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LIFE ON HOLD: LEGAL AND PRACTICAL ISSUES IN PRESUMPTION OF DEATH CASES IN MALAYSIA

VIDA EM SUSPENSÃO: QUESTÕES JURÍDICAS E PRÁTICAS EM CASOS DE PRESUNÇÃO DE MORTE NA MALÁSIA

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Abstract
This article examines the issues and legal challenges faced by families and beneficiaries of missing persons in Malaysia due to the seven-year waiting period under Section 108 of the Evidence Act 1950 and the absence of a dedicated presumption of death framework. Data were collected from statutory provisions, including the Evidence Act 1950 and the Births and Deaths Registration Act 1957 (as amended in 2017), as well as qualitative insights from the author's legal practice. The findings show that the mandatory waiting period imposes significant legal, financial, and emotional burdens. It impacts the delay of estate administration, financial claims, government benefits, transfer of property ownership, and family closure. The lack of a specific presumption of death statute leaves affected families in prolonged uncertainty, unable to act on behalf of the missing person or resolve critical legal affairs. The article concludes by urging legislative reform to provide clarity, uniformity, and timely legal relief.

Keywords: Presumption of Death. Missing Persons. Death Certificate. Seven Years. Probate and Administration.

Resumo
Este estudo investiga por que as bibliotecas dotadas são essenciais e importantes para nossa jornada acadêmica. Essas bibliotecas recebem apoio financeiro de doações para se expandirem e funcionarem de maneira excelente. Essas bibliotecas dotadas são importantes porque ajudam a pagar pela escola, promovem a educação, o aprendizado e mantêm os ativos educacionais seguros para o futuro. Elas podem se concentrar em coletar, aumentar e manter suas coleções com a ajuda de fontes confiáveis, sem ter que se preocupar com dinheiro o tempo todo. Este artigo examina as questões e os desafios legais enfrentados por famílias e beneficiários de pessoas desaparecidas na Malásia devido ao período de espera de sete anos previsto na Seção 108 da Lei de Provas de 1950 e à ausência de um arcabouço específico para a presunção de morte. Os dados foram coletados a partir de disposições legais, incluindo a Lei de Provas de 1950 e a Lei de Registro de Nascimentos e Óbitos de 1957 (com as alterações de 2017), bem como de percepções qualitativas da prática jurídica do autor. Os resultados mostram que o período de espera obrigatório impõe encargos legais, financeiros e emocionais significativos. Ele impacta o atraso na administração de espólios, reivindicações financeiras, benefícios governamentais, transferência de propriedade e encerramento do

processo familiar. A falta de uma lei específica sobre a presunção de morte deixa as famílias afetadas em prolongada incerteza, impossibilitadas de agir em nome da pessoa desaparecida ou de resolver questões legais críticas. O artigo conclui com um apelo à reforma legislativa para proporcionar clareza, uniformidade e assistência jurídica oportuna.

Palavras-chave: *Presunção de Morte. Pessoas Desaparecidas. Certidão de Óbito. Sete Anos. Inventário e Administração de Bens.*

1 INTRODUCTION

In Malaysia, each birth and death must be registered with the National Registration Department, which will subsequently issue a birth or death certificate accordingly. This is according to the Births and Deaths Registration Act 1957 (BDRA 1957). Section 18 of the BDRA 1957 governs the registration of death. Upon reading the said section, it is silent about the cases where the body is missing and cannot be found. Moreover, there are also no provisions in the above-mentioned act on the registration or issuance of the death certificate for a person who is presumed to be dead. Therefore, the question arose as to the registration of a missing person who cannot be discovered and is assumed dead emerged because the BDRA 1957 makes no provision for this, resulting in a legislative gap.

Hence, what would be the status of a person gone missing and cannot be traced and remains unknown for an extended period, which leads to many presumptions, such as whether the person is alive or dead. As a result of the status being unknown, the family members would be placed in a position of being unable to administer and manage the estate and affairs of the missing person. A good example to refresh and widely known would be the Malaysian Airlines Flight MH370 (MH370) which disappeared on 8 March 2014, which is also well within the knowledge of all and terrified the whole world (Carter Capner Law, 2014). The missing plane incident which to now, there is no conclusive evidence about the whereabouts of the plane.

The Cambridge Dictionary defines the missing person is said to be someone who has disappeared and is no longer in communication with their family and friends (Cambridge Dictionary, n.d.). As said above, the key question that arouses is how the law determines the status of a missing person and untraceable person, especially in the absence of any direct evidence indicating whether the person is still alive or has passed away. All assets belonging to the missing person will be frozen and cannot be accessed or used by any party (Wan Yusoff et al., 2019). These assets, including cash, shares, and property, will remain frozen for an indefinite period until the individual's status is legally confirmed.

As result of the MH370 tragedy, there arose various legal difficulties and challenges, leading the Malaysian government to amend the BDRA 1957 (Government of Malaysia, 2017). The amendment act is known as the Birth and Deaths Registration (Amendment) Act 2017 (Act A15224). By virtue of the new amendment in 2017 to the Birth and Deaths Registration Act 1957, there were new provisions inserted that changed the position. Section 19A of the Act was inserted whereby the Registrar General may record and register particulars concerning a death, if the Registrar General is satisfied with the evidence brought before him that a death had occurred. Additionally, there were two new provisions were inserted by virtue of Section 19A, which are Section 24A and Section 24B pertaining to the registration for the presumption of death.

In light of the above amendment, the family members are required to produce a court order on the presumption of death to the Registrar General to obtain a presumption of death certificate. In Malaysia, the only avenue that family members can invoke and apply for a presumption of death is through Section 108 of the Evidence Act 1950, as there is no specific legislation governing the same. This is in contrast to several other countries that have enacted dedicated laws on the matter. For example, England and Wales have the Presumption of Death Act 2013, Ireland has the Civil Law (Presumption of Death) Act 2019, and Scotland has the Presumption of Death (Scotland) Act 1977. These laws provide clear and comprehensive procedures for invoking the presumption of death in cases involving missing persons.

The absence of a specific legal framework in Malaysia (Noor et al., 2018) has resulted in the issue of presumption of death being referred to through several different statutes, such as the Evidence Act 1950, the Births and Deaths Registration (Amendment) Act 2017, and the Criminal Procedure Code.

One of the fundamental facts that must be proven in court to raise the presumption of death pursuant to Section 108 of the Evidence Act is that the individual has not been heard of by anyone who would be expected to have known of their whereabouts during the entire seven-year period. Section 108 of the Evidence Act 1950 read as: -

> *When the question is whether a man is alive or dead, and it is proved that he has not heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving, that he is alive shifted to the person who affirms it.*

Thus, during the waiting period of the seven years to obtain the court order on the presumption of death, there are several issues and challenges that would be faced by the family members and beneficiaries, the government, the private sectors, and professionals. The first and utmost issue would be that the National Registration Department will not issue the presumption of death certificate unless the court order has been produced for the issuance of the same. Therefore, a court order is required for the issuance of the presumption of death certificate in accordance with the new amendment, as illustrated above. Moreover, the said certificate is an important document that is needed for the personal affairs arrangement of the missing person. Pending issuance of the said certificate, the family members will be subject to several legal issues and challenges.

The article will address and examine numerous legal issues and challenges that arose as a result of the waiting period for the issuance of a presumption of death certificate. As illustrated above, without a presumption of a death certificate, family members and or the beneficiaries cannot inherit or benefit from the missing person's personal belongings.

2 DEATH CERTIFICATE

The administration of estates following a person's death involves various legal processes, and one of the key challenges is obtaining proper documentation. Among these documents, the death certificate plays a central role in ensuring that the legal, financial, and emotional matters of the deceased's family are addressed properly.

In law, a death certificate is an essential and vital legal document that proves a person's death (Brooks & Reed, 2015) without it, surviving family members and beneficiaries are unable to proceed with the administration of a deceased person. There are many other reasons why a death certificate is required (L. M. Schuppener et al., 2020).

Some of them are estate settlement, insurance claims, government benefits, account closure, real estate transactions and legal matters.

Apart from that, genealogists require a death certificate to investigate the family tree by obtaining more information from the death certificate (Helpful Resources, n.d.). The death certificate is essential to prevent identity fraud, such as voting rights (Abphnews.Com, n.d.), property claims, and to settle debts left by the deceased individual by contacting debtors and credit agencies (Helpful Resources, n.d.). The same would apply to a missing person, in which case a presumption of death certificate is required.

Thus, the failure to obtain a death certificate on time can have serious ramifications for family members and beneficiaries. For instance, without proof of the death certificate, they may be unable to claim inheritance, delaying asset distribution for years and potentially leading to legal conflicts. Second, the financial stability of the family members is at risk as all bank accounts, investments, and insurance claims remain frozen and inaccessible. Third, the family members are unable to benefit and claim all government benefits because claims will not be heard or accepted without verification of a death certificate. Fourth, family members may face disagreements regarding ownership transfer. Finally, families who are already struggling with the emotional toll of a loss may become trapped in a long bureaucratic maze, adding to their mental and emotional load.

The death certificate is a formal acknowledgement of a person's death to their family. As a result, obtaining a death certificate is often associated with the start of the grieving process, allowing family members to legally address their loss. The process of obtaining a death certificate assists family members in navigating their grief and accepting the reality of the loss of their loved one (Karen Hoonings, 2024), which then begins the healing process.

3 LETTER OF ADMINISTRATION, GRANT OF PROBATE AND OR DISTRIBUTION ORDER

For the letter of administration or grant of probate application (whichever is applicable), the family members and/or the beneficiaries are required to produce a copy of the death certificate, as the same is a prominent document, and the application cannot be filed in court without it (Hussain, 2018). The said above, both applications are governed by the Probate and Administration Act 1959. A letter of administration is issued when a testator dies without a Will (Lee, 2024), whereas a grant of probate is issued when a testator dies with a Will (Lee, 2024). Even though, alternatively, the family members and or the beneficiaries may apply to the land office for small estate distribution under the Small Estates (Distribution) Act 1955 (Lee, 2024) or to Amanah Raya Berhad (AmanahRaya, n.d.), the death certificate is still required.

Based on the above, even though the legal practitioners, administrators of an estate, and executors play an essential role in assisting the families, they are unable to apply without the presumption of the death certificate because of the same the estate remains legally inaccessible. Akmal Saufi MK, in his article *“Ultimate Guide on Letter of Administration and Grant of Probate in Malaysia”*, (MK, 2023) avers that the death certificate serves as official proof of death required for all succession-related proceedings.

Further, an applicant’s application for a letter of administration at the land office was first denied due to the lack of the father’s death certificate. The father had gone missing and was untraceable (JKPTG/PK/10/08/0230/2013, 2013). The applicant stated that the transfer of ownership of the father’s estate was unsuccessful and caused significant financial problems, and that the construction of a new house had been delayed due to a lack of proper documentation. Thereafter, the applicant filed an application in court under Section 108 of the Evidence Act 1950 for a presumption of death (BA-24NCvC-68-01/2019, 2019). The applicant suffered additional costs such as advertisement fees and time-consuming, as there were no clear guidelines in Section 108 of the Evidence Act 1950. Upon obtaining the court order, the client successfully obtained the letter of administration from the land office by producing the presumption of death certificates, and thereafter, the transfer of the ownership was perfected.

4 FINANCIAL AND SOCIAL SECURITY CLAIMS ARISING FROM PRESUMED DEATH

In addition to the legal and emotional complications discussed earlier, the absence of a certificate of presumed death significantly impedes access to financial entitlements and social security protections for the family and dependents of a missing person. This section explores three key financial avenues, such as Social Security Claims (Sosco) benefits, Employee Provident Fund (EPF) withdrawals, life insurance claims all of which depend on the formal legal acknowledgment of death.

4.1 Claims under the social security organisation

Among the several types of Socso benefits, the Invalidity Scheme, which provides benefits to contributors and their dependents, family members, and beneficiaries, allows them to submit their claims for survivors' pension and funeral benefits. The invalidity scheme covers death due to causes outside of work, and the claims must be made within a year together with a copy of the death certificate is required (Social Security Organisation (PERKESO), 2024). The missing person's family members and or the beneficiary are unable to submit the claims without a death certificate within the above-said time frame, as mentioned above, the presumption of the death certificate can be applied only after seven years pursuant to the only avenue through Section 108 Evidence Act 1950. This waiting period delays not only estate administration but also obstructs timely access to critical social support at a moment of economic and emotional vulnerability.

4.2 Withdrawal of employees provident fund

According to EPF, if a member is pronounced dead, their family member may collect the deceased's EPF savings and also receive a one-time payment of Ringgit Malaysia Two Thousand Five with certain criteria provided therein. The application must be done within 6 months after the member's death (Athena, 2025). As such, the missing person's family members and or the beneficiary are unable to submit the claims without a death certificate within the above-said time frame, as mentioned above, due to the waiting period of seven years.

If there is no nomination made by the member, only next of kin are allowed to submit claims and required to submit supporting documents, such letter of administrations or a grant of probate and or distribution order (whichever may applicable) attach to the application (nominee, 2024). Indeed, without a copy of the missing person's presumption of death certificate, the application by the executor or administrator for a letter of administration and or a grant of probate cannot be applied thus resulting in various challenges as discussed earlier paragraph.

As Fahri Azzat explains in his article *“If your husband or wife mysteriously disappears, can you claim their insurance and EPF, etc?”*, claims cannot be initiated until the legal presumption of death is granted, typically after seven years (Azzat, n.d.). Thus, this inflexible time frame imposes severe burdens on families, especially when they depend on the EPF savings for ongoing living expenses.

4.3 Claims for life insurance

The claim of life insurance is not automatic. The nominee is required to notify the insurance company of the policyholder’s death, supported by the essential documents, including a death certificate as proof of death for the payout (Insurance claims procedures: Understanding the insurance claims process. Prudential Malaysia, n.d.). The above claim can lift the financial stress that comes from the loss of a loved one, and a copy of the death certificate is attached to the application.

In addition, a copy of the grant of probate and or letter of administration is required to be produced by the family members and or the beneficiary by the insurance company if the policyholder does not nominate (Make a death claim. Great Eastern Life Malaysia, n.d.). Based on the above, the presumption of a death certificate is essential for the missing person who is presumed to death, without the same, the insurance claims will not be allowed (Azzat, n.d.) and the various consequences of the same have been discussed above.

5 ACCESS AND CLOSURE OF ACCOUNTS

Banks in Malaysia typically require formal legal documents before releasing access to a deceased person’s assets. In the case of the MH370 tragedy, the Association of Banks in Malaysia (ABM) stated that banks are generally unable to act without seeing either a grant of probate or a letter of administration. Despite the extraordinary nature of the incident, the banking sector did not indicate any special exemptions for the victims’ families. ABM clarified that banks operate under stricter requirements than insurance companies and must follow standard legal procedures before releasing funds or property tied to a missing or deceased individual (Lyn, 2014). Hereinafer, the article examines the numerous issues concerning all bank accounts owned by a missing person while waiting for a seven-year period to obtain the presumption of death certificate.

5.1 Bank accounts

In Malaysia, when someone dies, their bank accounts are not immediately accessible. If the account is a joint account, the surviving account holder cannot simply continue using it. The bank will freeze the account upon being notified of the death. The surviving account holder or family members will then need to go through legal procedures, such as obtaining a Grant of Probate or Letter of Administration, before any funds can be withdrawn or used (Malayan Banking Berhad, 2018). The above process applies to all the accounts in the bank.

Most importantly, it is a common misconception that money in the bank will be “transferred” to the next of kin. In reality, all assets are frozen, including savings accounts, fixed deposits, and other banking instruments. When someone dies without a Will, the procedure becomes more complex. If the deceased was Muslim, the family must obtain a Faraid Certificate from the Syariah Court, which identifies the rightful heirs under Islamic inheritance law (Lee, 2024). If there are no heirs, the estate may go to Baitulmal. For non-Muslims, the process is governed by the Distribution Act 1958. The family needs to appoint an administrator, apply for a Letter of Administration (Lee, 2024), and may be required to provide two guarantors unless Amanah Raya is managing the estate and its value is RM600,000 or less.

5.2 Safe box

When the owner of a safe deposit box passes away, the bank seals the box right after being notified of the death. The only way to access it is by giving the bank the death certificate and the correct legal papers, such as Letters of Administration or Letters Testamentary. If no one is legally appointed yet, a court order might be required. The bank will not just allow anyone, even a close family member, to open the box unless all these conditions are met (Hong Leong Bank Berhad, 2024). Furthermore, if someone dies, the contents of their safe deposit box don’t automatically go to the family. The person responsible for the estate, like an executor, must first provide proof of death and legal authority. Only after that, the bank will let them open the box (Malayan Banking Berhad, 2023). Many people are not aware that access to a safe deposit box is tightly controlled and discretion of the bank after someone is death.

Besides the above, another issue that ought to be known is what will happen if the Will is kept in the safe deposit box. There will be a potential difficulty in assessing the said box after the death, as most banks require proof of death, such as a death certificate, and possibly a court order or other legal documentation for access. Hence, it can be time-consuming and may delay the process of executing the Will when timely access is crucial. The executor may also face legal issues in retrieving it (Writer, 2022), failing which the distribution will be via intestacy law.

5.3 Housing loan account

According to the House Buyers Association website (National House Buyers Association, n.d.), if the borrower passes away and did not buy any insurance, then the next-of-kin or the surviving party may go to court and claim the right to continue paying the loan or take over the housing loan. There is no mention of automatic cancellation of the loan just because the borrower has died.

In the article from StarProperty, it is stated that if the borrower dies, the bank will not straight away treat the loan as bad debt. If there is Mortgage Reducing Term Assurance (MRTA), then the insurance will pay off the balance. If there is no such policy, the next-of-kin or the person handling the deceased’s estate can either keep paying the loan or use money from the estate to redeem the property. But if there is no repayment and no MRTA, then the bank can take steps to foreclose. If there is no Will, then the next-of-kin can apply for Letters of Administration from the court, and after they get it, they can inform the bank and continue on with the loan or settle it fully (Chong, 2020). Therefore, during the waiting period for above-said application the housing loan interest will be accrued.

5.4 Dormant account

A dormant bank account refers to a bank account that has not been operated by the account holder for seven years. According to *Bank Negara Malaysia*, dormant accounts are those where there is no transaction by the account holder during that period. Once the account reaches dormant status, the balance of the account shall be transferred to the Registrar of Unclaimed Moneys under the Unclaimed Moneys Act 1965 (Act 370). The family members can still reclaim their money. To do this, they must submit a claim to the Registrar of Unclaimed Moneys.

A current or savings account is considered dormant when no transaction has been made by the account holder for a continuous period of twelve months. The bank will notify the account holder before the dormancy status. The account holder is required to perform at least one transaction or notify the bank in writing to retain the account as active. If the account remains dormant for seven years, it will be closed. The balance of the account will be transferred to the Registrar of Unclaimed Moneys under the Unclaimed Moneys Act 1965 (Lazim, n.d.). The account holder may still recover the monies by applying to the Accountant General's Department of Malaysia.

5.5 Money stolen form the missing person's account

An interesting case involving the misuse of a missing person's bank account is linked to the disappearance of Malaysia Airlines flight MH370 (Straitstimes, 2015). In this case, a bank officer, Nur Shila Kanan, and her husband, Basheer Ahmad Maula Sahul Hameed, both aged 34, were charged with misappropriating Ringgit Malaysia One Hundred Ten Thousand and Six Hundred Forty-Three from the bank accounts of four MH370 passengers. Among the transactions, Nur Shila had transferred Ringgit Malaysia Thirty- Five Thousand from the account of a passenger named Hue into an account belonging to Ali Faran Khan. She then used falsified documents to apply for a new debit card in Hue's name. The card was subsequently used by Basheer Ahmad to withdraw funds from Hue's account via an Automated Teller Machine (ATM).

Due to the ATM's daily withdrawal limit of Ringgit Malaysia Five Thousand, the money is believed to have been withdrawn in stages between 15 May and 29 June. The fraudulent activity remained undetected until an internal audit by the bank in July revealed a significant sum missing from the frozen accounts of MH370 passengers. A police report was filed on 2 August following the internal investigation.

This case has deepened the pain of the victims' families. Elaine Chew, the wife of MH370 passenger Tan, expressed her sorrow and disappointment upon learning that money from her husband's account had been stolen by irresponsible individuals during such a painful period.

Beyond internal family matters, this incident highlights the serious risk of a missing person's assets being misused. As demonstrated in the MH370 case, the use of forged documents and unauthorised debit cards to misappropriate funds remained unnoticed until uncovered by a routine internal audit. Such exploitation not only causes financial harm but also intensifies the emotional distress for families who are still awaiting closure, and it raises important concerns about the protection of missing persons' assets in the absence of a legal declaration of death.

Based on the above, it is notable that without a Grant of Probate or Letter of Administration and or distribution order, the family members cannot access the bank accounts, safe deposit box, or get any official information on the housing loan account. All accounts will be frozen, safe boxes sealed, and housing loan details withheld. Accounts will become dormant after twelve months, and after seven years, the money will be transferred to the Registrar of Unclaimed Moneys, requiring another process to reclaim. While waiting for the presumption of death certificate, there is a risk of money being stolen from the missing person's account, as shown in the MH370 case.

6 TAX OBLIGATIONS UPON DEATH

Employers in Malaysia are required to notify the Inland Revenue Board (IRB) of an employee's death within 30 days by submitting the prescribed forms (CP22A for the private sector and CP22B for the public sector) (Inland Revenue Board of Malaysia [IRBM], 2025a). This notification allows the IRB to issue a tax clearance letter, which is necessary to settle the deceased's outstanding tax obligations before any final salary, gratuity, or benefits are released (IRBM, 2025b). However, in the case of missing persons, this process cannot be completed until a presumption of death certificate is obtained. Since such a certificate is only available after the statutory seven-year waiting period, employers are unable to comply with the reporting requirement within the prescribed time, leaving both the employer and the family of the missing person in legal and administrative uncertainty.

When a person dies, any unpaid taxes must be settled before the estate is distributed (Thanneermalai, 2022). Under Section 74 of the Income Tax Act 1967, the executor or administrator is responsible for paying the deceased's taxes and must notify the Inland Revenue Board (IRB) and file returns as required by Sections 77(1) and 77A (1) of the above-mentioned act. If the death is not reported, the IRB can issue assessments within the extended period of seven years during which late payment penalties will continue to accrue. Hence, failure to comply can lead to penalties under Section 112 of the Income Tax Act 1967, and any appeal against the assessment must follow the procedure in Section 99 of the Income Tax Act 1967, which can be complex and time-consuming. A copy of the presumption of death certificate is still required, and the same can only be obtained after seven years. Due to the waiting period, the executor or family cannot properly settle the tax affairs or close the estate. Clearing tax affairs (Rockwills, 2022) promptly is therefore crucial to avoid fines, penalties, and delays in administering the estate.

7 MISSING SPOUSE

In situations where a spouse has gone missing, the surviving spouse may rely on the presumption of death under Section 63 of the Law Reform (Marriage and Divorce) Act 1976. This provision requires proof that the spouse has been continuously absent for at least seven years (Yin, 2011). This requirement is in line with the time frame for the application of the presumption of death.

As a result, without a court order declaring the missing spouse presumed dead, the surviving spouse cannot inherit the missing spouse's property or belongings (Majid, 1999). Consequently, the absence of a presumption of a death certificate often leads to further legal and practical difficulties, as discussed in earlier paragraphs.

Another significant problem is that the surviving spouse is unable to remarry during the seven-year period. If the surviving spouse marries again within this period, he or she commits an offence under Section 7(1) of the Law Reform (Marriage and Divorce) Act 1976, which falls within the meaning of section 494 of the Penal Code. Section 494 of the Penal Code provides:

> *Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife and whether such marriage has taken place within Malaysia or outside Malaysia, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.*

This provision must therefore be read together with section 7(2) of the Law Reform (Marriage and Divorce) Act 1976, which states that a legally married person who contracts another marriage during the continuance of the first marriage is deemed to have committed an offence under section 494 of the Penal Code (Vyas, 2017). Furthermore, the surviving spouse may also be liable under Section 495 of the Penal Code. If he or she commits bigamy and conceals the fact of the first marriage from the new partner, the punishment is more severe.

To sum up, when a spouse is missing, the surviving spouse suffers uncertainty for seven years. As a result, without a court order of presumption of death, he or she cannot inherit the missing spouse's property or deal with legal matters (Majid, 1999). During this period, the law also does not allow remarriage, and doing so is an offence under sections 494 or 495 of the Penal Code. This makes the situation even harder if there are children, as the spouse must bear the financial and emotional burden alone while being unable to move on with life.

8 CHALLENGES IN MANAGING THE PROPERTY OF THE MISSING PERSON

The management of property belonging to missing persons raises practical and legal challenges. Without a specific law to govern such cases, families are often left unable to access, manage, or transfer the missing person's assets. Families are also unaware of their rights or what action needs to be taken. Family disputes and weak coordination among agencies make matters complicated. Meanwhile, the property risks falling into disrepair or being taken over by the state. The sections below explore these issues further, including how frozen assets affect sale and purchase, what the law says about unclaimed land, and the effects of long-term neglect.

8.1 Issues and implications of freezing the assests

In the article *"The Issues of Unclaimed Properties in Malaysia"* (Yusoff, 2021), the authors clearly identify several key issues related to missing persons. These issues are outlined and discussed below.

One of the biggest issues is the lack of a clear law in Malaysia that deals specifically with property owned by missing persons. This causes confusion, especially when civil and Shariah laws do not align. Under civil law, one has to wait seven years before someone can be declared dead, while under Shariah law, it is only four, but that is usually just for marriage-related matters. These differences create a legal mess that often slows down or blocks any effort to settle the person's estate.

When someone goes missing and has not been declared dead by the court, everything they own, land, houses, and bank accounts are frozen. No one can deal with it. The family members cannot sell it, cannot inherit it, and cannot even manage it. Over time, this leads to wasted resources. Properties may fall into disrepair or lose value just because no one is legally allowed to step in.

Another major problem is that many families do not even know what they are supposed to do. Some families do not realise they have a right to claim, or they are unaware that legal action is needed to access the missing person's property. In some cases, the relatives do not even know what the person owned or that they had any property at all. This ignorance just lets everything sit there, untouched.

Disagreements among family members also slow things down. When a person goes missing, some relatives want to move on with legal steps, while others cannot accept the idea of declaring them dead. Emotions get in the way. The fights, sometimes about the property itself, drag things out even more, and the longer it takes, the harder everything becomes.

On top of all that, the government bodies involved, like the Land Office, Amanah Raya, or even the courts, do not really have a proper system in place to deal with these cases. There is no specific agency that handles missing persons' estates. Staff may not be trained for it, and there is no clear procedure. People get bounced around and confused, and the system is not really helping them.

During the years someone is missing, their property just sits idle. There is no way for it to be used productively. Land could be farmed, homes could be rented, but nothing can happen. Over time, the risk of damage, encroachment, or even total loss increases. It's a waste, not just for the families, but for the economy too.

8.2 Sale and purchase

If the seller dies after executing a sale and purchase agreement, but before the completion period, the executor of the seller's estate can usually complete the sale, but delays often occur because the property must go through a probate application (Kok, 2007). On the other hand, if the buyer dies after executing the sale and purchase agreement but before the completion period, their estate may take over the purchase. If the buyer was granted a loan to part-finance the purchase, the lender may cancel the loan facility due to the death (transaction, 2024). The same procedure applies if the seller or buyer goes missing.

8.3 Implications of loss on ownership and title of property

From a legal perspective, the National Land Code 1965 is one of the main laws enacted by the Malaysian Parliament to regulate the land registration system throughout the country. This law sets out the legal framework relating to the ownership, transfer, and management of land ownership. After thoroughly examining the contents of this Code, there are several provisions that can be indirectly applied to cases involving persons who have been reported missing, especially when their status has not yet been ascertained, whether they are still alive or deceased. Among the relevant provisions are the following:

Firstly, Section 351 of the National Land Code allows the Land Administrator to record and take back ownership of land to the state when the registered owner has died and no heir or beneficiary comes forward within a reasonable time to claim it. In such cases, the land is treated as unclaimed and may be returned to the state.

Secondly, Section 352 deals with land that has not been used, occupied, or claimed by the owner for at least seven years (Jemarimalaya, 2013). If the Land Administrator is satisfied the land has been abandoned, an entry will be made on the title, and the land can be taken back and eventually become state property.

Accordingly, while waiting for the seven years to elapse and before any formal application can be filed, there is a possibility that the land owned by the missing person is not managed, including failure to pay the annual land tax or land revenue. This situation can result in prolonged tax arrears and accrued interest or fines. In such a situation, according to Section 100 of the National Land Code, the Land Administrator may declare that the land has been forfeited (forfeiture of title) (Aditya Land Resources et al., 2016) and reverts to the state authorities as government land.

Although in practice, such actions are rarely taken decisively by the Land Office, family members and beneficiaries of missing persons need to be aware and aware of the legal implications that may arise. Failure to take proactive action in managing the property of a missing individual, especially land, can cause them to lose the opportunity to inherit and utilize the land. Land that has the potential to bring economic and social benefits to the family may eventually transfer to the government if not claimed according to the appropriate legal procedures.

8.4 Property management and depreciation

The problems that exist behind the freezing of property of missing persons also affect the issue of management and maintenance of property owned by missing persons. Maintenance is the process carried out to prevent damage and repair damage to buildings. In this regard, the property of missing persons whose owner's status is unknown, whether alive or dead, is abandoned, unguarded, and ultimately, its value decreases (Wan Zahari Yusoff et al., 2019). Such properties may eventually become difficult to manage or even unworthy of sale and of burden than a benefit.

8.5 Missing borrower's complications on reassignment

The Bar Council circular "Did you know? Discharging /Reassigning Property" (Malaysian Bar, 2025) explain the general process for executing a Deed of Receipt and Reassignment once the loan is fully paid. But that process assumes the borrower is available to execute the necessary documents. In reality, things can become complicated if the borrower has gone missing. Even if the loan is already fully paid and settled, there may be no one legally authorised to complete the reassignment with the financier bank. Because of that, the financing bank is still the assignee, and the borrower's property is still subject to an assignment.

In this situation, the only way forward is to have the court appoint an executor or administrator to act on the missing person's behalf. Until then, the deed remains unresolved, and the property cannot be fully reassigned. This causes both legal and administrative delays. It shows that when the borrower is missing, the reassignment process gets hindered, even if everything else, including repayment of the loan facility, is already done.

To sum up above, the main challenges in dealing with property left behind by missing persons are still very real today. There is no proper legal route to follow, and families are often hindered when everything is frozen. Lack of awareness and family conflict just add to the problem. And with time, these properties are left to deteriorate, misused, or even lost. These are serious consequences that come from just waiting too long to act.

9 OPERATION AND ADMINISTRATION OF A COMPANY

In the normal practice of business, if one director is pronounced dead, the surviving director may and will continue to operate the business pending the appointment of a new director by the members. The same applies to a shareholder who is pronounced dead, the directors may continue to operate the company until the shares are officially transferred to the next of kin of the deceased shareholder by a Will.

A deceased shareholder's shares can be distributed through three methods (i) by way of a grant of probate if there is a Will (ii) by way of a letter of administration if there is no Will (iii) by a distribution order from the land administration if the shareholder died intestate and the value of the estate does not exceed Ringgit Malaysia Two Million. The family members and or beneficiaries are required to produce a death certificate to apply through any of the above-said three methods and also discussed earlier in paragraph four. The same applies if the directors or shareholders have gone missing.

Therefore, based on the above, officeholders and/or directors need to prepare a will appointing a legal personal representative to administer their estate. Failing this, complications and difficulties are likely to arise, particularly where a sole director or shareholder dies without having made prior arrangements. As a result of the above, the company may be left without any person properly authorised to operate and manage it for weeks or even months, until an administrator is appointed via a grant of letters of administration. During this interim period, the company may be completely unable to operate.

In Malaysia, there are no specific provisions in the Companies Act 2016 governing situations involving a company director who has gone missing. The only available avenue is through Section 108 of the Evidence Act 1950, which requires a waiting period of seven years for the purposes application of the presumption of death, which is similar to some jurisdictions which resulting in various issues and challenges in operating and managing the company.

According to an article by Kayode Omosehin (Omosehin, 2015), if a company director in Nigeria goes missing for seven years or more without any news, the law allows him to be presumed dead under Section 164(1) of the Evidence Act 2011. Upon such presumption, the director’s dismissal occurs automatically, and the company can appoint a new director to fill the vacancy. However, this seven-year waiting period poses various issues and challenges in managing the company, as director vacancies cannot be filled immediately. In certain circumstances, however, directors may be replaced pending an official decision.

Keith Paul Bishop (Bishop, 2019) stated that he has never encountered a case where a company has failed to locate its board of directors. However, Section 2003 of the California General Corporation Law allows any interested party to apply to the Superior Court of the relevant district. This section applies where the identity or qualifications of a director are in doubt, or if a director is deceased, incapacitated, or fails or refuses to act. The remedies provided under this section only cover the determination of the identity of a director or the appointment of a director to wind up the company. There is no express provision addressing the situation where a director goes missing.

The fact that there is no express provision under the Companies Act 2016 to address situations where a company director or shareholder goes missing. Therefore, the only available legal avenue is under Section 108 of the Evidence Act 1950. This waiting period creates significant issues, as no immediate steps can be taken to replace the missing individual. As a result, the company may face difficulties in continuing operations, especially if the person missing is a sole director or major shareholder.

10 IMPACT ON THE ECONOMIC GROWTH AND NATIONAL DEVELOPMENT

The freezing of property owned by a missing person also harms economic growth and national development (Wan Zahari Yusoff et al., 2019). This occurs because the freezing prevents the settlement of arrears of payments, such as land tax that must be paid to the land office and assessment tax that must be paid to local authorities. Failure to settle these payments will cause losses to national revenue. It is important to understand that land tax and assessment tax are among the main sources of government revenue that are important to ensure the continued development and maintenance of public infrastructure, such as roads, drainage systems, health facilities, education, and various other basic services. Therefore, when the property of a missing person cannot be managed properly due to the lack of confirmation of death or uncertainty of their life status, it not only burdens family members and heirs in terms of law and finance, but also restricts the flow of income that can be used by the government for the benefit of the people as a whole.

11 CONCLUSION

It has been demonstrated that families of missing persons in Malaysia face years of uncertainty because the law only allows a presumption of death after seven years. During the waiting period, they are unable to settle estates, claim benefits, or even move on with their life. Although the 2017 amendment to the BDRA was meant to help, it still requires families to go through the court process under Section 108 of the Evidence Act, a procedure that takes a long time and is far from straightforward. Other countries already have clear laws for these situations, but Malaysia still relies on scattered provisions. A proper Presumption of Death Act would remove unnecessary delays and give families a fair chance to manage important matters without waiting so long. Until then, families are left stuck between grief and bureaucracy, which is something the law should no longer ignore.

Meanwhile, interim measures should be proposed to alleviate the burdens endured by families of missing persons. For example, a dedicated Missing Persons Act might be enacted to manage things until a presumption of death order is obtained. Such an Act could provide for temporary property administration, access to financial resources, or limited legal recognition in order to sustain dependents. This would provide much-needed relief while also protecting the missing person's rights until a final judicial determination is reached. Temporary solutions of this sort have been effectively implemented in other jurisdictions, striking a balance between safeguarding the missing person's interests and avoiding excessive pain for their relatives. By establishing such processes, Malaysia will not only fix current legal gaps, but also exhibit more compassion and efficiency in dealing with missing persons cases.

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Both authors contributed equally to the development of this article.

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All datasets relevant to this study's findings are fully available within the article.

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