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The Solution Strategics for Missing Person Property in Malaysia

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Abstract

Until 2021, the missing person's property value estimated to reach billions of ringgit, which is significant. It will have an impact not only on society but also on economic and national development. Hence, effective management and efficient estate planning towards missing personal property must be practiced to ensure a smooth property management operation. This study aims to find the solution strategics framework for Missing person's Property in Malaysia. Hopefully, these studies will help the government solve this issue in Malaysia and enhance the quality of property management based on the highest and best use concept.

Keywords: Missing Person, Property, management, Solution framework

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1.0 Introduction

Missing Person property issues in Malaysia have become one of the more hotly debated. The missing person property issues happen when the owner of which cannot be traced or missing, and in Islamic law, generally known as Al-Mafqud. Until 2021, the missing person's property value is estimated to reach billions of Ringgit, which is significant. Thus, an approach needs to be recognized to plan and manage the assets. These issues negatively impact the heirs, religion, country, and society, but people generally disregard this issue. Shariah Judiciary Department of Malaysia on 2013 is seeking a solution for managing unclaimed assets. Ibrahim Lembut (2013) mentions that the wealth and assets owned by Muslims can be used for development and should be utilized for Muslim glory and the country. Hence, it is expected to solve the issues and problems regarding frozen private properties worth billions of Ringgit. These valuable assets have a very high potential to generate income for the Muslim community's development and improve the economic status of Malaysians. Since the Malaysian MH 370 missing tragedy, this issue has been debated. On 29th January 2015, the Malaysian Government declared MH370 was an accident, and all passengers and crews were presumed dead. MH370 issue is just a catalyst for the importance of property management of Al-Mafqud. Although the issue seems minor, however, the impact is enormous. The uncertain status affects the property of the missing persons. The problem is that the property of Al-Mafqud or his estate will freeze. The freeze period ends once Al-Mafqud or the heirs come to claim. However, in some instances, heirs are not aware of these issues. The situation worsens when there is a family dispute because no one even knows the family background of Al-Mafqud. Currently, in Malaysia,

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the Government has no right to liquidate the unclaimed property for a given period. Besides the Civil law restrictions, the Shariah Law does not allow unfreezing the property without substantial reason.

However, Ibrahim Lembut (2013) also mentioned that the National Fatwa Committee in 1982 has decided that the Government has the right to acquire or use any form of property for the public interest. Nevertheless, The Decision cannot be considered the law to implement in the actual situation. That means the Government should take action to solve the problem.

In this paper, we are focusing on the analysis of issues related to property management from the perspective of al-Mafqud in Islam. The concept of property in Islam should be understood as providing the best solution suited to the nature of Muslims as it is a blessing to all humankind. Mohd Zamro et al. (2006) explained that the inheritance of Al-Mafqud may be related to the Islamic Law of Inheritance, which is considered part of the estate or (al-tariqah) left by the deceased, something that is not unanimously agreed upon by all jurists of Islamic jurists.

2.0 Literature Review

Wahbah Zuhaili (1984) said that different categories are given to wealth in Islam. It which is Mutaqawwan (valuable things), Ghair Mutaqayyam (unuseful things, Mithy (same value at any place), Qimmi (different value with different place and situation), Manqul (mobile asset), Ghair Manqul (immobile asset). The immovable property is Ghair Manqul, also known as A'aqar (intangible asset).

Abd al-Karim (1976) mentions that the concept of A'aqar covers all the things that exist on the earth's surface, such as buildings, water, vegetation, and mineral resources that exist under it. Property in Islam has its unique concept contributed by various scholars of Islam, which may be treated as opinions and estimates. However, despite the different aspects of assessment, goal, and purpose, all are still the same. There are two critical features in determining property in Islam;

- An object that can be stored and collected can be used as a right.
- Objects that can be taken advantage of and derive benefit from there.

Freezing property or monopoly by certain parties is a condition that Islam rejects because it can cause various harmful effects on society and the country. According to Islam, with reasonable care of the property administration system, the circulation of wealth will occur healthily and harmoniously. Nevertheless, by itself, the property's inherent value can be maximized through direct use or investments. This situation certainly can improve the lives of Muslims in the country. Shaykh Muhammad (2006) said the existence and application of this law affected sentiment and understanding, customs, religion, culture, and many others. It begins in a relatively simple form and grows to be a complex one.

2.1 Property in Maqasid Syariah

Shaykh Muhammad (2006) also elaborates on the Maqasid Shariah. It has generally been a chain of five basic principles of Islam as stated by Imam Al-Ghazali, which are the legal objectives of Shariah, which is the Protection of wealth (hifz al-mal). It is one of the requirements of human life, and human beings cannot be separated from it. Islam does not prevent the human search for treasure as much as possible, provided one can do it and does not violate Islamic law. It is consistent with the human desire to maintain the property to increase the world's degree and pleasures. However, all wealth belongs to Allah, but Islam also recognizes the right of a private person. Therefore, man is obsessed with wealth and working through the various roads set by Islam to avoid chaos within each other.

2.2 Definition of Al-Mafqud

The definitions of a missing person or Al-Mafqud are, It does not look or sound significantly, cause to disappear does not appear again, and wipe himself and eliminated but not known whether alive or dead. In other words, Mustafa al-Kha (2005) said, Al-Mafqud's definition is lost in a place for an extended period without news, and no one knows about him, and it is also unknown whether he is still alive or has passed away. Wahbah Zuhaili (1996) defines Al-Mafqud as someone lost from someplace without any news, and his status is unknown. According to the Estates of Missing persons Act 1996 of Canada, a missing person is a person who lives in a place where relatives of the person who knows him and who might hear the news are unable to hear any news from him, at least for three last month.

Whereas according to the Estates of Missing person Act (management) 1973 Uganda, he is being a person who disappeared without making reasonable provision for the administration of his property. Suppose they disappeared without the news in the last six months. In that case, any relative of a missing person may ask the court to issue commands to manage the property with the consent of the family. However, if it deems necessary or desirable, the court may give orders to more than an heir to manage the property together [13].

2.3 Civil vs. Syariah Law in Malaysia

Article 121 (1A) of the Malaysia Federal Constitution states that the Civil Court has no jurisdiction over matters falling within the powers of the Shariah Court. Amendment of Article 121 of the Constitution in 1988 showed that the Federal Constitution had recognized the existence and integrity of Shari'a law. The Syariah Courts now have the absolute power to decide and resolve cases or some things under its jurisdiction. The civil court can no longer talk about a case under the Syariah Court's jurisdiction. The purpose of this change is because there are some cases in which the civil courts had previously discussed certain matters; even the essential thing, in this case, was under the jurisdiction of the Shariah Court. Thus, these changes are expected to resolve disagreements and clarify the division of jurisdiction between the two courts. The amendments have given special status to the Shariah Court.

This change's most significant theoretical effect would be preventing a conflict between Shariah court decisions and that of the civil court.

As happened in some previous cases involving custody of children, matrimonial property, and illegitimacy of children, the Civil High Court did not decide according to Islamic law. This upset the Muslim parties, who felt it was harmful. On the other hand, the Civil High Court's decision in favor of the law contradicts Islamic law. Civil courts have also made decisions on matters within the jurisdiction of the Syariah Court and sometimes have to change a decision made by the Syariah court. With this amendment, the difference between the Civil Court and Syariah Court should not occur again because the matter can only be brought to the Syariah Court, and Civil courts no longer have jurisdiction. Therefore, this problem can be solved. The two courts' jurisdiction ought to run as track as in the constitution and should not exercise powers that the constitution does not give them.

2.4 Period To Wait For Al-Mafqud To Be Presumed Dead In Malaysia Syariah And Civil Law

The legal system in Malaysia is divided into two, namely Shariah and Civil law. Each law has a different period for presumed death and has different functions. For the Civil Law, regarding section 108, Evident Act 1950, the period for Al-Mafqud to be presumed dead is seven years and can be declared by the Civil High Court and above. The heirs can use only the presumption of death or the Death Declaration from the Civil court in claiming inheritance. Meanwhile for Syariah Law is the legislative jurisdiction of the state government. All states in Malaysia (except Terengganu) insert in their Shariah law that the waiting period for the presumption of death is four years. However, the function of presumption of death from the perspective of Syariah Court in matters relating to the dissolution of marriage and not valid for property claims.

2.5 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 a death certificate produced or after court declaration after a certain period. The period is not fixed but will depend on the judge to confirm his death. Before the grant of probate, a transaction in any property is illegal because the Al-Mafqud is still assumed alive.

Based previous study, the causes of the freezing of property of Al-Mafqud in Malaysia are due to the two sides of the heirs and the authorities. Although the legal aspects are seen as the main factor, there is still some chance that can be used by both parties to avoid freezing property. The study also found that courts can still order the liquidation of the real estate of Al-Mafqud. However, ambiguity in the context of specific legislation is a significant consideration. The court order is just an opportunity to explain why such property is withdrawn, not an exceptional warranty. In the current situation, the risks are very high that a conflict of jurisdiction may arise on the issue of al-Mafqud status. Thus, a new law may be required in the United States, Canada, Australia, Ireland, and Uganda to solve such issues. The factors such as sentimentality and family relation must be addressed wisely among the heirs. However, they have the right to the properties. The next of kin ought not to figure out these family issues within narrow and personal interests. The more significant issue should be viewed as a waste of resources that would occur without a solution.

Then, on issue of ownership, before a person goes missing or property acquired during his disappearance, such property cannot be distributed until after his death is confirmed or the disappearance takes place over such a period where usually the missing person cannot be presumed to be living beyond that period. Duration of time is not automatic rather, an order of the court is still needed to confirm the death of the missing person. Before the judgment, the missing persons are still presumed alive, and the property cannot be. Besides, there is the issue of weakness of agencies and the lack of service delivery to society. For the agencies to resolve the problem, it is proposed that they need more authority to improve their service. Although each agency involved does not have a special responsibility for matters relating to Al-Mafqud, they should take the initiative to serve society by campaigning and educating the public. Furthermore, a special agency to administer the property of Al-Mafqud is very important to set up and the authorities should look at this matter seriously to avoid the worst for society and the country.

3.0 Methodology

The researcher has chosen to use qualitative data. Creswell, W. J. (1994) mentions that qualitative usually uses the investigation to understand the social problems based on an extensive research process established by the revelations and realistic situations. Various researchers argue that a qualitative approach is used when a researcher wants to understand the respondents' point of view more deeply and dynamic manner. Additionally, the researcher considers qualitative research to be descriptive research, where researchers focus on aspects of the process, the intent and understanding of subjective experience, and the respondents' appreciation.

A qualitative approach was used in the research process that requires in-depth exploration of a particular phenomenon. In this case, depth interview is used to achieve the objectives of this research. Five (5) experts identify as respondents from related authority bodies in Legal and Property Management were involved in this research.

4.0 Finding and Discussion

Researcher has interviewed the respondents to get their views on the appropriate solution in resolving Al-Mafqud property in Malaysia. The proposed solution used to meet the next objective. Respondents from the responsible authorities that involved in managing Al-Mafqud property is interviewed to get the information according to their perspectives. Semi-structured interviews were conducted to give respondents the freedom to express their opinion and views without being limited by specific themes.

In the interview, the respondents concluded that, there should be a solution framework that needs to meet the needs, as well as can be adapted to the current situation and society. All respondents agreed to the settlement of al-Mafqud's property by proposing the following:



Fig. 1: Pillar of the Strategies for Al-Mafqud Property Solution

4.1 Legislation

The weakness of the legal system has been a significant obstacle to the management and administration of al-Mafqud's property. The provisions of the law need to consider the country's interests, the people who have an interest in al-Mafqud, and the heirs to ensure that it can provide the maximum possible benefits.

Many issues exist in this aspect of the legislation that needs to be addressed. In drafting this law, the main legal issue is that the coordination of Civil and Shariah legislation needs to be refined to meet the requirements of the two laws. In addition, the views of the National Fatwa Council and the State Fatwa Council should also be considered. The issue of this adjustment is from the aspect of the waiting period, which is to choose only one period, which is either 4 or 7 years.

Respondents also suggested that a new amendment to the waiting period for an al-Mafqud be considered dead. In the existing Civil law act, namely through the Evidence Act 1950, the period of 7 years should be reviewed following the current rapid modernity in the world. All respondents agreed that the confirmation of the presumption of death from the Syariah court, that is four years, should be sufficient and should not be used for seven years.

4.2 Special Committee

Respondents also suggested creating a Special Committee at the national level. This committee shall consist of representatives of each state and relevant agencies. The existence of this committee is to take care of the stakeholders in the issue of al-Mafqud property. The committee should consider exploring the best opportunities to develop the al-Mafqud property to benefit the community without reducing the rights of the al-Mafqud family members. Respondents believed that as a country where Islam is the religion of the Federation, this committee should be formed and appointed by the Ruler Council (Majlis Raja Raja Melayu).

An implementing agency needs to be created by this committee in al-Mafqud real estate technically and professionally. The agency needs to implement the responsibilities and policies that have been established and carry out operations that can provide benefits such as development projects, investment management, and equity, and continuously increase revenue on the property al-Mafqud. This agency needs to be a corporate-oriented and shariah-compliant business that can be better developed and systematic management.

This agency's role is to manage, maintain, and make investments and be given freedom in carrying out its responsibilities. The potential of each of these properties needs to develop as much as possible. This freedom means diversifying the prospective a form of investment generated by al-Mafqud real estate as best as possible. However, all these aspects performed by the agency must be Shariah-compliant.

4.3 Education & Awareness

Respondents clearly show a lack of awareness and knowledge among the heirs to solve this problem. Therefore, the community needs to give the best possible guidance. This education is not only for the heirs of al-Mafqud alone but also for the general public.

Respondents suggested that settlement through education is a long-term measure. If public awareness improves, the issues in al-Mafqud's estate can be resolved. Issues that should not be family conflicts should no longer arise with the existence of an educated society. This issue of education should not be focused only on the heirs themselves. A focus on agencies and legal practitioners also needs to be implemented. Respondents also referred to the issue of agency weakness and their legal practitioners who did not have a good knowledge of al-Mafqud property management issues. Therefore, the relevant agencies should organize seminars to provide good information and understanding as well as be able to help the community in resolving this issue.

All respondents agreed that the Higher Education institution (HEIs) in the country should play a good role, especially in exploring research on this issue of al-Mafqud. Expertise from academics from related fields such as law, religion, finance, property management, psychology, and social must be mobilized together to assist the government in resolving the al-Mafqud issue.

Respondents also urged that the appropriate allocation for research be allocated because it is certainly not possible to do without sponsorship or grants provided by the government. The government's allocation in the field of research, especially involving the issue of al-Mafqud property, should be given due attention. Undoubtedly the country is focused on research in science and technology. However, in the issue of al-Mafqud, this has given a macro impact on the national economy, and if left alone, it will be detrimental to the country and society.

5.0 Conclusion

The strategies for the best solution for Al-Mafqud had discussed. Undeclared status of Al-Mafqud affects the property distribution to the heirs, and unclaimed property due to the status of Al-Mafqud can be helpful if the property can utilize for society, especially for the development of society.

These strategies can help the authorities take further action for Al-Mafqud property, which can benefit the poor, education, and the economy. Moreover, the management of Al-Mafqud properties can be introduced to utilize the property effectively. Immediate action should be taken as soon as possible. Government, Academician, and other stakeholders should play a significant role and draft a special law on Al-Mafqud property management as already done in a few countries. These strategies can help the authorities to take further action. This topic needs to expand for research because this research has limitations due to limited literature and proper respondent.

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Paper Contribution to Related Field of Study

The findings from this study imply crucial policy recommendations that the government and stakeholders can address for the best solution for Al-Mafqud Property in Malaysia.

References

[Article 121 (1A) of the Malaysia Federal Constitution

Abd al-Karim al-Khatib (1976) *Al-Siyasah Al-Maliyah Fi Al-Islam Wa Al Mucamalah Silatuha Bi Wa Al-Mucasarah*, Dar al- Fikr al-Arabiyy, Cairo, pages 29

Creswell, W. J. (1994). *Research Design, Qualitative, Quantitative, and Mixed Methods Approaches*. 1st.ed. London: Sage Publications

Estates of Missing Persons Act (management) 1973 Uganda

Estates of Missing Persons Act 1996 of Canada

Ibrahim lembut, (2013) *Al-Mafqud Real Problems according to Shariah law in the Malaysian Perspective*, PhD, State Islamic University Pekan Baru, Indonesia

Malaysia Syariah Judicial Department Report 2013.

Mohd Zamro Muda Awang and Mohd Ridzuan (2006), *Islamic Inheritance Law Implementation in Malaysia*, Bangi: Shariah Department, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia. m / s. 2.

Mustafa al-Khan, et al, (2005) '*Fiqhul Manhaji*', the second volume, sixth printing, Printing Darul Qalam, Damascus, Syria, on page 331,

Section 108 of Malaysia Evident Act 1950.

Shaykh Muhammad al-Tahir Ibn Ashur (2006), *Maqasid al-Sharia al-Islamiah*, Tunis: Dar al-Islam.

Wahbah al Zuhaili,(1996) *Fiqh and Islamic Jurisprudence Volume 1V*, translated by End Yaacob Md at.al

Wahbah al-zuhaili (1984), *Fiqh al Islami waa dillatuhu*, Damsyik: dar al fikr