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Division of Inheritance of Mafqud Husband According to the Opinion of the Ulama of Langsa City

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Abstract: The purpose of this research is to find out how the review of the mafqud husband according to Islamic law and to find out the views of the Ulama of Langsa City regarding the distribution of the inheritance of the mafqud husband. Based on the results of the research, it is concluded that in Islamic law, a mafqud (missing) husband is considered to have died after a waiting period, generally four years, in accordance with the Shafi'i Mazhab. If the mafqud husband has not been found within this period, then his status is considered legally dead, even though there is no physical evidence of his death. During this waiting period, the mafqud husband's property is still managed with the principle of prudence, and the arrangement and use of the property is done in a way that preserves the rights of the heirs and prevents potential conflicts. Langsa City scholars, such as Abati Salahuddin, Tgk. Syibril Malasyi, Tgk. Hadi Subulana, Abi Rifana, and Walidi Ramli Amri, identified two main situations related to mafqud husbands in the context of inheritance distribution. First, if the mafqud husband is found alive after the waiting period, the property that has been distributed remains the property of each heir in accordance with the provisions that apply at that time. Second, if the mafqud husband is not found within four years and is considered dead, then his inheritance can be distributed to the heirs in accordance with the provisions of Islamic law after the court process establishes the status of his death. They emphasized the need for careful and fair management of the estate during the waiting period as well as the judge's decision to ensure the distribution of the estate in accordance with sharia.

Keyword: Inheritance, Mafqud Husband, Scholars, Opinions.

INTRODUCTION

The basic principles of Islamic inheritance law apply to Muslims everywhere in the world. However, the characteristics of an Islamic country and the culture of the people there influence the implementation of inheritance law in that region. Such influence is limited and should not alter the core principles of Islamic inheritance law. However, such influence can be seen in aspects related to the interpretation and opinions of Islamic legal scholars (ijtihad).

The law of inheritance in Islam is known as faraid. The word faraid is the plural of farīdah, which is derived from the word fardu, which means a decree or obligation. In the Qur'an, fardu has several meanings, including decree and obligation. In short, the science of Faraid can be defined as the study of the provisions regarding the distribution of inheritance for heirs. It should be noted that in Islamic law regarding inheritance provisions, the principle of halving for women and a full share for men does not apply in all situations. This is only the case when a number of men and women jointly inherit property. In most situations, Islam stipulates a fixed share for women. In addition, according to shari'a law, a woman is supported by a man, be it her husband or the guardian responsible for her. Women in Islam are not obliged to provide maintenance, but instead, the obligation is borne by the man.

Men have a greater financial burden and heavier financial obligations, so they need more assets, they are required to pay dowry to the woman and also provide for her, including food, clothing, shelter and other needs. Hence, the awarding of twice the share of inheritance to men than women is in keeping with the financial needs and responsibilities that men have to shoulder. This corresponds to the far greater obligations placed on men, while women are not burdened with similar obligations and instead the responsibility is borne by men.

Basically, inheritance law in Islam functions as a mechanism for distributing property, especially among the heirs. When a person called al-muwarrīts dies, the property he previously owned is then distributed to the heirs in accordance with the provisions of inheritance law. Furthermore, as the heirs use the property, it will flow into society as a whole. However, in addition to paying attention to the aspect of wealth distribution, Islamic inheritance law also aims to create justice. This is because Islamic inheritance law comes from Allah, who is known as the Most Just. Justice can be realized perfectly if Islamic inheritance law is applied correctly and accompanied by the application of Islamic sharia as a whole.

The realization of this is a shared responsibility for all Muslims. In the study of Islamic Law (fiqh), a missing person is called mafqud, which means someone whose whereabouts are unknown so that it is unclear whether he is alive or dead. Previously, the person had been alive but there was no information to confirm whether they were alive or dead. The missing person is a concern in inheritance law because certainty regarding his life or death is an important requirement in the distribution of inheritance. In inheritance law, certainty regarding the death of the testator and his life status when the testator dies is a requirement that must be met.

According to the Shafi'i madhhab, the status of the death of a person who is mafqud can be determined if there are witnesses who testify to his death, or if the court judge issues a decision regarding his death based on his ijtihad. The judge can determine that a person has died if the suspicion that the person has died has passed a long enough period, and there is no definite time limit that is used as a guideline by the judge in determining the death of a person. However, there are some opinions that limit this period to a certain age, such as 70 years, 80 years, 90 years, 100 years, and 120 years.

The issue of missing persons (mafqud) has been a source of debate among scholars, especially in relation to their marital status and inheritance rights. This is because there are various interests associated with the situation of the missing person, making it important to establish his or her whereabouts. Basically, a missing person is considered to be alive based on the principle of istishhab, until there is convincing evidence that he has died. However, there are several interests and benefits that demand certainty regarding the whereabouts of the mafqud.

Firstly, in relation to the wife of a mafqud, it is important to ascertain the whereabouts of her missing husband as this relates to the status of the wife he left behind. This involves

the question of whether she is still considered to be the wife of a mafqud, how long she has to wait to find out whether her husband is alive or dead, and when she is allowed to remarry another man.

The second is related to the aspect of wealth, which is closely related to the issue of inheritance. This relates to the division of inheritance when there is a death. If no death occurs, a person cannot inherit or may himself die before his relatives.

If the provision is applied to the case of a missing person (mafqud), whose whereabouts are unknown whether he is alive or dead, difficulties will arise in its implementation. If the provision remains in place, it may have a negative impact on individuals related to the missing person, such as his wife, children, property and other related aspects. With a comprehensive understanding of this issue, this thesis aims to investigate the legal implications, challenges, and options and solutions that can be applied to the case of distributing the inheritance of a mafqud husband in the context of Islamic law. It is hoped that this research will enhance the understanding of the issue and contribute to the obstacles faced by wives who experience the situation of a mafqud husband.

METHOD

This research was conducted in Langsa City. The type of research applied in this thesis is descriptive qualitative research. This research is a field study (field research) the approach used in this research is a normative approach. Normative legal research is also called doctrinal legal research. In this type of legal research, often the law is conceptualized as what is written in laws and regulations or the law is conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate. In relation to this research, what is meant by law is Islamic law (fiqh) which comes from the Qur'an and Hadith which are then interpreted by scholars so that several opinions emerge with various similarities and differences. According to its source, research data is classified into two types, namely: Primary data, primary data in this study are the results of interviews with Ulama figures in Langsa City. What is meant by the Ulama Leader of Langsa City here is a person who is included in the management of the Ulama Consultative Assembly (MPU) in Langsa City. Secondary data, secondary data is data sourced from other parties, not directly obtained by researchers from research subjects or from library materials.⁶⁷ Secondary data is other data that is supportive of research using other reading materials, which have similarities with the research to be discussed by the author in this case, namely those related to the division of the inheritance of the husband who is mafqud. This data was obtained before the research and during the research. Among the books used as supporting data include al-Mugni Fa Fiqh al-Imam Ahmad bin Hambil ash-Syaibanī by Abdullah bin Ahmad bin Qudamah and others.

Data collection techniques in this study are: Observation, interview, documentation. In analyzing the data, the author uses inductive reasoning, which is a method of thinking based on specific events to establish general theories, laws, or concepts. The validity of the data is used triangulation technique to compare the results of the analysis according to the madhhabs in Islamic law regarding the division of the inheritance of the mafqud husband. So that later the legal basis of the problem will be found, as well as the reasons put forward by each source of law on the issue.

RESULTS AND DISCUSSION

Review of Mafqud Husband According to Islamic Law

The discussion about missing husbands (mafqud) remains an interesting and debated topic among the scholars of the madhhabs. The author tries to trace some of the opinions that are recognized in fiqh science, among others:

1. Imam Shafi'i's opinion

In the case of a mafqud husband, Imam Shafi'i has two opinions. In qaul qadim (old opinion), he agrees with Imam Malik in al- Muwatta'. However, Imam Syafi'i's opinion differs in punishing women whose husbands are mafqud when after the second marriage and then the first husband (mafqud) comes back. According to Imam Shafi'i, in qaul qadim, if the wife has not been married by the second husband, then the first husband (mafqud) has more rights over the wife. Meanwhile, if the wife has been married by the second husband, then the first husband has khiyar (the right to choose) between returning to his wife or receiving the dowry. Based on the opinion of Imam Syafi'i, it is said that in the case of a woman who has lost her husband (mafqud), there are different views regarding the waiting period and the rights that must be fulfilled.

Based on a narration from Umar Ibn Khattab, a woman must wait for four years and then undergo an iddah period of four months and ten days if there is no news of her husband. In this case, if the missing husband returns before the second husband has had sexual intercourse with his wife, then the first husband has the right to return. However, if the second husband has had sexual intercourse with his wife, the first husband has the choice between taking back his wife or accepting the dowry. Imam Shafi'i also showed a difference of opinion between his qaul qadim and qaul jadid. In qaul jadid, he does not set a specific time limit and requires the wife to wait until there is certainty regarding the life or death of the husband. The wife is not allowed to remarry or exceed the iddah period without clear certainty.

The Shafi'i view underlines the importance of absolute certainty in determining the marital status of a woman who has lost her husband, and emphasizes that decisions regarding marriage and the 'iddah period cannot be made arbitrarily in the absence of clear and valid evidence of death or divorce. This view reflects a cautious attitude in dealing with cases involving uncertainty and doubt, as was also expressed by earlier scholars. The dissolution of the marriage bond between a mafqud husband and his wife is considered a fasakh, as explained by Imam Ibrahim ash-Shirazi in al- Muhazzab. He compared mafqud to an impotent husband in terms of his inability to have intercourse with his wife, and to a poor person who has difficulty providing for his wife. Both of these conditions (inability to have intercourse and to provide maintenance) also apply to the mafqud husband.

With regard to calculating the waiting period, this does not start from the time of the disappearance of news, but from the judge's decision, according to the more correct view. In contrast, in his qaul jadid, Imam Shafi'i does not set a specific time limit for a wife whose husband is mafqud. He argues that the wife must be patient until there is certainty about the life or death of the husband. The wife is not allowed to undergo a waiting period and iddah or marry forever, as long as there is no news about divorce from the husband or his death.

Opinion of Imam Hanbali

In the case of the ruling on the missing husband, Imam Hanbali tends to refer to several Hadiths of Umar's companions as a basis, namely he narrated Umar ra. : Imam Ahmad states that when a wife loses her husband, she must wait for four years, then undergo an iddah period of four months and ten days. After that, she is allowed to remarry.

Imam Ahmad bin Hanbal, as explained in Ibn Qudamah's Mughni, differentiated the waiting period allowed for a wife who lost her husband between a free woman and a slave. For a slave, the waiting period is half the time prescribed for a free woman.

Based on Mughni Li Ibni Qudamah shows that in Islamic law, the waiting period for a woman who has lost her husband differs between free women and slaves. The waiting period for slaves is half the waiting period for free women, both in the context of the iddah period and the waiting period to ensure pregnancy. This period is based on the principles of justice and attention to the woman's condition, with the aim of ensuring clarity of her marital status

before she is allowed to remarry. This approach also shows attention to the rights of women, both free and slave, in the process of separation and the iddah period.

The Hanbali scholars are of the opinion that if a person who is missing (*mafqud*) is in a situation where it is possible that he is still alive in a safe area, there are two views on this matter. First, the person should wait until he reaches the age of 90 years. Secondly, the decision is left to the discretion of the judge. This opinion is based on a statement in the book *Mubdi' fi Sharh Muqni'*: "When information about a person is lost, what is meant is uncertainty about his whereabouts in a safe area, such as when trading or on a journey of knowledge. In this case, there is a view that the waiting period should last until the person reaches the age of ninety years from his birth. This is the more popular view of the two narrations. According to the view in *al-Mustauib* from Abdul Malik ibn al-Mājusūn, since the basic principle is that a person is presumed to be alive if there is no evidence to the contrary, the missing person should be waited for forever. Therefore, his property should not be divided, and his wife should not remarry until there is certainty about his death or until a period of time when it is generally considered unlikely that the person is still alive.

In this case, the judge must exercise *ijtihad*. The scholars are unanimous in their opinion that estimation cannot be used as a guide unless there is concrete evidence. The guideline in a case such as the disappearance of a child for nine years, as mentioned in the book of Targhib, is that the person should be waited for indefinitely until there is certainty about his death, which is a period of time that is generally considered unlikely to be alive. Abu Bakr and other scholars took this view. 'Abdullāh ibn Hakim was of the view that the waiting period should last for seventy years until any trace of the person's life is completely gone. Meanwhile, Ibn Razīn was of the opinion that the waiting period should be four years, following the opinion of the Companion 'Umar, after which the person can be considered dead. Ibn 'Aqil proposed a waiting period of one hundred and twenty years from the birth of the missing person.

Based on the above narration, it shows that the scholars have varying views on the waiting period for someone who is missing and unaccounted for. While most scholars agree that a person is presumed to be alive until there is evidence to suggest otherwise, they differ on how long the waiting period should last. Some scholars argue that the waiting period should continue until a certain age, such as ninety or one hundred and twenty years from birth, while others suggest a shorter waiting period, such as four or seventy years. In all cases, the final decision is often left to the discretion of the judge, who must consider the circumstances and available evidence before determining the status of the missing person. The consensus opinion is that mere estimation is not enough, and there must be a firm conviction or proof of death before any further action, such as division of property or remarriage, can be taken. Then in areas where it is certain that a person has died or perished, such as in cases of war or drowning, the waiting period for a wife is four months and ten days, as explained in *al-Mubdi' fi Syarh al-Muqni'*.

The book *al-Mubdi' fi Sharh al-Muqni'* indicates that the waiting period for a wife who has lost her husband depends on the situation and conditions of the area where he is missing. If the area is considered safe, the waiting period may be up to four years before the property can be divided and remarriage is permitted. However, if the situation is such that it is certain that the husband has died or perished, such as in a war or in the sinking of a ship, then the waiting period is four months and ten days.

The opinion of the majority of scholars and companions is that this waiting period should be observed to ensure clarity of status before a woman is allowed to remarry. In addition, in certain cases, such as a lost servant, some scholars are of the opinion that the waiting period can be half that of a free man. The final decision regarding the waiting period

and the division of property should be based on the actual circumstances and evidence available, taking into account prudence and legal clarity.

The Opinion of Imam Abu Hanifah

In dealing with the case of a missing husband (*mafqud*), Imam Abū Hanīfah explicitly states that such a person may not remarry until there is certainty regarding the husband's death. This is in accordance with the following narration: from Muhammad Hasan as-Syaibani, Abū Hanīfah ra. said in the case of *mafqud* a woman cannot be married, and obligations not being fulfilled.

Imam Abū Hanīfah provides a solution by allowing a woman whose husband has died to wait four years before remarrying. If a husband who has been ruled dead turns out to be alive and returns to his wife, his marital status remains as her husband. Imam Abū Hanīfah argued that in this case, the dowry given by the new husband should be returned, in accordance with the opinion of the Companion of 'Umar (may Allah be pleased with him): Muhammad reported that Isrāil ibn Musa told us, and Samāk ibn Harb reported from some of the people of Madīnah, that if a woman loses her husband and remarries, but he returns, then according to 'Ali (may Allah be pleased with him), she remains the wife of her first husband. The same thing was also stated by 'Umar (may Allah be pleased with him). In this case, if the first husband returns, she must return the dowry given by the new husband.

Based on the above narration, it can be concluded that if a woman remarries after her husband goes missing and then her missing husband returns, then her marital status remains with the first husband. In this case, the new husband must return the dowry to the first husband. This indicates that the second marriage is considered invalid and the woman must return to the first husband, in accordance with the decisions of 'Ali and 'Umar. The Hanāfiyah school is of the opinion that a person who has gone missing and whose whereabouts are unknown can be regarded as deceased by taking into account the age of the peers in the area or place where he lives. In another narration from Abū Hanīfah, it is stated that the time limit for confirming someone is dead is one hundred years.

According to the Hanāfiyah school of thought, a missing person (*mafqud*) can be considered dead if there are no living peers after the age of one hundred and twenty years. This is based on the consensus that it is highly unlikely for a person to live to that age. However, there is also a more cautious opinion, which suggests a waiting period of four years as a reasonable period of time to ascertain the status of death before dividing the estate and allowing remarriage. This opinion emphasizes the importance of real certainty and consideration of women's rights in legal decisions.

The Opinion of Imam Malik

According to Imam Malik in his work *al-Muwatta'*, a wife whose husband is *mafqud* and there is no information about his whereabouts has the right to report the matter to the *qāḍī* or judge. The judge will then order the wife to serve a waiting period of four years. If a husband who has been ruled dead turns out to be alive and returns to his wife, Imam Malik argues that the husband does not have the right to choose his wife back, whether or not she has had a relationship with a new husband. The following is an excerpt of Imam Malik's opinion from *al-Muwatta'*: Yahya reported to us from Malik, who narrated from Yahya Ibn Sa'id, from Sa'id Ibn Musayyab, that Umar Ibn Khattab once said: "A woman who loses her husband and does not know his whereabouts should wait for four years, then observe *'iddah* for four months and ten days. After that, she may remarry." Imam Malik was of the opinion that if the woman remarries after the *'iddah* period has expired, whether her second husband has sexual relations with her or not, then the first husband has no rights over her. Malik stated that this is the prevailing opinion according to our madhhab. However, if the first husband

returns before the wife remarries, then the first husband has more rights over her. Imam Malik also mentioned that there are some scholars who deny the opinion of Umar Ibn Khattab regarding the right of the first husband to choose between receiving the dowry or returning his wife.

Malik mentioned that Umar Ibn Khattab was also of the opinion regarding a woman whose husband divorced her, then the husband left, but did not inform her about his reconciliation, while the wife received news of her divorce and remarried. In this case, whether the second husband has intercourse with the wife or not, the first husband has no rights. Malik emphasized that this ruling was the most in line with what he had heard about the cases of divorce and missing persons (*mafqud*).

Based on the above narration, it shows that there are several important provisions related to the rights and obligations of wives who have lost their husbands (*mafqud*). According to the opinion of Umar Ibn Khattab, a wife who loses her husband and does not know his whereabouts must wait for four years, then undergo an 'iddah period of four months and ten days. After this period, she is allowed to remarry. Imam Malik added that if the woman remarries after the 'iddah period has ended, the first husband has no rights over her, whether he has sexual relations with her or not. However, if the first husband returns before the wife remarries, then the first husband has greater rights over his wife. Umar Ibn Khattab was of the opinion that if the first husband returns before the wife is married to a new husband, then the first husband has rights over the wife. Conversely, if the wife has married a new husband and the first husband does not return before the 'iddah period is over, then the first husband has no more rights. Imam Malik agreed with this opinion and considered that the most appropriate ruling in cases of divorce and missing persons is that the right of the first husband ends if the wife has remarried after the 'iddah period is over.

According to Imam Malik, the judge is allowed to determine the death of a missing husband (*mafqud*) after waiting for four years. After the four-year period is over, the wife must then undergo an 'iddah period of four months and ten days before being allowed to remarry.

According to Imam Sahnun's narration, a woman whose husband is missing (*mafqud*) has to undergo a waiting period of four years. After this period ends, if there is no news of her husband, the woman then enters an 'iddah period of four months and ten days before being allowed to remarry. If the woman has waited more than twenty years without any information regarding her husband, the Sultan will conduct an investigation and send a letter to the relevant place. If the investigation yields no news, the Sultan may extend the waiting period by an additional four years. However, the woman is still entitled to serve the waiting period and 'iddah without waiting for the Sultan's order, as this waiting period is her right by law, and the Sultan has no authority to change this period.

The View of the Ulama of Langsa City Regarding the Division of the Inheritance of the Mafqud Husband

Regarding the view of *mafqud*, Abati Salahuddin as Chairman of the MPU of Langsa City said that in Langsa City adheres to the Shafi'i Mazhab, the determination of the law is based on the teachings of the Shafi'i Mazhab. In the context of someone who has no news for 4 years and 4 months, if during that period there is no testimony or evidence that the person has returned, then he is considered as "*mafqud*" (missing person). The second method is that if there is proof and a judge's decision, then the person is also referred to as "*mafqud*." This understanding is part of the Shafi'i school of thought.

Furthermore, how are the children and wife to be supported when the husband's status has not been decided whether he is dead or alive? In this situation, the family may take temporary steps based on tradition to fulfill the needs of the wife and children. However, if

there is a verdict from a judge or witness stating that the husband is dead, then it is permissible to take some of the property for the wife in accordance with the applicable regulations.

The inheritance should not be distributed to the mother or other family members until there is an official decision from the judge. If, after the estate has been distributed, it turns out that there is evidence that the husband is still alive (in the status of "mafqud"), then the share of the estate that has been taken by the wife or children must be returned to its owner, namely the husband, because he is the one who is entitled to the property. This statement refers to the opinion of Ibn Hajar al-Haitamī in the book *Tuhfah al-Muhtaj* explained that: "If a man is ghāib because of traveling or other reasons, and the news of his death is lost, his wife may not remarry until she is certain of his death with strong evidence and reasons, or if she has divorced him. This also applies if the husband apostatizes before or after having intercourse with his wife, provided that the apostasy is from the husband. In such cases, the wife must undergo 'iddah just like a wife whose husband dies. In principle, the life and marital status of the ghāib remains valid, unless there is a definite belief that he has died or an event equivalent to such a belief occurs. The husband's wealth may not be distributed, and his slaves may not be freed. Likewise, his wife may not be married to another person. However, if the wife receives news from a fair person, even if only fair in narration, that her husband has divorced her or died, then it is permissible for her to marry someone else without the need for outward acknowledgement. This opinion is different from some other scholars. The case of the husband's ghāib can also be equated with the wife's ghāib in certain situations, such as with a sibling or fifth wife, if there is no plan to divorce. According to the qadīm (old) opinion, the wife must wait for 4 (four) years. The dhaif (weak) opinion states that this period is counted from the time the husband ghāib, while the strong opinion says that this period starts from the time the case is handled by the kadhi. The period before that does not count. After that, the wife must observe 'iddah just like a wife whose husband died, and may remarry only after the 'iddah period is over, following the ruling laid down by 'Umar Ra. This period of 4 (four) years is counted as the maximum period, as in the case of pregnancy."

Based on the above opinions, it shows that in the case of a ghāib (missing without news) husband, Islamic law establishes a strict precautionary principle in regulating marital status and property. The wife is not allowed to remarry until there is a firm conviction of her husband's death through valid evidence or the decision of a judge (kadhi). The life and marital status of the ghāib is still considered valid until there is a certainty equivalent to the certainty of death.

In addition, this opinion also emphasizes that the property of the mafqud (missing person) should not be distributed before there is certainty about his status, whether he is alive or dead. This is to protect the rights of the mafqud if he turns out to be alive and returns. His property should remain intact and should not be distributed to his heirs or other parties until there is a valid ruling on his status.

This opinion also shows that there is a difference of opinion among scholars regarding the time a wife must wait before she can remarry. The stronger opinion tends to refer to a period of four years starting from the time the case is handled by the kadhi, after which the wife must undergo a period of 'iddah as if her husband had died.

All of these opinions reflect the importance of evidence and due process in maintaining justice for all parties involved, as well as demonstrating the care and caution that is taken in Islamic family law, including in the management of the mafqud's assets.

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This definition emphasizes the importance of clear evidence or information before taking further legal action. Tgk Hadi further explained that although the Qur'an and hadith do not specifically discuss the status of the inheritance of a mafqud (missing without news) husband, there are rules and regulations in the law of mawaris that can be applied to determine the status of the inheritance. These rules help in regulating the distribution of inheritance when the status of the mafqud husband is still unclear, while maintaining justice and the rights of all parties involved.

Regarding the division of the estate of the mafqud husband, he refers to the opinion of Abu Fadhli al-Asqalanī in the book *Fath al-Barrī* saying that: Meaning: "Az-Zahrī is of the opinion that if a person is held captive and his place is known, then his wife may not marry someone else and his property may not be distributed, even if the news is interrupted. In this case, the time limit for waiting is the same as for the person who is mafqud. Salah ibn Abi Shibah, on the authority of al-Auza'i, reported that when al-Zahrī was asked about when the wife of a captive in an enemy country may marry, he replied that she may not marry while her husband is known to be alive. Another opinion of az-Zahrī is that the property of the captive and his wife should be withheld until the husband is safe or declared dead. This is in line with the view that the wife of a mafqud husband must wait for 4 (four) years, according to the opinion of Abdul Ar-Razzaq, Sa'id bin Mansur, and Ibn Abi Shaibah. Abdurrazak reported that Umar RA and Usman RA prescribed a similar punishment. Sa'id bin Mansur and Ibn Abbas were also of this opinion, that the wife of a mafqud husband must wait for 4 (four) years. This opinion was also accepted from Usman RA, Ibn Mas'ud, and a number of tabi'in such as an-Nakhī, al-Ita', az-Zahrī, Makhul, and al-Shafī, who agreed that the time starts counting from the time the case is processed by the judge, and the wife undergoes 'iddah like a wife whose husband died after 4 (four) years. If the wife of a mafqud husband remarries and the first husband returns, then the first husband can choose between staying with the wife or asking for his mahr back. The opinion of the majority of scholars is that the mahr must be paid by the second husband, except for Sa'id bin Musayyab who differs. Malik distinguishes between those who are ghāib in war, who are given a time limit of 4 (four) years, and those who are mafqud outside of war, who are not given a time limit but wait until they pass the age of habitual life. According to Ahmad and Ishak, a person who is mafqud from his family and whose news is unknown is not given a time limit, while a person who is mafqud in battle or at sea is given a time limit. Ali was of the opinion that a woman whose husband is ghāib should not marry him until he returns or is declared dead. Abdurrazak reported that Ibn Mas'ud and 'Ali agreed that a woman whose husband is mafqud should wait as long as possible. Abu 'Abīd's opinion from 'Ali states that if someone marries a woman whose husband is mafqud, then the second husband's relationship with the wife is allowed. According to Sa'id ibn Mansur and al-Shafī, if a wife whose husband is mafqud marries and then gets news that her husband is still alive, then she must be separated from the second husband and undergo 'iddah from the second husband. If the first husband dies, the wife must also undergo 'iddah and is entitled to receive inheritance. The opinion of an-Nakhī and the fuqaha of Kufa, al-Shafī, as well as some scholars of al-Hadith is that the wife of a mafqud husband should not marry until the matter is clear. According to Ibn Manzar, the opinion regarding the time limit of 4 (four) years was agreed upon by five companions."

Based on the opinions expressed, it shows that in the case of a husband who is mafqud or missing without news, the wife may not marry someone else and the husband's property may not be distributed until there is certainty about the husband's fate. Az-Zahrī and several scholars agree that the time limit for waiting is four years after the case has been processed by the judge, with the wife having to undergo 'iddah like a wife whose husband died. There are differences of opinion regarding this time limit, especially between cases of mafqud in war and outside of war. If the wife has remarried and the first husband returns, the first

husband can choose to remain with the wife or demand back the dowry from the second husband. The general consensus among scholars emphasizes the importance of legal certainty and clear evidence in determining the rights of the wife and the management of property, as well as maintaining justice in the case of a mafqud husband.

Regarding the mechanism of the division of the inheritance of the husband who is mafqud, Tgk. Hadi Subulana explained that in the context of the division of inheritance when the husband who is mafqud (missing) leaves a son and a wife, the mechanism is as follows.

If the Missing Husband Left a Son:

1. Wife's share: The wife is entitled to 1/8 (one-eighth) of the husband's entire estate. This is the share stipulated in Islamic inheritance law if the husband leaves children.
2. Son's Share: The son is entitled to receive the remaining property after the wife's share has been given. The son will get a larger share in accordance with Islamic inheritance law, which is twice the wife's share.

Adjustment if the husband's status changes, namely the remaining assets after the wife's share:

1. If the Husband Returns: If the husband who was initially declared missing returns, the share of inheritance that has been distributed must be adjusted.
2. If the wife has received 1/8th of the estate and the husband is subsequently declared to be alive, the sons' undistributed share should be given according to their entitlement.

As such, the division of the estate will be adjusted to ensure that the rights of the heirs are fulfilled in accordance with the provisions of Islamic inheritance law, whether the mafqud husband returns or is found alive.

Then related to the property and marital status of the mafqud husband, Tgk. Syibril Malasyi said that the property of the missing person cannot be directly distributed to his heirs, and he is also still considered bound to his wife. Conversely, if there are laws that require certainty of his life, the person can be considered dead. For example, the remainder of the inheritance is not immediately distributed to the heirs, but is deferred until it is certain whether the person is alive or dead. Likewise, if he or she receives a will, it will be held in abeyance until the status of his or her life or death is clear. In both situations, if it is proven that he is still alive, the property must be handed over to him. On the other hand, if it is proven that he is dead, the remaining assets can be distributed to the heirs who are entitled to receive them. However, there is another possibility, if the property has been distributed based on the judge's decision, and then the missing person returns, and the property has been used, then he cannot ask for the property back that has been distributed.

He referred to the opinion of Ibn al-Muqri in al-Raudh who explained that: In language, "mafqud" means missing, while in terms, it refers to a person whose whereabouts are unknown and the news has been lost. Regarding the status of this missing person, the fiqh scholars have several views. Firstly, his wife cannot be married to anyone else. Secondly, his inheritance cannot be distributed. Thirdly, his rights should not be taken over until it is clear whether he is still alive or dead, or until a certain time has passed so that there is a strong suspicion that he has died. If the judge decides that the person is dead, and does not specify a specific time, then his estate will be given to the rightful heirs at that time. However, if a specific time has been specified, then the estate is given to the rightful heirs at the specified time. If the missing person returns after the property has been distributed, the distribution is void, and the property must be returned if it is intact. If it is not intact, then the person who received the property is obliged to return a similar item or replace it with an equivalent value.

Based on the above opinions, it shows that the status of missing persons (mafqud) in the view of fiqh is very complex and requires caution. Their rights, such as the right to inheritance and other rights, should not be ignored or transferred before there is certainty about their condition, whether they are alive or dead. This arrangement aims to protect the

rights of the missing person as well as the heirs, so that any decisions made regarding their property and marital status are based on clear certainty or proper legal decisions. If the person returns after being presumed dead and the estate has been distributed, there is an obligation to return the estate or replace it with an equivalent value.

Furthermore, regarding the status of the mafqud husband's property, Abi Rifana gave the view that in Islamic Law, the status of missing persons or "mafqud" is treated with great care and reviewed in two different situations.

The first situation is when the missing person is considered to be alive. In this situation, Islamic law requires that all his rights are respected and safeguarded. His property is still considered his property, which means that the heirs are not allowed to distribute the property to anyone. In addition, his marriage bond with his wife also remains valid. She is still considered his legal wife, and their marriage cannot be annulled until there is clear and definitive proof of his death. This approach is taken to protect the rights of the missing person and ensure that the decision taken does not harm any party, either in terms of property or family relationships.

The second situation occurs when the missing person is considered dead. In this situation, Islamic law allows the person's property to be distributed to the heirs who are entitled to receive it, because the status of his death is considered quite certain. As such, he no longer has control over his property, and the heirs have the right to receive it. In addition, his wife is also considered to no longer be bound in marriage, which means that their marriage bond is legally over. This allows the wife to continue her life according to the provisions of Islamic law, including if she wishes to remarry. This decision is taken after considering various factors, such as the length of time missing and uncertainty regarding the person's whereabouts.

These two situations show how Islamic Law strives to maintain a balance between protecting the rights of the lost individual and ensuring justice for the heirs and spouse left behind. This careful and gradual approach aims to avoid mistakes in decision-making that could impact multiple parties.

Case

Total assets: 100 million rupiah, heirs: 1 wife, 1 son, 1 father, and 1 mother, division of Property Based on the Shafi'i Mazhab:

1. Wife According to the Shafi'i school of thought, the wife is entitled to 1/8 of the total estate if the husband dies and leaves children. Wife's share: $1/8 \times 100 \text{ million} = 12.5 \text{ million rupiah}$.
2. Remaining Estate After Wife's Share: The remaining assets available after the wife's share: $100 \text{ million} - 12.5 \text{ million} = 87.5 \text{ million IDR}$.
3. Father and Mother: In the Shafi'i school of thought, the father and mother are each entitled to 1/6 of the total estate if the deceased leaves children. Father's share: $1/6 \times 100 \text{ million} = 16.67 \text{ million rupiah}$. Mother's share: $1/6 \times 100 \text{ million} = 16.67 \text{ million rupiah}$.
4. Division for Sons: After allocating shares to the wife, father, and mother, the remaining estate will be given to the son. However, since the total share of the father and mother ($16.67 \text{ million} + 16.67 \text{ million} = 33.34 \text{ million rupiah}$) is less than the estate, the share for the son is: $87.5 \text{ million} - (16.67 \text{ million} + 16.67 \text{ million}) = 87.5 \text{ million} - 33.34 \text{ million} = 54.16 \text{ million rupiah}$.

Final Distribution of Estate: Wife: 12.5 million rupiah, Father: IDR 16.67 million, Mother: 16.67 million rupiah, Son: 54.16 million rupiah.

In this way, although the loss of husbands and fathers is very heavy, the distribution of inheritance is done by considering the rights of all heirs fairly and in accordance with the principles of sharia.

Based on the explanation above, the division of inheritance for husbands who are confirmed to have died due to natural disasters such as tsunamis, according to the Shafi'i school of thought, is as follows: The wife is entitled to receive 1/8 of the total assets, which is 12.5 million rupiah. The father and mother are each entitled to 1/6 of the total assets, which is 16.67 million rupiah each. After the allocation for the wife, father, and mother, the remaining assets available are 54.16 million rupiah, which is fully given to the son. Thus, the distribution of inheritance is done fairly and in accordance with the provisions of sharia, ensuring that the rights of each heir are fulfilled proportionally and fairly.

Author Analysis

In an examination of the status of mafqud, the ulema of Kota Langsa provided valuable insights, which are based on sound principles of Islamic law and adaptation to the local context. Abati Salahuddin, as the Chairman of the Ulama Consultative Assembly (MPU) of Langsa City, emphasized that mafqud refers to a person whose whereabouts are unknown, and the waiting period for determining such status is traditionally regulated in Islamic law. In Abati Salahuddin's view, the commonly applied waiting period is four years. This is in accordance with the guidelines in the Shafi'i school of thought, which suggest that after this period, a person who goes missing without further information can be presumed dead. This approach provides legal certainty for families and facilitates the regulation of inheritance rights.

However, Abati Salahuddin also added that in special situations such as natural disasters or armed conflicts, the waiting period could be extended. Tgk. Syibril Malasyi, one of the ulama who also gave his views, agreed with this by stating that in emergencies, the waiting period may require adjustment based on the circumstances. For example, if there is a major disaster that leaves many people missing and there is no clear information about their fate, the waiting period may need to be extended so that the decision taken is truly in line with the actual situation.

Tgk. Hadi Subulana emphasized the importance of the role of judges in determining the status of mafqud. According to him, the decision regarding the status of a missing person must consider the available evidence as well as the current conditions. Judges are expected to make a comprehensive decision, ensuring that all aspects and possibilities have been considered before determining the status of mafqud. This is important to avoid unfair decisions and ensure that all parties involved get their rights in accordance with Islamic law.

Abi Rifana, another scholar involved in this discussion, highlighted the aspect of managing the assets of a mafqud husband. He explained that if a missing person is considered mafqud, then his inheritance should be withheld until there is legal certainty regarding his status. If it turns out that the mafqud husband is still alive after the inheritance is distributed, then the portion that has been distributed must be returned. This reflects the principle of prudence in managing inheritance and ensuring that no party is harmed in the distribution process.

Walidi Ramli Amri, Leader of Dayah Futuhul 'Ulum As-Sa'adah, added that in extreme cases such as disasters, the waiting period can be extended by considering local conditions. During the waiting period, the family of the mafqud is entitled to receive assistance to meet their needs. This approach shows concern for the welfare of the families left behind and ensures that they do not experience severe economic hardship during this period of uncertainty.

As a researcher, the views of the ulama of Kota Langsa regarding mafqud strongly support the principles of comprehensive Islamic law and adjustment to local conditions. The approach adopted reflects a deep understanding of sharia law as well as the ability to adapt to dynamic situations. I fully support this view as it reflects efforts to ensure justice and the

protection of individual rights, as well as providing solutions that are fair and in accordance with the principles of sharia in managing the status of mafqud and inheritance.

CONCLUSION

Based on the research that has been conducted regarding the Division of the Estate of the Mafqud Husband According to the Opinion of the Ulama of Langsa City, it can be concluded that in Islamic law, the mafqud (missing) husband is considered to have died after a waiting period, generally four years, in accordance with the Shafi'i Mazhab. If the mafqud husband has not been found within this period, then his status is considered legally dead, even though there is no physical evidence of his death. During this waiting period, the mafqud husband's property is still managed with the principle of prudence, and the arrangement and use of the property is done in a way that preserves the rights of the heirs and prevents potential conflicts. Langsa City scholars, such as Abati Salahuddin, Tgk. Syibral Malasyi, Tgk. Hadi Subulana, Abi Rifana, and Walidi Ramli Amri, identified two main situations related to mafqud husbands in the context of inheritance distribution. First, if the mafqud husband is found alive after the waiting period, the property that has been distributed remains the property of each heir in accordance with the provisions that apply at that time. Second, if the mafqud husband is not found within four years and is considered dead, then his inheritance can be distributed to the heirs in accordance with the provisions of Islamic law after the court process establishes the status of his death. They emphasized the need for careful and fair management of the estate during the waiting period as well as the judge's decision to ensure the distribution of the estate in accordance with sharia.

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