populace, as shortcomings in this area could provide considerable issues for the province.

Table 1

Challenges and Impacts of Land Management in Aceh

Issue	Description	Impact
Lack of Legal Certainty and Protection	Legal certainty and protection are crucial for safeguarding land rights for both registered and unregistered landowners. Regulations must be clear and aligned with national laws and regulations. Aceh's authority over land management remains ambiguous, with no explicit authority to manage or issue land certificates. Certificates issued under unclear authority risk being legally flawed, prone to disputes, and invalid at the national level.	<ul style="list-style-type: none"> ▪ The risk of land disputes is increasing. ▪ Certificates may not be recognised nationally. ▪ The absence of protection hinders optimal land use.
Injustice for Communities and Threats to National Integrity	Inequality in land ownership and control may arise if local government authority is not monitored. Local leaders may abuse their power for personal gain, allowing individuals close to government officials to control land or transfer it to foreign parties under the guise of investment. This threatens the community's right to land as a source of livelihood, creating inequality and potential conflict.	<ul style="list-style-type: none"> ▪ Increased inequality in land ownership. ▪ Loss of community rights to land. ▪ Potential social conflicts and threats to national unity.
Obstacles to community welfare.	Land management without clear regulations leads to legal uncertainty over land rights, fails to protect property owners, and hinders optimal land use that could improve community welfare. Unclear land rights may not be recognised as collateral, limiting access to financing and hindering investment	<ul style="list-style-type: none"> ▪ Optimal use of limited land resources. ▪ Decreased investor confidence. ▪ Additional burden on the regional budget, affecting other community needs.

⁴⁰ Zaki 'Ulya, "Eksistensi Badan Pertanahan Aceh Sebagai Perangkat Daerah Di Aceh Dalam Aspek Kepastian Hukum Bidang Pertanahan."

	<p>due to low investor confidence. Currently, the central government budget of IDR 300 billion supports land development in Aceh. If land management is transferred to Aceh, this funding may no longer be available, potentially burdening the regional budget (APBD) and affecting community welfare.</p>	
Considerations for Special Land Management in Aceh	Various factors must be considered regarding Aceh's desire for exceptional land management:	
Large budget allocations	The annual budget of IDR 300 billion for land management in Aceh currently comes from the national budget (APBN). If managed locally, this allocation could burden the regional budget (APBA).	<ul style="list-style-type: none"> ▪ Reduction in funding for other development programmes. ▪ Challenges in land management due to limited financial resources.
Strategic national programmes	Key national programmes include completing land registration by 2024, accelerating Agrarian Reform, and acquiring land for public use. These programmes support job creation and poverty alleviation in Aceh.	<ul style="list-style-type: none"> ▪ Missed opportunities from strategic national programmes. ▪ Limited economic growth and poverty alleviation.
Digital transformation	The Ministry of Agrarian Affairs and Spatial Planning (ATR/BPN) aims to achieve global standards by 2024 through the digitalisation of land services.	<ul style="list-style-type: none"> ▪ Aceh is at risk of falling behind in the adoption of the digital system. ▪ Efficiency and transparency of land services are declining.
Risks of conflict and national disintegration	Significant authority granted to local leaders risks abuse of power in the allocation of land rights, including interference in strategic assets. This could lead to social conflict and national disintegration.	<ul style="list-style-type: none"> ▪ The potential for inter-community conflicts is increasing. ▪ Threats to national stability due to excessive interference by local governments.
Need for comprehensive regulation.	Current regulations are still centralised and do not fully delegate land management authority to Aceh. Comprehensive legal policies are needed to balance local and national interests within the framework of the Unitary State of the Republic of Indonesia (NKRI). Regulatory changes involve significant legal, social and political challenges.	<ul style="list-style-type: none"> ▪ The implementation of special autonomy in land management is hindered. <ul style="list-style-type: none"> ▪ Ineffective governance due to an incomplete regulatory framework.
Limited human resources (HR).	There is a shortage of experts with technical expertise in land management. Expertise in technical and social aspects is crucial for effectively addressing complex land issues.	<ul style="list-style-type: none"> ▪ Ineffective implementation of land management. ▪ High demand for professional training and capacity building.

Source: from several data and managed by the authors, 2025

Furthermore, the authors argue that the Central Government shall transfer its power in land administration to the Aceh Regional Land Agency comprehensively, as required by the relevant legal regulations. Additionally, the Aceh Government is necessary to fulfil its constitutional obligations concerning the implementation of Law No. 11 of 2006 on the Government of Aceh, which explicitly mandates special autonomy, including land management through the establishment of a land management body under Aceh's authority. This is particularly true in the context of the law's implementation. It is conceivable that the uncertainty surrounding the implementation of this law, which may have resulted from presidential supervision or conflicting policies, is a violation of the constitution and a disregard for the autonomy of the Acehnese people to manage their property independently.⁴¹

On the contrary, the failure to implement a law required by the legislature or the president may be sufficient to meet the requirements for impeachment in Indonesia, depending on whether the failure was purposeful or had a significant impact on the community. This is based on the country's constitutional law. Because the region lacks a specialised land management agency, Aceh is unable to thoroughly exercise its particular autonomy in land management, as stipulated by the law. This has resulted in the region's inability to comply with the law. This condition not only impacts the legality of land management but also hinders the ability of Acehnese residents to achieve social and economic justice, as they rely on legal clarity in land-related matters.⁴² The potential for agricultural disputes and public dissatisfaction exists if this uncertainty is not resolved. This is due to the community's belief that the central authority fails to recognise its autonomous rights. In this scenario, the House of Representatives, in its capacity as the representatives of the people, has the authority to supervise the implementation of laws and, if necessary, to propose impeachment to the Constitutional Court. If the president's actions are found to violate constitutional obligations, the Constitutional Court will require the president to submit to the People's Consultative Assembly for the impeachment process.

⁴¹ Masyitah et al., "Factors of Exchange of Waqf Property According to Positive Law and Islamic Law in Indonesia."

⁴² Maria Victoria Cabrera Ormaza, *The Requirement of Consultation with Indigenous Peoples in the ILO: Between Normative Flexibility and Institutional Rigidity* (Leiden: BRILL, 2017).

4 CONCLUSION

The transition of the Regional Office of the National Land Agency (BPN) within the framework of Aceh's special autonomy, as mandated by Article 253(1) of Law No. 11 of 2006 on the Government of Aceh, has not been implemented by the President through the relevant Presidential Regulation. As a result, the Regional Office of the National Land Agency in Aceh remains on par with other regions that lack autonomy. The government has not made a careful decision, failing to establish the Aceh Land Agency (BPA) as part of the regional apparatus, which has led to dualism in land management functions also carried out by the Aceh Land Office. However, there are differences in authority, with the Regional Office of the National Land Agency in Aceh having broader authority. Following the issuance of Presidential Regulation No. 23 of 2015, an inconsistency exists between the provisions of Law No. 11 of 2006 and those regarding the Government of Aceh. Impeachment proceedings against the president may be initiated if it is proven that he has violated the constitution, including failing to implement laws governing land autonomy in Aceh. The ambiguity in land management is considered detrimental to the rights of the Acehnese people in managing their land. The impeachment process must follow strict legal procedures and require evidence that the president has intentionally neglected his duties.

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Both authors contributed equally to the development of this article.

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