

## **GIVING A MARRIAGE DOWRY IN JURIDICAL, SOCIOLOGICAL, AND PHILOSOPHICAL PERSPECTIVES**

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### **Abstract**

The research aims to provide a comprehensive analysis of the obligation to provide dowry in marriage at the time of the marriage contract from a juridical, sociological, and philosophical perspective. This research is normative legal research (Doctrinal Research) with an interdisciplinary approach. The results of the research state that legally dowry is not a pillar of marriage, therefore negligence in its implementation does not cause the marriage to be annulled and valid, however, the dowry must still be given by the prospective husband to the prospective wife either in full or in part in cash or postpone it. Sociologically, because the law is always dynamic, the application of dowry is adjusted to local community habits. The essence is that dowry does not burden men and also does not degrade women. Philosophically, giving a dowry is not just at a transactional and materialistic level, but a dowry is essentially a form of seriousness and love as well as the groom's appreciation for the bride he will marry. Therefore, women must accept the dowry happily as a respect for their dignity and not interpreted as a buying and selling transaction against themselves.

**Keywords:** *Dowry, Marriage, Sociological and Philosophical Juridical Perspective*

### **Abstrak**

Penelitian ini bertujuan memberikan analisis komprehensif mengenai kewajiban memberikan mahar dalam perkawinan pada saat akad nikah dalam perspektif yuridis, sosiologis dan filosofis. Penelitian ini merupakan penelitian hukum normative (Doctrinal

Research) dengan pendekatan interdisipliner. Hasil penelitian menyebutkan bahwa secara yuridis mahar bukan rukun perkawinan, oleh karena itu kelalaian dalam pelaksanaannya tidak menyebabkan batalnya dan sahnya suatu perkawinan. Walaupun demikian mahar tetap harus diberikan oleh calon suami kepada calon isteri baik secara tunai seluruhnya atau sebagiannya ataupun menundanya. Secara sosiologis karena hukum itu selalu dinamis maka penerapan mahar disesuaikan dengan kebiasaan masyarakat setempat, esensinya adalah mahar tidak memberatkan pihak laki-laki dan juga tidak merendahkan pihak perempuan. Secara filosofis pemberian mahar tidak sekedar pada tataran transaksional dan materialistik, tetapi mahar pada hakikatnya merupakan bentuk keseriusan dan cinta kasih serta penghargaan mempelai laki-laki kepada mempelai perempuan yang akan dinikahinya. Oleh karena itu wanita harus menerima mahar itu dengan senang hati sebagai penghormatan terhadap martabatnya dan bukan dimaknai sebagai transaksi jual beli terhadap dirinya.

**Kata Kunci:** *Mahar, Perkawinan, Yuridis sosiologis dan filosofis*

## **A. Introduction**

By Law Number 1 of 1974 concerning Marriage, marriage is a physical and mental bond between a man and a woman as husband and wife to form a happy and lasting family (household) based on God Almighty. Article 2 of the Compilation of Islamic Law states that marriage is a very strong contract or *mitsaqan ghalidz'an*, to obey the commands of Allah SWT and carrying it out is an act of worship. With the marriage contract, it is permissible for both partners to have intercourse, which is a natural way to channel and satisfy sexual needs that are beneficial for health, both mental and physical.

In marriage, the contract is an agreement to enter into a marriage bond between a man and a woman. In this contract, there are elements of binding agreements and rules, including the terms and pillars of marriage. Conditions are rules that must be fulfilled

before the marriage takes place, while pillars are rules that must be present during the marriage contract<sup>1</sup>.

The religion of Islam is special in that it pays attention to and respects the position of women. One such honor is giving women the right to hold their authority, namely to receive a dowry. In the pre-Islamic era, women's rights were always squandered, and guardians could arbitrarily utilize their property by not allowing the women under their guardianship to manage and use their property<sup>2</sup>.

According to the Big Indonesian Dictionary (KBBI), dowry is defined as an obligatory gift of money or goods from the bridegroom to the bride during the marriage contract. This definition reflects the common tradition in Indonesia, where the dowry is given at the time of the marriage contract. However, in the Arab tradition, although the dowry is considered legally obligatory, it is not required to be given at the time of the marriage contract. In other words, the *mahr* (dowry) can be given at the time of the wedding or afterward<sup>3</sup>.

*Mahr* is a gift from the prospective groom to the prospective bride which can be in the form of goods, money, or services that are not contrary to Islamic law. The dowry is a form of sincerity and an expression of affection from the prospective husband towards his future wife. Although the dowry has significance in Islamic marriage, it is not a pillar of marriage or a condition for the validity of a marriage<sup>4</sup>. The dowry is proof of the husband's sincerity in material terms to his future wife. This reflects one of the virtues of Islam in protecting and honoring women by giving them the right they demand in marriage, namely the dowry. The size of the dowry is determined by the agreement of both parties, with full willingness from the prospective husband to his future

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<sup>1</sup> Zainuddin, *Kepastian Hukum Perkawinan Sirri Dan Permasalahannya Ditinjau Dari Undang-Undang No. 1 Tahun 1974* (Yogyakarta: CV. Budi Utama, 2017) : 45.

<sup>2</sup> Abd Kafi Mahar, "Pernikahan Dalam Pandangan Hukum Dan Pendidikan Islam," *Jurnal Paramurobi* Volume 3 (2020).

<sup>3</sup> Amir Syarifuddin, *Hukum Perkawinan Islam Di Indonesia* (Jakarta: Kencana Media, 2009).

<sup>4</sup> Lc Ahmad Sarwat, *Fiqih Nikah* (Jakarta: Kampus Syariah, 2009).

wife. as the backbone of the family and a sense of responsibility as a husband<sup>5</sup>.

In the history of Islamic law, the type and amount of dowry have never been standardized, so that each Muslim country in the world, including regions in Indonesia, varies in its application. As a result, the dowry continues to change and become socially, culturally, and economically turbulent.

Historically, dowry has served as a central legal instrument in the concept and practice of Islamic marriage. Since the beginning of Islamic history, the practice of dowry has received a lot of attention, especially in terms of its partiality to women. From a juridical perspective, the dowry is not a pillar in marriage, so negligence in its implementation does not cause the cancellation and validity of marriage. From a sociological perspective, dowry is closely related to social dynamics and structure, so dowry is very oriented towards the social class of society. While in a philosophical perspective, the provision of dowry is not only seen in terms of transaction and the form of the dowry objects given, but the dowry is a form of affection and appreciation for a woman who will be married to a man.

There are several previous studies related to the author's research between those conducted by Harijah Damis<sup>6</sup> entitled 'The Concept of Dowry in the Perspective of Fiqh and Legislation Review of Decision Number 23 K/AG/2012, which concluded that the Supreme Court Cassation Decision granted the woman's dowry claim (former wife) and canceled the decision of the religious court and religious high court which stated that the plaintiff's dowry claim could not be accepted. The case was filed for judicial review by the parents of the former husband because it turned out that the dowry given was a grant from the parents of the former husband. The case for judicial review was granted and has implications for the non-fulfillment of women's rights after divorce or after the decision is legally binding. Therefore, it is

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<sup>5</sup> Kaharuddin, *Nilai-Nilai Filosofi Perkawinan* (Jakarta: Wacana Media, 2015).

<sup>6</sup> Harijah Damis, "Konsep Mahar Dalam Perspektif Fiqih Dan Perundang-Undangan Kajian Putusan Nomor 23 K/AG/2012," *Jurnal Yudisial* Volume 9 n (2016).

necessary to regulate the rules governing the provision of dowry while still being guided by rules based on *fiqh* and social recognition (in society) that dowry is an absolute right of women that must be owned, not just a formality in the marriage contract.

Another study was conducted by Muhammad Mutawali Rahmah Murtadha<sup>7</sup> with the title *Mahar* between *Sharia* and Tradition (Historical, Juridical and Philosophical Perspectives), which concluded that the reality that occurs in society is often found cases of marriage cancellation due to the determination of the quantity of dowry and the high cost of marriage, on the pretext of self-esteem, family prestige, and ancestral traditions. The number of cases of marriage cancellation can be material for reflection and consideration for all parties so that they can carry out marriages following Islamic teachings and avoid the impression of excessiveness which will reduce the sacred values of marriage.

Some of the above studies have similarities with the author's research, namely both examining the importance of dowry in marriage. The difference is that the author's research focuses on the study of dowry from a juridical, sociological, and philosophical perspective.

This article is important to present to enable readers to know specifically and comprehensively about the importance of a dowry in marriage, which sometimes issues related to dowry can result in the end of a marriage (divorce). Therefore, for the discussion in this article to provide benefits to readers, the focus of study in this article includes: First, a discussion of the status of its importance from the perspective of *fiqh* and legislation relating to dowry. The second part is a discussion of dowry from several perspectives, namely juridical, sociological, and philosophical.

The novelty and uniqueness of this research is that this study describes in detail the meaning of dowry from a juridical perspective as contained in Indonesian legislation so that it can be seen how Indonesian *fiqh* on the existence of dowry. Likewise,

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<sup>7</sup>Muhammad Mutawali Rahmah Murtadha, "Mahar Antara Syariat Dan Tradisi ( Perspektif Historis, Yuridis Dan Filosofis)," *Al-Ittihad Jurnal Pemikiran dan Hukum Islam* Volume 6 (2020).

from a sociological perspective, it is known how the community views the existence of dowry in a marriage. Meanwhile, the philosophical perspective is to know in depth the essence of the existence of dowry in marriage. The discussion of dowry in the three perspectives above is very important because in practice it sometimes becomes a family ego problem which on the one hand can create harmony in the household but on the other hand can also trigger a split between two large families, especially quarrels between husband and wife and end in divorce. In the end, this article can be a contribution of thought for the world of academics and practitioners in particular and the development of science in general, especially regarding family law issues in several Muslim countries.

Based on the explanation above, the author is interested in the study in this article, apart from the fact that no one has specifically discussed it, but also the discussion focuses on the essence of giving dowry during the marriage contract from a juridical, sociological, and philosophical perspective.

## **B. Method**

This research is normative legal research (*Doctrinal Research*)<sup>8</sup> The research is conducted by examining library materials consisting of primary legal materials, secondary legal materials, and tertiary legal materials regarding the provision of dowry at the time of the marriage contract. The approach used is an interdisciplinary approach, namely an approach to determining problem-solving by using a review of various aspects of allied sciences that are relevant or appropriate in an integrated manner<sup>9</sup>. The approaches include juridical, sociological, and philosophical approaches. The juridical approach is an approach that examines dowry from a formal legal point of view. The sociological approach is an approach to look at societal facts about dowry in marriage. Meanwhile, the philosophical approach is used to examine the object of research

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<sup>8</sup> Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Kencana Media, 2016).

<sup>9</sup> "Http:\\\ajatcoolsudrajat.Blogspot.Com" (n.d.).

fundamentally, thoroughly, and speculatively in exploring ontological, epistemological, and teleological issues.

The data sources in this research are secondary data, consisting of primary legal materials in the form of Islamic law sources (*al-Qur'an* and *al-Hadith*), laws and regulations including Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law as the main literature. Secondary legal materials include reference books, legal journals, legal research results, encyclopedias, legal dictionaries, and others related to dowry in marriage.

The data obtained from this research are collected, processed, and analyzed qualitatively to conclude using inductive and deductive thinking. The inductive method is used to analyse knowledge or opinions that are specific or individual facts which are then drawn to general conclusions. The deductive method is used to examine the legal norms contained in general legal texts to be applied in concrete cases that are special.

### **C. Results and Discussion**

In Islamic marriage, the dowry has a very important position because it is directly related to the validity of marriage. Some scholars consider the dowry as one of the pillars of marriage, which not only determines the validity of the marriage but is also considered a guarantee for the continuity of the marriage. However, there are other views which state that the dowry is only a complementary requirement. As a result, not all Muslim communities consider the dowry as a guarantee for the continuity of the marriage.

The determination of dowry in marriage is often influenced by the customs in each region. The value of the dowry becomes a tradition that is adjusted to the discretion of the wife-to-be's family and local customs. Usually, it is the wife-to-be and her family who determine the value of the dowry, which can sometimes reach a high amount. As a result of the high demand for dowry by the woman, the method of payment can also vary. Some prospective husbands choose to pay the dowry in cash at the time of the

contract, while others choose to pay on credit or by taking out a loan.

The differences that arise in society regarding dowry are caused by variations in understanding the essence and nature of dowry in marriage. The impact of these differences on the development of Islamic society is to provide an understanding that the implementation of dowry can have an impact on various aspects of life. Dowry is not just a ceremonial aspect of marriage but also has a wide-ranging impact on the welfare of the family as a whole. By understanding this, it is hoped that people will be more aware of the importance of treating dowry with consideration and wisdom, to contribute to the realization of a happy and blessed family according to Islamic teachings.

### **The Concept of Dowry in Marriage in Islam**

The compulsory provision of dowry at the time of the marriage contract is defined as a gift with a full willingness by the prospective husband to his prospective wife to protect and honor women whose size is based on the consent of both parties<sup>10</sup>. Article 1 letter (d) of the Compilation of Islamic Law (KHI) states that dowry is a gift from the prospective groom to the bride in the form of goods, money, or services that are not contrary to Islamic law<sup>11</sup>.

According to Imam Shafi'i, dowry is something that a man is obliged to give to a woman so that she can control all of his limbs. Imam Malik in a narration states that the dowry is part of the pillars of marriage. Therefore, the validity of marriage is also based on the provision of dowry<sup>12</sup>. The Ash-Shafi'i school of thought further explains that dowry is an obligation that must be fulfilled as part of the marriage or as a fulfillment of the legal right

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<sup>10</sup>Suryani, "Perubahan Dan Tren Jumlah Mahar Dalam Tradisi Pernikahan Di Indonesia (Analisa Hadits Tentang Mahar)," *Qiyas, Jurnal Hukum Islam dan Peradilan* Volume 7 (2022).

<sup>11</sup>Mahkamah Agung RI Direktorat Jenderal Badan Peradilan Agama, *Himpunan Peraturan Perundang-Undangan Di Lingkungan Peradilan Agama*.

<sup>12</sup>Abdurrahman al-Jaziri, *Al Fiqh 'Ala Madzhabibil Al-Arba'Ah*, Juz 4. (Damaskus:: Maktabah al- Ilmiyah, n.d.).



to sexual intercourse. In this context, dowry refers to what is required by a man to a woman as part of the marriage process. In addition, the term dowry also includes the requirements necessary to maintain the validity of the marriage as well as to ensure the validity of intercourse, whether the contract is flawed, doubtful, or occurs under duress. Therefore, the meaning of dowry in its broader sense is more appropriate than the definition of dowry according to *Sharia* terminology, because it includes what is given to a woman to enable intercourse for doubtful or other reasons<sup>13</sup>.

Among the *fuqaha*, dowry uses other terms, namely *shadaqah*, *niblah*, and *faridbah*, which means dowry. With this etymological understanding, the term dowry is a gift made by the bridegroom to the bride which is obligatory but is not specified in the form of its type, size, and amount in the *Qur'an* and *al-Hadith*<sup>14</sup>. Based on the above definitions, according to the scholars, the *mahr* is obligatory on the husband. The obligation is caused by two things, namely the existence of a valid marriage contract and the occurrence of actual coitus (not coitus because of adultery)<sup>15</sup>.

The basis for the obligation to give the dowry is established in the *Qur'an Surah An-Nisa:4*

وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبَّنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا  
مَّرِيئًا

Meaning: Giving the bride price (dowry) to the woman (whom you marry) as a willing gift. Then if they give you part of the dowry gladly, then eat (take) the gift (as food) that is pleasant and good for you.

Muhammad Rasyid Ridha in *Tafsir al-Manar* states that Allah SWT. mentions dowry in *Al-Qu`ran* as *An-Niblah* which means a sincere gift. In the dictionary, *Al-Mubith An-Niblah* is *Al-Athbiyyahn*

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<sup>13</sup> Abd. Rahman Ghazaly, *Fiqh Munakabat*, Ed. by Kreasindo, Cetakan ke. (Bogor: Kencana, 2003).

<sup>14</sup> Muhammad Ridwan, "Kedudukan Mahar Dalam Perkawinan," *Jurnal Perspektif* Volume 13 (2020).

<sup>15</sup> Apriyanti, "Historiografi Mahar Dalam Pernikahan," *An Nisa'a: Jurnal Kajian Gender dan Anak* Volume 12 (2017).

which is a gift. Thus, the dowry is interpreted as a voluntary gift, not as a substitute for the woman's vagina<sup>16</sup>. The meaning is that dowry is a gift that is not accompanied by the expectation of receiving something in return and is proof of love and affection in the bond of kinship. In practice, many failures in marriage are due to the determination of dowries that are too high. Among other things, parents or guardians of a woman take part in determining the level of dowry and it turns out that a man cannot fulfil it. Whereas the Prophet Muhammad SAW. stated that the best dowry is light and not burdensome for men<sup>17</sup>.

*Surah an-Nisa* verses 20-21 also mention dowry:

وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَّكَانَ زَوْجٍ وَءَاتَيْتُمْ إِحْدَاهُنَّ قِنطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْتَانًا وَإِثْمًا مُّبِينًا وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

Meaning: And if you want to change your wife for another, and you have given to one of them a large sum of money, then do not take back from her anything. Will you take it back by way of false accusation and by way of (bearing) manifest sin? How shall you take it back, when some of you have mingled with others as husband and wife? And they (your wives) have taken from you a strong covenant.

Likewise in *Surah al-Baqorob* verse 237:

وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوا الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَىٰ وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

Meaning: If you divorce your wives before you have mixed with them, and you have determined the dowry, then pay one-half of the dowry you have determined, unless your wives forgive or are forgiven by the one who holds the marriage bond, and your

<sup>16</sup>Abdurrahman Al-Baghdadi, *Emansipasi Adakab Dalam Islam*, Cetakan ke. (jakarta: Gema Insani Press, n.d.).

<sup>17</sup>Muhammad Albar, *Wanita Karir Dalam Pertimbangan Islam, Terjemahan*, Cetakan ke. (jakarta: Pustaka Azzam, 1998).

forgiveness is closer to piety. And do not forget the virtue between you. Verily, Allah is All-Seeing of all that you do.

The dowry is obligatory and its form and price must be specified at the time of the marriage contract. If it is not mentioned at the time of the marriage contract, then he must fulfill his obligation during the marriage period until the marriage breaks down, either by death or divorce<sup>18</sup>. The *fuqaha* agree that there are two types of dowry: the *musamma* dowry and the *mistil* dowry.<sup>19</sup> First, the *mabr musamma*, which is the *mabr* that has been mentioned or promised at the time of the marriage contract, by mutual agreement or agreement with the judge. This is based on the word of Allah in *Surah al-Baqarah* verse 237 which reads; ... when in fact you have determined the dowry, then pay one-half of the dowry that you have determined<sup>20</sup>. The *fuqaha* divide this *musamma mabr* into two types, namely *musamma mu'ajjal* and *musamma ghairu mu'ajjal*. *Mabr musamma muajjal* is the dowry that must be given to the wife immediately. Meanwhile, the *mabr musamma ghairu mu'ajjal* is a dowry that has been determined in form and amount but the payment is delayed.<sup>21</sup>

The jurists agree that the *mabr musamma* must be paid in full if: a) there has been sexual intercourse. b) if one of the husband and wife dies. The *mabr musamma* must also be paid in full if the husband has mixed with the wife, and it turns out that the marriage is broken for certain reasons, such as it turns out that the wife is her *mabram*, or thought to be a virgin turns out to be a widow, or pregnant from a former husband. However, if the wife is divorced before mixing with him, only half is due<sup>22</sup>.

Secondly, the *mabr mitsil* (equivalent), is the amount and form of the *mabr* according to the amount and form commonly

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<sup>18</sup> Amir Syarifuddin, *Garis-Garis Besar Fiqh. Jakarta* (Jakarta: Kencana Media, 2003).

<sup>19</sup> Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu* (Beirut: Dar al-Fikr, 2007) hlm 6764.

<sup>20</sup> Ibid. 677-6775. .

<sup>21</sup> Beni Ahmad Saebani, *Fiqh Munakahat* (Bandung: Cv Pustaka Setia, 2009) hlm 275.

<sup>22</sup> Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu hlm 6774..*

accepted by the wife's family because it is not specified in the marriage contract<sup>23</sup>. If this is the case, the dowry follows the dowry of the bride's sister (aunt, daughter of an aunt), if there is none, then the *mithil* is transferred to the size of another woman who is equal to her. The *mithil* dowry also occurs in the following circumstances: a) *nikah tafwid*, which is a marriage in which the *mahr* is not mentioned or not stipulated. According to the majority of scholars, this is permissible. b) An agreement that there is no dowry. If the amount is not mentioned during the marriage contract, then the husband has already mixed with the wife or died before mixing. c) The mention of a dowry that does not follow the permissible provisions, such as mentioning the dowry with carrion or something forbidden<sup>24</sup>.

In the teachings of Islam, the dowry is the right of the bride-to-be, so the form and type are determined by the wife-to-be and not by her guardian, but technically it is not wrong and very useful to consult with the guardian to determine how much the form and type of dowry is, although the final decision remains with the bride<sup>25</sup>. As for the quantity and quality of dowry in marriage in his journal Bambang Sugianto concluded that the law of dowry is obligatory. the minimum limit is an iron ring or its equivalent, with the quality of something that can be taken advantage of. From the perspective of the *Qur'an*, he concludes that the minimum limit of the quantity of dowry is unlimited, as long as there is willingness, pleasure, and agreement between the two parties to the contract<sup>26</sup>. The *mahr* should be paid in cash at the time of the marriage contract, but it is permissible to delay it or pay part of it based on the agreement of both parties or according to local custom<sup>27</sup>.

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<sup>23</sup> Beni Ahmad Saebani, *Fiqih Munakabat blm* 276.

<sup>24</sup> Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu blm*6777-6781. .

<sup>25</sup>Ery Noor, "https:// Media.Neliti.Com/ Media / Publications / 165063- ID -Analisis-Yuridis-Terhadap-Mahar-Yang-Terhutang..

<sup>26</sup>Bambang Sugianto, "Kualitas Dan Kuantitas Mahar Dalam Perkawinan (Kasus Wanita Yang Menyerahkan Diri Kepada Nabi Saw)," *Jurnal Ayy-Syir'ab Jurnal Ilmu Syari'ah dan Hukum* Volume 45 (2011).

<sup>27</sup> Abd. Kafi, "Mahar Pernikahan Dalam Pandangan Hukum Dan Pendidikan Islam," *Jurnal Paramurobi* Volume 3 N (2020).

The goods that can be used as dowry must have conditions, namely<sup>28</sup>:

- a. The dowry must be something that has value, so it is not valid for the dowry to be something that has no value.
- b. The dowry must be usable, so it is not valid to give a dowry in the form of alcohol, pork, blood, or carrion, because they are worthless in the view of Islamic law.
- c. The dowry must not be stolen goods.
- d. The dowry must not be *haram* goods or goods obtained by *haram* means.
- e. The dowry must be clear in its form and its benefits.

Islam requires the payment of dowry as a symbol of the husband's appreciation of his wife's willingness to be his companion in their future lives. The dowry is therefore the absolute right of the wife and no one other than her, whether her husband, parents, or relatives, has the right to use it without her permission. However, as mentioned in *Surah An-Nisā'* verse 4, there are exceptions in terms of the holder of the dowry, as Sayyid Sābiq states that if the wife is still a child, her father has the right to keep her property or the dowry, but if the wife does not have a father or due to death and so on, then another guardian has the right to take care of it and keep it<sup>29</sup>

### 1. Dowry in Juridical Perspective

Article 14 of the Compilation of Islamic Law mentions several pillars of marriage, among others:

- a. Prospective husband;
- b. Prospective wife;
- c. The marriage guardian;
- d. Two witnesses;
- e. *Ijab and Kabul*.

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<sup>28</sup> Muhammad Mutawalli, *Mahar Dalam Perspektif Hukum Islam*, (Bandung: Bandung, 2018).

<sup>29</sup> Sayyid Sabiq, *Fiqh Sunnah* (Kairo: Dar al-Qalam, 2006) hlm 538.

Based on the provisions of the Compilation of Islamic Law above, it turns out that paying the dowry is not a condition and pillar of marriage. However, the dowry is an obligation that must be given by the husband to the wife. As in the word of Allah SWT: Give the dowry to the woman (whom you marry) as a gift with full willingness, then if they give you part of the dowry with pleasure, eat (take) the gift (as food) that is delicious and good in effect. (*Qs. An-Nisa: 4*)

Thus, based on the above verse, Allah SWT has commanded the husband to pay the dowry to his wife. Since the command is not accompanied by a *qarinah* (sign) to the law of *sunnat* or *mubah*, it implies that it is obligatory<sup>30</sup>. Thus, dowry is obligatory for the husband towards his wife, because no *qarinah* deviates from the meaning of obligatory to another meaning. In the context of Indonesian legislation, the discussion of dowry has not yet touched the realm of the law, so it becomes a separate issue of its position in the hierarchy of state law. Law Number 1 Year 1974 on Marriage does not regulate dowry because dowry is not included in the law of marriage. Because the dowry is not a pillar of marriage, the failure to mention the type and amount of dowry at the time of the marriage ceremony does not cause the cancellation of the marriage, as well as if the dowry is still owed, does not reduce the validity of the marriage.

From a juridical perspective, the discussion of dowry is only contained in the Compilation of Islamic Law (KHI), namely in CHAPTER I Article 1 and CHAPTER V articles 30 to 38, which regulates as follows:

- a. The definition of dowry adopts the definition of dowry according to the *fuqaha*.
- b. The prospective groom is obliged to pay a dowry to the prospective bride, the amount, form, and type of which are agreed upon by both parties. Failure to mention the type and

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<sup>30</sup>Mohammadar, "Analisis Pendapat Imam Syafi'i Tentang Mahar Muqoddam," [http://library.walisongo.ac.id/digilib/files/disk1/32/jptiain-gdl-s1-2006mohammadar-1591-bab4\\_219-2.pdf](http://library.walisongo.ac.id/digilib/files/disk1/32/jptiain-gdl-s1-2006mohammadar-1591-bab4_219-2.pdf) (n.d.).

- amount of dowry at the time of the marriage contract does not invalidate the marriage.
- c. The principle of dowry is simplicity and convenience and is not a pillar of marriage.
  - d. When the dowry is given to the bride, it becomes her personal property from that moment on.
  - e. With the consent of the bride-to-be, the dowry may be deferred in whole or in part and it is a debt owed by the groom-to-be.
  - f. If the husband divorces his wife *qobla dukhul*, he is obliged to pay half the dowry, and if the husband dies *qobla dukhul*, the entire dowry is due to his wife.
  - g. If the *mahr* is lost before it is handed over, it may be replaced by another item of the same form, type, and value or by money equivalent to the lost *mahr*.
  - h. If the dowry is found to be defective, it is still considered paid if the bride accepts it unconditionally, but if she refuses, the husband must compensate her.
  - i. If there is a disagreement about the type and value of the dowry, the matter shall be resolved in the religious court.

Article 32 of the KHI states that from the time the dowry is given to the prospective wife, it becomes her right. The meaning is that since the gift is made, the ownership of the dowry object becomes the perfect personal property of the prospective wife and cannot be withdrawn so the owner of the dowry has the right to manage his dowry. This is because the dowry is an obligatory gift, not a compensation or purchase, so it cannot be withdrawn.

Articles 33 and 34 of the Compilation of Islamic Law stipulate that the provision of dowry must be in cash, unless by agreement of both parties and local custom, the dowry can be deferred and its status becomes a debt of the prospective groom. The provision of dowry is not a pillar of marriage, so the failure to mention the type and amount of dowry at the time of the marriage contract does not cause the cancellation of the marriage.

From the two articles above, it is clear that the provision of dowry in marriage is obligatory, but its implementation depends on the agreement of the two prospective brides whether it is carried

out in cash or deferred in the form of a debt whose status must be paid by the husband, even if it turns out that the type and amount of dowry are not mentioned at the time of the marriage contract does not cause the cancellation of a marriage. This is the consequence of the dowry not being a pillar of marriage.

Articles 35, 36, and 38 of the KHI state that the husband is still obliged to give the dowry in an amount according to the conditions faced, including if the husband divorces his wife *qobla dukbul*, the wife is entitled to half of the dowry. If the husband dies, the dowry becomes the full right of his wife. If the *mahr* is lost before it is handed over, it must be replaced with the same or similar goods or valued at the amount of money.

Therefore, regardless of the circumstances, the husband is still obliged to give the dowry to the wife, even if the dowry is delivered in a defective condition, it must be replaced with a perfect item (not defective) unless the wife is willing to accept the defect without conditions.

Article 37 of the KHI states that if there is a difference of opinion regarding the dowry, either about the type or value of the dowry, then the settlement is submitted to the Religious Court. This provides an understanding of how important the provision of dowry is in marriage so that issues about dowry with all kinds of problems can be resolved legally in the Religious Court. Even if the dowry is owed and has not been paid by the husband and the husband does not want to pay it for various reasons, then this issue can be submitted to the religious court and not a few dowry issues result in disharmony between husband and wife and lead to divorce.

## 2. Dowry in Sociological Perspective

The dowry tradition in Indonesia does not only have material meaning, but also symbolic and social meaning. Dowries reflect the social relations, gender roles, and economic conditions of a society. Changes in the amount of dowry in Indonesian marriage traditions have varied over time depending on the culture, religion, region, and socio-economic conditions of the couple.



Significant economic growth in some regions may lead to an increase in the amount of dowry due to increased purchasing power and people's tendency to demonstrate higher social status through marriage. Thus social and economic factors play an important role in the changes of dowry amounts in Indonesian marriage traditions.<sup>31</sup>

Social status plays a key role in determining changes in the amount of dowry in Indonesian marriage traditions. Social status refers to a person's position or standing in society, often measured by economic factors, education, occupation, or family background, among others. Changes in the amount of dowry in traditional marriage related to social status can occur in several ways:

- a. **Demonstrating Prestige and Economic Success:** In some cases, men may provide a larger dowry as a way of asserting their prestige and economic success. In societies where social status is measured by material assets or wealth, the size of the dowry can symbolize higher social status.
- b. **Increased Social Expectations and Demands:** Changes in society can also affect demands and expectations regarding marriage. If society has higher expectations for weddings that are more lavish or represent higher social status, then this may affect the amount of dowry given<sup>32</sup>.

In the realm of the sociology of Islamic law, the discussion of dowry is complex because it is closely related to various aspects. Abd al-'Ari, for example, summarises the socio-legal complexity of dowry from an Islamic social perspective. For him, to understand the tradition of dowry in Muslim societies, it is important to consider the socio-economic, and cultural context, especially the

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<sup>31</sup> Suryani, "Perubahan Dan Tren Jumlah Mahar Dalam Tradisi Pernikahan Di Indonesia (Analisa Hadis Tentang Mahar).," *Qiyas: Jurnal Hukum Islam dan Peradilan* Volume 7 N (2022).

<sup>32</sup> G Soeprihanto, "Pernikahan Dan Dinamika Sosial Ekonomi Masyarakat Jawa," *Jurnal Pemikiran Sosiologi* Volume 1 N (2012): 8.

dynamics of power-class relations, religious values, and kinship systems<sup>33</sup>.

The practice of dowry law in the life of Muslims is inseparable from social dynamics and structures, even in its implementation, dowry is often closely related to a person's social class. From a sociological perspective, women tend to expect a high dowry, although Islamic teachings emphasize that women should be *qona'ab* towards the dowry, i.e., accepting what is available from the prospective husband. On the other hand, men tend to give dowries that are less than the expectations of the prospective wife, although religious teachings emphasize that men should sincerely give as much dowry as possible to their prospective wives. Thus, transactionally, the type and amount of dowry cannot be separated from the level of economic ability and social status of men.

In terms of the benefits of a valuable dowry, it turns out that the dowry can be used as an investment and economic asset for women's future security. If one day the husband and wife experience an economic downturn, while there is a form of dowry owned by the wife with economic value, then the dowry in the form of property can be a way out to overcome these economic problems. For example, a sudden need for money for childbirth, children's school fees, hospital fees, or business capital when the husband goes bankrupt. Thus, the dowry not only has a symbolic value in marriage but can also serve as financial protection for the family in difficult situations.

Thus, prospectively, the dowry given in a large amount and quality and economic value will be able to provide a way out of the problems of the welfare of the husband and wife's life in the future. So, the dowry is used as an investment and economic asset to guarantee the future of women.

Ibn Taymiyyah stated that it is permissible for a financially wealthy man to give a large dowry to the woman he marries, but if

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<sup>33</sup> Noryamin Aini, *Tradisi Mahar Di Ranah Lokalitas Umat Islam* (Jakarta: UIN Syarif Hidayatullah., 2014).

the husband is not economically capable, then giving a large dowry is *makruh*<sup>34</sup>.

From the perspective of Islamic law, the dowry is not required to be expensive, but the dowry must be decent and appropriate according to the religion and customs of the community where the two candidates live. Therefore, the community in its application must be flexible and follow existing conditions, especially in terms of financial capacity and social status of the male party. However, the essence of the dowry is not to burden the man and not to humiliate the woman.

### 3. Dowry in a philosophical perspective

Islam is a religion that adheres to justice and equality, its laws are general. Its worship revolves around the matter of cleansing and purifying the soul so that humans adorn their lives with virtues. Its rulings are aimed at preventing evil and creating benefits. Its *shar'i* rulings do not favor one group over another<sup>35</sup>.

In the perspective of the *Qur'an*, the gift of the prospective husband to the prospective wife at the time of the marriage contract is not discussed with the word dowry, but uses the word *shadaqah* (*Qs. An-Nisa: 4*). The meaning is that the *Qur'an* wants the highest meaning not only at the transactional and materialistic level, but the dowry is a symbolic issue of love because the dowry is a form of seriousness and love of the bridegroom to the bride he will marry. Therefore, the provision of this dowry must be done with a sincere heart, sincere and intended to honor the woman he will marry.

In *Sharia*, the dowry given by a man to a woman is due to the marriage contract. If a man is allowed to marry without a dowry, then this is an act of harassment and an insulting and belittling view of a woman's position. Therefore, the *mahr* is obligatory to instill in the man the feeling that a wife is not easy to

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<sup>34</sup> Abu Malik Kamal, *Fiqih Sunnah Wanita* (Jakarta: Pena Pundi Aksara, 2007)h.176.

<sup>35</sup> Muhammad Mutawali dan Rahmah and Murtadha, "Mahar Antara Syariat Dan Tradisi (Perspektif Historis, Yuridis Dan Filosofis)," *Al Ittibad* Vol. 6 No. (2020).

get, he has to spend money, and once obtained he cannot do whatever he wants. Giving a dowry during the marriage contract proves that a woman's dignity is also respected as it should be<sup>36</sup>. With this in mind, the woman should accept the dowry gladly as an honor to her dignity and not be interpreted as a sale transaction against her.

From a philosophical perspective, the dowry is the prerogative of women, women have the full right to determine how much dowry they want, meaning that if a woman is married to a man without a dowry and the woman accepts it, no one can prevent it. On the other hand, if a woman does not want to marry a man who does not want to give her a dowry, no one can force her to do so. This means that the dowry is the woman's prerogative, and no one can interfere with it, so she has the right to sell it, give it away, give it to charity, or lend it<sup>37</sup>.

By nature, giving dowry is obligatory on the husband and not obligatory on the wife, this is because the nature of the creation of each of the two is different, men are given physical strength, the ability to explore livelihoods, the perfection of reason and so on, so Allah imposes the obligation to provide for men and pay dowry. On the other hand, with the woman's lack of physical strength and her subtlety, patience, and sensitivity, Allah imposed on her the duty to be the cause of peace for her husband and children and to take care of the household.

#### **D. Conclusions**

From a juridical perspective, dowry is not a pillar of marriage but must be given at the time of the marriage contract. For legal certainty, if there is an issue regarding the dowry, the settlement is submitted to the religious court. From the sociological perspective, the dowry is adjusted to the customs of the community. Most people think that the best dowry is a dowry that is measured by the financial capacity and social status of the bride

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<sup>36</sup> Muhammad Bin Abdullah Sulaiman Arafah, *Hak Dan Peran Aktif Wanita Muslimah*, Cetakan ke. (Solo: Hazanah Ilmu, 1994).

<sup>37</sup> Baidan, Nasaruddin, *Tafsir Bi Al-Ra'yi*, Cetakan ke. (Yogyakarta: Pustaka Pelajar, 1999).

and groom while still paying attention to the essence of the dowry. Whereas in a philosophical perspective, the dowry is a form of seriousness and love of the bridegroom to the bride he will marry. Therefore, the woman must accept the dowry happily as an honor to her dignity and not be interpreted as a sale and purchase transaction against her.

Taking into account that this research is based on a literature review, especially from the juridical, sociological, and philosophical perspectives, there is an urgent need to continue this research with a more field research approach. The focus on collecting data directly from the community will enable a clearer picture of the reality of the existence of dowry in the institution of marriage.

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