



Interpreting *Mafqūd* in Modern Courts: The Influence of Classical Fiqh Schools on Judicial Ijtihad in Indonesia

Hamda Sulfinadia,^{1*} Jurna Petri Roszi,² Amirulhakim,³ Syahrul Anwar⁴

^{1,4} Faculty of Sharia, UIN Imam Bonjol Padang, Indonesia

² STAI Azziyah Klender, Jakarta, Indonesia

³ Kolej Islam As-Sofa, Selangor, Malaysia

*Corresponding Author: hamdasulfinadia@uinib.ac.id

DOI: <https://doi.org/10.21154/justicia.v23i1.9694>

Received: August 10, 2025 | Revised: Nov 16, 2025 | Accepted: Jan 30, 2026

Abstract: This article addresses the question of how inheritance cases involving *mafqūd* are resolved in Indonesian Religious Courts and to what extent judicial reasoning reflects madhhab moderation within Islamic law. The issue of *mafqūd*, defined as a missing person whose life or death is legally uncertain, has long generated juristic debate due to divergent interpretations of the principle of *istishḥāb al-ḥāl* and the scope of judicial authority in determining death. This study positions itself within normative Islamic legal scholarship by examining judicial practice as an arena where classical fiqh interacts with contemporary positive law. Using a qualitative legal method, the research analyses twelve purposively selected Religious Court decisions through document study and juridical analysis. Operationally, the rulings are examined by comparing judges' legal reasoning with doctrines from the Ḥanafī, Mālikī, Shāfi‘ī, and Ḥanbalī schools, as well as with the Compilation of Islamic Law. The findings reveal that judges do not strictly adhere to a single madhhab, but instead employ *ijtihād qadā‘ī* to selectively integrate classical opinions with statutory norms to ensure legal certainty and substantive justice. This judicial pattern demonstrates madhhab moderation as a methodological approach rather than doctrinal compromise, contributing, theoretically, to the concept of living fiqh and, practically, to fair inheritance adjudication in Religious Courts.

Keywords: *mafqūd* cases; Religious Courts; moderation in madhhab.

Abstrak: Artikel ini mengkaji bagaimana perkara kewarisan *mafqūd* diselesaikan di Pengadilan Agama Indonesia serta sejauh mana pertimbangan hakim mencerminkan moderasi bermazhab dalam hukum Islam. Persoalan *mafqūd*, yakni orang yang hilang dan tidak diketahui status hidup atau matinya, sejak lama memunculkan perdebatan fikih akibat perbedaan penafsiran atas prinsip *istishḥāb al-ḥāl* dan kewenangan hakim dalam menetapkan kematian. Penelitian ini diposisikan dalam kajian hukum Islam normatif dengan menempatkan putusan

pengadilan sebagai ruang interaksi antara fikih klasik dan hukum positif. Metode yang digunakan adalah penelitian hukum kualitatif melalui studi dokumen dan analisis yuridis terhadap dua belas putusan Pengadilan Agama yang dipilih secara purposif karena relevansinya dengan sengketa kewarisan *mafqud*. Secara operasional, pertimbangan hukum dalam putusan tersebut dibandingkan dengan pendapat mazhab Ḥanafī, Mālikī, Syafi'i, dan Hanbali serta ketentuan Kompilasi Hukum Islam. Hasil penelitian menunjukkan bahwa hakim tidak menerapkan mazhab secara rigid, melainkan menggunakan *ijtihad qadā'i* untuk mengintegrasikan doktrin fikih dan hukum positif demi kepastian hukum dan keadilan substantif. Temuan ini menegaskan moderasi bermazhab sebagai pendekatan metodologis dan berkontribusi pada pengembangan hukum Islam yang adaptif dan berkeadilan.

Keywords: perkara *mafqud*; Pengadilan Agama; moderasi madhhab.



Copyright: © 2026 by author (s). This work is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](#).

Introduction

There is disagreement among the madhhabs regarding the settlement of *mafqud* cases. *Mafqud* is a person whose whereabouts are unknown, whether alive or dead. The various benefits of this *mafqud* are the source of this difference of opinion, so it is necessary to determine its existence.¹ *Mafqud* is declared alive under the principle of *istishāb* until there is convincing evidence of his death. However, several interests require the existence of the *mafqud* to be confirmed.² First, about the wife of the *mafqud*, it is necessary to clarify the whereabouts of her missing husband because this concerns the status of his wife, whether the wife still belongs to the *mafqud*, how long the wife must wait for certainty whether her husband is alive or dead, and when she can remarry another man.³ The second concerns property, which is closely related to

¹ Mek Wok Mahmud and Siti Zulaikha Binti Mokhtar, "Mafqud and Fasakh in the Writings of Muslim Jurists and Provisions of Malaysian Federal Territory Islamic Family Law: The Case of MH 370 Missing Plane," *Intellectual Discourse* 25 (2017): 575–88; Isniyatun Faizah, M. Syafi' Nuril Izza, and M. Najib, "The Application of Istishab In Cases of Missing Heirs (Mafqud) or Those Whose Whereabouts Are Unknown," *Al Hakam: The Indonesian Journal of Islamic Family Law and Gender Issues* 5, no. 1 (June 2025): 57–69, <https://doi.org/10.35896/althakam.v5i1.1004>.

² Nunung Rodliyah, Elfa Murdiana, and Ricco Andreas, "Judicial Ijtihad in Religious Courts for Achieving Substantive Justice in Indonesia," *Journal of Law and Regulation Governance* 2, no. 12 (2024): 372–80, <https://doi.org/10.57185/jlarg.v2i12.79>.

³ Farahsyinta Gladisia Puspa Fardiana, Khoirul Hidayah, and Mohd Hazim Bin Borhan, "A Comparative Analysis of the Missing (Mafqud) Husband Regulations in Indonesia and Malaysia: A Study to Reform

inheritance. Mutual inheritance occurs when there is death. If there is no death, then a person cannot inherit, or he may die before his relatives.⁴

The *mafqud* case has occurred not only in the studies of the imams of the madhhab,⁵ but also in legal practice in Indonesia.⁶ Based on data from the Directory of Decisions of the Supreme Court of the Republic of Indonesia, there have been 256 Religious Court decisions related to *mafqud* cases over the last three years (2019–2021). This data shows that the phenomenon of *mafqud* is not merely a theoretical issue, but a real problem faced by religious courts.⁷ Of these decisions, 12 were selected as research samples for analysis from the perspectives of the four fiqh schools: Ḥanafī, Mālikī, Shāfi‘ī, and Ḥanbalī. However, from the initial review, there appears to be a gap between the theoretical construction of classical fiqh and the practice of *mafqud* resolution in Indonesian Religious Courts, where judges often interpret contextually, in line with social needs and national positive law. This condition illustrates the dynamics of the madhhab's moderation in the practice of Indonesian religious courts, which is the primary focus of this study.

Previous studies on *mafqud* in Islamic law and in religious court practices in Indonesia have focused on three main themes: determining the status of *mafqud*, the continuation of the *mafqud* party's marriage, and the inheritance of *mafqud*. First, studies on assessing the status of *mafqud* highlight the criteria and time period used to determine that a person is legally missing.⁸ Most studies examine the application of classical views of madhhab scholars in the

the Regulation That Meets Legal Certainty in Indonesia," *De Jure: Jurnal Hukum Dan Syar'iah* 14, no. 2 (2022): 359–79, <https://doi.org/10.18860/j-fsh.v14i2.17347>.

⁴ Alifia Farhanah and Muhammad Muhammad, "Analisis Penetapan Kewarisan Mafqud Pada Putusan Nomor 318/Pdt. P/2022/PA. Kab. Mn," *Al Fuadiy Jurnal Hukum Keluarga Islam* 6, no. 2 (2024): 13–24.

⁵ Abdul Jafar, "Warisan Mafqud Dan Orang Mati Bersama Menurut Imam Mazhab Dan Hukum Islam Di Indonesia," *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah* 10, no. 2 (2024): 145–62; Fathun Nisa Nisa, "Pembagian Harta Waris Terhadap Ahli Waris Yang Hilang (Mafqud) Ditinjau Dari Hukum Islam," *Interdisiplin Journal Social Science (IJSS)* 1, no. 1 (February 2025): 10–16, <https://doi.org/10.33330/ijss.v1i1.6>.

⁶ Andre Afrilian, "Landasan Hukum Dan Pertimbangan Hakim Terhadap Status Istri Dalam Perkara Suami Mafqud Melalui Putusan Nomor 0279Pdt. G2009PA. PAS," *Al Maqashidi: Jurnal Hukum Islam Nusantara* 6, no. 2 (2023): 84–103.

⁷ Muchamad Coirun Nizar, "The Religious Court's Decisions on Divorce: A Maqāṣid Sharī‘a Perspective," *Ulumuna* 24, no. 2 (2020): 398–416, <https://doi.org/10.20414/ujis.v24i2.408>.

⁸ Hatice Kübra Kahya, "In Search of a Remedy in Another Madhab: Marriage of an Absent Husband in Ottoman Family Law," *Islam Tetkikleri Dergisi* 12, no. 2 (2022): 697–716, <https://doi.org/10.26650/iuitd.2022.1123353>.

context of modern law, finding differences of opinion regarding the length of the waiting period (*muddat al-intizār*).⁹ Meanwhile, religious courts in Indonesia tend to adopt a contextual approach that considers the principle of public interest and national legal provisions.¹⁰

Second, studies on the continuation of marriage with the *mafqud* focus on the legal implications for the abandoned spouse, particularly the wife's right to remarry after a court ruling.¹¹ Research on this topic shows the convergence between religious doctrine and socio-legal reality.¹² Judges often use their discretion to balance between Sharia principles and the protection of women's rights.¹³ Finally, studies on *mafqud* inheritance highlight the tension between the classical fiqh principle of delaying inheritance distribution until there is certainty of death and the practical needs of the judiciary in providing legal certainty for heirs.¹⁴ These findings indicate interpretive flexibility among judges in responding to *mafqud* cases in religious courts.¹⁵

In general, previous studies have made significant contributions to the normative and procedural understanding of *mafqud*, but they remain partial and separate in each theme.¹⁶ Therefore, this study offers something new by analysing the dynamics of religious court decisions in Indonesia through the perspective of madhhab moderation, namely how judges negotiate between

⁹ Mahmud and Mokhtar, "Mafqud and Fasakh in the Writings of Muslim Jurists and Provisions of Malaysian Federal Territory Islamic Family Law," 575.

¹⁰ Fardiana, Hidayah, and Borhan, "A Comparative Analysis of the Missing (Mafqud) Husband Regulations in Indonesia and Malaysia," 359.

¹¹ A Khomsatun, "Hukum Pernikahan Istri Yang Disebabkan Suami Mafqud Menurut Perspektif Hukum Islam," *Jurnal Al-Wasith: Jurnal Studi Hukum Islam*, no. Query date: 2022-10-04 15:51:33 (2021), <https://jurnal.unugha.ac.id/index.php/wst/article/view/196>.

¹² Muthia Hartati and Muhammad Yunus, "Upaya Hukum Dan Perlindungan Terhadap Istri Dalam Perkara Suami Mafqud," *Jurnal Riset Hukum Keluarga Islam*, December 20, 2022, 67-70, <https://doi.org/10.29313/jrhki.vi.1183>.

¹³ Lindiana Pramaysela, Nuraeni Novira, and Rahmayani Lancang, "Implikasi Hukum Perkawinan Pada Kasus Rajul Mafqud," *AL-QIBLAH: Jurnal Studi Islam Dan Bahasa Arab* 1, no. 1 (August 2022): 53-71, <https://doi.org/10.36701/qiblah.vii.1630>.

¹⁴ Sirat Handayani, "Kepastian Hukum Pembagian Waris Terhadap Orang Yang Dianggap Hilang Berdasarkan Penetapan Ketidakhadiran Di Pengadilan," *Jurnal Ilmu Hukum: ALETHEA* 4, no. 2 (May 2022): 95-114, <https://doi.org/10.24246/alethea.vol4.no2.p95-114>.

¹⁵ İbrahim Kâfi Dönmez, "An Oft-Repeated Fallacy in Writing and Teaching Islamic Legal Methodology and Its Significations: The Case of *Mafqud*," *Islam Arastirma Dergisi* 2022, no. 47 (2022): 1-65, <https://doi.org/10.26570/isad.1056197>.

¹⁶ Hamda Sulfinadia et al., "Implementation of Aqiqah in the Bulan MaulidIn Nagari Padang Laweh West Sumatra Perspective'Urf," *Al-Istinbath* 8, no. 2 (2023): 465-484. <https://doi.org/10.29240/jhi.v8i2.6800>.

classical fiqh doctrine and the needs of modern legal practice, thereby producing a contextual, adaptive, and just form of Islamic law. This method involves a study of twelve Religious Court decisions and legal analysis of their determinations of *mafqud* status and inheritance rights. These rulings were selected through purposive sampling, based on the consideration that they explicitly discuss the legal determination of missing persons and their legal implications for heirs, contain sufficiently detailed legal reasoning, and are relevant to inheritance disputes involving *mafqud*. Data were collected through a literature review of court rulings, relevant legal documents, and regulations. The analysis compared the practices found in *mafqud* case rulings with the opinions of the four leading fiqh schools: Ḥanafī, Mālikī, Shāfi‘ī, and Ḥanbalī. This study aims to identify how madhab moderation is applied in legal practice and to evaluate the conformity of Religious Court decisions with applicable Islamic legal principles.

Determination of *Mafqud* and Basis for Judge's Consideration in Indonesia

It is not only in the study of Islamic Jurisprudence that the determination of the death of *mafqud* is the judge's authority. The compilers of the Compilation of Islamic Law (KHI) also determine this.¹⁷ The provisions of Article 71, letter b, state that the heir is a person who, at the time of his death or who is declared dead based on a court decision, is Muslim. In addition, in Book II, it has been expressly stated that one of the functions of the voluntary jurisdiction of religious courts is to request that a person be declared in a state of *mafqud*.¹⁸ The Compilation of Islamic Law explains in Article 71 that a marriage can be annulled if: a) A husband commits polygamy without the permission of the Religious Court; b) The woman who is married is later found to be still the wife of another man who is *mafqud*; c) The woman who is married is still in the *iddah* period with another husband. d) Marriages that violate the age limit for marriage as stipulated in Article 7 of Law No. 1 of 1974. e) Marriages conducted without an unauthorised guardian; f) Marriages conducted without coercion.

¹⁷ Humaira, Anggun Mareta, and Dedy Sumardi, "Eksistensi Mafqud Dalam Hukum Islam Dan Hukum Positif Indonesia: Implikasi Terhadap Hak Waris Dan Perkawinan," *Jurnal Hukum Samudra Keadilan* 20, no. 1 (May 2025): 17–30, <https://doi.org/10.33059/jhsk.v20i1.11312>.

¹⁸ Abdul Manaf and Hakim Tinggi PTA Medan, "Yurisdiksi Peradilan Agama Dalam Kewarisan Mafqud," in <https://www.pa-bengkulukota.go.id/> accessed April 2025.

The matter of determining the death of *mafqud* is the jurisdiction of the courts within the Religious Courts, with due regard to the provisions of Article 2 of Law Number 7 of 1989, which has been amended by Law Number 3 of 2006, which states that the Religious Courts are one of the actors of judicial power for people seeking justice who are Muslims regarding some instances as referred to in this Law. The determination of *mafqud* cases in the Religious Courts in Indonesia can be seen in the table below:

Table 1. Determination of *Mafqud* Cases in Indonesia

No	PA Name	Case Number	Verdict
1	PA Bantul	11/Pdt.P/2020/PA.Bt 1	Determination of <i>mafqud</i> : the child is determined to be <i>mafqud</i> , considering that the age of life has exceeded the average age.
2	PA Wates	15/ /2020/PA.Wt	Pdt.P In determining <i>mafqud</i> , the father is deemed <i>mafqud</i> , given that he has exceeded the average age.
3	PA Jakarta Selatan	428/ Pdt.P/2020/PA.JS	Determination of <i>Mafqud</i> after 12 years of unknown news.
4	PA Surabaya	0655/ Pdt.P/2020/PA Sby	Determination of <i>Mafqud</i> after 2 years of leaving home, and no news is known.
5	PA Jember	815/ Pdt.P/2020/PA.Jr	Determination of <i>mafqud</i> after 10 years of unknown news.
6	PA Jember	996/ Pdt.P/2020/PA. Jr	Determination of <i>Mafqud</i> after 10 years of unknown whereabouts.
7	PA Jember	638/ Pdt.P/2020/PA.Jr	Determination of <i>mafqud</i> 11 years of unknown news.
8	PA Kendal	XXXX/Pdt.P.G/2019/ PA.Kdl	Determination of <i>mafqud</i> 2 years after unknown whereabouts.
9	PA Wates	39/Pdt.P/2019/PA Wt	Determination of <i>Mafqud</i> after 76 years.
10	PA Yogyakarta	XX/Pdt.P/2019/Yk	Determination of <i>Mafqud</i> after 40 years.
11	Mahkamah Syari'ah Sigli	480/Pdt.P/2020/MS .Sgi	Determination of <i>mafqud</i> after 12 years of unknown whereabouts.
12	PA Yogyakarta	0042/Pdt.P/2019/PA .Yk	Determination of <i>mafqud</i> after 7 years running away from home.

Source: Directory of Decisions of the Indonesian Supreme Court, 2025

Based on the table above, it can be classified as a form of Religious Court decisions in Indonesia related to the continuation of marriage, which can be

classified into 3: First, the determination of the *mafqud* case, which is in line with the opinion of the Ḥanafī Madhab. PA Bantul Stipulation No. 11/Pdt.P/2020/PA.Btl and PA Wates Decision on Case No. 15/Pdt.P /2020/PA.Wt states that the determination of *mafqud* in both decisions, the child is determined to be *mafqud*, with the legal consideration that the age of life has exceeded the average age. In PA Bantul Stipulation No. 11/Pdt.P/2020/PA.Btl, it is explained that the *mafqud* child was taken by his parents to another area in 1946 when the child was only 8 years old, but until the entry of this case to PA Bantul, his whereabouts were unknown, and both parents were confirmed dead.

The family filed a *mafqud* determination in 2020, and it was decided that this child was *mafqud* because his whereabouts had been known for 76 years. In Case No. 15/ Pdt.P /2020/PA, Wt the determination of *mafqud*, the father was determined to be *mafqud*, considering that his age exceeded the average age of his father's peers. Likewise, with the determination of the Wetan Religious Court No. 39/Pdt.P/2019/PA Wt, the determination of *mafqud* after 76 years of unknown news of the *mafqud* and the Yogyakarta Religious Court Determination No. XX/Pdt.P/2019/Yk, which determines *mafqud* after 40 years of no news of the *mafqud*. In these last two determinations, it turns out that 76 and 40 years after the loss of the *mafqud* have exceeded the average ages of people aged 65 and 72.

The determination of the *mafqud* case above is in line with the opinion of the Ḥanafī Madhab. This is evident from the opinion of Abu Hanifah and his companions that a person who is *mafqud* is only legally determined when a person of the *mafqud*'s age has died. Regarding the age of the deceased in general, this group argues that there are ages of 60, 90, and 120 years.¹⁹ In both of the above rulings, the Bantul Religious Court and the Wetan Religious Court ruled that a person is only determined as *mafqud* when a person of the *mafqud*'s age has died, or a person of the *mafqud*'s age has exceeded the average age of the *mafqud*.

Second, *mafqud* cases should be determined in accordance with the Mālikī and Shāfi‘ī Madhhabs. Determination of South Jakarta Religious Court No.

¹⁹ Shams al-Dīn al-Sarakhsī, *Al-Mabsūt* (Beirut: Dār al-Ma'rūfah, 2000); Muhammad Abu Zahrah, *Al-ahwal al-shakhsiyah* (Cairo: Dar al-Fikr al-Ārabi, 1957).

428/Pdt.P/2020/PA JS, determination of *mafqud* after 12 years; Determination of Jember Court No. 815/pdt.P/2020/PA Jr, determination of *mafqud* after 10 years; Determination No. 996/dt.P/2020/PA.Jr, determination of *mafqud* after 10 years; Determination No. 638/Pdt.P/2020/PAJr, determination of *mafqud* after 11 years since the news of the *mafqud* is not known; Sigli Syar'iyah Court Determination No. 480/Pdt.P/2020/MS.Sgi, Yogyakarta Religious Court determination No. 0042/Pdt.P/2019, determination of *mafqud* is carried out after 7 years of unknown news of the *mafqud*. In the six stipulations above, the relevant Religious Courts determine the *mafqud* of a person after a period of 7 to 11 years. Given the passage of 4 years, there is no news of the *mafqud*, whether he is alive or dead, which is in line with the opinions of the Mālikī and Shāfi‘ī Madhhabs.

The Mālikī and Shāfi‘ī schools of thought think that a person who is *mafqud* can be declared dead by a judge if four years have passed. After four years have passed, if the wife is unable to live on her own, she may file a lawsuit with the judge for annulment because the husband is *mafqud*.²⁰ However, the age limit according to the Mālikiyah is up to 70 based on the well-known hadith that the age limit of my Ummah is between 60 and 70 years old.

The Shāfi‘ī Madhab also explains that the *mafqud* can be declared dead based on available evidence or after the passage of a period believed, according to the usual, to be impossible for him to be still alive. They do not determine the size of the period because human age is relative, but leave it entirely to the judge based on these considerations.²¹ Another narration explains that the age limit is 90 years, based on the prevailing custom.²² The settlement of *mafqud* cases, according to the Shāfi‘ī Madhab, is that the *mafqud* husband can apply for annulment of his marriage to the ruler, after which he is given four years. Within this time, a search is carried out for his husband in the case of a missing person in an enemy country. Based on the stipulations of the 6 relevant Religious Courts, it turns out that, in determining abandonment of the *mafqud*

²⁰ Hasri Wahyuni Manurung, “Penyelesaian Warisan Dari Pewaris yang Hilang Menurut Mazhab Syafi‘ī (Studi Kasus Kecamatan Simpang Empat Kabupaten Asahan)” (skripsi, Universitas Islam Negeri Sumatera Utara, 2021), <http://repository.uinsu.ac.id/13004/>; Zahrah, *Al-ahwal al-shakhsiyah*.

²¹ Muhammad al-Idris Al-Shafi‘ī, *Kitab Al-Umm* (Dar Al-Marifa, 1973); Wahbah Al-Zuhaily, “Al-Fiqh al-Islamiy Wa Adillatuhu,” Juz VII, *Damsyiq: Dar al-Fikr*, 1989.

²² Muhammad Ali Ash-Shabuni, *Pembagian waris menurut Islam* (Jakarta: Gema Insani, 1995).

after no news is received for 7 to 11 years, the stipulation is, in fact, in line with the Mālikī and Shāfi‘ī madhhabs.

Third, the determination of *mafqud* is based on the judge's *ijtihad*. Determination of the Kendal Religious Court No. XXXX/Pdt.P/2019/PA Kdl and Determination of Surabaya Religious Court No. 0655/Pdt.P/2020/PA Sby determined that the *mafqud* had died after 2 years of unknown existence of the *mafqud*. The two stipulations are based on the judge's *ijtihad*. Judges can resolve and determine a case through their *ijtihad*.²³

The determination of the legal death of the *mafqud* is left to the judge. The judge will research and exercise *ijtihad*, doing what is beneficial.²⁴ Some other Maalikis are of the view that the judge may determine the death of the *mafqud* after one year has passed.²⁵ This opinion is also in line with the opinion of 'Ali bin Abi Talib. The reason for this is the absoluteness of the words of 'Ali ibn Abi Talib: The wife of the *mafqud* is a wife who has been subjected to trials, so be patient and do not marry her until there is proof of her husband's death.²⁶

The Hanbali school of thought distinguishes between two categories of *mafqud*: a. *Mafqud* who is presumed dead, such as a person who asks permission to go to war, after the war is over, the person does not return, after searching for information, no one knows, and no one has seen his body. In such a case, the *mafqud* can be said to have died if four years have passed. b. *Mafqud*, who is not seriously suspected of having died. For example, a person said goodbye to trade, but after some time, he did not return home, and it was not known whether he was alive or dead. The *mafqud*, in this case, is considered to

²³ Mu'tashim Billah, "Konsep Radd Dalam Kompilasi Hukum Islam: Interpretasi Hakim Pengadilan Agama Yogyakarta," *Ahkam: Jurnal Hukum Islam* 9, no. 1 (July 2021): 27–54, <https://doi.org/10.21274/ahkam.2021.9.1.27-54>.

²⁴ Agung Widya Yudhistira and Agung Widya Yudhistira, "Akibat Hukum Orang Hilang (Mafqud) Terhadap Harta Benda Dan Penyelesaian Kewarisan Dalam Islam," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 10, no. 2 (November 2021): 131–45, <https://doi.org/10.28946/rpt.v10i2.1229>.

²⁵ Imam Malik, in one of his opinions, determined that the permissible time for a judge to pass a death sentence on the *mafqud* is four (4) years. He derived this opinion from the statement of Umar bin Khattab, who said: "Every wife who is abandoned by her husband, and she does not know where her husband is, must wait four years, then observe 'iddah for four months and ten days, after which she is free..." See Al-Zuhaily, "Al-Fiqh al-Islamiy Wa Adillatuhu," 456.

²⁶ Al-Zuhaily, 455.

have died if people of the *mafqud*'s age have generally died or agree with the Ḥanafīs.²⁷

Suppose it is related to the above Religious Court decisions. In that case, it can be understood that of the 13 (thirteen) decisions above, there are no *mafqud* or disappearance of a person strongly suspected of having died. However, in the 13 *mafqud* choices listed in the table above, where the *mafqud* left the house, there is a slight possibility that the *mafqud* died. The cause of the *mafqud*'s departure from home is basically that it is unlikely that they died because, at the beginning of their disappearance, some went migrating, went on tour, went to carry out their usual activities and until finally in the range of 7 to 76 years later their whereabouts were unknown and even until the average age of the *mafqud*'s peers had died. Based on the description above, it can be understood that the 13 determinations above align with the opinion of the Hanbali Madhhab. The basis of the judge's consideration in determining *mafqud* in Indonesia is Article 71 of the Compilation of Islamic Law (KHI), the opinion of the Madhhab of Jurisprudence, such as the Ḥanafī Madhhab, Mālikī Madhhab, Shāfi‘ī Madhhab and Hanbali Madhhab, based on maslahah according to the Judge's Ijtihad.²⁸

In another case with Umar bin Khattab, according to him, there are several laws related to the marriage of a *mafqud* husband: 1) The wife may choose between remaining faithful to her husband until it is clear where he is, or she may file a lawsuit. If the choice is to file the matter with the judge, then according to Umar, the wife must wait four (4) years from when she reports her husband to the judge. This is because a woman's gestation period is at most four years if the news of her husband's pregnancy is apparent within the four-year waiting period. If, after four years, there is no sign of her husband's life, then the wife serves an *iddah* period of four (4) months and ten (10) days. 2) If the four-year waiting period is over, the judge must summon the guardian of the *mafqud* to divorce the woman and the *mafqud*, and then the woman should

²⁷ Zahrah, *Al-ahwal al-shakhsiyah*; Ibnu Farhan Istiqlal, Meriza Isna Fadlilah, and M. Ikhsanul Akhdza E, “Al-Ijtihād al-Intiqā‘ī and the Resolution of Issues in the Schools of Islamic Jurisprudence: A Study on the Implementation of the Concept of Al-Ijtihād al-Intiqā‘ī in the Indonesian Religious Courts.,” *Rayah Al-Islam* 9, no. 1 (February 2025): 107–26, <https://doi.org/10.37274/rais.v9i1.1396>.

²⁸ Hamda Sulfinadia and Jurna Petri Roszi, “Moderation of Madhhabs in West Sumatra Towards Hadhanah of Minors Whose Mothers Remarry,” *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024): 789–815.

observe the *iddah* period of four months and ten days. 3) If the wife remarries, then the *mafqud* husband returns, and the judge shall order her to choose between his wife and the dowry he has paid. If he chooses the dowry that has been paid, then the wife is for the second husband. If the *mafqud* who has returned chooses to return to his wife, then the wife must undergo an '*iddah* period, after which he may have intercourse with her, and she still gets the dowry that she received from the second husband in exchange for the pleasure she had with him.²⁹

As for the case of *mafqud* that occurred during the time of Umar bin Khattab, which Abdurrahman bin Laila narrated, he said there was a woman who lost her husband for four (4) years, then she reported it to Umar. Then Umar told the woman to wait four (4) years from when she reported the matter to him. If her husband's whereabouts were unknown, she could remarry another man after the four-year waiting period. It turned out that her husband's whereabouts were unknown, and she married another man. After the marriage, her *mafqud* husband returned. This news was conveyed to Umar: "If you want, I will return her. If not, then I will marry you to another woman. The *mafqud* husband replied: Just marry me to another woman."

The disappearance of a person, which results in the unknown whereabouts of a person, whether he is alive or dead, let alone a husband, will have a bearing on the continuation of the marriage. This will affect how long the wife waits for her husband and when she can remarry another man. However, the problem arises when the wife has waited for a certain period according to the opinions of the existing madhhabs and has been submitted to the Religious Court, undergone the trial process, and undergone the *iddah* of death of 4 months and 10 days. Then the wife remarries, and after marriage, the *mafqud* husband returns. The resolution of a case like this can be understood from the opinions of the existing madhhabs. According to Imam Abu Hanifah and Shāfi'i, if the *mafqud* returns while the wife is already married, the wife remains the first husband's property. At the same time, her marriage to her second husband is void (*fasakh*). Imam Malik thinks that if the *mafqud* comes before the second husband intercedes, the woman remains the first

²⁹ Muhammad Rawwas Qal'ahji, *Ensiklopedi fiqh Umar bin khathab r.a* (Jakarta: PT RajaGrafindo Persada, 1999), 362.

husband's wife. However, if the *mafqud* comes before the second husband has interfered with her, she remains the first husband's wife, and the second husband must pay the mahr to the first husband.

According to Imam Ahmad, if the woman has not been married to her new husband, she remains the first husband's wife. If he has already had intercourse with her, then the matter is in the hands of the first husband; if he wants to return to his wife, then he can take her from the second husband and return the dowry. If he does not want to, the first husband can leave her with her new husband, and he can take the dowry from her.

Table 2. Typology of Judicial Rationality in the Determination of Mafqud

Reasoning Mode	Characteristics of Judicial Reasoning	Dominant School of Law	Maqāṣid Orientation	Representative Decisions
Textual fidelity	Literal adherence to classical juristic opinions; declaration of death only after the <i>mafqud</i> has exceeded the average human life expectancy	Ḥanafī	<i>hifz al-nafs</i> (precautionary principle in preserving the presumption of life)	PA Bantul, PA Wates
Doctrinal flexibility	Integration of multiple schools of law, combined with considerations of family welfare (<i>maṣlahah</i>), and the waiting period as a basis for legal certainty	Mālikī–Shāfi‘ī	<i>hifz al-‘ird</i> and <i>hifz al-nasl</i> (protection of marital status and lineage)	PA Jember, PA South Jakarta, MS Sigli
Pragmatic <i>maṣlahah</i>	Independent judicial <i>ijtihād</i> grounded in concrete justice and socio-economic realities; relatively shorter waiting period	Ijtihād-based	<i>hifz al-māl</i> and <i>hifz al-‘ird</i> (protection of economic interests and family dignity)	PA Kendal, PA Surabaya

Source: Author's analysis, 2026

Based on the above description, the determination of the legal status of *mafqud* by judges in the Religious Courts in Indonesia demonstrates a spectrum of judicial rationality that is substantively in line with *maqāṣid al-shariā*, even though it has not been explicitly stated in the normative framework of legislation. This is reflected in the variety of approaches taken by judges, ranging from textual fidelity to the doctrines of the madhhab to pragmatic *ijtihad* based on the interests of the family. In decisions oriented towards textual fidelity, protection of *hifz al-nafs* becomes the most dominant *maqāṣid*. The judges' caution in not immediately declaring a person *mafqud* before their age exceeds the average human life expectancy reflects the fiqh principle that the original law of humans is life (*al-āṣl baqā' al-hayāh*). This approach prioritises the safety of the soul and the assumption of continued life, even though it delays legal certainty for the bereaved family.

Conversely, rulings with doctrinal flexibility show a shift in the orientation of *maqāṣid* towards *hifz al-'ird* and *hifz al-nasl*.³⁰ By declaring a person *mafqud* after a certain period of time (7–12 years), judges seek to end uncertainty regarding marital status, protect the honour of the wife, and provide certainty regarding the lineage and inheritance rights of children. This approach reflects the internalisation of the *Mālikī* and *Shāfi'i* schools of thought, which allow for the determination of death based on time, custom ('urf), and rational probability of a person's survival. Meanwhile, decisions based on pragmatic *maslahah* represent a more progressive and contextual actualisation of *maqāṣid*. In the Kendal and Surabaya court cases, the judges' *ijtihad* was directed at protecting *hifz al-māl* and *hifz al-'ird*, especially when the uncertainty of *mafqud* status had the potential to cause economic losses, stagnation of civil rights, and a heavy social burden on the family. In this context, the judge's *ijtihad* serves as a corrective mechanism for the limitations of the text and doctrine when faced with the need for concrete justice.

Thus, the determination of *mafqud* in the practice of Indonesian Religious Courts is not monolithic, but rather reflects a typology of judicial rationality that ranges from textual fidelity and doctrinal flexibility to *ijtihad maslahat*. This variation confirms that *maqāṣid al-shari'ah* has implicitly become the

³⁰ Lia Noviana, Lukman Santoso, and Mega Puspita, "Interpreting Legal Rights: Disparities in Judicial Treatment of Children Born Out of Wedlock in East Java, Indonesia," *Lex Scientia Law Review* 8, no. 1 (September 2024): 1, <https://doi.org/10.15294/lslr.v8i1.4606>.

foundation of judicial consideration, while also reinforcing the urgency of formulating more explicit, standardised normative guidelines for determining *mafqud* that are oriented toward comprehensive family protection.

Mafqud Heirs: Madhhab Perspectives and Judges' Ijtihad

Jurisprudence scholars have different opinions on the status of *mafqud*'s property and wife, namely, there are 4 (four) alternatives: 1) He is considered alive, both in terms of his property and his wife. That is, the property and wife still belong to *Mafqud* until there is convincing news that he has died. 2) He is considered dead, both in terms of his wealth and in terms of his wife. This means the wife can remarry, and the property can be distributed to her heirs. 3) He is considered alive in terms of wealth and dead in terms of his wife. This means the wealth may not be distributed because he is still considered alive. However, his wife may remarry another man. 4) He is considered alive regarding his wife and dead regarding his property. This means the wife cannot remarry, and the property can be distributed to the heirs because it is considered dead.³¹

The requirements for heirs explained in *faraid* are that the heirs be alive at the time of the testator's death, and among these requirements is the requirement of a certain death.³² This uncertainty causes problems in inheritance. The discussion of *mafqud* in this inheritance involves two things. First, he transfers his property to the heirs in his position as an heir. Second, in his position as an heir, relating to legally transferring the heir's property to him.

Determining the status of *mafqud* in the study of Islamic Jurisprudence, whether the person is still alive or has died, is increasingly important because it involves many aspects, including the law of inheritance. As an heir, *Mafqud* is entitled to a share according to his status, whether as a *dzawil furud* or

³¹ Muhammad Syaltut, *Perbandingan Madhhab Dalam Masalah Fiqih* (Jakarta: Bulan Bintang, 2005), 246; Boris A. Antonov, "Madhhabs in the Islamic Law: Comparative Legal Analysis," RSUH/RGGU Bulletin. Series Economics. Management. Law, no. 1 (2023): 113–32, <https://doi.org/10.28995/2073-6304-2023-1-113-132>.

³² Saidul Iskandar, "Dasar hukum penetapan status hukum mafqud dalam kewarisan di Pengadilan Agama Yogyakarta dan Kediri" (Fakultas Syari'ah dan Hukum UIN Syarif Hidayatullah, 2017), <https://repository.uinjkt.ac.id/dspace/handle/123456789/41250>.

ashabah.³³ Meanwhile, as heirs, they need clarity on their status in the event of their death, as this status is one of the conditions for determining whether the *mafqud*'s inheritance as heirs is open. Two legal considerations can be used in seeking clarity on the legal status of *mafqud*, namely: First, based on authentic evidence that can be accepted as *shar'i*, in line with the principle: "Which remains based on evidence as it remains based on reality."³⁴

For example, if two fair and trustworthy people testify that so-and-so has died, the judge can use their testimony to determine the status of the *mafqud*'s death. If the judge has decided the law, in the capacity of the *mafqud* as heir, then his assets can be distributed to the heirs.

The scholars differed on the period for determining the death of the *mafqud*. They are divided into several schools of thought. Such considerations and efforts must be more vital, but some are acceptable and can be used as legal references. First: Caliph Umar ibn Khattab once decided a case through his words as follows: "Any woman whose husband is missing, and she does not know whether he is alive or dead, must wait for four years. After that, she undergoes a waiting period of four months and ten days, then she is permitted to remarry."

Secondly, Imam Abu Hanifah and his students, Abu Yusuf, Imam Shāfi'i, and Muhammad Hasan al-Syaibani, hold that the judge may determine the death of the *mafqud* by his judgment. The consideration is the maximum average human age in which the *mafqud* lived; this is defined in the judge's *ijtihad*. Based on the two considerations above, ultimately, determining the status of the *mafqud* lies in the *ijtihad* of the judge.³⁵ In the era of reform and the development of increasingly sophisticated technology supported by an adequate state apparatus, the above considerations must be re-examined for

³³ Muhibbussabry Muhibbussabry, "Hak Waris Mafqud (Orang Hilang) dan Penyelesaian Dengan Metode Mauquf (Penangguhan)," *An-Natiq Jurnal Kajian Islam Interdisipliner* 4, no. 1 (February 2024): 80–92, <https://doi.org/10.33474/an-natiq.v4i1.21409>.

³⁴ Mohammad Adnan and Badrah Uyuni, *Ilmu Waris Islam: Teori, Aplikasi, dan Solusi Kontemporer* (PT Penerbit Qriset Indonesia, 2025).

³⁵ Abdelrahman Abdelhamid Mohammed Hassanein, "The Complementarity of Ijtihad and the Maqasid Al-Shariah in Islamic Law: An Analytical Study," *International Journal of Academic Research in Business and Social Sciences* 15, no. 5 (May 2025), <https://doi.org/10.6007/ijarbss/v15-i5/25424>.

their effectiveness.³⁶ Information facilities, both in print and electronic media, are indeed beneficial to judges' duties in determining the status of *mafqud*.³⁷

Mafqud, in his position as heir, scholars agree that the missing person was considered alive during his disappearance. Therefore, his wife remains the wife of the *mafqud*, and his wealth cannot be distributed to the heirs. Regarding how long the *mafqud* is considered alive, the scholars differ in opinion as described above.³⁸ The attitude of the scholars of Jurisprudence is based on the rule of *istiṣḥāb*, which determines the law that applies from the beginning until there is evidence to the contrary. Imam Shāfi‘ī stated that this is a ruling from Allah SWT, the Messenger, the opinion of the Arabs, and the scientists in our country.³⁹ A person cannot inherit the property of his relatives until there is evidence that he has died. Whoever inherits the property of a living person is violating the ruling of Allah and His Messenger.⁴⁰

However, the assumption of being alive cannot be maintained indefinitely, as this would harm others. Therefore, a legal consideration must be used to clarify the legal status of the *mafqud*. Scholars of Jurisprudence have agreed that the judge has the right to determine whether the missing person is dead. However, the scholars agree that he must wait until a specific time in his position as an heir. However, scholars differ in opinion on the position of the *mafqud* as an heir who gets a share of the inheritance.

The Jumhur Ulama group believes that *istishab* can be used to confirm existing rights and obtain new ones.⁴¹ Meanwhile, according to the Ḥanafīs,

³⁶ Sodiq Omoala and Hafsat Kamal Ibrahim, “The Legal Implications of Abandoned Digital Assets in Shari‘ah-Compliant Fintech Platforms,” *ISRA International Journal of Islamic Finance* 15, no. 2 (May 2023): 60–76, <https://doi.org/10.55188/ijif.v15i2.542>.

³⁷ Shahbaz Ahmad Cheema, “Distribution of Inheritance under Islamic Law: An Appraisal of Online Inheritance Calculators,” *Journal of Islamic Thought and Civilization* 11, no. 1 (June 2021): 112–31, <https://doi.org/10.32350/jitc.111.07>.

³⁸ Nor Amira Binti Abd Shakor and Mohd Zamro Bin Muda, “Missing Persons (Al-Mafqud) and Its Relationship With Nafaqah According to Sharia Perspective,” *International Journal of Academic Research in Business and Social Sciences* 13, no. 3 (March 2023), <https://doi.org/10.6007/ijarbss/v13-i3/16399>.

³⁹ Ahmed Nafiu Arikewuyo and Idris Abdur-Rahman Olamidekan, “Application of *Istiṣḥāb* and *Istihsān* in Islamic Law of Inheritance: An Analytical Study,” *International Journal of Fiqh and Usul Al-Fiqh Studies* 8, no. 2 (July 2024): 142–56, <https://doi.org/10.31436/ijfus.v8i2.342>.

⁴⁰ Imam Asy-Syafi‘i, AL-UMM #1: *Kitab Induk Fiqih Islam* (Republika Penerbit, 2016).

⁴¹ J. M. Muslimin and M. Abdul Kharis, “Istihsan and Istishab in Islamic Legal Reasoning: Towards the Extension of Legal Finding in the Context of Indonesia,” *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasayarakatan* 20, no. 2 (December 2020): 163–79, <https://doi.org/10.30631/alrisalah.v20i2.589>.

istishab can only be used to verify existing rights rather than to get new ones.⁴² The opinion of the *Jumhur Ulama* (the majority of scholars) is that, after 4 years, and based on a court decision, the *mafqud*'s property can be divided if the status is that of an heir. If the *mafqud* is an heir after 4 years, and if his family is also an heir, then he is entitled to be an heir and receives a predetermined share. The settlement of *mafqud* cases in terms of determining heirs in Indonesia can be seen in the following table:

Table 3. Determination of Heirs from *Mafqud* Cases in Indonesia

No	PA Name	Case Number	Verdict
1	PA Lumajang	806/Pdt. P/2020/PA.L.mj	Children who are <i>mafqud</i> are considered heirs to their father and mother.
2	Mahkamah Syar'iyyah Banda Aceh	306/Pdt.P/2020/Ms.Bna	Determination of heirs after the death of the husband's parents.
3	PA Banyumas	050/Pdt.P/2020/PA Bms	Determination of heirs after 40 years of <i>mafqud</i> .
4	PA Bandung	693/Pdt.P/2019/PA.Badg	Children who are <i>mafqud</i> are considered heirs to their father.
5	PA Jakarta Selatan	911/Pdt.P/2019/PA.Js	Determination of the heirs of <i>mafqud</i> after 14 years of <i>mafqud</i> is unknown.
6	PA Yogyakarta	31/Pdt.P/2019/PA Yk	Determination of heirs after 40 years of <i>mafqud</i> .

Source: By authors analysis, 2025

Determination of Lumajang Court No. 806/Pdt.P/2020/PA/ L. Mj; Determination of Bandung Religious Court No. 693/Pdt.P/2019/PA.Badg, determining the heirs of the *mafqud* based on the *ijtihad* of the Judge, in which the determination states that the child is chosen as heir after 2-3 years of unknown news. After their parents died, the testator's child was determined to be the heir. This means that the two rulings above align with the majority opinion of the madhhab's scholars.

⁴² Hani Sholihah, Nani Nani Widiawati, and Mohd Khairul Nazif bin Hj Awang Damit, "Reinterpretation of Justice in Islamic Inheritance Rights Based on Gender," *Al-'Adalah* 21, no. 1 (June 2024): 101-24, <https://doi.org/10.24042/alah.v21i1.21256>.

The stipulation of the Syar'iyyah Court of Banda Aceh No. 306/Pdt.P/2020/Ms.Bna determines the heir after the person who is the same age as her husband dies. Whereas the stipulation of the Banyumas Court No. 050/Pdt.P/2020/PA Bms and the Stipulation of the Yogyakarta Religious Court determine the heirs after 40 years of the disappearance of the *mafqud*.⁴³ In the South Jakarta Religious Court's stipulation, the determination of heirs after 14 years of the *mafqud* is not new. These three determinations align with the Ḥanafī School's view that the determination of heirs is made after the average person of the *mafqud*'s age dies. According to the Ḥanafis, the *mafqud* does not inherit from his family unless it is established that the *mafqud* is still alive or has been declared alive by the judge. They argue that the person entitled to inheritance is a living person, whereas a *mafqud* cannot prove whether he is alive or dead. Therefore, according to them, if the *mafqud*'s father dies, then the distribution of the *mafqud*'s inheritance is *mauquf* (suspended) until his whereabouts are known conclusively. That is, if it turns out that the *mafqud* is still alive and the inheritance has been distributed, then his share is taken from the hands of the heirs who have received it and returned to the *mafqud*. If the property has been exhausted, the *mafqud* cannot sue the heirs who received the inheritance to require its return.⁴⁴

Another case with the Stipulation of the South Jakarta Religious Court No. 911/Pdt.P/2019/PA.Js, the determination of heirs is carried out 14 years after the unknown existence. This determination, if associated with the opinion of the madhhab, is in line with the Shāfi'i madhhab. This madhhab argues that in the case of *mafqud*, the *istishāb* argument can be used to obtain new rights. This means that *Mafqud* is entitled to inheritance from his family. If one of the relatives of *Mafqud* dies, and *Mafqud* is one of those entitled to inheritance, then, in this case, there is a difference of opinion among the scholars of Jurisprudence. The majority of scholars of Jurisprudence, consisting of the Mālikī, Shāfi'i, Hanbali, az-Zhahiri, and Shi'a Imamiyah madhhabs, think that the *mafqud* should receive a share of the inheritance by his rights determined

⁴³ Miftakur Rohman, "Eksistensi Mafqud (Solusi Atas Masa Tangguh Bagi Istri Dan Status Ahli Waris)," *MASADIR: Jurnal Hukum Islam* 1, no. 1 (2021): 1-14.

⁴⁴ Al-Syamsuddin Al-Syarkhasi, *Al-Mabsuth* (2000: Dar al Fiqr, Beirut); Yudhistira and Yudhistira, "Akibat Hukum Orang Hilang (Mafqud) Terhadap Harta Benda Dan Penyelesaian Kewarisan Dalam Islam," 131.

by *sharia* and kept for delivery when he returns.⁴⁵ The reason is that *istiṣḥāb al-hal* can be used as absolute proof to establish or reject the law, provided no evidence changes it. He is alive and entitled to inheritance, and his property should not be inherited because he has not died. The basis for the judge's consideration in determining the heirs in the case of *mafqud* in Indonesia is Article 71 of the Compilation of Islamic Law (KHI), Opinions of the Jurisprudence Madhhab, such as the Ḥanafī Madhhab, Mālikī Madhhab, Shāfi‘ī Madhhab, and Hanbali Madhhab, based on *maslahah* according to the Judge's Ijtihad.

The differences of opinion between the two groups above are not significant, but they differ in their application. For the majority, the *mafqud* is included in the composition as an heir when dividing the inheritance. At the same time, the Ḥanafīs do not include it as part of the composition of heirs. It does not mean he will not receive his share of the inheritance; it's just that his share is deferred. The difference stems from their views on *istiṣḥāb sifat*, namely the enforcement of a trait that previously existed. In *istiṣḥāb sifat*, generally called *istiṣḥāb al-hal*, there are indeed differences of opinion among scholars. On the one hand, most scholars argue that *istiṣḥāb al-hal* can be used to strengthen existing rights and obtain new ones. Meanwhile, according to the Ḥanafīs, *istiṣḥāb sifat* or *istiṣḥāb al-hal* can only confirm existing rights rather than create new ones.⁴⁶

To regard the missing person as an heir is to discuss and defend his rights. In this case, they agreed to use *istiṣḥāb*, which means continuing to consider the missing person alive. In this regard, both groups of scholars agree. That is why they have similar opinions on how to treat the disappeared person. As for his relationship as an heir, it means that talking about the missing person will give him inheritance rights. The scholars differ in using *istiṣḥāb*, which means that they differ in their opinion on whether the missing person is alive or dead. Most scholars who use *istiṣḥāb* consider that the status of life that existed before must still be applied to him; therefore, the missing person is still

⁴⁵ Al-Zuhaily, “Al-Fiqh al-Islamiy Wa Adillatuhu,” 421–22.

⁴⁶ Abdul Majid Kurdi, Jum’atul Latifah, and Noor Lida, “Masa Tunggu Bagi Istri Yang Suami Mafqud Dalam Pandangan Imam Syaffi’i Dalam Kitab Al-Umm Dan Ibnu Qudamah Dalam Kitab Al-Mughni,” *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (April 2025): 1995–2005, <https://doi.org/10.62976/ijijel.v3i2.1201>.

declared alive. Meanwhile, the Ḥanafīs argue that, in this case, *istiṣḥāb* cannot be used, meaning that the pre-existing status of life is no longer a consideration for the person's life. This implies that his inheritance rights are declared non-existent. Thus, it can be understood that their differences of opinion in *ushul* have real consequences in the differences in their decisions in matters of Jurisprudence, which in this case determine the rights of heirs.⁴⁷

If the judge determines the death of the *mafquḍ* based on evidence, then the date of death is determined based on the evidence. However, if the decision is based on *ijtihad* and the judge's conjecture, then there are two scholarly opinions: 1) The date of death is calculated on the day he went missing. Consequently, relatives who died before he disappeared do not get the inheritance. Relatives who die after he is missing get an inheritance, whether he is alive or dead. The Malikis and Ḥanafīs express this opinion. 2) The date of death starts from the issuance of the judge's verdict. *Mafquḍ* can inherit the property of his relatives who died before that date, and his property can also be inherited by his relatives who were alive at the time the verdict was issued. The Shāfi‘īyah and Hanbali express this opinion.⁴⁸

According to the majority, other than the Ḥanafīs, the *mafquḍ* inherits from his deceased relatives in his position as an heir. Suppose the *mafquḍ* is the sole heir because he veils the other heirs with the *hijab hirman*. The estate is all deferred to him. If it turns out that the *mafquḍ* is still alive, then it is given to him, and if it turns out that he has died, then the property is given to the rightful heir. But suppose there are other heirs with him. In that case, there are two possibilities: 1) The possibility that he is alive is included as the provisions of shara distribute an heir entitled to receive an inheritance and the property. The *mafquḍ*'s share will be kept by his relatives or heirs. 2) The possibility that he has died, he died after his relatives died, then he gets the inheritance of his

⁴⁷ Abdi Nugraha et al., "Kedudukan Hukum Ahli Waris Yang Hilang Menurut Hukum Islam Berdasarkan Putusan Mahkamah Agung No.0057/PDP-P/2014/PA.YK," *Journal of Law & Policy Review* 2, no. 1 (June 2024): 87–94, <https://doi.org/10.34007/jlpr.v2i1.451>.

⁴⁸ Hasbiah Tunnaim Harahap, Sukiati Sukiati, and Muhammad Yadi Harahap, "Yurisprudensi Hukum Mafquḍ Sebagai Alasan Gugatan Cerai Melalui Putusan Pengadilan (Putusan Nomor 0027/Pdt.G/2016/PA.Srog)," *Innovative: Journal Of Social Science Research* 5, no. 4 (July 2025): 88–110, <https://doi.org/10.31004/innovative.v5i4.20046>.

relatives, and the inheritance is left to the existing heirs. Conversely, the *mafqud* will not receive an inheritance if he dies before his relatives.⁴⁹

For example, suppose the heirs are the missing person's mother, husband, sister and brother. If it is assumed that the missing person is alive, then the share of the heirs is as follows: a) The mother gets $1/6$ because there are two siblings or $12/72$; b) The husband gets $1/2$ because there are no children or $36/72$; c) The sister and brother who *mafqud* gets the rest of the property: 1) The sister gets $1/3 \times 2/6$ or $8/72$; 2) The brother gets $2/3 \times 2/6 = 4/18$ or $16/72$. If the *mafqud* is considered dead, then the division is: a) Mother gets $1/3 = 2/6$ in 'aul to $2/8$ or $18/72$; b) Husband gets $1/2 = 3/6$ in 'aul to $3/8$ or $27/72$; c) Sister $1/2 = 3/6$ in 'aul to $3/8$ or $27/72$; d) In the settlement of the division of inheritance above, the mother's share there are two possibilities, the smallest to be given first is $1/6$ or $12/72$ (if alive), the husband's share is the smallest to be given first is $1/2$ or $27/72$ (after di'aul and considered he died) and the sister to be given first is $8/72$ (if he lives). Thus, the property that is deferred is the right of the missing person in the amount of $16/72$ and $9/72$, for the possibility of returning after there is certainty later.⁵⁰

If the time limit for waiting has passed, as argued above, it turns out that the *mafqud* has not returned or there is no news of his death, then scholars differ in opinion about the property deferred to the *mafqud*. According to Abu Yusuf, as quoted by Amir Syarifuddin, the deferred property is returned to the heirs who already exist, and there is no provision for the heirs who are *mafqud*. This means that missing people are not entitled to inheritance property. Al-Khabari argues that the deferred property is for the missing person because the news is unknown, so the property is given to the heirs of the *mafqud*.⁵¹

The person held captive by a disbeliever, although his situation may be like that of a missing person, is discussed separately in the Jurisprudence

⁴⁹ Ash-Shabuni, *Pembagian waris menurut Islam*, 208; Sancarlos Carlous and Gunawan Djajaputra, "Implementasi Hukum Kewarisan Dalam Penetapan Orang Hilang," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (March 2025): 3219–29, <https://doi.org/10.38035/jihhp.v5i4.3898>.

⁵⁰ Abdur Rohman Wahid, "Distribution of Inheritance Among Different Religions: A Perspective from Islamic Sociology of Law Atho' Mudzhar," *Al-Syakhsiyah: Journal of Law and Family Studies* 7, no. 1 (June 2025): 103–26, <https://doi.org/10.21154/syakhsiyah.v7i1.11383>.

⁵¹ Sholihah, Widiawati2, and Damit, "Reinterpretation of Justice in Islamic Inheritance Rights Based on Gender"; Roslina Roslina et al., "Reinterpreting Islamic Inheritance: Supreme Court Jurisprudence and Gender Justice in Indonesia," *Jurnal Ilmiah Peuradeun* 13, no. 3 (September 2025): 2339–64, <https://doi.org/10.26811/peuradeun.v13i3.1593>.

literature, separate from the discussion of missing persons. This distinction is because the missing person or *mafqud* has only one problem: no certainty of death. Whereas in the case of a captive of a disbelieving enemy, there is the possibility of a second problem arising, namely, the change in the status of the captive into an enslaved person, which is a barrier to inheritance.⁵² Regarding the possibility of that difference, scholars differed in their opinions on determining the status of the inheritance of people held captive by the enemy. According to an-Nawawi in *al-Majmu'*, quoting the opinion of all scholars who equate the position of the person taken captive by the enemy with *mafqud*, if there is no certainty of his death, he is declared an heir. His right to inheritance is suspended. The reason used by this group is that the basis for granting him rights is the generality of verses 11, 12 and 176 of Surah an-Nisa'. No explanation in these verses limits the captive heirs' right of inheritance.⁵³ Meanwhile, according to al-Nakha'i, the captive is not entitled to inherit. The reason is that the disbelievers who took him captive made him an enslaved person, and in that case, he is prevented from inheriting. The first opinion rejects this reason because the disbeliever cannot be a free person.⁵⁴

It is also explained in *al-Umm* that there was a debate between Imam Shāfi‘ī and a person about the position of apostates, whether it is the same as *mafqud*, and this was then connected to the issue of inheritance.⁵⁵ The man told Shāfi‘ī that some of the scholars of the East had ruled that if a person leaves the Muslim community and joins the polytheists, whether as a priest or a military man, he is declared dead. The result is that everything that pertains to him becomes null and void, such as his wife, property, and enslaved people. Therefore, his property may be distributed among his heirs, his wife may

⁵² M. Noor Harisudin and Muhammad Choriri, "On The Legal Sanction Against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda's Maqasid Al-Shariah Perspective," SAMARAH Jurnal Hukum Keluarga Dan Hukum Islam 5, no. 1 (June 2021): 471-471, <https://doi.org/10.22373/sjhk.v5i1.9159>.

⁵³ Papa Murphy, *Inheritance Laws in an Islamic Society: Islamic Cultures Are Distinct in Everyway* (iUniverse, 2012).

⁵⁴ Ibn Qudamah Muwafiq al-Din Abu Muhammad ‘Abdullah Ibn Ahmad, *Al-Mughni*, IV (Beirut: Dar al-Fikr, 1992).

⁵⁵ Nadhira Imaniyar and Dwi Aryanti Ramadhani, "Legal Implications of Determining A Missing Person in Relation to His Rights and Obligations As A Subject of Civil Law," *Journal of Law, Politic and Humanities* 5, no. 5 (June 2025): 3432-40, <https://doi.org/10.38035/jlph.v5i5.1969>.

remarry after completing her 'iddah (waiting period), and his slaves may be freed.

Their reasoning is based on *qiyyas*, which is that apostates are permissible in blood and may be killed. This shows that the apostate can be considered dead, even though he is still alive. This is because Islam makes his blood lawful, and they make the *qiyyas* of apostasy to *mafqud*. According to Imam Shāfi‘ī, the apostate is not the same as *mafqud* because the apostate is alive and cannot be said to have died. Even if it turns out that he has died in a state of apostasy, then his inheritance cannot be distributed to his heirs.⁵⁶ This is because Muslims and disbelievers do not inherit from each other, as the Prophet said: "Muslims do not inherit from disbelievers, and disbelievers do not inherit from Muslims."⁵⁷

The apostate's estate becomes fair property and is handed over to the *bait al-mal*. But if he returns to Islam, the property is returned to him. Finally, the person accepted Imam Shāfi‘ī's opinion. An analysis of *mafqud* inheritance shows that the differences in opinion among classical scholars stem from their interpretations of the principle of *istiṣḥāb al-hal* (presumption of continuity) and the application of *ijtihad* in determining the legal status of missing persons.⁵⁸ The majority of scholars, such as the Shāfi‘ī, Mālikī, and Hanbali schools of thought, argue that the *mafqud* is still considered alive until there is definite proof of death, so the distribution of inheritance is suspended, while the Ḥanafī school of thought gives the judge the authority to determine the death of the *mafqud* after a specific period of time for the sake of public interest. In Indonesia, Religious Court judges combine classical school of thought with positive law through the Compilation of Islamic Law (KHI) and apply *qadha'i ijtihad* to balance fiqh doctrine and practical justice.⁵⁹ This approach demonstrates the dynamic character of Islamic law as a living fiqh that is adaptive to social change and the need for justice, so that the settlement

⁵⁶ Imam As-Syafi'i, "Al-Umm, Terj," *Misbah*, Jilid 5 (2014): 78–79.

⁵⁷ HR. Mutafaq 'alaik.

⁵⁸ Arikewuyo and Olamidekan, "Application of *Istiṣḥāb* and *Istihsān* in Islamic Law of Inheritance: An Analytical Study," 142.

⁵⁹ Wikandaru Soni Puspantoro, "Pertimbangan Hakim Dalam Perluasan Wasiat Wajibah Di Luar Ketentuan Kompilasi Hukum Indonesia," *Journal of Law, Society, and Islamic Civilization/Parental: Jurnal Hukum Dan Budidaya* 13, no. 2 (October 2025): 120–120, <https://doi.org/10.20961/jolsic.v13i2.109134>.

of *mafqud* inheritance cases reflects the moderation of the madhhab and the transformation of Islamic legal thought towards a more humanistic and substantively just direction.

An in-depth analysis of the twelve Religious Court decisions concerning *mafqud* inheritance demonstrates that judicial differences do not merely reflect adherence to particular classical schools of law, but rather reveal an active process of selective legal reasoning and contextual *ijtihād* aimed at achieving substantive justice.⁶⁰ Classical juristic disagreements on *mafqud* primarily arise from divergent applications of *istishhāb al-hāl* (the presumption of continuity), particularly regarding how long the presumption of life may be maintained without causing harm (*darar*) to the rights of heirs and dependents.⁶¹ While the Shāfi‘ī, Mālikī, and Ḥanbalī schools generally hold that the *mafqud* remains legally alive until definitive proof of death emerges, thereby suspending inheritance distribution, the Ḥanafī school allows judicial determination of death after a legally reasonable period based on public interest (*maṣlahah*).⁶²

The twelve Religious Court rulings examined in this study do not rigidly replicate any single madhhab position. Instead, judges consistently integrate classical fiqh doctrines with Indonesia's positive Islamic law framework, particularly the Compilation of Islamic Law (KHI), through *qadhā ī ijtihād*. This judicial reasoning is evident in how courts assess the length of the disappearance, the evidentiary circumstances, the socio-economic conditions of the heirs, and the potential harm of prolonged legal uncertainty.⁶³ In several decisions, judges uphold the principle of *istishhāb* by delaying inheritance distribution. In contrast, in others, they judicially determine death after a

⁶⁰ Akhmad Khisni, “Ijtihad Hakim Peradilan Agama Bidang Hukum Kewarisan Dan Kontribusinya Terhadap Hukum Nasional,” *Jurnal Hukum IUS QUA IUSTUM* 18 (2011): 146–63.

⁶¹ Arikewuyo and Olamilekan, “Application of Istiṣhāb and Istihsān in Islamic Law of Inheritance: An Analytical Study,” 142–46.

⁶² Imam Yazid, Nurcahaya Nurcahaya, and Fikri Al Muhaddits, “Consideration Of Judges Of The Pandan Religious Court In Determining The Status Of The Defendant / Invisible Applicant: Maqashid Al-Usrah Perspective,” *Jurnal Pembaharuan Hukum* 10, no. 2 (December 2023): 271–271, <https://doi.org/10.26532/jph.v10i2.34111>.

⁶³ Muhammad Zā’im Muhibbulloh and Abdul Majid, “Perspektif Maqasid Al-Shari’ah Terhadap Ahli Waris Pengganti,” *Minhaj Jurnal Ilmu Syariah* 3, no. 2 (July 2022): 219–40, <https://doi.org/10.52431/minhaj.v3i2.2609>.

substantial period to prevent injustice, reflecting an implicit synthesis of Shāfi‘ī caution and Ḥanafī pragmatism.⁶⁴

This pattern illustrates what this article conceptualises as madhab moderation, namely a judicial approach that neither absolutises a single classical opinion nor abandons fiqh tradition altogether. Instead, moderation manifests through proportional selection (*takhyīr*) and contextual adaptation (*talfiq manhajī*) of madhab doctrines, guided by the objectives of Islamic law (*maqāṣid al-shari‘a*), especially legal certainty (*qat‘ iyyah*), justice (*‘adālah*), and protection of rights (*hifz al-huqūq*). Thus, madhab moderation in these rulings is not doctrinal compromise, but a methodological stance that treats fiqh as a living legal system responsive to empirical realities. Accordingly, the dynamism reflected in these twelve verdicts signifies a transformation of Islamic legal reasoning within the Indonesian Religious Courts from formal adherence to classical texts toward a substantively just, human-centred application of Islamic law. *Mafqūd* inheritance cases, therefore, function as a concrete arena in which judicial moderation reconciles normative fiqh authority with contemporary demands for legal certainty and social justice.

Conclusions

This study proposes judicial madhab moderation as a conceptual model to explain how Indonesian Religious Court judges resolve *mafqūd* cases through a dynamic and contextual legal reasoning process rather than rigid adherence to a single school of fiqh. The findings demonstrate that judges systematically integrate classical fiqh doctrines, particularly *istishhāb al-hāl* with *ijtihād*, *qadā‘ī* and *maqāṣid al-shari‘a* considerations to achieve substantive justice, legal certainty, and harm prevention for affected families. Theoretically, this research contributes by positioning *maqāṣid al-shari‘a* and judicial *ijtihad* as a unified analytical framework that bridges normative fiqh and positive Islamic family law, showing Islamic law as adaptive yet normatively grounded. From a policy perspective, the observed variation in judicial reasoning underscores the

⁶⁴ Maskur Rasyid, “Istiṣhāb Sebagai Solusi Pemecahan Masalah Kekinian,” *Syariah Jurnal Hukum Dan Pemikiran* 18, no. 1 (June 2018), <https://doi.org/10.18592/sy.v18i1.2125>; J. M. Muslimin and M. Abdul Kharis, “Istihsan and Istishab in Islamic Legal Reasoning: Towards the Extension of Legal Finding in the Context of Indonesia,” *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 20, no. 2 (December 2020): 163–79, <https://doi.org/10.30631/alrisalah.v20i2.589>.

urgent need for explicit codification of *mafqud* determination, including standardised waiting periods, evidentiary guidelines, and the formal recognition of modern proof mechanisms, to reduce legal disparity and protect family rights. Future research should extend this inquiry through thematic and cross-regional analyses of judicial reasoning, particularly focusing on how *maqāsid*-based arguments are articulated in judges' legal considerations and their long-term implications for the protection of marital, economic, and inheritance rights in Islamic family law.

Acknowledgement

The authors make an exception for use of the AI tools, including ChatGPT, to be used as a linguistic and conceptual aid only; all determinations about science, data analysis and legal interpretation are at the sole discretion of the authors. AI tools could not contribute to the generation of new ideas, could not be effective in raising such and no use was made of these services in bringing up an original piece, performing legal analysis and establishing sources; All references were independently verified by each author according to academic rigour standards and COPE Publication ethics.

Disclosure Statement

Hamda Sulfinadia conceptualised the research, developed the theoretical framework, designed the methodology, conducted the research, interpreted the data, and led the preparation and revision of the manuscript. Jurna Petri Roszi revised and contributed to the theoretical refinement, finding validation, and analysis, and contributed to the discussion of the findings. Syahrul Anwar conducted data collection and supported data analysis. Amirulhakim critically reviewed the manuscript and translation, ensuring coherence, academic rigour, and adherence to journal standards. All authors are responsible for the accuracy, originality and then read and approved the final manuscript.

References

Adnan, Mohammad, and Badrah Uyuni. *Ilmu Waris Islam: Teori, Aplikasi, dan Solusi Kontemporer*. PT Penerbit Qriset Indonesia, 2025.

Afrilian, Andre. "Landasan Hukum dan Pertimbangan Hakim Terhadap Status Istri Dalam Perkara Suami Mafqud Melalui Putusan Nomor 0279Pdt.

G2009PA. PAS." *Al Maqashidi: Jurnal Hukum Islam Nusantara* 6, no. 2 (2023): 84–103.

Ahmad, Ibn Qudamah Muwafiq al-Din Abu Muhammad 'Abdullah Ibn. *Al-Mughni*. IV. Beirut: Dar al-Fikr, 1992.

Al-Shafi'i, Muhammad al-Idris. *Kitab Al-Umm*. Dar Al-Marifa, 1973.

Al-Syarkhasi, Al-Syamsuddin. *Al-Mabsuth*. 2000: Dar al Fiqr, Beirut.

Al-Zuhaily, Wahbah. "Al-Fiqh al-Islamiy Wa Adillatuhu." *Juz VII, Damsyiq*: Dar al-Fikr, 1989.

Antonov, Boris A. "Madhhabs in the Islamic Law: Comparative Legal Analysis." *RSUH/RGGU Bulletin. Series Economics. Management. Law*, no. 1 (2023): 113–32. <https://doi.org/10.28995/2073-6304-2023-1-113-132>.

Arikewuyo, Ahmed Nafiu, and Idris Abdur-Rahman Olamilekan. "Application of Istiṣḥāb and Istiḥsān in Islamic Law of Inheritance: An Analytical Study." *International Journal of Fiqh and Usul Al-Fiqh Studies* 8, no. 2 (July 2024): 142–56. <https://doi.org/10.31436/ijfus.v8i2.342>.

Ash-Shabuni, Muhammad Ali. *Pembagian waris menurut Islam*. Jakarta: Gema Insani, 1995.

Asy-Syafi'i, Imam. *AL-UMM #1: Kitab Induk Fiqih Islam*. Republika Penerbit, 2016.

Billah, Mu'tashim. "Konsep Radd Dalam Kompilasi Hukum Islam: Interpretasi Hakim Pengadilan Agama Yogyakarta." *Ahkam: Jurnal Hukum Islam* 9, no. 1 (July 2021): 27–54. <https://doi.org/10.21274/ahkam.2021.9.1.27-54>.

Carlous, Sancarous, and Gunawan Djajaputra. "Implementasi Hukum Kewarisan Dalam Penetapan Orang Hilang." *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (March 2025): 3219–29. <https://doi.org/10.38035/jihhp.v5i4.3898>.

Cheema, Shahbaz Ahmad. "Distribution of Inheritance under Islamic Law: An Appraisal of Online Inheritance Calculators." *Journal of Islamic Thought and Civilisation* 11, no. 1 (June 2021): 112–31. <https://doi.org/10.32350/jitc.111.07>.

Dönmez, İbrahim Kâfi. "An Oft-Repeated Fallacy in Writing and Teaching Islamic Legal Methodology and Its Significations: The Case of Mafqûd." *Islam Arastirmalari Dergisi* 2022, no. 47 (2022): 1–65. <https://doi.org/10.26570/isad.1056197>.

Faizah, Isniyatih, M. Syafi' Nuril Izza, and M. Najib. "The Application of Istishab In Cases of Missing Heirs (Mafqûd) or Those Whose Whereabouts Are Unknown." *Al Hakam: The Indonesian Journal of Islamic Family Law and Gender Issues* 5, no. 1 (June 2025): 57–69. <https://doi.org/10.35896/alhakam.v5i1.1004>.

Fardiana, Farahsyinta Gladisia Puspa, Khoirul Hidayah, and Mohd Hazim Bin Borhan. "A Comparative Analysis of the Missing (Mafqud) Husband Regulations in Indonesia and Malaysia: A Study to Reform the Regulation That Meets Legal Certainty in Indonesia." *De Jure: Jurnal Hukum Dan Syar'iah* 14, no. 2 (2022): 359–79. <https://doi.org/10.18860/j-fsh.v14i2.17347>.

Farhanah, Alifia, and Muhammad Muhammad. "Analisis Penetapan Kewarisan Mafqud Pada Putusan Nomor 318/Pdt. P/2022/PA. Kab. Mn." *Al Fuadiy Jurnal Hukum Keluarga Islam* 6, no. 2 (2024): 13–24.

Handayani, Sirat. "Kepastian Hukum Pembagian Waris Terhadap Orang Yang Dianggap Hilang Berdasarkan Penetapan Ketidakhadiran Di Pengadilan." *Jurnal Ilmu Hukum: Alethea* 4, no. 2 (May 2022): 95–114. <https://doi.org/10.24246/alethea.vol4.no2.p95-114>.

Harahap, Hasbiah Tunnaim, Sukiati Sukiati, and Muhammad Yadi Harahap. "Yurisprudensi Hukum Mafqud Sebagai Alasan Gugatan Cerai Melalui Putusan Pengadilan (Putusan Nomor 0027/Pdt.G/2016/PA.Srog)." *Innovative: Journal of Social Science Research* 5, no. 4 (July 2025): 88–110. <https://doi.org/10.31004/innovative.v5i4.20046>.

Harisudin, M. Noor, and Muhammad Choriri. "On The Legal Sanction Against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda's Maqasid Al-Shariah Perspective." *SAMARAH Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (June 2021): 471–471. <https://doi.org/10.22373/sjhk.v5i1.9159>.

Hartati, Muthia, and Muhammad Yunus. "Upaya Hukum Dan Perlindungan Terhadap Istri Dalam Perkara Suami Mafqud." *Jurnal Riset Hukum Keluarga Islam*, December 20, 2022, 67–70. <https://doi.org/10.29313/jrhki.vi.1183>.

Hassanein, Abdelrahman Abdelhamid Mohammed. "The Complementarity of Ijtihad and the Maqasid Al-Shariah in Islamic Law: An Analytical Study." *International Journal of Academic Research in Business and Social Sciences* 15, no. 5 (May 2025). <https://doi.org/10.6007/ijarbss/v15-i5/25424>.

Humaira, Anggun Mareta, and Dedy Sumardi. "Eksistensi Mafqud Dalam Hukum Islam Dan Hukum Positif Indonesia: Implikasi Terhadap Hak Waris Dan Perkawinan." *Jurnal Hukum Samudra Keadilan* 20, no. 1 (May 2025): 17–30. <https://doi.org/10.33059/jhsk.v20i1.11312>.

Imaniyar, Nadhira, and Dwi Aryanti Ramadhani. "Legal Implications of Determining A Missing Person in Relation to His Rights and Obligations As A Subject of Civil Law." *Journal of Law, Politics and Humanities* 5, no. 5 (June 2025): 3432–40. <https://doi.org/10.38035/jlph.v5i5.1969>.

Iskandar, Saidul. "Dasar hukum penetapan status hukum mafqud dalam kewarisan di Pengadilan Agama Yogyakarta dan Kediri." Fakultas Syari'ah dan Hukum UIN Syarif Hidayatullah, 2017. <https://repository.uinjkt.ac.id/dspace/handle/123456789/41250>.

Istiqlal, Ibnu Farhan, Meriza Isna Fadilah, and M. Ikhsanul Akhdza E. "Al-Ijtihād al-Intiqā'ī and the Resolution of Issues in the Schools of Islamic Jurisprudence: A Study on the Implementation of the Concept of Al-Ijtihād al-Intiqā'ī in the Indonesian Religious Courts.." *Rayah Al-Islam* 9, no. 1 (February 2025): 107–26. <https://doi.org/10.37274/rais.v9i1.1396>.

Jafar, Abdul. "Warisan Mafqud Dan Orang Mati Bersama Menurut Imam Mazhab Dan Hukum Islam Di Indonesia." *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah* 10, no. 2 (2024): 145–62.

Kahya, Hatice Kübra. "In Search of a Remedy in Another Madhab: Marriage of an Absent Husband in Ottoman Family Law." *Islam Tetkikleri Dergisi* 12, no. 2 (2022): 697–716. <https://doi.org/10.26650/iuitd.2022.1123353>.

Khisni, Akhmad. "Ijtihad Hakim Peradilan Agama Bidang Hukum Kewarisan Dan Kontribusinya Terhadap Hukum Nasional." *Jurnal Hukum IUS QUA IUSTUM* 18 (2011): 146–63.

Khomsatun, A. "Hukum Pernikahan Istri Yang Disebabkan Suami Mafqud Menurut Perspektif Hukum Islam." *Jurnal Al-Wasith: Jurnal Studi Hukum Islam*, no. Query date: 2022-10-04 15:51:33 (2021). <https://jurnal.unugha.ac.id/index.php/wst/article/view/196>.

Kurdi, Abdul Majid, Jum'atul Latifah, and Noor Lida. "Masa Tunggu Bagi Istri Yang Suami Mafqud Dalam Pandangan Imam Syafi'i Dalam Kitab Al-Umm Dan Ibnu Qudamah Dalam Kitab Al-Mughni." *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (April 2025): 1995–2005. <https://doi.org/10.62976/ijijel.v3i2.1201>.

Mahmud, Mek Wok, and Siti Zulaikha Binti Mokhtar. "Mafqud and Fasakh in the Writings of Muslim Jurists and Provisions of Malaysian Federal Territory Islamic Family Law: The Case of MH 370 Missing Plane." *Intellectual Discourse* 25 (2017): 575–88.

Manaf, Abdul, and Hakim Tinggi PTA Medan. "Yurisdiksi Peradilan Agama Dalam Kewarisan Mafqud." [https://www.pa-bengkulu.go.id/Foto/Yurisdiksi%20peradilan%20agama%20dalam%20kewarisan%20mafqud \(12_Feb\), n.d.](https://www.pa-bengkulu.go.id/Foto/Yurisdiksi%20peradilan%20agama%20dalam%20kewarisan%20mafqud%20(Feb%2012).pdf)

Manurung, Hasri Wahyuni. "Penyelesaian Warisan Dari Pewaris yang Hilang Menurut Mazhab Syafi'i (Studi Kasus Kecamatan Simpang Empat Kabupaten Asahan)." Skripsi, Universitas Islam Negeri Sumatera Utara, 2021. <http://repository.uinsu.ac.id/13004/>.

Muhibbulloh, Muhammad Za'im, and Abdul Majid. "Perspektif Maqasid Al-Shari'ah Terhadap Ahli Waris Pengganti." *Minhaj Jurnal Ilmu Syariah* 3, no. 2 (July 2022): 219–40. <https://doi.org/10.52431/minhaj.v3i2.2609>.

Muhibbussabry, Muhibbussabry. "Hak Waris Mafqud (Orang Hilang) dan Penyelesaian Dengan Metode Mauquf (Penangguhan)." *An-Natiq Jurnal Kajian Islam Interdisipliner* 4, no. 1 (February 2024): 80–92. <https://doi.org/10.33474/an-natiq.v4i1.21409>.

Murphy, Papa. *Inheritance Laws in an Islamic Society: Islamic Cultures Are Distinct in Every Way*. iUniverse, 2012.

Muslimin, J. M., and M. Abdul Kharis. "Istihsan and Istishab in Islamic Legal Reasoning: Towards the Extension of Legal Finding in the Context of Indonesia." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 20, no. 2 (December 2020): 163–79. <https://doi.org/10.30631/alrisalah.v20i2.589>.

Nisa, Fathun Nisa. "Pembagian Harta Waris Terhadap Ahli Waris Yang Hilang (Mafqud) Ditinjau Dari Hukum Islam." *Interdisciplinary Journal of Social Science (IJSS)* 1, no. 1 (February 2025): 10–16. <https://doi.org/10.33330/ijss.v1i1.6>.

Nizar, Muchamad Coirun. "The Religious Court's Decisions on Divorce: A Maqāṣid Sharī'a Perspective." *Ulumuna* 24, no. 2 (2020): 398–416. <https://doi.org/10.20414/ujis.v24i2.408>.

Noviana, Lia, Lukman Santoso, and Mega Puspita. "Interpreting Legal Rights: Disparities in Judicial Treatment of Children Born Out of Wedlock in East Java, Indonesia." *Lex Scientia Law Review* 8, no. 1 (September 2024): 1. <https://doi.org/10.15294/lslr.v8i1.4606>.

Nugraha, Abdi, M. Hasballah Thaib, Zamakhsyari Bin Hasballah, and Utary Maharani. "Kedudukan Hukum Ahli Waris Yang Hilang Menurut Hukum Islam Berdasarkan Putusan Mahkamah Agung No.0057/PDP-P/2014/PA.YK." *Journal of Law & Policy Review* 2, no. 1 (June 2024): 87–94. <https://doi.org/10.34007/jlpr.v2i1.451>.

Omoola, Sodiq, and Hafsat Kamal Ibrahim. "The Legal Implications of Abandoned Digital Assets in Sharī'ah-Compliant Fintech Platforms." *ISRA International Journal of Islamic Finance* 15, no. 2 (May 2023): 60–76. <https://doi.org/10.55188/ijif.v15i2.542>.

Pramaysela, Lindiana, Nuraeni Novira, and Rahmayani Lancang. "Implikasi Hukum Perkawinan Pada Kasus Rajul Mafqud." *AL-QIBLAH: Jurnal Studi Islam Dan Bahasa Arab* 1, no. 1 (August 2022): 53–71. <https://doi.org/10.36701/qiblah.v1i1.630>.

Puspantoro, Wikandaru Soni. "Pertimbangan Hakim Dalam Perluasan Wasiat Wajibah Di Luar Ketentuan Kompilasi Hukum Indonesia." *Journal of Law, Society, and Islamic Civilization/Parental: Jurnal Hukum Dan Budidaya* 13, no. 2 (October 2025): 120–120. <https://doi.org/10.20961/jolsic.v13i2.109134>.

Qal'ahji, Muhammad Rawwas. *Ensiklopedi fiqih Umar bin khathab r.a*. Jakarta: PT RajaGrafindo Persada, 1999.

Rasyid, Maskur. "Istiṣḥāb Sebagai Solusi Pemecahan Masalah Kekinian." *Syariah Jurnal Hukum Dan Pemikiran* 18, no. 1 (June 2018). <https://doi.org/10.18592/sy.v18i1.2125>.

Rodliyah, Nunung, Elfa Murdiana, and Ricco Andreas. "Judicial Ijtihad in Religious Courts for Achieving Substantive Justice in Indonesia." *Journal of Law and Regulation Governance* 2, no. 12 (2024): 372–80. <https://doi.org/10.57185/jlarg.v2i12.79>.

Rohman, Miftakur. "Eksistensi Mafqud (Solusi Atas Masa Tangguh Bagi Istri Dan Status Ahli Waris)." *Masadir: Jurnal Hukum Islam* 1, no. 1 (2021): 1–14.

Roslina, Roslina, Syahrizal Abbas, Ilyas Ismail, and Iman Jauhari. "Reinterpreting Islamic Inheritance: Supreme Court Jurisprudence and Gender Justice in Indonesia." *Jurnal Ilmiah Peuradeun* 13, no. 3 (September 2025): 2339–64. <https://doi.org/10.26811/peuradeun.v13i3.1593>.

Sarakhshī, Shams al-Dīn al-. *Al-Mabsūt*. Beirut: Dār al-Ma'rūfah, 2000.

Shakor, Nor Amira Binti Abd, and Mohd Zamro Bin Muda. "Missing Persons (Al-Mafqud) and Its Relationship With Nafaqah According to Sharia Perspective." *International Journal of Academic Research in Business and Social Sciences* 13, no. 3 (March 2023). <https://doi.org/10.6007/ijarbss/v13-i3/16399>.

Sholihah, Hani, Nani Nani Widiawati2, and Mohd Khairul Nazif bin Hj Awang Damit. "Reinterpretation of Justice in Islamic Inheritance Rights Based on Gender." *Al-'Adalah* 21, no. 1 (June 2024): 101–24. <https://doi.org/10.24042/adalah.v21i1.21256>.

Sulfinadia, Hamda, and Jurna Petri Roszi. "Moderation of Madhhabs in West Sumatra Towards Hadhanah of Minors Whose Mothers Remarry." *El-Usrah: Jurnal Hukum Keluarga* 7, no. 2 (2024): 789–815. <https://doi.org/10.22373/ujhk.v7i2.23941>.

Sulfinadia, Hamda, Jurna Petri Roszi, Eli Suryani Rosdialena, and Anisa Fitri. "Implementation of Aqiqah in the Bulan Maulid in Nagari Padang Laweh West Sumatra Perspective 'Urf." *Al-Istinbath* 8, no. 2 (2023): 465–484. <https://doi.org/10.29240/jhi.v8i2.6800>.

Syaltut, Muhammad. *Perbandingan Madhab Dalam Masalah Fiqih*. Jakarta: Bulan Bintang, 2005.

Wahid, Abdur Rohman. "Distribution of Inheritance Among Different Religions: A Perspective from Islamic Sociology of Law Atho' Mudzhar." *Al-Syakhsiyah: Journal of Law and Family Studies* 7, no. 1 (June 2025): 103-26. <https://doi.org/10.21154/syakhsiyah.v7i1.11383>.

Yazid, Imam, Nurcahaya Nurcahaya, and Fikri Al Muhaddits. "Consideration of Judges of The Pandan Religious Court in Determining The Status of The Defendant / Invisible Applicant: Maqashid Al-Usrah Perspective." *Jurnal Pembaharuan Hukum* 10, no. 2 (December 2023): 271-271. <https://doi.org/10.26532/jph.v10i2.34111>.

Yudhistira, Agung Widya, and Agung Widya Yudhistira. "Akibat Hukum Orang Hilang (Mafqud) Terhadap Harta Benda Dan Penyelesaian Kewarisan Dalam Islam." *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 10, no. 2 (November 2021): 131-45. <https://doi.org/10.28946/rpt.v10i2.1229>.

Zahrah, Muhammad Abu. *Al-ahwal al-shakhsiyah*. Cairo: Dar al-Fikr al-Àrabi, 1957.