



Legal Implications of Determining A Missing Person in Relation to His Rights and Obligations As A Subject of Civil Law

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Abstract: This study of legal implications of determining a missing person in relation to his rights and obligations as a subject of civil law explores the legal consequences of declaring a person missing (afwezigheid) on their civil rights and obligations in Indonesia. The status of missing persons creates legal uncertainty for families and related parties, especially in guardianship, divorce, and asset management matters. Using a normative juridical approach with statutory and case analysis, the research examines relevant laws including the Civil Code, Population Administration Law, Islamic Law Compilation, and court rulings. The results reveal a dual regulatory system between general courts and religious courts, leading to differences in procedures and legal effects. The declaration of missing status significantly affects three civil law areas: first, it allows appointment of guardians for children left behind; second, it serves as grounds for divorce after a specific period; and third, it permits appointing administrators to manage and protect the missing person's property. The study concludes that harmonizing regulations on missing persons' status is essential to provide legal certainty and comprehensive protection for all parties involved. Such harmonization would resolve procedural inconsistencies and jurisdictional overlaps, ensuring clearer legal frameworks and better safeguarding of rights and obligations in cases involving missing persons.

Keyword: Legal Implications, Missing Persons, Civil Law Subjects, Rights and Obligations.

INTRODUCTION

Humans are one of the legal subjects who possess rights and obligations. In carrying out their status as legal subjects, the existence of a person becomes a crucial factor in the accountability of their legal rights and obligations. It is not uncommon to encounter situations where an individual disappears without leaving certainty for their family or other related parties.

Cases of missing persons often arise in the context of disasters such as natural calamities, airplane or ship accidents, and also disappearances due to criminal incidents (Muhammad Yasin, 2018). In civil law terminology, a missing person is referred to as being in a state of absence (afwezigheid). Afwezigheid is regulated in Chapter XVIII concerning

Absence in the Indonesian Civil Code (KUHPPerdata). Absence refers to situations where a person leaves their residence, either by granting power of attorney to another party to manage their interests or without granting any power of attorney at all, but their whereabouts subsequently become unknown for a certain period as stipulated in Article 463 of the Civil Code. The absence of a person does not terminate their status as a legal subject (Sri Wahyuni, 2020).

In our legal system, when a person is declared missing, absent, or in a state of *afwezigheid*, their civil rights and obligations do not automatically vanish as in the case of a deceased person. This is because there remains a possibility that the individual is still alive. Therefore, a missing person must be officially declared as such before the law. Until a formal determination is made, the rights and obligations of the individual remain attached to them. Such absence can create legal uncertainty, especially in matters of inheritance law, marriage, and contractual agreements. Consequently, the law provides mechanisms for determining the legal status of a missing person to ensure the protection of the rights of family members and other interested parties.

Regulations regarding missing persons in Indonesia are stipulated in Article 44 paragraph (4) of Law Number 23 of 2006 on Population Administration (UU Adminduk), which states: “In the event of uncertainty regarding a person’s whereabouts due to disappearance or death where the body has not been found, registration by the Civil Registry Officer shall only be conducted after a court determination.

” This provision demonstrates the significant role of the court in determining the legal status of a missing person, in order to avoid uncertainty in various aspects such as population administration, inheritance rights, and marriage. Furthermore, in civil law, the status of a missing person is also regulated in Article 467 of the Civil Code, which states: “Anyone who leaves their residence without granting power of attorney to anyone to manage their interests, and there is no news at all about them, may, at the request of interested parties, have a guardian appointed to manage their property.

” With this regulation, the Indonesian legal system seeks to accommodate the interests of families and other parties in cases of missing persons, both in the context of population administration and in the management of civil rights. However, in practice, challenges remain in determining the appropriate time limits and legal procedures so that court decisions truly reflect the principles of justice and legal certainty for all affected parties.

Based on data obtained from the DORS SOPS Polri application for the period January to August 19, 2024, there were 1,019 reported cases of missing persons in Indonesia (Polri, 2024). Several of these cases have led to civil disputes and legal uncertainty, resulting in petitions for the determination of missing person status being submitted to the courts, including:

Table 1. The Cases of Missing Person

Case Number	Main Issue
PA SLEMAN Nomor 237/Pdt.P/2024/PA.S mn	Determination of an heir as missing to allow for the distribution of inheritance
PN BEKASI Nomor 413/Pdt.P/2024/PN Bks	Petition for determination so that siblings left behind can manage property donated in the name of the petitioners and the missing person
PN BANDUNG Nomor1005/Pdt.P/2024/PN Bdg	Determination of a person who has been missing since 2007 until now
PN TONDANO Nomor	Petition for determination of missing person due to a ship accident

569/Pdt.P/2024/PN

Tnn

PA BINJAI Nomor Petition for a mother to be declared missing and for the appointment of a
30/Pdt.P/2025/PA.Bji guardian for the child left behind

Source: Research data

These cases illustrate the legal uncertainty regarding the status of missing persons in relation to their rights and obligations over assets, inheritance, and guardianship. Based on these cases, the researcher believes that it is necessary to examine the status of missing persons and its implications for the rights and obligations of individuals as legal subjects. The results of this research are expected to support the development of national law, judicial programs, and law enforcement efforts to protect the rights and obligations of legal subjects even after being declared missing (Bambang Waluyo, 1996).

METHOD

This research is a normative juridical legal study, that is, research on the provisions of legislation in force as positive law in Indonesia (Efendi & Ibrahim, 2016: 124). The approaches used in this research are the statute approach and the case approach, analyzing relevant regulations as the basis for the author's analysis of the cases under study.

Secondary data were collected through literature study related to the legal issues or problems raised in the research (Waluyo, 2008: 50). The secondary data obtained were analyzed qualitatively and systematically to draw conclusions from the issues discussed. The research data are presented in clear, effective, orderly, coherent, and logical sentences to facilitate analysis and discussion of the issues (Ashshofa, 2004: 20).

RESULTS AND DISCUSSION

Procedure for Determining a Person's Status as a Missing Person.

Missing persons are defined as individuals whose life or death is unknown due to the cessation of news about them. These individuals were once alive, but there is no clarity as to whether the missing person is deceased or still alive (Mardani, 2014: 95-96). In civil law, the status of a missing person, known as *afwezigheid*, may arise, for example, according to *Staatsblad* 1922 No. 455, from a tragic event involving an airplane or ship, where there has been no further news after their departure or since the date of the incident.

Furthermore, Article 463 of the Civil Code explains "A person is considered absent if they leave their residence without issuing a power of attorney to represent their affairs and interests or to manage their assets and interests, or if the power of attorney granted is no longer valid." This means that an absent person refers to an individual who has been away for a long time and has not appointed a substitute to protect their interests (Pulungan & Jalil, 2023: 3). If a person has been missing for a certain period, the process for determining their status as a missing person may be initiated.

The determination of a missing person is regulated by Article 44 paragraph (4) of the Population Administration Law (UU Adminduk), which states that such determination is conducted in court. Article 468 of the Indonesian Civil Code (KUHPerdata) further clarifies:

"If, upon summons, neither the absent person nor any other person who could provide sufficient indication of the person's existence appears, the District Court, upon the request of the Prosecutor's Office and after hearing the office, may declare a legal presumption that the person has died, effective from the day they left their residence or from the last known report of their life, the date of which must be expressly stated in the decision."

This shows that the determination of missing person status is carried out in the District Court.

However, in practice, religious courts (Pengadilan Agama) also issue determinations for missing persons, known as *mafqud* in the context of Islamic law. Religious courts focus on Islamic family law, as stipulated in Law No. 7 of 1989 concerning Religious Courts, as amended by Law No. 3 of 2006 and further by Law No. 50 of 2009.

These laws delineate the jurisdiction of religious courts to examine, adjudicate, and decide cases. Article 49 of Law No. 3 of 2006 provides:

“The religious court is tasked with and authorized to examine, decide, and resolve cases at the first level between people who are Muslim in the fields of: a) marriage; b) inheritance; c) wills; d) gifts; e) waqf; f) zakat; g) infaq; h) shadaqah; and i) sharia economics.”

Therefore, the determination of missing person status in religious courts also has a valid legal basis governing its authority.

The process of legally determining someone as a missing person generally aims to balance the rights and interests of all parties involved. Initially, when a person’s whereabouts are unknown, a period of absence must pass before formal legal action can be initiated. This waiting period acknowledges that individuals may be temporarily unreachable for various reasons, and premature intervention could infringe upon their personal freedoms (Samosir, 2021: 109-118).

The duration of this period is regulated in Article 467 of the Civil Code, which stipulates that a person may be declared missing or deceased by the court if they have left their residence for five years or more without any news or evidence of their existence. After the waiting period expires, interested parties-usually family members-may file a petition with the court to initiate a formal investigation into the missing person’s whereabouts.

For example, see the Determination of the District Court of Tondano No. 569/Pdt.P/2024/PN.Tnn and the Determination of the Religious Court of Binjai No. 30/Pdt.P/2025/PA.Bji. The detailed procedures for determining missing person status in these two cases are as follows:

Table 2. comparison of district court and religious court decisions

Procedural Aspect	Determination 569/Pdt.P/2024/PN.Tnn	No.	Determination 30/Pdt.P/2025/PA.Bji	No.
Type of Case	Petition for missing person for death certificate		Petition for determination of missing person, appointment of heirs, and guardianship	
Main Legal Basis	Article 44(4) Population Administration Law, Articles 463 & 467 Civil Code		Article 49 (a) and (b) Religious Courts Law, <i>mafqud</i> concept	
Reason for Disappearance	Ship accident, body not found		Left home since 2015 without news	
Duration of Disappearance	>4 years		>10 years	
Purpose of Petition	Issuance of death certificate		Determination of heirs and child protection	
Announcement of Disappearance	Social media, newspapers		Posmetro newspaper	
Evidence	Letters, witnesses, advertisements, SAR team statement		Letters, witnesses, statements, domicile evidence	

Decision	Declares the presumed missing person as missing and orders issuance of death certificate	<i>Mafqud</i> , validation of heirs, appointment of child guardian
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Source: Research data

In practice, religious courts place greater emphasis on Islamic family law and exhibit flexibility regarding the duration of a person's disappearance. In deciding on the determination of a missing person, judicial discretion plays a significant role in religious courts, unlike district courts where the period of five years is clearly stipulated.

It can be observed that the legal foundations considered by judges in rendering decisions differ; however, they share the same objective, namely to provide legal certainty for the family and other involved parties.

In this context, the practice of determining the status of missing persons in Indonesia continues to face overlapping jurisdiction between district courts and religious courts, particularly concerning Article 44 paragraph (4) of the Population Administration Law (UU Adminduk). (Bakri, 2022:81) This overlap results in a convoluted and inefficient procedural framework for the public seeking legal certainty regarding missing persons. Such a situation contradicts the principle of good governance in public service, which demands efficiency and effectiveness in the delivery of legal services.

Legal Implications of Missing Person Status for Civil Rights and Obligations

The legal status of missing persons in the Indonesian legal system is regulated dualistically through the Indonesian Civil Code (KUHPerdata) and the Compilation of Islamic Law (KHI). Articles 463–484 of the Civil Code govern the concept of *afwezigheid* (absence), while Articles 171–172 of the KHI regulate the status of *mafqud* (missing person in Islamic law). This difference in legal basis creates complexity in determining the legal implications, especially regarding civil rights and obligations. (Subekti, 1977; Nasution, 2014) The ambiguity of this legal status can affect various civil law aspects, ranging from property ownership to contractual obligations.

The determination of a missing person's status has significant legal consequences for civil relationships. According to Article 468 of the Civil Code, the designation of *afwezigheid* can result in the freezing of a person's civil rights, including the right to perform legal acts. On the other hand, in the Islamic legal system, the status of *mafqud* affects inheritance distribution and the management of property, as regulated in Article 172 of the KHI.² Issues arise when determining precisely when a person's civil rights can be transferred or restricted, while their life or death status remains legally uncertain.

This research is important given the lack of uniformity in law enforcement practices relating to missing persons. As observed by Manaf (2019), there are differences in approach between the District Court and the Religious Court in handling missing person cases. These differences have the potential to create legal uncertainty, particularly regarding civil rights and obligations. This study aims to analyze the legal implications of the determination of missing person status and to offer harmonization solutions to create greater legal certainty, while upholding the principles of justice and legal protection for all parties involved.

This research specifically examines the implications of determining missing person status in three crucial aspects of civil law, namely:

1. Guardianship

In the matter of guardianship, this study analyzes the case from the Determination of the Religious Court of Binjai Number 30/Pdt.P/2025/PA.Bji. A mother who has been missing since 2015 left behind a minor child. The determination was requested by the child's grandmother after the father's death, so that she could become the child's lawful guardian. Such a determination is necessary because, legally, there is a vacuum of responsibility for the child's

guardianship, to ensure the child remains legally protected in terms of care, upbringing, education, and property management.

This is in line with the legal basis governing child guardianship, namely Article 319h of the Civil Code, which states that “If a minor is not under the authority of their parents, the court shall appoint a guardian to manage the person and property of the child.” Furthermore, Law No. 1 of 1974 on Marriage (as amended by Law No. 16 of 2019) Article 47(1) states, “A child who has not reached the age of 18 or has never been married is under the authority of their parents as long as this authority has not been revoked.” Law No. 23 of 2002 on Child Protection (as amended by Law No. 35 of 2014) Article 33(1) also states, “In the event that parents are unable to ensure the proper growth and development of the child, the state may appoint a guardian to carry out the caregiving role.”

Such a determination is necessary to protect the child when both parents can no longer act as guardians, to ensure the child’s rights are protected. The court, as a state authority, is obliged to guarantee the continuity of child protection by appointing a guardian based on the closeness of the relationship, caregiving ability, and the best interests of the child. This implication is critical because, without the appointment of a guardian, the child cannot manage administrative matters (such as family card, school, health insurance), cannot be legally represented in matters such as inheritance and asset guardianship, and is legally vulnerable in the event of family or social disputes.

The legal designation of someone as missing requires the appointment of a substitute guardian for any minor under their responsibility. This ensures that there is a legally recognized party to represent the child in all aspects of life-personal, social, and civil. The legal basis is clearly stated in the Civil Code, Marriage Law, and Child Protection Law, and judicial practice also shows that guardianship is an inseparable part of the determination of missing person status.

2. Divorcement

In the Indonesian civil law and family law system, marriage can only be dissolved by death, divorce, or a court decision. When one spouse in a marriage goes missing without any news, it creates legal uncertainty for the spouse left behind.

The remaining spouse cannot remarry, cannot settle legal matters related to joint property, and has no certainty regarding their marital status. The determination of missing person status by the court thus becomes an important prerequisite for resolving marital status in accordance with the law. However, in practice, not all divorce petitions against a missing spouse require a formal determination of missing person status first. The Religious Court, for example, often accepts divorce petitions by proving the absence and efforts to locate the spouse (through media summons, family witnesses, police reports, etc.).

The case highlighted in this section is the Decision of the Religious Court of Kabupaten Malang Number 6589/Pdt.G/2020/PA.Kab.Mlg, in which a wife filed for divorce against her husband who had left home since July 2019 without any certainty regarding his whereabouts. The husband never appeared in court despite proper summons, which was supported by evidence of search efforts, witness statements, and a letter from the local authorities stating the husband’s absence.

In this case, the husband was deemed to have neglected his obligations as head of the family, providing a strong basis for the wife to file for divorce. The legal basis in this case is the Compilation of Islamic Law (KHI) Article 116(h), which states that one reason for divorce is “if one party leaves the other for two consecutive years without permission and a valid reason or for other reasons beyond their control.” Also, Article 19(b) of Government Regulation No. 9 of 1975 on the Implementation of the Marriage Law states:

“One party leaves the other for two consecutive years without permission and without a valid reason or for other reasons beyond their control and does not provide information as to whether they are alive or dead.”

The status of being missing (*mafqud*) in marriage means that the civil rights and obligations of the missing party cannot be effectively exercised.

The spouse left behind obtains the legal right to file for divorce for legal certainty and the protection of their and their children's rights. Once divorce is granted, the civil rights and obligations between husband and wife end, except for the rights of the children, which must still be fulfilled. This decision provides legal certainty for the wife and children and prevents prolonged uncertainty in the family.

3. Assets Management

A person declared missing is still considered a legal subject, so their ownership rights and civil obligations remain attached. However, because they are not present and cannot exercise their rights and obligations, a vacuum arises in the management of their assets. This can disrupt the interests of family, business partners, creditors, and even third parties with legal relations to the missing person. To prevent losses and maintain legal order, the Indonesian civil law system provides a mechanism for appointing an administrator or guardian of the assets through a court decision.

Based on the Decision of the District Court of Bekasi Number 413/Pdt.P/2024/PN Bks, the petitioners are heirs and recipients of a grant from their grandfather, and the missing person is one of the recipients.

The missing person in this case left home and has not been heard from since 1984. Their absence prevents the petitioners from separating, upgrading the certificate status, transferring title, or selling the granted land, because the missing person's rights are still legally attached. As regulated in Article 463 of the Civil Code, an administrator or guardian must be appointed to safeguard, manage, and protect the assets of the missing person.

Asset management for missing persons is not only for the protection of the assets themselves but also to prevent misuse by unauthorized parties, to enable the settlement of the missing person's obligations (such as debts or taxes), and to ensure that the rights of third parties-such as creditors, business partners, or heirs-are not harmed by the person's absence. The appointment of an asset administrator is temporary and ends when:

- a) The missing person returns and resumes management of their assets;
- b) The person is legally declared dead (Article 467 Civil Code), and the assets are inherited;
- c) There are other legal reasons requiring the termination of guardianship/management.

In practice, the management of missing persons' assets may also involve the State Heritage Agency (*Balai Harta Peninggalan*, BHP), especially if there are no close family members or if the assets managed are of significant value.

Determination of missing persons affects many crucial aspects of a person's legal status as a legal subject. Therefore, it is necessary to have a promising legal certainty so that no losses will arise in the future. This is a challenge for policy makers to be able to protect the rights and obligations of their people. With legal certainty and clarity, it is hoped that every related party can obtain protection and certainty of rights fairly, and encourage the creation of a civil law system that is responsive and adaptive to the dynamics of society.

CONCLUSION

There remains a dualism in the regulation of the status of missing persons within the Indonesian legal system, namely through the concept of *afwezigheid* in the Civil Code (KUHPerdata) applied by the general courts, and the concept of *mafqud* in Islamic law applied by the religious courts.

This dualism results in differences in the procedures for determination and legal consequences, potentially causing legal uncertainty. Although a missing person is still regarded as a legal subject with attached civil rights, their absence creates a gap in the fulfillment of their legal obligations. The judicial determination of missing status serves as a solution to fill this gap by appointing an authorized party to act on their behalf.

The declaration of missing status has significant implications for three main aspects of civil law: (1) in guardianship, it requires the appointment of a guardian for minor children to protect their interests and rights; (2) in divorce, a missing status lasting at least two years can serve as grounds for a divorce petition by the left-behind spouse; and (3) in asset management, the determination enables the appointment of an administrator or custodian to protect and manage the missing person's assets for the benefit of all related parties.

Furthermore, there is an urgent need to harmonize the regulation of missing persons' status between the general and religious courts, particularly regarding procedures, timeframes for determination, and legal consequences.

This harmonization is essential to establish greater legal certainty and comprehensive protection for all involved parties, especially families and other stakeholders. This study recommends improving the regulations concerning missing persons' status through revising existing legislation or enacting specific laws that comprehensively govern the procedures for declaring a person missing and safeguarding their civil rights, while respecting the pluralistic legal system in Indonesia.

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