

Managing Al-Mafqud Property Investment among Mafqud Status in Malaysia

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ABSTRACT : *Al-mafqud property need some good strategy in any ways to manage al-mafqud properties in Malaysia. Since the property cannot be owned by others include al-mafquds' heirs, thus researcher suggested ways to manage al-mafqud property from investment perspective. The researcher was studying the ways to invest and found that investment alternative could be implement to manage the al-mafqud property in Malaysia. The main purpose of this investment is to growth the mal (property) of al-mafqud and also to help al-mafqud family to have a better life while al-mafqud was disappeared. The objective of this article is (1) to suggest the simple way to manage al-mafqud property, (2) to help facilitate the parties involved in managing al-mafqud property and also (3) to give the proposed solution in managing the unclaimed al-mafqud property in Malaysia. The method used is qualitative method based on previous research through document sources mainly the Quran and Hadith. This article aims to help al-mafqud heirs have a better life for the next 1-7 years while waiting the al-mafqud to come back and claim his property.*

KEYWORDS - *Al-mafqud property, ways, investment, waiting period, and growth*

I. INTRODUCTION

Al-mafqud means people who are missing without any news for a certain period and have high probability to live rather than death (Abdullah, 2014). Since the missing person declared as al-mafqud, the value of al-mafqud's increase yearly especially the land. The value of the property increased but not growing optimally because those properties which belong to al-mafqud will be freeze (Berita Sarawak, 2013) in the waiting period of mafqud status. In order to make those properties increase and also growth optimally, there must be some ideas and persons or institutions to take the responsible action (Bernama, 2013). The waiting period of al-mafqud is four years in minimum and the maximum is seven years (Harun, 2014). Muslims need to follow the Syariah rules and regulation stated, which are four years and must take an action to apply for the 'Presumption of Death Certificate' from the Syariah Court in order to make any arrangements like remarriage or all of the distribution of inheritance. Since al-mafqud heirs or others are not allowed to use the property which belong to the al-mafqud, thus the researchers come out with some suggestions regarding the issues and problems appear through this situation. The suggestions are followed by further topics of discussion in this article.

II. RESEARCH PROBLEMS

The concept of investing al-mafqud property is to expanding property values in line with the increase in market value of land. Al-mafqud's property cannot be owned by others including al-mafqud's heirs (Bernama, 2013). Besides, the property cannot be withdrawn since the owner of the property is missing. Others issues are like remarriage for al-mafqud spouse, the distribution of al-mafqud's inheritance, al-mafqud's tax, debt and others payment that should be settled at current time. Thus, researcher suggests some ways to invest al-mafqud property to make its growth. This because, the property will be frozen and will affect the Malaysian economic liquidity since it can't be touched or managed by others. Normally, the claimed process takes about five month and half (Kamarudin & Abdullah, 2016). The main problem is ineffective management and administration methods (Shafie, Wan Yusoff & Al-Edrus, 2014). Besides, the property is frozen and the management delayed because the owner (al-mafqud) is missing and theoretically, the property cannot managed by others (Mohamad & Sulaiman, 2015a) unless Baitumal (Wan Harun, 2015 and Rosly, 2014) through *Aqad Tabarru'* (Kamaruddin, 2008 and Mohamad & Sulaiman, 2015b). This because Baitulmal is responsible to manage the property which

belong to someone who was died and no heir (Bernama, 2013 and Utusan Online, 2013). Mejar Jeneral Dato' Sri Jamil Khir bin Baharom said that the cause and the reason of abstention case in court should be review (Bernama, 2013) to find a better and suitable solution especially the unclaimed property.

III. LITERATURE REVIEW

Al-mafqud's property management issues are closely related to inheritance. The difference is in the status of the property owner, ie inheritance involves the property of the deceased person (Yaakub & Othman, 2012) while al-mafqud is define as individual who is missing and still cannot be confirmed dies as long as there is no proof that he is dead (Abdullah, 2014 and Utusan Online, 2013). Al-mafqud is divided into two categories namely al-mafqud life and al-mafqud died (Mohamad & Noralfishah, 2015b). The discussion of this article is related to al-mafqud life only which is people who has high probability to live rather than death (Abdullah, 2014).

Based on Muzakarah Fatwa Committee (Mat Hussain & Nor Muhamad, 2013) which convene on 13-14 April 1982 decided that (1) Distribution of property with land which cannot be solved by title, then the authority may resolving any way as appropriate and reasonable according to Islamic Law; and (2) In Islam, the division of the inheritance is a share or shares and if not beneficial, the government may use the powers in the course of resolving the problem without the consent of all heirs.

Referring to the fatwa that has been issued to the management of this faraid property, the researchers consider that specific guidelines should be implement to protect the al-mafqud's property during its absence. According to Wan Harun (2009), under item 76(4), the federal constitutional parliament has passed an act called Land Act (Group Settlement Area) in 1960, Act. No.13 year 1960 (GSA). The land involved with this act is the land of FELDA, FELCRA and Land Rover Plan. Based on Section 14, Land Act (Group Settlement Area) year 1960, (amendment) 2002 which does not permit the land to be owned by more than two owners. Based on the GSA Law (Wan Harun, 2009), the Hedge Allocation Unit as the land administrator will appoint at least one administrator to be registered in the land grant. The task of the administrator is to manage the farm and to distribute the result to the heir according to faraid or as agreed. Through the GSA Law, the researcher found that these management rights can be applied to the management of al-mafqud property during the waiting period of the mafqud status. Because al-mafqud property management involves owners who has high possibility to live, then the disposition of prosperity must be more thorough. Then the appointment of a trustee who will act as a third party to manage the al-mafqud property on behalf of al-mafqud, then there are some conditions that need to be highlighted in order to maintain the quality of management and security of al-mafqud property. From Islamic perspective, based on term of *wasi* (trustee), a trustee must be a Muslim, *mukallaf* (able to take any responsibilities), freedom, fair, trustworthy and capable to manage the wealth (Al-Fawzan, 2009 and Nor Muhammad, 2012) and conditions are mutual consent (Abdul Hamid, 2004 and Kamarudin Abdullah & Mohamad, 2015). The management and administration of al-mafqud property should follow the management and administration of land Islamic principle of justice, the principle of *syura*, the principle of transparency and the principle of *amar ma'ruf* and the nature of fairness because the axis is based on the belief that the absolute administrative power belongs to Allah (Abdullah, 2005).

Based on the previous research, there were about RM56.6 billion was unclaimed (Berita Sarawak, 2013). From this amount, we can generate it to earn more amount of money through investment. The ways suggested is to help al-mafqud and their heirs to make the property growth properly from investment purpose. While investing al-mafqud property, the investment process will help the Malaysian economic growth and liquidity. Besides, the value of al-mafqud property will increase annually in line with the potential profit of investment. This practices can be done by Malaysian institutions either Baitulmal or Al-Mafqud Committee based on the previous practices about the employer who manages his workers payment while his worker doesn't take his payment on time (An-Nawawi, 2015).

IV. RESEARCH AIMS

The main purpose of the investment proposed is to growth the property of al-mafqud and also help al-mafqud family to have a better life even al-mafqud was not around. The objective of this article is (1) to suggest the simple way to manage al-mafqud property, (2) to help facilitate the parties involved in managing al-mafqud property and also (3) to give the proposed solution in managing the unclaimed al-mafqud property in Malaysia.

Nowadays, there is no proper institutions who could be pointed to take the responsibility for managing the al-mafqud property including Baitulmal. Since Baitulmal is known as an institution which manage the Muslims property, thus it could be the one who could take the responsibility for the al-mafqud property. Besides, there is also other institutions which known as Al-Mafqud Committee, which leads by Tan Sri Ibrahim Lembut (Bernama, 2013) and was launched in Sarawak (Berita Harian, 2013). This research is aimed to help those parties involved and proposed the solution for short-term and long-term of investment. This project may need more expertise from a variety of fields such as real estate, finance, law, ministry, Mufti and others.

V. USEFULLNESS

The interesting thing about this suggestion is, al-mafqud will get back all his property, including the profit if they were coming back after missing for several years. If al-mafqud died or considered death by the law, the al-mafqud heirs will get the property including the profit on the investment. From this investment, all individual and institutions which involve in this project will also get the benefit such as current salary, debt payment, tax (Lembut, 2013), current rental payment and others. Within this activity, Malaysian economy will have a positive impact because of the economic liquidity.

VI. RESEARCH METHODOLOGY

This research used qualitative method. From secondary data, researchers come out with disadvantages and the guidelines of investment as an information for the investors to invest the al-mafqud property in real estate investment. The proposed guidelines are found through previous and current activities from expertise through online, and has been researched by the researcher about the potential of investment in real estate investment. From preliminary study, there are three respondent involves through expert interview and more than ten related articles used as instrument in document sources. The scope of this study is Muslim's property located in Malaysia. The main document sources are the Quran and Hadith which used as the main guideline in inspiring ideas and problem solving.

VII. FINDINGS AND DISCUSSION

(1) Disadvantages of Investing in Real Estate Property

The researcher found that the al-mafqud property can be invested and developed better involving third party with the permission of law and Regulation after taking into account the Shariah requirement. There are lots of type of investment in real estate and facilities management such as low cost housing or apartment, student housing, hotels, airlines and airports, industrial automation, infrastructure, construction and building materials. These kinds of investment are most popular nowadays to be practiced in Malaysia. Here, the researcher stated the disadvantages of investing al-mafqud property in real estate in Malaysia. Within this activity, Malaysian economy will have a positive impact because of the economic liquidity.

TABLE 1: Disadvantages of Investing in Real Estate Property

Disadvantages of Investing in Real Estate Property	
1.	The property is a form of investment assets that are difficult to be disposed relative to the stock of asset liquidity faster and easier (Tokjogho, 2013).
2.	If the stake could be sold by giving instructions to a stock broker or real estate agent, the stock holdings may have to be sold within a year. This because each property represents the specific even though it is close to popular locations. The higher property values again less qualified buyers (Tokjogho, 2013).
3.	It is more difficult and expensive compared to other investments because the value depends on the ownership of property owners (Tokjogho, 2013).
4.	The process of selling real estate take a lot of times by searching the existing value and debt on the peroperty that needs to be done (Tokjogho, 2013).
5.	The process of selling take a lot of energy and resources especially financial resources, even if the buyer is already known to be able and willing to buy (Tokjogho, 2013).
6.	The property holding possession of the asset such as commodities does not like to another. Some of them are freehold but most of them are leasehold which means that an investor buy a property to live in a certain period, and not have full rights on the property such as in Kuala Lumpur and Selangor (Tokjogho, 2013).

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7. At a certain period, freehold may have to be changed to Leasehold and vice versa. Less tenure increasingly eroded the value of the property. The real estate depreciation is due to the of Leasehold tenure (Tokjogho, 2013).
8. Real estate property is an expensive assets because the purchase price is not the only cost of the existing properties. There are main cost that need to be taking into account such as stamp duty lawyer, agents, interpreters value, cancellation cost, insurance and the cost of restoration that need to be known before making judgments of buying real estate property (Tokjogho, 2013).
9. Real estate is an investment that requires high maintainance. All properties in need of improvement and modernization so thats its value remains high (Tokjogho, 2013).
10. Real estate investment requires large capital and take a long time and the investor has to work (Tokjogho, 2013).
11. Investors suffer losses if they fail to find buyers, especially when the price of the real estate market crashed (Tokjogho, 2013).

Every business may have different expected cost and potential risk. But, based on Malaysian economic nowadays, those kind of investment may help al-mafqud and economic liquidity in Malaysia for short-term and long-term potential business. This kind of disadvantages stated will help investors to be well prepared in order to face any future risk in real estate investment.

(2) Guidelines for Investor in Real Estate Investment

Scientist have agreed that the property of al-mafqud should be held first until there is clear news that al-mafqud has actually died or there is a judge's decision based on the evidence of his death, his property cannot be divided to anyone, especially in the division of inheritance either al-mafqud as the property owner of the heir (Yayasan Nurussyahid, 2017). Researchers found that there is clear without hard bans towards effort to manage on behalf of al-mafqud, but the prohibition is only on the division of property or property acceptance only because the status of al-mafqud has not been cut out either dead or alive. According to the *dalil Istihabul Hal* (proposition) (the proposition to establish the law based on its original state) that he is still alive, he still has full ownership of the property (Yayasan Nusussyahid, 2017).

Islam sets certain conditions to avoid the use of one's property, hence Tan Sri Ibrahim Lembang (2013) through his dissertation, he stated the guidelines set by the alternative through *Aqd Al-Fudhuli* (using one's assets to gain profit without the owner's knowledge):

1. Use of property law but during execution subject to its owner;
2. Fund managers have the expertise in developing one's property;
3. Through this contract give the owner a favour;
4. Do not harm the owner; and
5. The prescription cancels this contract if it poses a danger.

Based on this alternative, it is strongly support that investment purpose towards al-mafqud property should be implement in the waiting period of mafqud status to maximize the Muslims economic capability especially al-mafqud's heirs. Hence, researchers come out some suggestion in order to influence the process of investment strategy by providing al-mafqud property regulations which are:

1. The beneficiary should make the "Al-Mafqud Loss Report" to the police;
2. The beneficiary should obtain "Al-Mafqud Health Record Confirmation Letter" from the relevant hospital (Mohamad and Noralfishah, 2016);
3. The party seeking to apply to manage on behalf of al-mafqud shall apply for the "Al-Mafqud Property Management Letter" from the Shariah Court;
4. The party who wishes to manage shall submit "Al-Mafqud Property Management Letter" which has been approved by the Shariah Court to the state Islamic Council (*Majlis Agama Islam Negeri*) (MAIN) through Baitulmal Institution;
5. The party who has obtained the approval of managing may manage the property of al-mafqud under the monitoring of MAIN and is obliged to observe the stipulated conditions:
 - i. All profits earned shall be submitted and reported to Baitulmal;
 - ii. 100% of the original profits and values passed to the heirs of al-mafqud after the expiration of the covenant and al-mafqud did not return; and

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- iii. The governing party is only entitled to wages/rent (at current rates) on the energy/property used when managing the property of al-mafqud only.
- 6. The managing party is obliged to report on the management's flow record to MAIN through Baitulmal Institution.

On the other hand, these are the listed guidelines found for investor in real estate investment in Malaysia. These guidelines are supposed to be the referred by parties involves who was responsible in managing al-mafqud property for the investment purpose.

TABLE 2: Guidelines for Investor in Real Estate Investment

Guidelines for Investor in Real Estate Investment	
1.	Real estate assets will not be a burden to the investor if the investor successfully identify incidental cost such as assessment and quit rent, mortgage, maintenance cost, service costs and bills modifications (Junus, 2015).
2.	Investment in real estate is the most profitable investment and low-risk even require a high capital (Junus, 2015).
3.	Investing in real estate investment generally will benefit more than 20% per annum (Junus, 2015).
4.	Investors who study the science of law involving property can reduce problems that may be encountered in managing real estate investment (Anuar, 2017).
5.	Investors should hiring lawyers who are experts in the field of real estate investment to avoid facing a huge problem (Anuar, 2017).
6.	Real estate is a good investment and profitable since many are already making money and earn huge profits through real estate investment (Anuar, 2017).
7.	The amount of profit that can be generated through real estate investment could reach tens of thousands, hundreds of thousands and even millions of ringgit (Anuar, 2017).
8.	The money and the profits are often the biggest investment gains in life investors who invest in real estate (Anuar, 2017).
9.	Investors should be attentive to changes in interest rate (Yunos, 2017).
10.	To avoid the cost burden when providing affordable housing at lower prices, the investor can offer a small house area of between 700 to 900 square feet (Yunos, 2017).
11.	Whether an investors wants to earn every month or gain profit from property sales, investors must set a strategy that would like to use (Karim, 2015).
12.	Technique without the capital and also the technique to other people's money as a lease-sale strategy to maximize gain in investment when buying investment in such investments (Karim, 2015).
13.	Successful investors use minimal capital and buy properties at prices below the market must successfully gain (Karim, 2015).
14.	Investors can not allow investments in a negative situation, so investors need to be creative to make your investment is an asset (Karim, 2015).
15.	Investors have less potential to transform the property into a guest house of homestay to generate revenue from it (Karim, 2015).
16.	Before investors start investing in real estate, investors need to know the strategy to exit from the investment (Karim, 2015).
17.	Investors need to make selected investments as investments that can be self-regulated and well worth the time and in the prescribed goals (Karim, 2015).
18.	For investors who are Muslims, investors need to make sure every transaction is Shariah compliant (Fahmy, 2014).
19.	Islamic investors should choose a company that monitors Syariah panel appointed management of the company to be free of things that are forbidden in Islam (Fahmy, 2014).
20.	Property developed outside the main urban areas of Kuala Lumpur, Penang and Johor Bahru, for example Bangi, Semenyih, Cyberjaya, Kota Bahru, Kelantan and Penang are some examples of real estate investments that generate profits (Zainon and Junjun, 2015).
21.	Avoid making real estate investments by developers who are not qualified (Zainon and Junjun, 2015).
22.	Property such as holiday homes, properties priced at a 30% premium above than from other competitors and real estate projects from developers who have no experience should be avoided (Zainon and Junjun, 2015).
23.	In terms of selection of property, investment in real estate sector of the resort is not recommended because it offers a very high price and expensive (Zainon and Junjun, 2015).
24.	Strata title such as shopping centres and resort real estate project is also seen as highly risky for investment (Zainon and Junjun, 2015).
25.	Apart from buying and selling real estate, investors can also rent out the house to get cash flow positive. Rental rates given should generate surplus funds after deducting cost such as monthly bank installments, maintenance fee, assessment and so on to get a positive cash flow, in turn bring in passive income to

(3) The Rules of Using Al-Mafqud Property

The Malaysian has its own rules and laws that should be followed. Since Malaysia is an Islamic country, thus Islamic ways should be the first choice as the guide. The rule that stated by Imam Asy-Syafie about the al-mafqud status (Abdullah, 2014) is, he stated that there must be a proved and accepted by the Syariah Law. Based on the previous Muslims history situated on the An-Nawawi collection, it stated that the person who managed others property should return back all the capital and the profit to the owner after less the current salary (An-Nawawi, 2015). Individual or institutions involved may have the salary while managing the al-mafqud property. The summary of the rules is;

- (1) Permission of Shariah Court;
- (2) Benefits and profits 100% returned back to the owner (al-mafqud); and
- (3) Workers of intermediaries only take the service charge or salary only from the profit.

These rules are only a common rules that should be followed by Muslims. Since there were less issue about managing al-mafqud property before, thus there is no specific rules stated by our ministry, law, Mufti or Majlis Agama Islam Negeri about the rules and regulation of managing the al-mafqud property (Abdullah, 2014 & Utusan Online, 2013).

VIII. CONCLUSION

After studying about the previous practices by Muslims through history, researchers found that the al-mafqud property could be managed by others either individual or institution as long as the *amanah* attitude and honesty is there. The proposed potential business suggested is only a few and there were listed since researchers found that these kind of business is quite easy to manage either through the cost, risk or the management itself. These ways are applicable to use by al-mafqud heirs during the al-mafqud is missing. Within the ways proposed, researchers hope that it will help al-mafqud to protect his property and also will give a positive impact to the country. Besides, it will help facilitate all the parties involve and Muslims in Malaysia could maximize their economic potential for their future from this investment project. On the other hand, these ways are also relevant to be implement not only for managing al-mafqud property, but also recommend to other practices such as Luqatah Property, Waqaf Property, Adat Property and others.

IX. RECOMMENDATION

Since there a lot of investment opportunities, researcher have recommended to diversifying the research based on the property investment. If there were lots of research done by the expertise from the specific fields, the outcome could be better rather than research ideas that provided by the expertise who was outside the fields. Others, there were lots of things that should be researched like investing Luqatah Property, Adat Property and Waqaf Property. At the same time, the Malaysian Ministry and the Mufti should take advantage of this issue by reviewing those previous histories and provide a new solution regarding rules and regulations based on the current situation and suitable to apply in Malaysia nowadays. May this practice which started by Malaysian institutions as an apprentice will be followed by other Muslims countries in this world especially Asian. Thus, Malaysia will become their roles of practicing and will be the one of Muslims country which have good attitude specifically *amanah* attitude.

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