

A Comparative Study on the Management of Al-Mafqud Real Estate (AMRE) and Luqatah Property (LP) in Malaysia

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ABSTRACT : *Al-mafqud real estate (AMRE) is considered as a new issue in Malaysia. There is a need to uncover the differences between AMRE and luqatah property (LP) using available resources in the literature. This leads to this study which aims to investigate clear differences between AMRE and LP. At this moment, only LP which is well-managed by State Islamic Society Council (MAIN) or Baitulmal. The main difference between both entities is the owner. Al-mafqud means people who are missing without any news for a certain period and have a high probability to be alive rather than dead. Al-mafqud real estate (AMRE) means property which belongs to someone missing while luqatah property (LP) means the missing property where it was found somewhere without knowing who is the owner of that property. Findings from the document analyses show that there are differences between AMRE and LP. AMRE should be utilised in such a way that can be beneficial to the ummah and this should be made legal.*

KEYWORDS - *AMRE, Luqatah Property (LP), Ways, and Property Management*

I. INTRODUCTION

Literally, al-mafqud means missing person (Berita Sarawak, 2013) [1] meanwhile literal meaning for luqatah is things found. From an Islamic terminology, al-mafqud is conceptually defined as people who are missing without any news for a certain period and has high probability to be found alive rather than dead (Abdullah, 2014 [2] and Mahkamah Syariah Tinggi Terengganu, 2008 [3]). Al-mafqud's property means all the property which belongs to the al-mafqud. While luqatah means all objects found in places that cannot be controlled by someone either in the form of wealth or goods (Akbar, 2012 [4] and Sahril, Madany & Afandi, 2009 [5]). Luqatah property (LP) is missing from its owner because of the person's carelessness or unawareness about the lost thing and the person who found it does not know who the owner is.

There are two categories of al-mafqud which are living and die al-mafqud (Abdullah, 2014) [2]. The AMRE could be in the form of assets and cash (Berita Sarawak, 2013) [1]. Otherwise, LP is not only about assets, cash and also animals (Ipansyah, Jalaluddin & Helmi, 2014) [6]. Obviously, most LP that are found and reported are assets and cash. The objective of this article is to investigate clear differences between AMRE and LP.

II. METHODOLOGY

For this research, document analysis method is deemed the most suitable method to be employed. To achieve the research objective of this article, the researchers conducted document analyses and the collected data were analysed qualitatively. Thematic analysis based on developed categories learnt from literature review. The selected documents included Hadith, collected relevant previous research and newspaper.

III. LITERATUR REVIEW

(1) Property Management Methods

AMRE is scarcely understood in Malaysia compared to LP. Baitulmal or State Islamic Religious Council (MAIN) are responsible institutions under government who manage both kinds of properties (Majlis Agama Islam Negeri, 2016) [7]. Compared to LP, we have very limited knowledge about the AMRE until the

case of missing MH370 plane tragedy happened in 2014 (Bernama, 2014) [8]. Ever since MH370 plane tragedy, then Malaysian society has started to be aware about the al-mafqud issues and AMRE issues. The society has learned from the plane tragedy this and now started to search the way to manage their own property as the preparation if something bad happens in the future (Mohamad & Sulaiman, 2015) [9].

The status of the AMRE is characterized as 'dependent' since the owner is missing and cannot be found (Bernama, 2013 [10] and Berita Harian, 2013 [11]). The waiting period of AMRE could be managed by third party is four years (Harun, 2014) [12]. After that period, the property will be transferred to another owner through will, grant or other methods. The main difference between both kinds of properties is the owner. For the al-mafqud real estate (AMRE), the owner is known but missing meanwhile for the LP the owner is unknown and there is no way to transfer the AMRE to another owner. Thus, the government mentioned that the holding period of the property is one year only (Majlis Agama Islam Negeri, 2016) [7]. After a year, the finder can become the owner of that property (Sarwat, 2009) [13] or Baitulmal will manage the property for the benefit of *ummah* (Majlis Agama Islam Negeri, 2016) [7].

However, AMRE is declared to be frozen by the Malaysian government until four years or until the owner (al-mafqud) is return. After four years, the al-mafqud next-of-kin/heirs can claim that property which belongs to al-mafqud. LP also has to be frozen for a year. Since LP consist of various types, only durable goods needed to behold and the founder need to take care of the LP until the owner claim it back (Majlis Agama Islam Negeri, 2016) [7]. But, if it is considered as perishable goods, there are ways to manage the LP, either sells it and hold the sales revenue until the owner claimed it back or the founder can take the benefit of the goods. The requirement of holding the LP is, the founder has to make announcement for the missing property at the same location of the item found and location where lots of people can see the notice about the missing property, such as a mosque, market or others (Majlis Agama Islam Negeri, 2016) [7].

Factually, AMRE cannot be managed by others, even after the deadline of four years if the next-of-kin/heirs wants to claim the AMRE it must be within the four years period. After a suitable period, if the next-of-kin/heirs have not yet made claim, thus the AMRE which belongs to the al-mafqud will be transferred to AmanahRaya or Baitulmal for mutual benefit among Malaysian society. The mutual benefits are such as roads, bridges, highways, irrigation and drainage systems, schools, institutions and other public use. While LP durable or perishable goods can be sold, rented or stored well without any action based on the condition of the item. After the period, actions including quotation and tender making, auction or destroying of goods can be taken (Majlis Agama Islam Negeri, 2016) [7]. If the item is valuable, it will be sold and the revenue will be used for public benefit and purposes. Thus, Malaysian society is encouraged to report and submit any property found without legal owner at any places for the advantage of the people.

IV. RESULTS AND DISCUSSIONS

There are differences between AMRE and LP management. The researcher has categorised the differences between both AMRE and LP management into two three: (1) Rules of managing Al-Mafqud Real Estate (AMRE) and Luqatah Property (LP); (2) Ethics in property managing Al-Mafqud Real Estate (AMRE) and Luqatah Property (LP) in Malaysia; and (3) Property management of Al-Mafqud Real Estate (AMRE) and Luqatah Property (LP).

(1) Rules of Managing Al-Mafqud Real Estate (AMRE) and Luqatah Property (LP)

The AMRE is announced to be frozen until the owner was founded or returned. Baitulmal is the main institution who is responsible to manage the cases of AMRE specifically. Besides, the AMRE could be managed by the next-of-kin/heirs such as a car, house, business and others if the property has the second owner like joint ownership or it is for daily use. Other issues or problems about the AMRE, should be directly reported and dealt with Syariah Court. Only permission by Syariah Court is acceptable for Muslims. The permission and decisions stated by Civil Court are for certain cases only.

While for the LP, there are three categories involved, which are the founder, ownership, and management (Majlis Agama Islam Negeri, 2016) [7]. The founder can consist of anyone, the ownership also can

be anyone but he or she must have a good attitude, and the management involved is Baitulmal or MAIN (Majlis Agama Islam Negeri, 2016) [7].

The management of the property which belongs to others is quite difficult to be managed rather than managing our personal property. There will be more difficulties in managing property which belongs to the unknown (Bernama, 2013) [10]. Since AMRE owner exists, the manageable property such as car can be used by the al-mafqud next-of-kin/heirs like his son, or the company owned by al-mafqud can be handled by his partners or wife within the waiting period.

LP cannot be used or managed by others as it is considered as a durable or perishable founded property and the owner is also unknown. If the item is considered perishable, it can be sold, but need to hold the sales revenue until a year or until the owner claims the property back. Either AMRE or LP, if the owner claims back their property, the founder or the one who managed it has to give back the property, either in term of the original shape or the value for the item (if it has been sold). If the item has been rented or invested because the property is in a good condition durable and high yield potential since it was found, thus the original property, including the profit must be returned to the original owner if it is demanded by the property owner (Majlis Agama Islam Negeri, 2016) [7].

(2) Ethics in Managing Al-Mafqud Real Estate (AMRE) and Luqatah Property (LP)

Since AMRE and LP does not have the owner for a certain period (Abdullah, 2014 [2] and Majlis Agama Islam Negeri, 2016 [7]), it may be permissible to the founder or those who manage it to get the benefit from it before the announcement period has expired (Majlis Agama Islam Negeri, 2016) [7]. However, the person/institution who manages the AMRE or LP within the period four years (AMRE) or one year (LP) is considered *amanah*. If the founder cannot be trusted or unable to maintain trust for handling the project or property found, then he is highly recommended to submit the matter or the property to the authorities such as Baitulmal (Majlis Agama Islam Negeri, 2016) [7].

(3) Property Management of Al-Mafqud Real Estate (AMRE) and Luqatah Property (LP)

The main issue of both properties is about the owner, where the owner of the AMRE is known, but they are missing for a certain period, compared to LP, the owner is unknown and quite difficult to find since there is no specific clue about the owner of the founded property.

1. The Importance of Property Management of Al-Mafqud Real Estate (AMRE) and Luqatah Property (LP)

Management is important in order to help the work matters to be smooth. In terms of managing the AMRE, a special committee was set up to manage the cases and property belongs to al-mafqud within the waiting period of al-mafqud known as Al-Mafqud Committee which located at Miri, Sarawak. Before, the cases of al-mafqud and the property which belongs to al-mafqud are conducted by Baitulmal. The cases of LP and AMRE are still under the management of the State Islamic Religious Council (MAIN) for every state. Same goes to LP. LP is also managed by Baitulmal.

The MAIN has set rules and guides for the founder and also for the management towards LP. The classifications of rules have already been discussed above about the methods and the rules of property management. Because of al-mafqud cases are fewer and involved only certain state, thus the responsible management parties still have some time to create new guidelines and procedures in order to make AMRE manageable within the four years of its waiting period.

Al-mafqud waiting period is minimum four years (Abdullah, 2014) [2] but for LP is one year (Ichwan, 2017) [14]. There is no specific discussion regarding AMRE in the Quran but fewer in Hadith. The period of waiting al-mafqud to come back before all the procedure being done is more referred to the *Ijtihad Ulama'* through four *mazhabs* which are Imam Malik, Hanafi, Syafie and Ahmad bin Hanbal (Abdullah, 2014) [2]. Compared to LP, the source for managing the LP is stated in the Hadith (refer the 153th hadith from the Encyclopedia of Prophet Muhammad: As Entrepreneur Volume 8) (Ichwan, 2017) [14]. While the ethics are

referred directly to the Quran such as amanah attitude (Surah An-Nisa: verse 58 & Surah Al-Anfal: verse 27) and others are commonly mentioned like the rights, the property and others.

The importance of managing both of these properties is to help the owner (al-mafqud) and the owner of LP feel safely and relieved if something happened to their property. Besides, for al-mafqud, if he cannot manage his property by himself, at least he knows that there is management agency like MAIN or Baitulmal which can help him to manage his AMRE and LP safely. If the next-of-kin/heirs of al-mafqud cannot be found, the period can be extended to seven years (as requested and permissible by the court). As Muslims, even there is no claimed by the next-of-kin/heirs, the property will be managed by MAIN or Baitulmal and also AmanahRaya (for certain cases). Thus, the property will be used by/for the society which calls sadaqah and the reward will be given by Allah to the original owner (al-mafqud). Same goes to LP, if the original owner cannot find the lost property or the founder of the lost property, he still rewarded by Allah. The founder is permitted to own the property after the announcement period has been done/expired.

2. Potential Disadvantages of Al-Mafqud Real Estate (AMRE) and Luqatah Property (LP)

The disadvantages is risk. The risk might be considered as the loss or it will enhance to gain profit of AMRE or LP. People tend to think that risk always bring loss rather than profit. In other words, the risk can give adverse effect on anything. In Islamic ways, Allah 1 promised that if His servant lost something, He will replace the item or items that are better than what you had before (Surah Al-Baqarah: verse 155-157). Because of that, Muslims are encouraged to be thankful to Allah 1 for any possible risks that might happen either it will bring loss or profit (*Redha*-complete and absolute submission to Allah 1's will).

The disadvantage is human ethical and its behavior issues. The attitude issues such as fraud, dishonesty, breach of trust, falsification of data and information and others are considered as risk to AMRE and the owner of LP. This issues need to be addressed by educating Muslims's way of life since young by practicing good manners in schools, workplace, home and also through social media. With the Islamic way of life, it will then give a positive impact to the society at large.

V. CONCLUSIONS

AMRE cases is lesser than LP. Because of LP cases happened in many states in Malaysia, the management of LP is then quite specific in terms of the guidance of the founder, the parties involved and also the ways to manage the LP. Since AMRE cases is lessor, there is no specific guidance to the parties involved except the determination of al-mafqud status and the waiting period of al-mafqud. Other than that, the AMRE is being frozen until al-mafqud returned or the al-mafqud next-of-kin/heirs claim it after the waiting period is expired.

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