

Reformulating the Concept of *Mafqūd* in Islamic Law and Its Implications for Loss-Related Phenomena in the Modern Digital Era

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Abstract

This study revisits the classical Islamic legal concept of *mafqūd* by situating it within the realities of a modern society increasingly dependent on digital systems. In traditional fiqh, *mafqūd* refers to a person who is physically missing and whose whereabouts cannot be verified, a condition that carries significant legal implications regarding marriage, inheritance, and personal civil status. However, technological developments in the contemporary era have introduced new forms of “loss” previously unknown in classical literature—such as the disappearance of personal data, the erasure of digital identity traces, system failures that result in loss of access, and the sudden vanishing of a person’s online accounts or profiles without clear cause. These emerging phenomena call for a re-examination of the foundational principles of *mafqūd* to make them more relevant and adaptable to digital contexts.

This research employs a library study approach, utilizing primary Islamic legal sources including works of the classical jurists, texts of *uṣūl al-fiqh*, and comparative fiqh literature. These are analyzed alongside contemporary studies on technology law, data protection, and the notion of digital identity. The analysis shows that although classical fiqh does not explicitly address digital forms of loss, several underlying principles hold strong potential for contextual reinterpretation. Doctrines such as precaution (*iḥtiyāt*), the elimination of harm, the protection of individual rights, and legal determinations based on public interest (*maṣlahah*) provide a methodological basis for extending the concept of *mafqūd* into digital realms. Through this approach, digital loss is not treated as a direct analogue of physical disappearance, but as a phenomenon that likewise generates uncertainty, impedes the fulfillment of rights, or disrupts the legal status of a person or digital asset.

Keywords: *mafqūd*, Islamic law, conceptual reconstruction, digital loss, contemporary fiqh, digital era, library research.



A. Introduction

The profound transformations occurring in contemporary human life cannot be separated from the rapid development of digital technology. Nearly all forms of activity administrative processes, professional work, education, and even social interaction are now mediated through digital devices and internet-based systems. Essential documents, personal identification data, transaction records, and private communication increasingly depend on digital platforms that are dynamic yet vulnerable.¹ This shift has given rise to new forms of loss that differ significantly from traditional understandings. Whereas loss in the past was typically associated with the physical disappearance of a person or material objects, in the modern era the concept has expanded to include the disappearance of personal data, the deletion of digital accounts, the obscuring of online identities, and the loss of access to digital systems containing vital information.

These digital forms of loss may appear simple on the surface, yet they can generate serious legal, social, and administrative problems. Losing access to essential data, for instance, may prevent an individual from verifying their identity, reclaiming rights dependent on such data, or carrying out basic daily activities. The uncertainty that arises from these situations closely resembles the classical Islamic legal concept of *mafqud*, which has long been used to describe a person whose whereabouts are unknown and whose life or death cannot be confirmed. Classical jurists developed detailed legal provisions to regulate the status of such individuals, particularly concerning inheritance, marriage, property, and family relations.²

However, the concept of *mafqud* found in classical fiqh emerged from a social context vastly different from that of the modern world. In earlier eras, loss was understood almost exclusively as the physical absence of a person, and the legal

¹ Munifah Munifah and Mufrod Teguh Mulyo, "Personal Data Hacking: A Critical Analysis of Islamic Criminal Law and Islamic Jurisprudence," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 8, no. 2 (2025): 179, <https://doi.org/10.30659/jua.v8i2.44585>.

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

framework built by jurists reflected the realities and social experiences of their time. Today, the challenge has shifted.³ Loss is no longer restricted to physical presence but extends to a person's "existence" in the digital sphere. A person may be alive, yet their digital identity disappears; they may be physically present, yet their data becomes inaccessible, leaving their legal or administrative status uncertain. These new forms of uncertainty call for a renewed examination of the *mafqud* concept through a contemporary lens.

Contemporary fiqh scholarship that directly connects the concept of *mafqud* with digital forms of loss remains very limited. Most existing studies focus on data protection, digital ethics, or positive legal regulations related to cybersecurity, yet there has been little effort to approach the issue through the deeper theoretical frameworks of classical Islamic jurisprudence.⁴ In fact, Islamic law offers a rich set of foundational principles particularly those related to precaution, public interest, the protection of individual rights, and legal decision-making in ambiguous situations. These principles provide a strong basis for reinterpreting and expanding the understanding of *mafqud* so that it becomes relevant to contemporary challenges.⁵

Through a library-based research approach, this study explores primary and secondary sources in Islamic jurisprudence, including the views of classical jurists, works of *uṣūl al-fiqh*, and comparative fiqh literature, to gain a deeper understanding of how the concept of *mafqud* was originally formulated. The discussion then links this classical framework with modern forms of digital loss that have become increasingly common in daily life. This approach does not aim to alter the principles or structure of classical fiqh, but rather to reposition the concept

³ Agus Wedy, "Refleksi Maqashid Syariah Dalam Penyelesaian Sengketa Waris Digital: Menjawab Tantangan Hukum Keluarga Islam Di Era Teknologi," *Litaskunu: Jurnal Hukum Keluarga Islam* 1, no. 1 Mei (2025): 1–11.

⁴ Fakultas Syariah et al., "Jurnal Yurisprudencia" 11, no. 27 (2025): 1–23.

⁵ Fitratallah Abdul Rahman et al., "Al-Mafqud According To Hadith and Its Impact on Separate Property: A Literature Review Al-Mafqud Menurut Hadith Dan Impaknya Terhadap Harta Sepencarian: Satu Kajian Literatur," *Bil* II (2021): 75–84.

within a broader context so that Islamic law can offer meaningful and relevant responses to emerging issues.⁶

B. Theoretical Review

1. The Concept of *Mafqūd* in Islamic Law

a. Definition of *Mafqūd*

In the classical corpus of Islamic jurisprudence, the term *mafqūd* refers to a person who disappears without any information regarding their whereabouts or condition, leaving it uncertain whether they are still alive or have passed away. This state of ambiguity produces a range of legal implications, particularly concerning family relations, property ownership, and personal legal status. Classical jurists generally describe *mafqūd* as “an individual who disappears without known cause and without any reliable indication of life or death.” This definition forms the foundation for subsequent legal discussions among earlier scholars on the rulings related to missing persons.⁷

b. Views of the Classical Schools

The four major Sunni schools of jurisprudence present differing perspectives regarding the waiting period and the determination of the legal status of a *mafqūd*. These differences reflect the methodological tendencies of each school as well as their sensitivity to social realities.⁸

1. Hanafi Madhhab

The Hanafis emphasize rational assessment and social circumstance rather than fixed rules. They do not prescribe a strict waiting period; instead, they consider factors such as the missing person’s age, life

⁶ M. Nur Hasan Latief, “Pembaharuan Hukum Keluarga,” *Hukum Novelty* 7, no. 2 (2016): 196–209.

⁷ Universiti Islam, Sultan Sharif, and Article Info, “JOURNAL OF ISLAMIC AND LAW STUDIES THE PERIOD OF MAFQUD ACCORDING TO HUKUM SYARA’ AND THE SHARIA LAW ACT IN BRUNEI DARUSSALAM Nor Sabrina Binti Ratna Mas Nooraini Binti Haji Mohiddin Nor Sabrina Binti Ratna Mas Nooraini Binti Haji Mohiddin INTRODUCTION A” 8, no. 2 (2024): 187–206.

⁸ 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 (2022): 53–71, <https://doi.org/10.36701/qiblah.v1i1.630>.

expectancy, habitual patterns, and the level of risk surrounding their disappearance.

2. **Maliki Madhhab**

Maliki jurists generally adopt a longer waiting period. In several opinions, the duration may extend to what is considered a normal human lifespan, reflecting their cautious approach to declaring a missing person deceased.

3. **Shafi'i Madhhab**

The Shafi'i tradition determines the waiting period based on what is commonly understood as the maximum span of life for an average individual within society. Once it is no longer reasonable for a person of that age to remain alive, legal rulings regarding death may be applied.

4. **Hanbali Madhhab**

The Hanbalis offer a more flexible framework, often relying on local customs and the societal ability to investigate disappearances. Their approach accommodates varying contexts and community capacities.

These divergent views demonstrate that the jurisprudence of *mafquḍ* is deeply influenced by social context, temporal conditions, and the mechanisms available to trace a person's whereabouts. They show that classical fiqh inherently contains space for adaptive reasoning.⁹

c. Scope of Legal Issues Related to *Mafquḍ*

The concept of *mafquḍ* affects several key areas of Islamic legal rulings, particularly those involving rights, obligations, and civil status. Among the most significant are:¹⁰

- **Marital status**, especially the position of a spouse whose partner is missing and the legal basis for ending or maintaining the marriage.

⁹ Wan Zahari Wan Yusoff, Muhammad Azwan Sulaiman, and Wan Ainaa Mardhiah Wan Zahari, "Isu Dan Penyelesaian Harta Al-Mafquḍ: Satu Pemerhatian (Issues and Solution to Al-Mafquḍ Property: An Observation)," *UMRAN - International Journal of Islamic and Civilizational Studies* 6, no. 2-2 (2019): 13-33, <https://doi.org/10.11113/umran2019.6n2-2.381>.

¹⁰ Nur Adni Md Shukri and Noor Lizza Mohamed Said, "Sorotan Literatur Kes Perwarisan Al-Mafquḍ Di Malaysia," *BITARA International Journal of Civilizational Studies and Human Sciences* 2, no. 3 (2019): 114-22.

- **Inheritance distribution**, including the postponement of other heirs' rights until the status of the missing person becomes clear.
- **Management of the missing person's property**, whether it may be used, safeguarded, or temporarily frozen.
- **Civil status and legal responsibility**, such as ownership rights, financial obligations, and liabilities tied to the missing individual.

These domains become increasingly relevant when examined alongside the emerging phenomenon of digital disappearance. Although digital loss does not involve physical absence, it generates legal uncertainty such as unclear identity status, disrupted access rights, and suspended claims similar to the issues addressed under the traditional concept of *mafqūd*. This parallel opens space for rethinking the concept in light of modern technological realities.¹¹

2. Principles Relevant to the Study of *Mafqūd*

Several maqāsid-based principles can be employed to reinterpret the concept of *mafqūd* within the realities of the digital era. Among the most relevant are:¹²

1. **Hifz al-Nafs (protection of life)**

This principle underlies the determination of whether a person is presumed alive or deceased in situations of uncertainty.

2. **Hifz al-Māl (protection of property)**

It serves as the foundation for regulating a missing person's assets, including whether such property may be accessed, safeguarded, or withheld.

3. **Hifz al-'Ird (protection of dignity)**

In contemporary contexts, this principle extends to the protection of digital identities, personal data, and online reputational integrity.

4. **The principle of *iḥtiyāt* (precaution)**

¹¹ Isniyatin Faizah, "THE APPLICATION OF ISTISHAB IN CASES OF MISSING HEIRS (MAFQŪD) OR THOSE WHOSE WHEREABOUTS ARE UNKNOWN," *Critical Disability Discourses* 5 (2025), <https://doi.org/10.25071/1918-6215.39755>.

¹² Abdul Hadi et al., "Undang-Undang Informasi Dan Transaksi Elektronik Dalam Konteks Maqāsid Al-Syarī'Ah," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 211–24, <https://doi.org/10.24090/mnh.v14i2.3582>.

A highly relevant rule when dealing with ambiguous situations, emphasizing careful, conservative legal judgment.

5. The principle of removing harm (*raf' al-darar*)

This principle guides responses to the harms caused by digital loss, such as loss of access, compromised identity, or data breaches.¹³

3. The Phenomenon of Loss in the Digital Era

a. Transformation of the Concept of Loss

Technological development has introduced forms of loss that differ markedly from traditional understandings. Loss is no longer confined to the physical domain but increasingly takes place in the digital sphere. Examples include:

- disappearance of personal data,
- loss of social media accounts,
- deletion of a person's digital identity,
- system failures causing inaccessible data,
- disappearance of digital footprints.

These forms of digital disappearance generate a type of uncertainty that parallels the classical *mafqud* scenario, even though the objects involved—data and digital presence differ from physical existence.¹⁴

C. Methodology

This study employs a qualitative approach grounded in library research. All data are derived from an extensive review of literature related to the concept of *mafqud* in classical and contemporary Islamic jurisprudence, as well as modern sources discussing various forms of digital loss. Primary sources include major fiqh works from the four Sunni schools, classical juristic writings, and relevant compilations of Islamic legal rulings. Secondary sources consist of academic books,

¹³ Nomor Pdt and G P A Msb, "CERAI MAFQŪD DI PENGADILAN AGAMA MASAMBA PROGRAM STUDI HUKUM KELUARGA ISLAM CERAI MAFQŪD DI PENGADILAN AGAMA MASAMBA," 2025.

¹⁴ Mohd Zamro Muda Mohd Kamarul Khaidzir Saadan, Mohamad Sabri Haron, "Pemilikan Dan Transaksi Harta Al-Mafqud Sebelum Perintah Anggapan Kematian," *5th Muzakarah Fiqh & International Fiqh Conference (MFIFC 2019)*, no. September (2019): 211–22.

journal articles, previous research findings, and legal documents that support the analysis.¹⁵

Data collection was conducted through the identification, close reading, and classification of selected literature into thematic categories, such as definitions of *mafqud*, differences among the schools of law, legal implications, and the development of the concept in modern contexts. The data were analyzed using content analysis, with particular emphasis on critically examining juristic arguments and assessing their relevance to contemporary phenomena.¹⁶

In addition, the study adopts a comparative approach to explore both the divergences and the points of convergence between classical juristic perspectives and the demands of modern legal contexts, especially regarding cases of digital disappearance. Through this method, the research aims to produce a formulation of the *mafqud* concept that is more applicable and responsive to issues arising in the digital era. The findings are then organized systematically to present a reconstructed understanding of *mafqud* that can contribute to the development of Islamic law today.¹⁷

D. Findings and Discussion

1. The Position of the *Mafqud* Concept in Classical Fiqh

A review of classical fiqh literature shows that discussions on *mafqud* emerged as a response to social situations in which a person disappeared without any reliable information regarding whether they were alive or deceased. Early jurists developed a legal framework to prevent confusion in matters relating to family status, property ownership, and social relations. Foundational works such

¹⁵ Suhana Binti Amiril, "1071-Ismail_Abdullah" 2022, no. December (2022): 420–37.

¹⁶ Md Shukri and Mohamed Said, "Sorotan Literatur Kes Perwarisan Al-Mafqud Di Malaysia."

¹⁷ Kasmiasi et al 2023, "TINJAUAN HUKUM ISLAM DAN HUKUM POSITIF TERHADAP PERCERAIAN KARENA ISTRI MAFQUD (STUDI PUTUSAN PENGADILAN AGAMA YOGYAKARTA NOMOR.0396/Pdt.G/2016/PA.Yk) SKRIPSI" 32, no. 3 (2021): 167–86.

as *al-Mudawwanah*, *al-Umm*, and other major fiqh texts across the different legal schools demonstrate consistent scholarly attention to this issue.¹⁸

According to the majority of jurists, the core of the *mafqūd* problem lies in the uncertainty surrounding a person's life status. In the area of marriage law, for example, the primary concern is the position of a wife whose husband has disappeared. Hanafi jurists tend to assess the social context that may explain a person's disappearance, while Maliki scholars emphasize a waiting period tied to the maximum expected human lifespan. These differences illustrate that fiqh is not static; it evolves in accordance with social conditions and the availability of information in a given era.

Beyond marital issues, the concept of *mafqūd* also intersects with inheritance matters. Determining whether a person is presumed dead directly affects the distribution of property and the legal recognition of heirs. Jurists often adopt a precautionary approach to ensure that no party is unfairly disadvantaged, especially in cases where premature distribution of wealth may lead to legal or moral harm. In this sense, the jurisprudence of *mafqūd* exemplifies how Islamic law seeks to balance individual rights with social stability when navigating conditions marked by uncertainty.¹⁹

2. The Transformation of the Meaning of "Loss" in the Digital Era

Technological advancements have not only produced new forms of communication, but also forms of "loss" that were entirely unknown in the classical context. Today, a person may be considered "missing" not because they physically disappear, but because their digital identity is deleted, their data is hacked, or the accounts that serve as the center of their social activity become

¹⁸ Khaiyyil Faizunan Nurun Nafi, Kamilatun Nisa', and Ahmad Taufiqur Rohman, "Digitalization in Islamic Family Law: An Opportunity or a Threat?," *International Journal of Religion and Social Community* 2, no. 2 (2024): 34–48, <https://doi.org/10.30762/ijoresco.v2i2.3498>.

¹⁹ 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 (2025): 17–30, <https://doi.org/10.33059/jhsk.v20i1.11312>.

inaccessible. In many cases, losing access to such accounts leads to financial, legal, and even reputational harm.²⁰

In the digital sphere, being “lost” does not necessarily refer to the absence of physical existence, but rather to the loss of legitimacy, records, or proof of one's presence. Phenomena such as identity hijacking, data breaches, or server failures that erase a person's digital footprint illustrate how loss can occur without touching physical reality. This type of loss is not merely a technical issue; it often carries legal and social implications. For instance, a person who loses access to a digital banking account may lose the capacity to manage their assets. Likewise, the disappearance of marriage records, contractual agreements, or official identity data on digital platforms may create uncertainties similar to those discussed in classical cases of *mafqud*, albeit in a different domain and form.

3. Normative Principles of Mafqud Adaptable to the Digital Domain

Although the contexts differ, an analysis of the principles underlying *mafqud* reveals several foundational norms that can help regulate issues of digital loss. The principle of prudence, for example, can be applied in establishing waiting periods or verification procedures for missing digital identities. Not every form of loss can be immediately considered permanent; certain cases require time to determine whether the data can be recovered or not.

The principle of rights protection is also highly relevant in the digital context. Losing access to an essential account may result in the loss of ownership over digital assets, intellectual property, or sensitive information. This principle encourages the development of legal mechanisms that allow users to reclaim their rights or verify their identity through legitimate means.²¹

The principle of public interest (*maṣlahah*) serves as a foundation for expanding the concept of loss in Islamic law. Within digital cases, determining

²⁰ Abdul Wahab Khalil, “Batasan Suami Mafqud Dalam Kompilasi Hukum Islam Perspektif Maqoshid Al- Usroh Jamaluddin ‘ Attiyah (Analisis Putusan Nomor : 401 / PDT . G / 2024 / PA . JBG),” *Jurnal Multidisiplin Ilmu Akademik* 2, no. 2 (2025): 322–23.

²¹ Studi Atas, Kelanjutan Perkawinan, and D A N Kewarisan, “Penyelesaian Kasus Mafqud” 7, no. 1 (2022).

the status of “missing” for a person’s digital footprint must take into account social and economic impacts, enabling the law to provide solutions that are not only normative but also functional for modern society.

Collectively, these three principles demonstrate that *mafqud* need not be interpreted narrowly. It can be understood as a normative framework for addressing various forms of status uncertainty, including those emerging from technological development.

4. Reconstructing the Concept of *Mafqud* for an Adaptive Islamic Legal Framework

The analysis indicates that reconstructing the concept of *mafqud* is necessary for Islamic law to respond to the complexities of the digital age without abandoning its methodological foundations. Reconstruction does not imply replacing established meanings, but rather adjusting them by taking into account the characteristics of newly emerging issues.

At the practical level, this reconstruction may be applied to cases such as:

- a) the loss of digital identity affecting administrative processes,
- b) the disappearance of transaction records that influence the determination of rights and obligations,
- c) the loss of digital evidence in dispute resolution,
- d) the deletion of marital or inheritance records within digital systems.

By understanding *mafqud* as a mechanism for dealing with uncertainty, Islamic legal scholars can employ the methods of *uṣūl al-fiqh* to formulate parameters for determining “missing status” in digital contexts. Islamic law retains its vitality when it is able to reinterpret classical concepts responsibly and proportionally in light of modern dynamics.²²

E. Conclusion

This study demonstrates that the concept of *mafqud* in classical Islamic jurisprudence was fundamentally developed to address the uncertainty surrounding

²² Muhammad Ikbāl, Sahmiar Pulungan, and Akmaluddin Syaputra, “Division of Inheritance of Mafqud Husband According to the Opinion of the Ulama of Langsa City,” *Journal of Law, Politic and Humanities* 4, no. 6 (2024): 2452–66, <https://doi.org/10.38035/jlph.v4i6.734>.

a person's status when information regarding their life or death cannot be verified. Early jurists formulated various legal provisions through approaches grounded in prudence, protection of rights, and communal welfare. These principles form the core of mafqūd regulations, even though the schools of law differ in their views on waiting periods and procedural guidelines.

Technological advancements have introduced new forms of loss that are not tied to a person's physical disappearance but relate instead to digital identity, data, and digital traces. Although different in form, digital loss shares the same element of uncertainty that underlies classical discussions of mafqūd. The analysis shows that several foundational principles of mafqūd can be recontextualized to interpret digital loss, particularly through applying the principles of prudence, protection of rights, and public interest.

The reconstruction of the mafqūd concept is not intended to alter established legal substance, but to expand its applicability so that it becomes more responsive to the dynamics of the digital age. By situating the concept within the framework of uṣūl al-fiqh, Islamic law can formulate new approaches that remain rooted in tradition while accommodating contemporary societal needs. Overall, this research affirms that the methodological flexibility of Islamic jurisprudence opens space for developing Islamic legal thought that remains relevant to modern challenges, including issues of loss in digital environments.