

The Status of Wives When Their Fisherman Husbands Go Missing at Sea: An Analysis of Natural Law from the Perspectives of Legal Certainty and Justice

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Abstract

The disappearance of a fisherman at sea can create uncertainty regarding his wife's marital status and legal rights. Such cases may involve *mafqud*, a status in which a person's whereabouts are unknown and whether they are alive or dead cannot be established. This study analyzes the legal resolution of wives' marital status when their fisherman husbands go missing at sea, drawing on natural law theory to examine legal certainty and justice. The study employed normative legal research with statutory and conceptual approaches. Legal materials were collected through a literature review and analyzed descriptively and analytically. The findings indicate that a husband's disappearance does not automatically dissolve the marriage or establish his wife's status as a widow. Resolving a *mafqud* case requires consideration of the circumstances surrounding the disappearance, available evidence, and the search process. From a natural law perspective, legal mechanisms must provide certainty for the wife while upholding justice, protecting her rights, and accounting for the possibility that her husband remains alive. The study concludes that legal certainty in *mafqud* cases extends beyond determining whether the missing husband is alive or dead; it also entails clarifying the legal consequences for the marriage through applicable mechanisms grounded in the circumstances of each case. This interpretation emphasizes the connection between legal certainty and substantive protection of the wife's rights.

Keywords: *Mafqud*; Missing Fishermen; Wives' Marital Status; Legal Certainty; Natural Law

INTRODUCTION

Fishing is classified as a high-risk occupation because it is carried out in a marine environment characterized by natural conditions and operational circumstances that are difficult to predict. These potential hazards may include boat accidents, adverse weather conditions, damage to marine vessels, and various other situations that may result in fishermen experiencing accidents or becoming untraceable after returning from fishing trips. An analysis of fishing vessel incidents reveals that the safety of fishermen is associated with various technical and operational aspects that are crucial to consider when sailing and fishing (Mantari et al., 2023). This situation indicates that fishermen going missing at sea is not merely an occupational safety issue but may also give rise to subsequent problems for their families when their whereabouts are not immediately established.

The issue of fishermen disappearing at sea becomes increasingly complicated when search efforts fail to provide immediate clarity regarding their whereabouts. Research on deaths and disappearances among fishermen at sea demonstrates that incidents involving individuals who die or remain missing while engaged in fishing activities constitute a problem related to the protection of fishermen and their families (Chantavanich & Jitpong, 2023). In the Indonesian context, studies on Indonesian migrant fishers have also identified cases of deaths at sea associated with accidents, working conditions, and problems concerning the reporting and investigation of fishermen's deaths (Stringer & Yea, 2026). Therefore, when a husband who works as a fisherman fails to return from the sea and his whereabouts remain unknown, the resulting problems do not end with the search process but may extend to questions concerning his legal status and that of his family members.

For families, particularly women, the disappearance of a family member without a trace creates a form of uncertainty that differs from a death that has been confirmed. Relatives of missing individuals must grapple with uncertainty regarding the whereabouts and condition of the absent person, making it difficult to determine whether the situation should be regarded as a permanent or temporary departure (Dartnall et al., 2022). This uncertainty may also persist for an extended period and significantly affect the lives of the families left behind (Lenferink et al., 2019). In the context of marriage, such circumstances present more complex challenges because the wife not only experiences emotional distress resulting from her husband's absence but must also address questions concerning their marital status, her position as a wife, and the rights associated with their family life.

In Islamic teachings, the condition of a person whose whereabouts are unknown is referred to as *mafqud*. The issue of *mafqud* concerns the uncertainty of whether a person is still alive or has passed away, meaning that the person's legal status cannot be determined solely on the basis of their absence. Studies on the marital status of wives whose husbands are declared *mafqud* indicate that a marriage essentially remains valid until certainty regarding the husband's condition is established or a court decision produces legal consequences for the marital bond (Khomsatun, 2021). Accordingly, the disappearance of a husband does not automatically terminate a marriage, as the legal consequences for the marital relationship continue to require a legal basis and the applicable legal procedures.

Perspectives on husbands who are *mafqud* also reveal differences of opinion among religious scholars concerning the waiting period and the circumstances that may serve as the basis for determining the status of a missing person. These differences indicate that the issue of *mafqud* concerns not only the duration of a person's absence but also the circumstances surrounding the disappearance and the extent to which certainty regarding the person's fate can be established.

This issue becomes critical when the missing individual is a fisherman whose last known location was at sea. Disappearances at sea may occur under various circumstances; therefore, the actual conditions before and after a person's disappearance are essential in determining how the person's status should be interpreted legally. Studies on missing men indicate a distinction between situations in which contact is lost but there remains a physical possibility that the individual may be found alive and situations in which the loss of contact involves a greater threat to the individual's life, such as a shipwreck or the sinking of a vessel (Susilo et al., 2025). Other studies also demonstrate that the circumstances of a person's disappearance, available evidence, witness testimony, and search efforts may constitute factors considered in determining *mafqud* status (Ulum et al., 2025). Accordingly, in cases involving a fisherman who disappears at sea, the legal issue cannot be adequately examined solely on the basis of the length of time his whereabouts have remained unknown. It is also essential to consider the circumstances of his disappearance and the facts that may serve as a basis for determining his legal status. In Indonesia, Islamic family law faces challenges when a husband becomes untraceable, raising questions regarding the continuation of the marital bond and the rights of the wife. A wife is not automatically considered a widow merely because her husband has disappeared.

Under Indonesian marriage law, the disappearance of a husband does not automatically terminate a marriage. Article 38 of Law Number 1 of 1974 concerning Marriage stipulates that a marriage may be dissolved by death, divorce, or a court decision, while Article 39 emphasizes that divorce may only be granted before a court hearing after sufficient grounds have been established. In the context of one spouse leaving the other, Article 19(b) of Government Regulation Number 9 of 1975 establishes as a ground for divorce the abandonment of the other spouse for two consecutive years without permission and without a valid reason, or due to circumstances beyond the abandoning spouse's control. This provision is also contained in Article 116(b) of the Compilation of Islamic Law for Muslim marriage cases. These provisions do not mean that a marriage automatically ends after two years; rather, they constitute one of the grounds that may be invoked in divorce proceedings, which must still be examined and decided through the judicial process. To establish certainty regarding her marital status, a wife may pursue legal procedures before the Religious Court (Hidayatulloh & Sayehu, 2024). Studies on divorce petitions against missing husbands indicate that *mafqud* status, when invoked as a ground for terminating a marriage, must be established through a court decision. The provision concerning a spouse who abandons the other for a specified period also constitutes one of the legal grounds for addressing such cases.

However, the resolution of *mafqud* cases does not depend solely on the length of time a person's whereabouts remain unknown. Factors such as the person's last known location, the circumstances surrounding the disappearance, available evidence, witness testimony, and search efforts may be considered in determining the legal consequences. Studies on establishing time limits for *mafqud* individuals indicate that judges may consider the circumstances of a person's disappearance, evidence, witnesses, and search efforts when determining the legal status of an individual whose whereabouts are unknown. Technological developments may also provide additional information, such as digital traces, population registration data, and electronic evidence, which can strengthen legal considerations (Putri & Lubis, 2025). These findings are directly supported by research conducted by Putri and Lubis, which examines judicial considerations concerning the circumstances of a person's disappearance, evidence, witnesses, and search efforts.

For a wife, these circumstances have more significant implications because they concern the certainty of the marital relationship and the protection of her rights. Uncertainty regarding her husband's whereabouts may place the wife in an uncertain legal position,

particularly when her husband no longer provides information about his whereabouts and ceases to fulfill his obligations to the family (Hartati & Yunus, 2022). Studies on legal remedies and the protection of wives in cases involving missing husbands indicate that wives require legal avenues to obtain a resolution to their suspended marital status.

In judicial practice, the actual circumstances surrounding a husband's disappearance are also crucial factors in judicial deliberations. An analysis of Decision Number 1868/Pdt.G/2024/PA.Grt of the Garut Religious Court examines a divorce case filed by a wife whose husband had been missing since January 2023 and had ceased providing information or financial support to his family. In this case, the judge granted the divorce petition by considering the legal provisions governing divorce and the actual circumstances experienced by the wife (Sofiawati & I'baad, 2025). This demonstrates that the resolution of cases involving missing husbands in judicial practice is related to the actual circumstances experienced by the family.

Consideration of actual circumstances is also reflected in a study of Decision Number 0279/Pdt.G/2009/PA of the Pasuruan Religious Court (Afrilian, 2023). This study reveals that case resolution is based not only on the length of time a husband's whereabouts have remained unknown but also on the circumstances experienced by the parties and the benefits intended to be achieved through the decision. This indicates that the resolution of mafqud cases in judicial practice may take into account the actual circumstances that lead a wife to require legal certainty.

An examination of Decision Number 401/Pdt.G/2024/PA.Jbg of the Jombang Religious Court also explores the limits applicable to a mafqud husband under the Compilation of Islamic Law, demonstrating that the judge granted the divorce even though the husband's disappearance had not yet reached two years (Mamduh & Khalil, 2025). This consideration was associated with the principles of justice and the attainment of welfare for the party filing the case. These findings demonstrate that the resolution of mafqud cases cannot be separated from an assessment of actual circumstances and the legal consequences experienced by the party left behind.

Previous studies on mafqud have examined this issue from various perspectives. Edi Susilo, Yahya Aziz, and Miswanto examined differences of opinion among the founders of Islamic legal schools concerning the marital status of a mafqud husband (Susilo et al., 2025). Tita Sirdan Maulana and Ahmad Ubaidi Hasbillah examined divorce judgments and the

wife's waiting period (iddah) in the context of a husband's disappearance. Meanwhile, other research has analyzed the protection of wives and the resolution of mafqud cases through the Religious Court (Maulana & Hasbillah, 2024). These studies confirm that the issue of mafqud has been investigated in relation to marital status, divorce, the iddah period, the protection of wives, and judicial considerations.

Nevertheless, based on the mapping of previous studies, there remains an opportunity to examine the issue of mafqud more specifically in the context of fishermen who disappear at sea (Ulum et al., 2025). This study does not merely position the disappearance of fishermen at sea as a factual problem but connects it with issues of family law concerning the legal position of the wife and subsequently analyzes the legal resolution through Natural Law to determine whether the certainty provided to the wife is consistent with justice and the protection of rights. Previous research has examined high-risk disappearance circumstances, including ship accidents, as well as considerations involving evidence, witnesses, and search efforts (Putri & Lubis, 2025). Other studies have addressed marital status, divorce, and the protection of wives. However, research that explicitly positions the status of a wife whose fisherman husband has disappeared at sea as its primary focus and analyzes the issue through the lens of Natural Law, particularly the relationship between legal certainty and justice, has not been a primary concern of these studies.

This issue highlights a conflict between the need for legal certainty and the reality that the whereabouts of a missing husband may not be immediately confirmed. On the one hand, the wife requires certainty so that she does not remain indefinitely in a state of uncertainty regarding her marital status. On the other hand, the law must exercise caution because a missing person has not necessarily passed away (Khomsatun, 2021). Therefore, the legal resolution of mafqud circumstances must consider the available evidence and the actual circumstances surrounding the disappearance to ensure that the certainty provided does not disregard the underlying reality.

Within this framework, Natural Law is employed as a perspective for analyzing the legal resolution concerning the status of a wife whose husband is mafqud. In this study, Natural Law is not used to determine whether the missing husband is still alive or has passed away but rather to analyze the fundamental values underlying the legal resolution (Gibbs, 2024). This perspective is employed primarily to examine the relationship between legal guarantees, justice, the protection of rights, and respect for human dignity. Accordingly, the

issue of mafqud is examined not only in terms of the existence of legal mechanisms but also in terms of how these mechanisms provide certainty to the party left behind while continuing to take justice into account.

In light of the foregoing discussion, this study focuses on the legal position of a wife whose husband, who works as a fisherman, is declared missing at sea and classified as mafqud. The purpose of this study is to examine how the legal framework provides solutions and certainty regarding the status of a wife whose fisherman husband has disappeared at sea, as well as how these solutions can be examined from the perspective of Natural Law. Accordingly, this study seeks to explore the relationship between legal certainty and justice in providing a resolution for wives facing uncertainty resulting from their husbands' disappearance at sea.

The novelty of this study lies in positioning the status of a wife whose fisherman husband has disappeared at sea as a distinct research focus, analyzed through the perspective of Natural Law with an emphasis on the relationship between legal certainty and justice, an approach that has not been a primary focus of previous studies on mafqud.

Based on this research gap, this study formulates three research questions: What is the legal position of a fisherman who disappears at sea and the status of the wife left behind under Islamic family law and Indonesian positive law; to what extent can search and rescue (SAR) evidence and other factual circumstances serve as legal considerations in resolving mafqud status; and how can this legal resolution be analyzed and evaluated through the perspective of Natural Law, particularly in relation to legal certainty and justice? This study aims to map the legal position of a mafqud fisherman and his wife, analyze the role of SAR evidence in resolving this status, and examine the resolution within the framework of Natural Law. The urgency of this study is grounded in the high risk of occupational accidents among fishermen, the prolonged uncertainty experienced by wives due to the absence of an explicit assessment framework for SAR evidence, and the need for a legal resolution that takes both certainty and justice into account. This study offers a theoretical contribution by extending the application of Natural Law to mafqud issues in Islamic family law, a methodological contribution through an analytical framework that positions SAR evidence as part of legal assessment, and a practical contribution by providing recommendations for Religious Courts in resolving cases involving fishermen husbands classified as mafqud.

METHODS

This study employs normative legal research with a qualitative design through a literature review (*library research*), aiming to analyze the status of a wife whose fisherman husband has gone missing at sea under *mafqud* circumstances based on Islamic family law, Indonesian positive law, and the perspective of Natural Law. The approaches employed include the statutory approach to examine legal provisions governing marriage and divorce, and the conceptual approach to analyze the concepts of *mafqud*, legal certainty, justice, and the protection of the wife's rights (Bachtiar, 2018; Marzuki, 2021). This study does not involve participants or respondents because it focuses on legal materials; therefore, sources are selected purposively based on their relevance and relationship to the research questions. The research instrument is the researcher themselves, assisted by legal-material inventory sheets and an analytical matrix. Legal materials are collected through a literature review by examining primary legal materials, such as relevant legislation and court decisions, as well as secondary legal materials in the form of books, scientific journal articles, and previous research findings concerning *mafqud* and Natural Law (Muhaimin, 2020). The legal materials are subsequently analyzed using a descriptive-analytical method through the stages of inventory, classification, interpretation, and deductive conclusion-drawing to assess the balance between legal certainty and justice for the wife, including consideration of search and rescue (SAR) evidence as supporting information in the legal process. The research period and duration have not been specified in the original manuscript and therefore need to be adjusted to reflect the actual implementation of the study.

RESULTS

1. The Legal Status of a Fisherman Husband Who Goes Missing at Sea

The disappearance of a fisherman husband at sea creates legal uncertainty because his whereabouts and condition remain unknown. The disappearance does not automatically establish that the husband has died or terminate the marital relationship. The circumstances of the disappearance, including vessel accidents, weather conditions, and the last known location, are important in determining his status. This situation also affects the wife's legal position and the rights of the family left behind.

2. Legal Mechanisms Governing the Status of the Wife of a Mafqud Husband

The husband's unknown whereabouts do not automatically terminate the marriage or establish the wife's status as a widow. The wife may pursue legal proceedings to obtain certainty regarding her marital status. The two-year abandonment period constitutes a potential ground for divorce rather than an automatic change in marital status. Information concerning the husband's last known location, vessel condition, communication records, and search results may support the legal examination of the case. The determination of marital status remains subject to the applicable legal procedures and the decision of the competent court.

3. The Role of SAR in Providing Facts for Legal Consideration

Search and Rescue (SAR) operations help establish the circumstances surrounding the husband's disappearance at sea. Information obtained from SAR activities can provide evidence concerning his last known location, vessel condition, and search results. While the husband's whereabouts remain unknown, the wife faces uncertainty regarding her marital status, rights, and legal position. Therefore, she needs access to legal procedures that provide an opportunity to resolve her situation. SAR findings serve as supporting factual information and do not independently determine the wife's marital status.

4. Legal Certainty for the Wife of a Mafqud Husband

Legal certainty differs from certainty regarding whether the missing husband is biologically alive or dead. The law must provide a mechanism for resolving the wife's uncertain marital status without automatically terminating the marriage because of the disappearance. Delayed legal certainty may occur when the available facts are insufficient to establish the husband's status. Nevertheless, the legal process must provide a clear resolution mechanism while ensuring that the wife's rights are not neglected.

5. A Natural Law Analysis of Legal Certainty and Justice

Legal certainty must be considered alongside justice, the protection of rights, and human dignity. The circumstances of each disappearance must be examined individually rather than treated identically. Relevant considerations include the duration of the disappearance, the last known location, vessel conditions, accident reports, witness statements, and search results. A fair legal resolution must protect the wife's interests without disregarding the possibility that her husband may still be alive. Accordingly, the resolution

must consider the applicable legal procedures and the actual circumstances of the parties involved.

6. Justice for the Wife: Protection and Caution

Justice requires balancing the wife's need for legal certainty against the need to avoid an unsupported declaration of death. Prolonged uncertainty may leave the wife without clarity regarding her marital status, financial support, and family protection. Therefore, she must have access to legal proceedings to seek a resolution to her situation. Legal certainty can support justice when decisions are based on sufficient evidence and fair procedures. The legal process must protect the wife's rights while exercising caution in determining the husband's status.

7. Analysis of the Status of the Wife of a Mafqud Fisherman Husband

The wife of a fisherman who disappears at sea does not automatically acquire widow status. The duration of the disappearance is relevant but must be considered alongside the circumstances and available evidence. SAR operations and tracking technologies can support the investigation but cannot replace the authority of the court. Legal proceedings must consider the wife's rights while acknowledging the possibility that the husband remains alive. The wife must be provided with a legal mechanism to obtain certainty regarding her marital status. Ultimately, a just resolution must prevent indefinite uncertainty while avoiding conclusions unsupported by the available facts, ensuring that legal certainty and justice operate together in resolving cases involving missing fisherman husbands.

DISCUSSION

1. The Legal Status of a Fisherman Husband Who Goes Missing at Sea

The findings indicate that the disappearance of a fisherman husband at sea gives rise to legal issues that differ from circumstances in which a husband simply fails to return home or cannot be located in everyday life. The sea is a high-risk working environment; therefore, a fisherman's disappearance may be associated with vessel accidents, adverse weather conditions, vessel damage, falling overboard, or other circumstances that prevent the victim's whereabouts from being immediately established. Research on fishing vessel accidents indicates that vessel characteristics, operational conditions, vessel age, and other factors may be associated with accidents and the loss of lives or vessels (Mantari et al., 2023). Uğurlu et

al. also demonstrate that fishing vessel accidents can be analyzed through the relationships between accident types, vessel characteristics, vessel losses, and fatalities (Uğurlu et al., 2020).

These circumstances are significant for family law because the status of a missing husband cannot immediately be equated with that of a person whose death has been confirmed. When a fisherman husband goes missing at sea, two possibilities must initially be considered. First, the husband may still be alive but has not yet been found. Second, the husband may have died but has not yet been found or identified. Therefore, a person's disappearance does not, in itself, extinguish the legal relationship between that person and their family.

The issue becomes increasingly complex because search operations for victims at sea also have limitations. The vastness of maritime areas, weather conditions, the vessel's last known position, sea currents, vessel damage, and limited information may affect the search process. Research on fishing vessel accidents in Peru indicates that accident characteristics and operational conditions must be considered when understanding the risks of vessel losses and casualties at sea (Mulyatno et al., 2019). A similar consideration appears in research on the safety of traditional fishing vessels in Indonesia, which highlights the importance of technical conditions and vessel stability for navigational safety (Chantavanich & Jitpong, 2023).

Accordingly, the disappearance of a fisherman husband cannot be assessed solely by asking, "How long has the husband been away?" The event that caused the disappearance is also significant. For example, a fisherman who disappears after a vessel sinks is in a factually different situation from a husband who goes fishing but subsequently stops communicating without any known accident. These differences may provide a basis for judges to assess the degree of certainty available in a particular case. This is consistent with research on fishermen's conditions and social protection, which indicates that the deaths and disappearances of fishermen at sea have legal and social consequences for the families left behind. Chantavanich and Jitpong demonstrate that deaths and disappearances among fishermen at sea are not merely occupational safety issues but are also associated with social protection for their families (Chantavanich et al., 2016). Meanwhile, research by Chantavanich, Laodumrongchai, and Stringer on fishery workers in Thailand indicates that working conditions at sea may place fishermen in vulnerable situations that require protection (Stringer & Yea, 2026).

In the Indonesian context, this issue becomes increasingly important because some fishing families must confront uncertainty when their family members disappear at sea. Research by Stringer and Yea on Indonesian migrant fishers identifies issues concerning the deaths and disappearances of Indonesian fishermen at sea and the consequences arising from these circumstances (Pitana et al., 2022). These findings demonstrate that fishermen's disappearances are not merely individual events but may generate broader social and legal problems for their families.

2. Legal Mechanisms Governing the Status of the Wife of a Mafqud Husband

Under Indonesian marriage law, a husband's whereabouts being unknown does not, in itself, terminate the marital relationship. Law Number 1 of 1974 concerning Marriage stipulates that a marriage may be dissolved by death, divorce, or a court decision. Divorce itself may only be granted in court after sufficient grounds have been established. In cases where one spouse leaves the other, Article 19(b) of Government Regulation Number 9 of 1975 provides grounds for divorce when one spouse abandons the other for two consecutive years without permission and without a valid reason, or because of other circumstances beyond their control. For Muslim couples, a corresponding provision is contained in Article 116(b) of the Compilation of Islamic Law. However, this time limit should not be interpreted as a provision that automatically changes the wife's status to that of a widow after two years. Rather, the specified period constitutes one of the grounds that may be invoked in divorce proceedings, while the dissolution of the marriage still requires judicial examination and a court decision. Accordingly, the issue of mafqud lies at the intersection of the factual circumstances of the husband's disappearance, the legal grounds presented, the evidentiary process, and the court's authority to determine the legal consequences for the marriage.

Developments in search and rescue (SAR) technologies have changed the ways in which the whereabouts of missing persons can be traced. In the context of fishermen, search technologies serve an important function because information about the vessel's or victim's last known location may constitute factual information used in legal proceedings. Research by Pitana et al. on Mini SART-DMOM demonstrates that transponder technology can assist in locating fishing vessels. The system utilizes GPS, LoRa, and receiver devices to transmit and monitor positions remotely (Jiang et al., 2024). Although this research falls within the field of engineering rather than family law, its findings are relevant in demonstrating that

contemporary searches for missing fishermen at sea do not rely exclusively on manual search methods.

Research by Jiang, Zhou, and Han also demonstrates the importance of managing and retrieving vessel-position data during the rescue of vessels involved in accidents. The study specifically examines the use of geocoding to accelerate the identification of vessels requiring assistance. This means that information about a vessel's position may constitute an important element in establishing a factual account of a person's last known circumstances before being declared missing.

Such information is significant in legal research because *mafqud* status should not be determined solely on the basis of time. Data concerning the last known location, vessel conditions, last communication, accident reports, search operations, and search results may provide an account of the circumstances surrounding a person's disappearance. Accordingly, SAR technology does not replace legal decisions but can help provide facts that serve as considerations in legal proceedings. These technological developments also strengthen the argument that the legal approach to *mafqud* should not rely exclusively on a mechanical calculation of time. Research on determining the status of *mafqud* individuals in the technological era also indicates that the use of electronic data and digital traces can enrich the evidence and information available to legal decision-makers. These findings are consistent with the research by Ivina Dwi Juliantika Putri and Azwani Lubis discussed in the introduction.

Thus, SAR search results may be positioned as supporting factual information rather than as an automatic determinant of marital status. For example, if a search establishes that a vessel has been found in a particular condition, identifies a clear last known location, or yields no indication of the victim's whereabouts following the search operation, such information may form part of the overall factual circumstances assessed by a judge. However, the legal conclusion must still be reached through the applicable legal mechanisms. This can also be understood through research on vessel accidents that employs scientific approaches to examine relationships among various accident factors. Uğurlu et al. demonstrate that vessel conditions and accident characteristics may be associated with vessel losses and fatalities (Uğurlu et al., 2020). This knowledge helps explain why the circumstances surrounding a fisherman's disappearance at sea must be examined concretely rather than solely on the basis of how long the individual has remained missing.

3. The Role of SAR in Providing Facts for Legal Consideration

The principal issue for the wife is the emergence of an uncertain legal situation. As long as her husband's whereabouts remain unknown, the wife cannot simply declare that her marriage has ended. At the same time, maintaining this situation indefinitely may also give rise to problems of justice for the wife.

This situation constitutes a form of uncertainty that differs from an ordinary death. When a person dies and the death can be established, the legal status of the marriage can be processed on the basis of that fact. In contrast, in a *mafqud* situation, the principal fact available is precisely the uncertainty as to whether the person remains alive or has passed away.

Research by Lenferink et al. on the families of missing persons demonstrates that relatives must confront uncertainty regarding the fate of their family members. Such uncertainty may give rise to problems that differ from those associated with a loss resulting from a confirmed death (Lenferink et al., 2019). Research by Isuru, Bandumithra, and Williams also indicates that the families of missing persons experience a distinct form of loss because they receive no certainty regarding the condition of their family members (Isuru et al., 2021).

In the context of family law, this situation has a more complex dimension because the wife not only experiences emotional loss but must also question her marital status, her rights and obligations within the family, the possibility of continuing the marital relationship, and her legal position if she seeks a resolution through the courts.

Therefore, legal certainty for the wife cannot be understood merely as "determining whether the husband is dead." Legal certainty also means the existence of mechanisms through which the wife can pursue a resolution to her uncertain situation. In this regard, the court plays an important role because decisions concerning the legal consequences of a *mafqud* situation cannot be based solely on unilateral statements made by the family.

Research by Dartnall, Goodman-Delahunty, and Gullifer on the families of missing persons demonstrates the importance of legal processes that allow families to be heard, obtain information, and receive treatment that is sensitive to their circumstances (Dartnall et al., 2023). The study also highlights the importance of timely proceedings and humane treatment of the families of missing persons.

In the Indonesian context, this principle can be applied by recognizing the wife as a party with a direct interest in the resolution of the case. The wife requires certainty not merely to enable her to remarry but also to clarify her legal position within the family. Therefore, legal proceedings concerning a mafqud husband must consider the wife's needs without disregarding the possibility that the husband may still be alive.

4. Legal Certainty for the Wife of a Mafqud Husband

The analysis reveals a distinction between legal certainty and certainty regarding a person's biological condition. The law can establish certainty concerning the legal consequences of a particular situation without claiming to know absolutely whether a person is still alive or has passed away.

This distinction is important in cases involving fishermen who disappear at sea. Judges do not have the authority to create the fact that a person has died when the available evidence does not establish such a conclusion. However, the law also cannot leave the party who has been abandoned in a state of uncertainty without providing a mechanism for resolution.

A similar issue arises in studies of the presumption of death. Research by Nor Azlina Mohd Noor, Ahmad Shamsul Abd Aziz, and Akmal Hidayah Halim on the law governing the presumption of death in Malaysia demonstrates that the absence of a body may create difficulties when the law must determine when a missing person can be presumed dead (Noor et al., 2018). This research highlights the importance of a legal framework capable of addressing circumstances in which a person's whereabouts remain unknown while the legal lives of their family members and other affected parties must continue.

This issue is also reflected in research on the families of missing persons in conflict contexts. Sarkin demonstrates that missing-person cases involve not only search efforts but also require a legal and institutional framework capable of addressing the needs of families. The study finds that fragmented and incomplete legal systems may complicate the resolution of missing-person cases (Sarkin, 2022).

In the context of fishermen's husbands, these circumstances demonstrate that the law needs to provide a clear mechanism for wives. Such a mechanism does not mean that the husband's disappearance automatically terminates the marriage. Rather, it provides a legal avenue through which the wife can submit the matter to the competent institution and obtain a decision based on the available facts and evidence.

Accordingly, the term "delayed legal certainty" in this study can be understood as a situation in which certainty regarding legal consequences cannot be provided immediately because the facts concerning the husband's whereabouts remain unclear. Such a delay may be justified as long as a clear legal process is available and the delay does not result in the neglect of the wife's rights.

5. A Natural Law Analysis of Legal Certainty and Justice

Natural Law is employed in this study as a perspective for examining whether the legal resolution of cases involving mafqud husbands has taken into account the values of justice, certainty, the protection of rights, and human dignity.

Natural Law is not used to replace positive law. Instead, it serves to evaluate the fundamental values underlying legal resolution. In debates concerning positive law and Natural Law, Gibbs demonstrates that the Natural Law tradition addresses questions concerning the normative foundations of law and the relationship between law and the values underlying it (Gibbs, 2024). Accordingly, the use of Natural Law in this study is directed toward examining whether the legal resolution of cases involving the wives of mafqud husbands provides fair protection for the parties affected.

Recent developments in Natural Law scholarship further emphasize the relevance of this framework for the substantive evaluation of legal norms. Crowe demonstrates that contemporary Natural Law theories share the view that law necessarily constitutes a rational standard for human conduct rather than merely a socially recognized standard (Crowe, 2016). In his analysis of the declaratory theory of judicial lawmaking, Beswick emphasizes that changes in law through judicial decisions must remain guided by the underlying principles of law, consistent with the demands of justice (Beswick, 2026). Popović, through a renewed examination of the thought of Finnis and Aquinas, emphasizes that justice serves as an evaluative standard for the substantive validity of positive law, rather than merely its procedural validity (Popović, 2023).

García-Huidobro and Poblete demonstrate that discussions of Natural Law cannot be separated from the relationship between general legal principles and their application to concrete circumstances (García-Huidobro & Poblete, 2021). This is relevant to the issue of mafqud because the circumstances of each missing person are not necessarily identical. Some individuals disappear under circumstances in which they may still be alive, while others disappear following events that objectively involve a high risk of death.

In cases involving fisherman husbands, these differences are particularly important. For example, the disappearance of a fisherman following a serious vessel accident involves factual circumstances that differ from those of a husband who leaves home for unknown reasons without any information indicating an accident. Both individuals may be described as having unknown whereabouts, but their factual circumstances are not identical.

Therefore, justice does not always mean applying the same legal consequences to every situation. Justice may require considering relevant circumstances before issuing a legal decision. In *mafqud* cases, relevant circumstances may include the time of disappearance, the last known location, vessel conditions, accident reports, search results, witness statements, last communications, and other information that may help clarify the circumstances of the husband's disappearance.

This approach is also consistent with developments in thinking about the protection of human rights at sea. Strating, Rao, and Yea demonstrate that the vastness of maritime areas may create challenges for law enforcement and human rights protection, requiring coordination and approaches centered on safety and individual rights (Strating et al., 2024). Although their research focuses on human rights violations and forced labor at sea, the principle of protecting individuals remains relevant in demonstrating that the maritime environment must not become a reason to disregard the rights of affected persons.

In the family context, these rights belong not only to the missing person but also to the family left behind. Parrin demonstrates that the families of missing persons need to know the fate of their family members and obtain information about the circumstances of their disappearance (Parrin, 2023). Accordingly, search operations and legal proceedings are connected to the family's need for certainty and a dignified resolution.

When analyzed from the perspective of Natural Law, the resolution of cases involving *mafqud* husbands cannot be evaluated solely by determining whether legal procedures exist. The resolution must also be assessed in terms of the justice it produces for the affected parties. For the wife, justice requires an opportunity to obtain certainty regarding her marital position and protection of her rights. At the same time, justice requires that the law refrain from declaring the husband dead without an adequate factual basis. Therefore, Natural Law in this study positions certainty and caution not as competing interests from which only one must be selected, but as two values that must be considered simultaneously in resolving *mafqud* cases.

6. Justice for the Wife: Protection and Caution

The Natural Law perspective also helps identify two interests that must be balanced. The first is the wife's interest in obtaining certainty. The second is the interest in avoiding a declaration of death without an adequate basis. Within the Natural Law framework, this issue can be understood in terms of two possible outcomes that must be avoided. First, imposing legal consequences too quickly without an adequate factual basis may risk disregarding the possibility that the husband is still alive. Second, the absence of an effective legal resolution may leave the wife in prolonged uncertainty. Therefore, justice in mafqud cases can be understood as the need to provide a proportionate resolution based on the facts, evidence, and concrete circumstances of the parties.

Research by Arenliu et al. on families of missing persons in the context of war demonstrates that families experiencing ambiguous loss require social support and face circumstances that differ from losses resulting from confirmed deaths (Arenliu et al., 2019). Although the context of that study differs from fishermen disappearing at sea, its findings reinforce the understanding that uncertainty regarding a person's whereabouts places a distinct burden on the family.

In cases involving fisherman husbands, this burden may become more complex because the wife must confront uncertainty regarding her marital status while potentially facing the absence of financial support and family protection. Therefore, the law must provide a means through which the wife can submit a petition or lawsuit to the competent institution.

At this point, legal certainty and justice do not have to be positioned as two conflicting values. Legal certainty can instead serve as an instrument for achieving justice when it is established through procedures that consider the facts and provide interested parties with the opportunity to present evidence.

Accordingly, the resolution of cases involving mafqud husbands should not focus solely on the question of when the marriage ends but also on how the legal process protects the wife while her husband's status remains unknown.

7. Analysis of the Status of the Wife of a Mafqud Fisherman Husband

Based on the overall discussion, the status of a wife whose fisherman husband has disappeared at sea occupies a legal position that requires resolution through legal proceedings

rather than personal assumptions regarding the husband's death. First, the husband's disappearance does not automatically confer widow status upon the wife. A person's disappearance constitutes a factual circumstance requiring further assessment. Marital status must be determined in accordance with the applicable legal provisions and decisions of the competent institution. Second, the duration of the disappearance is one relevant factor but not the only relevant consideration. The circumstances in which the husband was last known to be present, vessel conditions, suspected accidents, search results, witness statements, and other evidence may provide context for understanding the disappearance.

Third, modern SAR operations can assist in establishing evidence and investigating the facts but do not replace the authority of the court. Technologies such as location-tracking systems, vessel-position data, and communication systems can help identify or estimate the victim's last known location. Research by Pitana and Jiang demonstrates the importance of technology in vessel search and rescue operations (Pitana et al., 2022). Fourth, legal certainty for the wife must continue to take into account the protection of the rights of a husband who may still be alive. Therefore, legal proceedings must be conducted on the basis of the available facts and must not rely solely on the wishes of one party. Fifth, from the perspective of Natural Law, a just resolution is one that not only provides formal certainty but also considers the human circumstances underlying the legal issue. A wife who has lost her husband requires certainty regarding her marital status and protection of her rights, while the husband's unknown whereabouts demand caution to prevent the law from reaching conclusions unsupported by the facts.

Thus, Natural Law in this study demonstrates that legal certainty and justice should operate together. Legal certainty is necessary to prevent the wife from remaining in uncertainty indefinitely, while justice requires caution to ensure that such certainty is not provided by disregarding the possibility that the husband may still be alive.

This study indicates that determining the status of a wife whose fisherman husband has gone missing at sea requires consideration of legal certainty, justice, search and rescue (SAR) evidence, and the protection of the wife's rights through applicable legal mechanisms.

This study is limited to normative legal research through a literature review and an analysis from the perspective of Natural Law. It does not yet include direct interviews with fishermen's wives, victims' families, SAR personnel, or judges handling related cases.

CONCLUSION

Based on the discussion concerning the status of a wife whose fisherman husband has gone missing at sea under *mafqud* circumstances, it can be concluded that the husband's disappearance does not automatically terminate the marital bond or confer widow status upon the wife. The determination of marital status requires legal consideration that takes into account the duration of the disappearance, the husband's last known circumstances, available evidence, witness statements, search efforts, and the circumstances of the family left behind. From the perspective of Natural Law, the resolution of *mafqud* cases should not be oriented solely toward formal legal certainty but should also uphold the values of justice, the protection of rights, and human dignity. Therefore, a legal resolution is necessary that can provide certainty and protection for the wife by objectively considering the facts surrounding the disappearance without disregarding the possibility that the husband may still be alive.

This study contributes to the development of Islamic family law scholarship, particularly regarding the status of *mafqud*, by integrating the perspective of Natural Law to understand the relationship between legal certainty, justice, and the protection of women's rights.

Future researchers are encouraged to conduct empirical studies in coastal areas involving fishermen's wives, family members, SAR personnel, and judicial officers, as well as to examine comparative court decisions, in order to obtain a more comprehensive understanding of the resolution of cases involving husbands who go missing at sea.

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