



Legal Consequences of *Mafqud* (Missing Persons) Wealth According to Islamic Law

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Abstract

Introduction: A missing person case occurred in one of the villages of Padaelo, Lalolang Village, Tanete Rilau District, Baru Regency, South Sulawesi, where a husband disappeared and after 8 years of disappearance he returned to his house which at that time had been sold by the heirs of his wife and child so that he also reported this to the local village government and the results of the report showed that the wife had sold her house and her inheritance in the form of rice fields and then she returned to her hometown.

Purposes of the Research: Know and study the procedures for determining the assets of missing persons according to Islamic law and explain the legal consequences for assets according to Islamic law.

Methods of the Research: The method used is normative legal research. The research approach is a statutory approach and a conceptual approach. Sources of legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. The technique of collecting legal materials is through literature study and then analyzed through a perspective using qualitative methods.

Findings of the Research: The research results show that the *mafqud*'s legal status must be determined by a judge through a court process before his assets can be distributed. As long as the status is not clear, *mafqud* assets must be frozen and cannot be transferred or distributed. The procedure for determining *mafqud* involves submitting an application by the heirs or interested parties to the Religious Court, taking into account the evidence and the circumstances of the person's disappearance. The legal consequences for *Mafqud*'s assets depend on the judge's decision. If the *mafqud* is declared dead, his inheritance is distributed to the heirs according to the *faraid* provisions. However, if the *mafqud* returns, the property must be returned to him, unless it has been used legally. The role of judges is very important in creating legal certainty and protecting the rights of *mafqud*, heirs and interested parties.

Keywords: Islamic Law; Religious Courts; *Mafqud*.

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INTRODUCTION

The law regulates legal relations. The legal relationship consists of the bond between the individual and society and between the individual himself. These bonds are reflected in rights and obligations, in regulating legal relationships in various ways. Sometimes only obligations are formulated. On the contrary, along with the law, certain events are also the conditions for the emergence of legal relationships.¹

Talking about the legal system, although briefly, it should first be known the meaning of the system, in a system there are certain characteristics, namely consisting of components that are related to each other and in the integrity of an organized and integrated organization.² The law is held with the aim of creating order or peace and more deeply,

¹ Sudikno Mertokusumo. *Mengenal Hukum (Suatu Pengantar)*. Yogyakarta: Cahaya Atma Pustaka, 2010. p. 50.

² R. Abdoel Djamil. *Pengantar Hukum Indonesia*. (Jakarta: RajaGrafindo Persada, 2001). p. 65.

justice in society so that they get the same share.³ The regulation of Islamic Inheritance Law has also been completely regulated and arranged in matters related to the transfer of inheritance from an heir to an heir. In Islamic Inheritance Law, such a process of transition is known as *fara'id* science, which is the science of inheritance distribution, a science that explains the provisions of inheritance that are part of the heirs which are broadly differentiated in two ways, namely: the first as the rules about the division of inheritance, the second as the rules for counting the parts, how to calculate the share of each person who is entitled to the property Legacy.

Some time ago, there were many disasters and accidents in public transportation, especially natural disasters that befell various regions in Indonesia, including mountain eruptions, tsunamis, earthquakes, accidents of public transportation such as airplanes, sunken sea transport ships, and others that caused a lot of damage and casualties as a result of the occurrence of the disaster, both victims who died and those who disappeared without knowing their life and death circumstances. Or people who leave their homes for no apparent reason, but never return or even give no news at all. A lost person will certainly raise its own problems, especially related to the heirs who have the right to inherit the lost person's inheritance (*mafqud*).

The regulation of inheritance law has a very important role in society where Indonesia is a country with a very diverse variety of ethnicities, religions, races, and others. The form and system of inheritance law are very closely related to the form of society and the nature of the family.⁴ Meanwhile, the family system in Indonesia uses a lineage attraction system which has been known to have three types of descendants⁵, among others: parental, patrilineal, matrilineal.

The law of inheritance has a very close relationship with human life, especially in terms of the family. This is because every human being will experience a very important legal event in his life and is also the last legal event in his life, namely death, in a legal event of death it will automatically cause a legal consequence, namely regarding the management of rights and obligations for the person he leaves behind. The settlement and management of rights and obligations as a result of legal events due to the death of a person is regulated by inheritance law. Also included in these rights and obligations is the management of the property of the deceased person. The law of inheritance regulates the affairs of a person's property after he dies.⁶

The determination of *mafqud* for a lost person is very important, because this determination will be used to determine the position of *mafqud* in terms of obtaining inheritance rights and obligations.⁷ Talking about a lost person or *mafqud* in inheritance concerns 2 (two) things, namely the position of *mafqud* as an heir or the position of *mafqud* as an heir. If he is an heir, then his heirs need clarity of status about his existence (whether the person concerned is still alive or has died) so that the law of inheritance and inheritance is clear, and if as an heir, *the mafqud* is entitled to a share according to his status.⁸ The

³ Soeroso. *Pengantar Ilmu Hukum*. (Jakarta: Sinar Grafika, 2014). p. 27.

⁴ Hazairin, *Hukum Kekeluargaan Nasional* (Jakarta: Tinta Mas, 1968). p. 14.

⁵ Wirjono Prodjodikoro, *Hukum Warisan Di Indonesia* (Bandung: Vorkink Van Hoeve's Graven Hage, 1966).p. 23.

⁶ L. J. Van Apeldoorn. *Pengantar Ilmu Hukum*. (Jakarta: Pradnya Paramita, 2014), p. 222.

⁷ Akhmad Faqih Mursid, Arfin Hamid, and Muammar Bakry, *Penyelesaian Perkara Mafqud di Pengadilan Agama*, Jurnal: Program Magister Kenotariatan, Fakultas Hukum, Universitas Hasanuddin, Makassar, 2014, p. 5.

⁸ Abdul Manaf (Hakim Tinggi Pengadilan Agama Medan), *Yurisdiiksi Peradilan Agama Dalam Kewarisan Mafqud*, www.pabengkulukota.go.id.

determination of *mafqud* for the lost is very important, because this determination will be used to determine the position of *the mafqud* in terms of obtaining inheritance rights and obligations. If he is an heir, then his heirs need clarity of status about his existence (whether the person concerned is still alive or has died) so that the law of inheritance and inheritance is clear, and if as an heir, *the mafqud* is entitled to a share according to his status.

The determination of *the status of mafqud* in the study of Islamic jurisprudence, whether the person concerned is still alive or has passed away, is very important because it involves many aspects, including in inheritance law. As an heir, *mafqud* is entitled to a share of his status, whether he is a *dzawil furud* or as a *dzawil asobah*. Meanwhile, as an heir, of course the heirs need clarity on the status of their death, because this status is one of the conditions to be able to say that the inheritance of *the mafqud* concerned is open.

The sources of law that can be used as a basis in inheritance matters are the Quran, hadith, and ijma of scholars. The Quran and Hadith are agreed upon by most scholars of fiqh as the main source of Islamic Law. In addition, there are several fields of study that are closely related to the sources of Islamic law, namely: *ijma'ijtiḥad, istishab, istislah, istihsun, maslahat mursalah, qiyas, ray'yu, and 'urf*.⁹ Based on the source of the law, inheritance can occur if the pillars of inheritance are fulfilled, including heirs, heirs, and inheritance, if one of the pillars is not fulfilled, then inheritance cannot be carried out. The distribution of inheritance can be carried out if absolute conditions are met, namely the death of the heir, the life of the heir, the status or position in the distribution of inheritance.¹⁰ In determining the status of *the mafqud* (whether he is still alive or dead), the jurists tend to view it in a positive light, namely by assuming that the missing person is still alive, until it can be proven by evidence that he has died. Iman Shafi'i is of the opinion that a person who has been missing (*mafqud*) for a long time and it is not known whether he is still alive or dead, then that person should be punished for life until it is known for sure.

Provisions in a *mafqud case*, the party who wants to apply for the determination of *mafqud*, can submit his application to the Religious Court. The *mafqud* case is one of the authorities or competencies of the Religious Court. This authority is as regulated and explained in Article 49 of Law Number 3 of 2006 concerning Religious Courts, namely: "The Religious Court has the duty and authority to examine, decide, and resolve cases at the first level between Muslims in the fields of: Marriage, Inheritance, Waqf, Grants, Zakat, Infaq, Sadaqah, and Sharia Economics". Article 96 paragraph (2) of the Complications of Islamic Law is also used as a reference, as explained in the article, namely: "the distribution of joint property for a husband and wife or their lost husband must be suspended until there is certainty of actual death or legal death on the basis of the decision of the Religious Court". In addition to the above article, in jurisprudence to determine the circumstances and period of time that a person is considered to have been *mafqud* is the authority of the judge of the Judicial Institution (judge), not the authority of other institutions, let alone an individual.

The judge in deciding a person who *has died* has died under the following circumstances:¹¹ 1) The person concerned is missing in a situation where he should be considered as having perished such as due to a sudden attack or in a state of war; 2) The person concerned left for a purpose, but never returned. In these two cases, the judge may decide that the person concerned has died after a grace period of 40 years since his departure

⁹ Ali Zainuddin, *Hukum Islam*, (Jakarta: Sinar Grafika, 2005), p. 13

¹⁰ Syuhadah Syarkun, *Menguasai Ilmu Fara'idh*, (Jakarta: Pustaka Syarkun, 2014), p. 6

¹¹ "mafqud" <http://repository.ucu.ac.id/handle/123456789/57827>

(madhhab Imam Ahmad); 3) The person concerned is missing in a tourist activity or business affair. In this case, the judge decided the death of the person in question based on his own consideration.

There are two opinions regarding the decision of a missing person, namely, waiting until the person concerned is 90 years old because usually above this age there is a slim chance for a person to be able to survive. Or it is left to the judge's consideration. Not only in the study of Islamic jurisprudence, the determination of the death of *mafqud* is the authority of the judge. The Compilation of Islamic Law also determines this. This can be seen based on the provisions of Article 171 letter b which states that: "An heir is a person who at the time of death or who is declared dead based on the decision of an Islamic court, leaving behind his heirs and inheritance". In addition, in Book II, it has also been expressly stated that one of the contents of the *voluntary jurisdiction* of the Religious Court is the matter of requesting that a person be declared in a *state of mafqud*. To find out the status of the heirs mentioned above, this case was submitted to the court judge. Religion to provide determination by taking into account the benefits of either the *mafqud* himself or for other heirs, in which a judge must use clear reasons, so that later it can give clear implications for the loss of the heir.

Another problem occurred when after the judge handed down a verdict on the death of *the mafqud*, and it turned out that *the mafqud* was suddenly present in good health while the *mafqud*'s property had been distributed. According to ushul fiqih, *the property of the mafqud* that has not been extinct since his death, still cannot be inherited, because the person *istihab*, is still as it was at the beginning, that is, he is still alive, so that his property also remains as the owner.¹² However, the practice of its implementation in the Religious Court, whether or not the authority to determine the status of *mafqud* is still debated.¹³ This happened in one of the villages of Padaelo, Laalang Village, Tanete Rilau District, Baru Regency, South Sulawesi where a husband disappeared and after 8 years of disappearance he returned to his house which at that time had been sold by the heirs of his wife and own child so he also reported this to the local village government and as a result of the report it was known that the wife had sold her house and her inheritance in the form of rice fields back in his hometown.

METHODS OF THE RESEARCH

This paper uses normative legal research methods because the focus of the study departs from the ambiguity of norms, using approaches: a legislative approach and a conceptual approach. The technique of tracing legal materials uses the technique of literature / document study, and the analysis of the study uses qualitative analysis.

RESULTS AND DISCUSSION

A. Provisions for the Distribution of Inheritance in Islamic Law

The provisions as an Indonesian nation which are based on one of the sources of law, namely Islamic Law including the Qur'an, As-Sunnah, and Ra'yu which are faced with such complex problems about Islamic heritage in Indonesia, often cause difficulties in deciding

¹² Syarifuddin, *Hukum Kewarisan Islam*, (Jakarta: Prenada Media Group, 2015), p. 139.

¹³ Amin Husein Nasution, *Hukum Kewarisan; Suatu Analisis Komparatif Pemikiran Mujtahid Dan Kompilasi Hukum Islam*, (Jakarta: Raja Grafindo Persada, 2012).

and considering something that still does not have permanent legal force, as is the case in inheritance that occurs if a person is considered lost (*Mafqud*).

This inheritance problem makes fiqh scholars and judges of the Religious Court have to dig up the truth, justice and evidence that supports the *Mafqud* event. Therefore, it is necessary to have the main clarity on the status of a lost person so that there is clarity from the signs of the still life of their ark, because one of the basic principles of Islamic law is for eternity, where both partners show that marriage is carried out to carry out offspring and foster love and affection throughout life.

Studying Islamic inheritance law, especially talking about the determination of *mafqud*, cannot be separated from the existence of four mahzab that inspire all joints of life and legal deeds of Muslims. Mahzab is the main study in interpreting the teachings of Islam. This mahzab is linguistically a road or a place to walk or the foundation and basis of Islamic fiqh. Mahzab comes from the word "*dzahaba*" which means the road or place passed. Meanwhile, according to the term fiqh scholars, mahzab is following something that is believed.

There are four major mahzab that are embraced in Islamic history as the foundation of Islamic Fiqh with the number of authentic evidences Rasullullah Shallallahu 'Alaihi Wasallam. Namely Mahzab Hanafi, Maliki, Shafi'i, and Hambali. These four Mahzab affirm the determination of a person who is declared dead after disappearing within a certain period of time: 1) The Hanafi school holds that a missing and unknown person can be declared a dead person by looking at a person of his age in his area (where he lives). If people of his age no longer exist, then he can be decided as a dead person. From Abu Hanifah in his narration states that "the limit is 90 years"; 2) The Maliki school argues that the limit is 70 years. This is based on *the* hadith in general which states that the age of the Prophet Muhammad (saw) is between 60 years and 70 years. Another narration, from Imam Malik, states that the wife of a person who disappeared in the Islamic territory until his whereabouts were unknown was allowed to file a lawsuit with a judge to find out the possibilities and with whom he could recognize her whereabouts or obtain information clearly through existing means and infrastructure. If the step is deadlocked, then the judge gives a limit for his sentence for 40 years to wait. If the period of 40 years has ended and the lost has not been found, then he begins to calculate *his iddah as is customary for a wife who is left dead by her husband, which is 40 days*; 3) Madhhab Shafi'i states that the limit of time for a missing person is 90 years, that is, by looking at the age of the people of his age. However, the most valid opinion according to Imam Shafi'i is that the time limit cannot be determined or ascertained, but it is enough to what the judge thinks and sees, then he sentences him as a dead person. Because according to Imam Shafi'i, a judge with *ijtihad* then verdicts that the missing person is a dead person, after a certain time has passed; 4) Mahzab Hambali is of the opinion that if the missing person is in a situation where his death is possible such as in the event of a war, or is one of the passengers of a sinking ship, then he should seek clarity for 4 years. If for 4 years it has not been found or the news is not known, then the property can be distributed to the heirs. Likewise, his wife can go through his *iddah* period, and he can remarry after his *iddah* period is over.¹⁴

Missing persons (*mafqud*) are a problem in inheritance law because the certainty of life or death is a basic condition in inheritance, in an important inheritance it is required to be certain of the death of the heir and the certainty of the life status of the heir when the heir

¹⁴ "empat mahzab" melalui, <https://kabarislamia.com/2012/02/11/mengenai-imam-hanafiimam-malik-imam-syafii-dan-imam-hambali/>.

dies. Regarding the legal status of the lost person (*mafqud*) regarding the inheritance of *the mafqud*, it is necessary to separate the position:¹⁵ 1) The position of *the mafqud* as the heir: The position of *the mafqud* as the heir, the scholars agree that *the mafqud* is considered to be alive during the period of loss and therefore his property cannot be distributed to the heirs until there is clear news that he has indeed died or was sentenced by a judge about his death; 2) The position of *the mafqud* as the heir.

The position of *the mafqud* as the heir, the part for *the mafqud* is held first until it is clear that he died, the reason is that *the mafqud* is still doubtful about his death, can cause problems, if after being distributed it turns out that he is still alive, unless it is believed that he died or there has been a court decision that decides that legally *the mafqud* has died. In addition, it is the legal result of the missing person (*mafqud*) whose status is not yet clear, namely: a) The wife of a lost person (*mafqud*) should not be married; b) The property of a lost person should not be inherited; c) The rights of the missing person (*mafqud*) cannot be spent or transferred.

The inadmissibility of the three things above until the missing person is clearly known in his status, namely whether the missing person is still alive or dead. If it is still in doubt, then its status must be considered as still alive in accordance with its original condition. Regarding who has the right to determine a missing person who has passed away, only the judge, namely with an application for the determination of a missing person.

The legal status for a missing person (*mafqud*) that contains uncertainty about going through a legal procedure that then turns into a legal suspicion that the missing person (*mafqud*) is considered to have died. The suspicion after exceeding a certain time turns into a certain circumstance in which the person is declared dead, and the inheritance left behind can be inherited to his heirs, as well as the husband / wife who is left behind can marry another party.

B. Legal Certainty of the Distribution of Inheritance for Missing Persons

Utrecht interprets that legal certainty contains two meanings. First, legal certainty is the existence of general rules that make individuals know what actions can or cannot be done; Second, it is in the form of legal security for individuals from government authority because with these general rules, individuals can know what the state can impose or do on individuals.¹⁶

The principle of legal certainty has a meaning where it is certain or patent of a law because there is a concrete force for the law in question. This principle is considered to be a protection or shield for justice seekers (*judiciary*) against an arbitrary action, so that there is hope of obtaining something desired under certain circumstances. Legal certainty consists of concrete law and legal security¹⁷. It is hoped that with legal certainty, everything will run more orderly in accordance with the applicable law. The task of the law is to create a legal certainty that aims to create public order. The definition of certainty is a definite state, provision, or stipulation, the law is considered to be certain and fair. Legal certainty is considered to be only normative answers.¹⁸

¹⁵ *Ibid.*,

¹⁶ Riduan Syahrani, *Rangkuman Intisari Ilmu Hukum* (Citra Aditya Bakti 1999), p. 11.

¹⁷ Mario Julyano, and Aditya Yuli Sulistyawan. "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum" *Crepidus* 1, no. 1 (2019): 13-22.

¹⁸ Dominikus Rato, *Filsafat Hukum Mencari: Memahami dan Memahami Hukum* (Yogyakarta: Laksbang Pressindo 2010), p. 59.

Based on the opinion expressed above, it can be concluded that the scope of legal certainty is quite broad, consisting of rules that allow or do not allow individuals to do something, and guarantee legal security for each individual, in the judicial process the judge has a great responsibility related to creating a legal certainty. Legal certainty can be realized for everyone if there is a concrete event. There should be no deviation from the applicable law, this is the ideal of legal certainty.

The law is for humans, so its implementation must provide a benefit to society. Legal certainty is closely related to the understanding of legal positivism, which argues that the only source of law is law, justice is only the application of concrete events from law.¹⁹ Definisi hilang menurut kamus Kamus Besar Bahasa Indonesia adalah²⁰: a) Nothing more, vanished, invisible. A person suddenly does not exist without a clear cause, invisible to the eye; b) No longer remembered, vanished. The person has fame or is still popular but is not known for an event; c) None, no more to be heard. A person who is often seen in the surrounding environment suddenly because an event happened to him is no longer heard, so that the surrounding environment that usually hears his voice or conversation is now no longer heard.²¹

Absence or *afwezigheid* is a person who leaves his residence without appointing authority to represent him in taking care of all his interests²². Because in the event of a person's absence does not stop his status as a subject of law, there needs to be an arrangement. A person who is absent usually leaves his residence for a relatively long time even until he does not return for an interest or there is an event that occurs without the power to take care of his interests.

The term fiqh is called *mafqud*, which is a person who leaves, there is no news and his whereabouts are unknown, and it is not known whether the person is still alive or has died.²³ Absenteeism is regulated in Civil Code Articles 463 to 495, in Civil Code Article 463 it is explained "If a person leaves his place of residence without giving power of attorney to represent his affairs in managing his property, and he does not manage his affairs and interests or if the power of attorney granted is no longer valid". The meaning is that if a person leaves his place of residence without giving power of attorney to another person, then he is said to be absent because of the statement he is unable to carry out his rights and obligations.

The elements in Article 463 of the Civil Code that must be fulfilled if a person is declared absent are: 1) Leaving his place of residence; 2) Not giving to represent his affairs to others as his representative to take care of all his interests; 3) Appointing a power of attorney but the grant or deadline of the power of attorney has expired or expired; 4) When an urgent situation arises to manage the property in whole or in part; 5) Legal action must be taken to fill the vacancy as a result of the absence in order to appoint a representative from it.

Temporary Action Period, in the Civil Code This period is regulated by Articles 463-456, this is the first period that occurs when a person leaves his residence without leaving power.

¹⁹ Hasaziduhu Moho, "Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, dan Kemanfaatan" *Warta Dharmawangsa* 13, no. 1 (2019): 1-13. <https://doi.org/10.46576/wdw.v0i59.349>

²⁰ KBBI Daring (5th edn, 2016), p. 52.

²¹ Mirna Riswati, "Analisis Komparatif Kewarisan Mafqud (Orang Hilang) Berdasarkan Hukum Islam dan Hukum Perdata" *Syaksia: Jurnal Hukum Perdata Islam* 20, no. 1 (2019): 61-98.

²² Ending Heriyani and Prihati Yuniarlin, "Perlindungan Hukum Bagi Ahli Waris yang Tidak Hadir (Afwezig) dalam Pembagian Harta Waris di DIY" *Transparansi Hukum* 2, no. 1 (2019): 17-30.

²³ Sarina, Nilla Nargis, and Siti Nurhasanah, "Penyelesaian Waris Bagi Ahli Waris Mafqud Menurut Hukum Waris Islam" *Pactum Law Journal* 2, no. 3 (2019): 810-820.

Temporary action is only taken if there is an urgent reason to take care of all or part of the property. How to request this interim action with an interested person related to the property or the prosecutor requests it to the district court. After asking the district court, the Judge will then give an order from the Heritage Center to take care of the property and interests of the "absent person". BHP has an obligation to: a) Make a record of the property whose affairs are handed over to it, such records should be made before sealing; b) Bring a list of asset records, papers, cash, and valuable papers to the BHP office; c) Pay attention to all provisions for guardians related to the management of a child's property, unless the judge orders otherwise; d) Every year the BHP officer must give his responsibility to the prosecutor by giving or showing management papers and effects.²⁴

The period when there is a legal suspicion of death, regulated in Civil Code Articles 467-470, this period is the second period, which occurs when: 1) the "absent person" disappears or is absent from his place of residence within 5 years and does not leave a power of attorney; 2) he is absent for 10 years, there is a power of attorney but it has expired; 3) Absent for 1 year, the person is confirmed as a crew or passenger of a ship or aircraft; 4) Absent for 1 year, the person is confirmed missing due to an event that befalls and results in a fatal event (loss of contact, fall, sinking) such as hitting a ship, or aircraft. In the event of death for the crew or passengers of the aircraft or ship, the calculation is calculated one year from the last news, and if there is no news, it is calculated from the day the crew or passengers depart.

The period of the defensive heir, regulated in Article 484 of the Civil Code, this period only begins after 30 years or 100 years after the birth of the absentee with the statement of presumption of death that has been stated in the court decision. The period of the defensive heir causes a consequence, among others, as follows: a) Exempt from all guarantees; b) The heirs can continue to maintain the distribution of the inheritance that has been carried out or make a separation of assets and defensive divisions.

In the absence and non-return or there are signs that he is still alive after the period of defensive inheritance, then the absentee has the right to request his property to be returned as it should be along with all the assets that have been transferred, without interest, income from the property and without interest. Regarding the existence of a will grant or inheritance falling to the absentee who turns out to have died, the recipient of the transferred property can only control the property after a court determination permit.

So in the Civil Code, the result of the absence is the taking of temporary action who can apply only those who are interested or the prosecutor, declared to be probably dead. From the legal consequences above, to the fact that the "absent person" may have died, it can end if there is news from the person and it turns out that he is still alive. The 'maybe' situation will also end after a doctor's statement that the person has actually died. The existence of a court determination related to the statement that a person may have died is very important, especially in family relationships because the loss of one of the partners for two years will result in divorce law.

It is explained in Article 468 of the Civil Code, "if on a third summons the person who may be declared missing or his power of attorney does not come to face, even though it has been advertised in the newspaper, then at the request of the prosecutor the court can state

²⁴ *Ibid.*, 31.

that there is a legal suspicion that the absentee has died since the day he left his residence, or since the last news, that day must be clearly stated in the decision".

As for the effect of absence for the heirs in Article 490 of the Civil Code, if the person is not present, in an uncertain state of life or death, then the inheritance or grant of the will falls where the inheritance becomes the right of another person who is entitled to the inheritance or grant of the will, or must be shared with other people, where the inheritance or grant of the will is divided because it is as if the absent person has died without any obligation. To prove the death of the "absent person", from him must obtain permission or determination from the District Court in the area of his residence, and the court is obliged to make public summonses and order security regulations for the needs of interested persons, in Article 492 of the Civil Code, it is explained that if later the absentee returns home, or on his behalf his rights are demanded, then the return of the proceeds and income can be requested from the day the right arrives to him on the basis and in accordance with the provisions of Article 482 of the Civil Code.

The legal consequences after the determination of death for the "absent person" are regulated in the Civil Code in the event that if the absentee leaves a power of attorney to take care of his interests, it must be waited for 10 years from the last news from the person, after which a request can be submitted for the determination of the absentee to be declared dead. After the determination of the judge, the heirs have the right to divide the property with a guarantee that they will not sell the property.

Then if a person goes missing without giving a power of attorney to take care of his interests, the interested family can file an application to the court directly without waiting ten years for a decision to be made on the distribution of wealth and certainty of the death of the missing person based on the Judge's decision, or they can report to the police that one of their family members is missing to conduct investigations and advertisements in the media such as newspapers, In taking care of his interests, the judge will order BHP and if the missing person's wealth is not much, it is enough to hand it over to his family appointed by the judge.

The legal consequences of absenteeism can also cause a problem with the property that he leaves behind because every object left by a deceased person must have an owner, in Article 833 paragraph (1) of the Civil Code, the heirs themselves acquire ownership rights to all goods due to the law, and all rights and receivables of the deceased person. Article 874 of the Civil Code also explains that all the assets of a person who dies belong to his heirs, so every object must have an owner, in this case there must be a transfer of wealth from the heir to the heir. Then in this state of absence it raises a problem of legal uncertainty about his status and the wealth he has.

C. Legal Consequences of Property for Missing Persons According to Islamic Law

The arrangement of missing persons in Islamic law is known in Arabic as *Mafqud* which means a person who has long since left his place of residence, whose news is unknown, whose domicile is unknown, and whose life and death are unknown. The meaning of property in Islam is linguistically known as *al mal*, which according to the Arabic meaning is anything that a human person has, *mal* is grouped into immovable property (*aqar*) movable property (*mal maqul*, *mal naqli*), and can also be classified into exchangeable property (*misli*) and non-exchangeable property (*qimi*), while the form of ownership can be seen from its origin, namely original ownership and ownership from others: 1) Original

ownership is obtained through objects that there was no previous owner (*res nutlius*); 2) Ownership comes from another person, occurs in several ways: a) Through the transfer of ownership by means of transfer of control by surrender (*taslim*) and acceptance of possession (*qabd*), receiving surrender (*tassalum*), receipt (*istgfa'*), and reciprocal acceptance of control (*taqabud*), this way of ownership occurs in relation to a number of obligations; b) Ownership through transactions with transactions with transactions with transactions where rights *in rem* give rise to ownership without receiving control; c) Guarantee (*rahn*), occupying a special position, since the possession is taken but the ownership is not transferred, the transfer only occurs under certain conditions as a result of the contract.

The provision in Islamic law, when the heirs want to get a certainty from someone who has gone and the news is cut off, it is not known where he is and whether he is still alive or has died, then the heir can apply for a determination from the judge, the judge's decision is sometimes based on evidence, such as the testimony of a just person, Sometimes based on signs that are not appropriate to be a postulate, namely the time limit. The first circumstance, his death is certain and permanent, since there is evidence of his death. While in the second circumstance, the judge decides the death of *the mafqud* based on a certain time limit, then the death is a legal death because there is a possibility that he is still alive. The occurrence of inheritance due to death is an absolute condition for inheritance from the deceased to the left behind, but the condition alone is not enough, there are several other requirements that must be met in order for the validity of the inheritance, as for matters related to the validity of inheritance depending on 3 things, namely: 1) Certainty of the death of the owner of the legacy, either by dying normally, namely death that occurred due to natural causes due to his death which can be proven by the statement of the doctor or the authority for it or death based on the decision of the judge related to the person who is considered lost; 2) Certainty of the heir's life after the death of the owner of the inheritance, if it is not known for sure about the life or death of the heir after the death of the owner of the inheritance, such as in the case of a victim of fire, flood, buried destroyed house, and so on, then there is no inheritance between them, in this case their respective inheritances are divided among their own surviving families; 3) Absence of any of the barriers to inheritance. The certainty of death is very important because it aims to protect one's property, under normal circumstances, a person can be called dead if it can be proven without the need for a judge's decision then the property left behind can be distributed to the heirs, but the problem of inheritance status becomes a problem when it is not known for sure whether the owner of the property has died or has not died because his whereabouts are unknown the owner of the property and likewise if the deceased can be proven to be dead, but the heirs are not known to be alive or have also died because their whereabouts are unknown. The above is known as *mafqud*, in the sense of inheritance law *the mafqud* is a person who is missing and has been disconnected from information about himself so that it is no longer known about the circumstances concerned, whether he is still alive or dead, for that his status must be ascertained by the judge's decision.

The case of the Missing Person against Muhammad Zain who was declared to have left the applicant his own wife but shortly after 8 years later Muhammad Zain returned, the inheritance in the form of houses and rice fields was sold by the petitioners in this case there were a lot of irregularities because basically and should have inherited the inheritance on the basis of the death of someone and then the property could be inherited. Before *the mafqud* gets clarity on its legal status, the heirs cannot immediately divide the assets left

behind, the heirs must be responsible for maintaining and storing the assets left by a *mafqud* until there is clarity on its legal status.

The Compilation of Islamic Law does not have a law that regulates *mafqud* in a unified manner. The Compilation of Islamic Law states that an heir is a person who at the time of death or who is declared dead based on an Islamic court decision, leaving behind an heir and inheritance. Heirs are people who at the time of death have a blood relationship or marital relationship with the heir, are Muslim and are not prevented by law from becoming an heir.

The elements of inheritance emphasize the importance of certainty over the death of the heir so that there can be an inheritance which then the inheritance's property will transfer to the heirs. Likewise, in determining the legal status of *mafqud* so that the inheritance process of the *mafqud's property* is not hindered by the legal status of the *mafqud* and can transfer power to the heirs, in the Compilation of Islamic Law, there are no special regulations that discuss the procedure for summoning a person and determining the status of this *mafqud*.

In *mafqud* cases like this, judges usually not only use legal rules related to Islamic law, but also based on the Civil Code, because Indonesia still uses legal pluralism and is also in accordance with Article 1 of the Transitional Rules to the 1945 Constitution which states that the Civil Code is still used in determining a legal provision as long as there are no other legal rules governing it. In addition, Article 7 paragraph (1) and paragraph (4) of Law Number 10 of 2004 concerning the Establishment of Laws and Regulations, that the Presidential Instruction has binding legal force in the legislative order.

Article 2 of Law Number 50 of 2009 concerning the second amendment to Law Number 7 of 1989 concerning Religious Courts, states that the Religious Court is one of the implementers of judicial power for the people seeking justice who are Muslims regarding certain civil cases regulated in this Law. So that the public, especially Muslims, will seek justice in various matters related to the field of Islam. Based on Article 49 Paragraph 1 of the law, the law also states that the Religious Court has the duty and authority to examine, decide and settle cases at the first level between Muslims in the field of: a) Marriage; b) Inheritance of wills, and grants, carried out under Islamic Law; c) Waqf and shadaqah.

Article 49 letter b reads "...as well as the determination of the court on a person's application on the determination of who is the heir...". So that in the case of *mafqud* above, it is closely related to the determination of heirs and the distribution of inheritance. Judges in court in the process of determining legal status will need evidence, both evidence in the form of related letters and witnesses. The evidence presented is evidence that must meet the formal and material requirements as evidence and have perfect and binding evidentiary force as referred to in Article 1870 of the Civil Code. And also the witnesses presented must be in accordance with what has been determined in the legislation.

Law Number 50 of 2009 and the Compilation of Islamic Law as formal and material laws of the Religious Court have not clearly and detailed the procedure for summoning those who leave for a long time without news then to be declared dead, except in Article 171 letter b of the Compilation of Islamic Law which requires a declaration of death The judge's consideration is also carried out by looking at several things, including: 1) Lost in a situation where it should be considered that he has perished; 2) Left for a purpose, but never returned; 3) Lost in a tourist activity or business affair; 4) By paying attention to friends of the same

age or generation as the person concerned, if the friends of the same age or generation of *mafqud* have died.

The investigation in the field proves that, the lawsuit against the missing person, namely Muhammad Zain who sold his property and demanded to be returned to the house and his assets that were sold on the previous determination of the judge's decision stating that Muhammad Zain himself had been missing or *mafqud* for 8 years and finally abandoned by his wife's children again. In the case of *Mafqud* as an heir, the scholars agree that the missing person is still considered alive during the period of loss and therefore his property cannot be distributed to the heirs and also his wife remains in the status of wife. *Mafqud* as an heir, the inheritance of the heir is completely frozen and still remains his, that is, until his death is manifest or the law stipulates his death and cannot be given to the heirs for a while until *the inherited mafqud* comes or it is known where it is. If the *mafqud* is still alive, then he is entitled to inheritance according to his share. However, if the *mafqud* has been determined to have died, then the inheritance of his share is given to other heirs who are entitled to receive according to his share.

The regulation of Islamic law (*fiqh*), the status of a person's lost property (*mafqud*) and then back again is regulated by the principles of justice and protection of rights. Regarding the legal consequences on the property of a lost person and returned again according to Islamic law: 1) Status of a Lost Person (*mafqud*): A lost person (*mafqud*) is a person whose whereabouts are unknown, whether he is still alive or dead. His legal status in Islam is determined based on strong evidence or conjecture (*zhann*) about his life: a) If there is a strong suspicion that the person is still alive (e.g., there is news or evidence), then his or her rights, including property, are still protected; b) If there is a strong suspicion that the person has died (e.g., missing in life-threatening circumstances), then his or her status can be decided as deceased by the court (judge). 2) Management of Assets During Loss: As long as a person is declared lost, their assets should not be neglected or taken over unilaterally. Islamic law stipulates that the property must be managed properly: a) The guardian or executor (manager of the property) can be appointed by the judge to take care of the property; b) The property is used for legitimate purposes, such as meeting the needs of the abandoned family or paying its debts; c) If there is no urgent need, the property must be kept and should not be distributed as an inheritance until the person's status is clear. 3) If the Lost Person returns, then: a) His property is returned to him in full, including what remains of the management of the property during his or her absence; b) If the property has been used for a legitimate purpose (such as meeting family needs or paying debts), then such use is considered legitimate and does not need to be refunded; c) If the property has been distributed as an inheritance because it is decided that he has died, then the property must be returned to the person concerned, unless the heirs have used it legally and it cannot be returned. If the court (judge) decides that the person has died based on strong evidence or suspicion, then: 1) His wealth is distributed as an inheritance to the entitled heirs according to the provisions of *faraid* (Islamic inheritance law); 2) If it turns out that the person returns, then the heirs must return the inheritance they received, unless the property has been legally used up.

Islamic law places great emphasis on prudence in determining the status of a missing person and the management of their property. This aims to: a) Avoid injustice to the disappeared; b) Protect the rights of heirs and interested parties; c) Ensure that the property is used for legitimate purposes. Some of the postulates and principles underlying this are:

1) Q.S. An-Nisa: 5-6: Allah commands to take care of the property of orphans and not to eat them illegally.; 2) Hadith of the Prophet: "It is not lawful for a Muslim's wealth except with his willingness." (HR. Ahmad); 3) Ijma' ulama: The scholars agree that the property of the lost person should be guarded until its status is clear.

Here the researcher explains that looking at Islamic law, the property of the lost person must be managed carefully and fairly. If the person returns, the property is returned to him, unless it has been used legally. If declared dead, the property is distributed as an inheritance, but if it turns out that he returns, the heir must return the property. The main principle is to safeguard the rights of all parties and avoid injustice.

CONCLUSION

The procedure for determining mafqud involves submitting an application by the heirs or interested parties to the Religious Court, taking into account the evidence and the situation of the loss of a person. The legal status of *the mafqud* must be determined by the judge through a court process before his wealth can be distributed. As long as the status is unclear, the mafqud property must be frozen and must not be transferred or distributed, so if a person who is lost returns after his inheritance is distributed, then his legal status must be reviewed by the Religious Court. The judge will determine that the person is still alive and order the return of the inheritance that has been distributed. This procedure ensures that the rights of the returnee are protected and justice is upheld in accordance with sharia principles. The legal consequences for *the mafqud's* property depend on the judge's decision. If *the mafqud* is declared dead, his inheritance is distributed to the heirs according to the provisions of faraid. However, if the mafqud returns, the property must be returned to him, unless it has been used legally. The role of judges is very important in creating legal certainty and protecting the rights of *mafqud*, heirs, and interested parties. The need for clearer and more detailed regulations in the laws and regulations regarding the status of *MAFQUD*, including the period and procedures for its determination. In addition, it is necessary to strengthen the role of *Baitul Mal* in managing *mafqud* assets that are unknown to the owner or heirs.

REFERENCES

- Abdul Manaf (Hakim Tinggi Pengadilan Agama Medan), *Yurisdiksi Peradilan Agama Dalam Kewarisan Mafqud*, www.pa-bengkulukota.go.id.
- Akhmad Faqih Mursid, Arfin Hamid, and Muammar Bakry, *Penyelesaian Perkara Mafqud di Pengadilan Agama*, Jurnal: Program Magister Kenotariatan, Fakultas Hukum, Universitas Hasanuddin, Makassar, 2014.
- Ali Zainuddin, *Hukum Islam*, (Jakarta: Sinar Grafika, 2005).
- Amin Husein Nasution, *Hukum Kewarisan; Suatu Analisis Komparatif Pemikiran Muftahid Dan Kompilasi Hukum Islam*, Jakarta: Raja Grafindo Persada, 2012.
- Dominikus Rato, *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*, Yogyakarta: Laksbang Pressindo 2010.
- "empat mazhab" melalui, <https://kabarislamia.com/2012/02/11/mengenal-imam-hanafiimam-malik-imam-syafii-dan-imam-hambali/>

- Ending Heriyani and Prihati Yuniarlin, "Perlindungan Hukum Bagi Ahli Waris yang Tidak Hadir (Afwezig) dalam Pembagian Harta Waris di DIY' *Transparansi Hukum* 2, no. 1 (2019): 17-30.
- Hasaziduhu Moho, "Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, dan Kemanfaatan" *Warta Dharmawangsa* 13, no. 1 (2019): 1-13. <https://doi.org/10.46576/wdw.v0i59.349>.
- Hazairin, *Hukum Kekeluargaan Nasional*, Jakarta: Tinta Mas, 1968.
- L. J. Van Apeldoorn. *Pengantar Ilmu Hukum*. Jakarta: Pradnya Paramita, 2014.
- Mario Julyano, and Aditya Yuli Sulistyawan. "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum" *Crepido* 1, no. 1 (2019): 13-22.
- Mirna Riswati, "Analisis Komparatif Kewarisan Mafqud (Orang Hilang) Berdasarkan Hukum Islam dan Hukum Perdata" *Syaksia: Jurnal Hukum Perdata Islam* 20, no. 1 (2019): 61-98.
- R. Abdoel Djamal. *Pengantar Hukum Indonesia*. Jakarta: RajaGrafindo Persada, 2001.
- Riduan Syahrani, *Rangkuman Intisari Ilmu Hukum*, Citra Aditya Bakti 1999.
- Sarina, Nilla Nargis, and Siti Nurhasanah, "Penyelesaian Waris Bagi Ahli Waris Mafqud Menurut Hukum Waris Islam" *Pactum Law Journal* 2, no. 3 (2019): 810-820.
- Soeroso. *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika, 2014.
- Sudikno Mertokusumo. *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Cahaya Atma Pustaka, 2010.
- Syarifuddin, *Hukum Kewarisan Islam*, Jakarta: Prenada Media Group, 2015.
- Syuhadah Syarkun, *Menguasai Ilmu Fara'idh*, Jakarta; Pustaka Syarkun, 2014.
- Wirjono Prodjodikoro, *Hukum Warisan Di Indonesia* (Bandung: Vorkink Van Hoeve's Graven Hage, 1966.

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