

## Management of Missing Person's (Al-Mafqud) Property in Islamic Perspectives: Issues and Challenges

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### Abstract

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Missing person's property currently has been the hot issue in the world especially after MH370 tragedy. In Islam, the missing person is known as 'al-Mafqud'. Missing person's property is difference as compared to inheritance property. Uncertain status person a life or died has create the conflict and their property need to be frozen due to law constraints. This phenomenon raises many issues and problems that become increasingly critical and extremely difficult to resolve. Besides, if the Muslim's assets do not develop, it will give detrimental effect to Muslim. Moreover, if the property is used wisely, it will give a positive impact to the society, economic and education. However, property management of Al-Mafqud is not a simple matter; it involves legal issues, inheritance rights, and various relevant issues. Those issues bring challenge to manage the property of al-Mafqud.

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### 1. Introduction

The missing person's property is not the new issue in Malaysia. In Islamic perspectives, the missing person's known as 'Al-Mafqud' which means the person had unknown status either still alive or not. In 2013, the value of missing person's property was estimated to worth RM66.6 billion still unclaimed (JKSM, 2013). These issues give a negative impact to the heirs, religion, country and society but people generally disregard this issue. However, this issue has been debated since Malaysian MH 370 missing tragedy on 8th March 2014. Until today, there is no conclusion regarding this tragedy. On 29th

January 2015, Malaysia Government declared MH370 is an accident and all passengers and crews are presumed dead. MH370 issue is just a tonic to tell the public about the importance on property management of Al-Mafqud. Although the issue seems small, however the impact is enormous. The uncertainty status affects the property of inheritance. The problem is the property of al-Mafqud or the inheritance will freeze.

The freeze period ends once Al-Mafqud or the heirs come to claim. However, in certain cases heirs are not aware about these issues. The situation worse and when there is a family dispute, because no one even knew the family background of Al-Mafqud. In this paper are focusing the analyzing issues related to property management in perspective mafqud al-Islam. The concept of property in Islam should be understood as providing a best solution suited to the nature of Islam that brought blessings to all mankind. The issue of inheritance Al-Mafqud group states in Islamic Law of Inheritance, which are considered part of the estate or also known as Al-Tarikah. Al-Tarikah means all that is left by the deceased. While from the point of the term also applies to Islamic jurists dispute between scholars' in determining the meaning (Mohd Zamro et al, 2006).

## 2. Property in Islam Perspectives

Wealth is a trust by Allah S.W.T and given to humans as a symbol of wealth in the world. Human received the wealth from God and it is a right to use it and disbursed to the beneficiary through an organized way by *Syarak*. Thus, the administration and management of property in Islam are emphasized with reference to the established concept and rules or laws (Muhammad Ali, 1996). The wealth is a temporary gift from Allah S.W.T as an award to achieve a blessed life. However, property with wise management is contradicting with Islam way (Amir Bahari, 2012).

In Islam different categories of wealth are which are Mutaqawwan, Ghair Mutaqayyam, Mithy, Qimmi, Manqul, Ghair Manqul, Istikhali and Istiklak (Wahbah al-Zuhaili (a), 1984). The property includes a property type Ghair Manqul also known as A'aqar. The concept of A'aqar covers all the things that exist on the surface of the earth such as buildings, water, vegetation and mineral resources that exist below it. Property in Islam has its own unique concept. There are various opinions, estimates and an opinion concerning to this property was said by Muslim jurists. However, despite the different aspects of assessment, goal and purpose are still the same. There are two key features in determining property in Islam (Abd Karim, 1976);

- a. An object that can be stored and collected which can be used as a right.
- b. Objects that can be taken advantage and benefit.

### 2.1 Definition of Al-Mafqud

The definitions of missing person or Al-Mafqud) are:

- (i) It does not look or sound significantly,
- (ii) Cause to disappear does not appear again, and wipe himself
- (iii) Eliminated by not specify whether alive or dead.

Al-Mafqud is defined as someone who are lost from place in a long period without news and no one knows about him and is also unknown whether he is still alive or had pass away (Mustafa, 2005). In another reference Al-Mafqud is defined as someone who is lost from some place without any news and his status is unknown (Wahbah al-Zulhaili (b), 1996).

## 2.2 Period to waiting al-Mafqud for presume of death

There is difference of definition from scholar regarding the period for Al-Mafqud to be declared as dead or known as presumption of death (Muhammad, 2007). Basically, the period of someone missing or disappeared as the main consideration. The scholars have different definition as listed below;

### a) Imam Hanafi

Determination of period should depend on the peer of Al-Mafqud. When peers of Al-Mafqud no longer exist, then the confirmation of the death can be declared. He believes that because during his time, most of the people died around the age of 120 years.

### b) Imam al-Maliki

Al-Mafqud can be considered dead when their ages reach the age around 70 to 80 years old.

### c) Imam Syafie

The missing person will be presumed dead when his entire peer had already gone, whereas in term of age is must past 90 years old.

### d) Imam Hambali

A person is found to be missing in a situation, where the situation was destroyed, like those lost in the war, sailing or in the plane that crashed, then it should be investigated for four years and if one is lost in a condition that is not the case of destruction, like those who go to trade or travel, or study and so it is in this state there are two opinions:

- i. Wait until the 90 years since it was born.
- ii. Handed to Ijtihad of Judge (Judge Decision).

## 2.3 Period to waiting al-Mafqud for presume of death in Malaysia Syariah and Civil Law.

The legal system in Malaysia is divided into two, namely Syariah and Civil law. Each law not just have different period for presume of death, but also have different functions.

### a) Civil Law

Regarding the section 108, Malaysia Evident Act (1950), the period for al-Mafqud can presume of death is 7 years and can declare by Civil High Court and above. The presumed of death from this court can use for the heirs in claim process of inherence property.

b) Syariah Law

Syariah law is under state government Authority. All states in Malaysia (except Terengganu) in Syariah law stated the waiting period for a presumption of death is 4 years. Function of presumption of death from Syariah Court in matters relating to the dissolution of marriage, such as a wife of al-Mafqud who want to remarry and are not valid for property claims.

### 3. Issues in the property Management of Al-Mafqud

On the issue of ownership before somebody is Al-Mafqud, or property acquired during his disappearance, the property cannot be distributed among the heir or nominated until there is death confirmation such as death certificate or after court declaration after certain period. The period is not fix but will depend to the judge to confirm his death. Before probate is any property transaction is illegal because the Al-Mafqud is still assumed alive. The property can also not be inherited wealth but convincingly. After the judge confirmed his death his property passes to the persons entitled to receive it.

#### 3.1 Inheritance of Al-Mafqud's property.

Inheritance means pertain to the legal heirs or the estate and inheritance (DBP, 2012). While the heir are the party entitled to receive an inheritance from a person who had died. In the inheritance of al-Mafqud problem, Abdul Rashid et al, (2013) stated there are two conditions, namely ;

- i. Al-Mafqud as people who inherit property (muwaris).
- ii. Al-Mafqud as heirs will inherit the property.

#### 3.2 Al-Mafqud as Muwaris

After the court issues an order for the presumption of death of Al-Mafqud, the property can be inherited by their families in accordance with the command of Allah in the Qur'an. However, before the property can be distributed to those who are nominated, something should be done by the heirs in advance, the rights related to the estate is divided into five (5) areas namely;

- i. The rights to the goods,
- ii. The right to prepare the funeral bier of the deceased,
- iii. The right to settle the debt.
- iv. Execute a will.
- v. Distribute the remaining inheritance to the heirs of the right according to the position.

#### 3.1 The right to inherit of Al-Mafqud

Al-Mafqud will still be considered alive as long as there is no evidence, or prove of his death or until the judge does not confirm his death. Based on this principle he was entitled to inherit until there is confirms and if there are heirs who will not receive an inheritance in one assumption, this heir cannot inherit the estate because there is a possibility that the missing are still alive.

#### **4. The challenge of property management of Al-Mafqud**

Unclear status of death can create a conflict especially in the issues related to inheritance of Al-Mafqud property to the heirs. Civil and Syariah law barrier have a significant impact (Mohamed Hadi, 2014). This is because basically, Al-Mafqud belonging cannot be claimed by the relatives until a confirmation about the status of death is determined by the court. Due to the problem, new effort is required to solve the real estate of Al-Mafqud issue. In an effort to resolve issues related to real estate of Al-Mafqud, a declaration of presumption must be obtained in advance from the court. However, in the Malaysia Federal Constitution 1957 had two legal systems, Shariah and Civil legislation which states that any legislation should not *ultra-virus*. However in terms of implementation and understanding of the community there is a challenge in order to develop the Al-Mafqud property. Shariah court judge's decision only affects the divorce his wife and not to the issue of succession although the waiting period only just 4 years. The presumption of death issued by the Shariah courts is only received by the Office of the Registrar of Marriages and Divorces in the states but does not mean the division of inheritance (Wan Abdul Halim, 2009). For the purposes of inheritance, based on the Malaysia Evident Act (1950), the Presumption of Death issued by civil high court required. According to the Civil law, which stipulates that a person can be considered dead when is no any news heard from him for seven years by those who would normally have heard of him. However, through the civil legislation, still have a chance for the acquired property temporarily by the government and the heirs, via High Court orders (Syed Iskandar, 2015). But it is rarely practiced because there is no specific law in this case besides it very costly.

#### **5. Benefit the property management of Al-Mafqud**

A number of advantages can be achieved when the Al-Mafqud property can be used for the society and also the development of nation. Since the large value of property can be managed properly and wisely. Without the proper strategy of property management of Al-Mafqud, it will lead to high loss for country. Following are the advantages that can be considered to be applied for Al-Mafqud property:

##### *5.1 Poverty*

A majority of the indigent consists of muslims themselves. This group look so weak that leads to it the other problems such as social issues, education and leading to social issues. Property owned by Al-Mafqud can be developed to eradicate poverty among Muslims. Payment of zakat from Al-Mafqud property and the involvement of the indigent in developing property of Al-Mafqud will create a harmonious society.

##### *5.2 Education*

The formation of human capital in Islamic societies is crucial to ensure continuity and sustainability of the Islam. Various programs such as scholarships, establishment of religious schools, the construction of the universities and short courses can be implemented if the property Al-Mafqud can be defrosted and used towards the better development of human capital.

### 5.3 Economy

The economic power of the Muslim community does not describe as it should be despite being a majority in Malaysia. Equity holdings in company shares and the Muslim community is still weak. Economic empowerment of Muslims is crucial and with existence of proper management of al-Mafqud property, it will give big opportunities.

## 6. Conclusions

The different of perspective in Islam of duration of missing person (Al-Mafqud) have been discussed. Undeclared status of Al-Mafqud affect the property distribution to the heirs and unclaimed property due the status of Al-Mafqud can be use full if the property can be utilize for society especially for development of Islamic society. The advantage of property of Al-Mafqud property also have been presented where can provide benefit to poverty, education and economy. Moreover, the property management of Al-Mafqud properties can be introduced in order to effectively utilize the property. The government should play a big role as well as draft a special law on Al-Mafqud property management as already done in a few countries in the world.

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