

THE REGULATION OF *MAHR* (DOWRY) IN ISLAM  
AND ITS RELATION WITH KINSHIP SYSTEM

(Anthropological Perspective)<sup>1</sup>

Akhmad Jalaludin

IAIN Pekalongan

**Abstract:** This paper aims to describe the changes in the dowry institution carried out by Islam and its relationship to the kinship system that Islam wants. In the tradition of pre-Islamic Arab society, a dowry is paid to the father or guardian of the bride as compensation for taking the bride from her family, with a value that is adjusted to the status of her family. This provision is in accordance with the Arab patrilineal kinship system. Islam then changed this tradition. The dowry is paid to the bride at an agreed value. This change indicates a shift from a patrilineal kinship system to a bilateral system.

**Preface**

Gifts in the form of valuable objects or money by the groom to the bride are part of the culture in various societies in the world, with different terms (Arabic: *mahr* and *sadāq*; English: dowry; Indonesian: *maskawin*). Regarding the gift, Islam has given directions that contain reforms not only for the dowry institution itself but also have implications for other broader institutions.

Given that the dowry is part of the culture, the Islamic regulation of it must be read with attention to how the existence and function of the institution in Arab culture at that time. Moreover, because the object of Islamic regulation is a cultural reality, the direction of the regulation can also be seen from an anthropological perspective.

The relationship between Islam (al-Qur'an and Sunnah) and the culture of the society in which it descended is a necessity that cannot be ignored hermenetically. The Qur'an was revealed to and dialogue with people who already have their own culture.

---

<sup>1</sup> Presented at International Conference of Indonesia Islamic Family Law Lecturer Association in Bengkulu on Juli 16-19, 2019.

Although the content of the Qur'an is the word of God, when it is revealed to cultured beings, its statements become closely related to their culture.<sup>2</sup> On this basis, in reading the Qur'an (and especially the Hadith) a cultural approach is needed to understand the background of the descent of the rules given by Islam and the direction it wants.<sup>3</sup> Textual reading that ignores the cultural approach in understanding the provisions related to cultural reality can lead to erroneous or – at least – superficial conclusions.<sup>4</sup>

### **Dowry as an Anthropological Reality**

The dowry culture is believed to have existed since ancient times. The oldest discovery that regulates the procedure for giving dowries is recorded in the Hammurabi<sup>5</sup> charter which states:

A man who has given a dowry to a bride, but marries another woman is not entitled to a refund of the dowry he has given. If the father of the bride refuses to marry, the man is entitled to return the dowry he has given. If a wife dies without giving birth to a son, the father of the wife must give a dowry as a fine to the man, after deducting the value of the dowry given by the man.<sup>6</sup>

Dowry or dowry is not always given by the husband to the wife, but also vice versa. Who is obliged to give the dowry and how much the dowry must be paid is influenced by the kinship system prevailing in society.

---

<sup>2</sup> Komaruddin Hidayat, *Memahami Bahasa Agama: Sebuah Kajian Hermeneutik* (Jakarta: Paramadina, 1996), 9.

<sup>3</sup>The urgency of the socio-cultural context in understanding the Qur'an is emphasized by many Islamic intellectuals. Among them are Fazlur Rahman in her hermeneutical theory, Naṣr Abū Zayd in his *Manhaj al-Qirā'ah al-Siyāqīyah*, Aminah Wadud in his holistic interpretation (*Tafsir Tawhidi*), Muhammad al-Ghazali in his *Kayfa Nata'āmal ma'a al-Qur'ān*, Asma Barlas in his "reading from behind", and Asghar Ali Engineer.

<sup>4</sup> Komaruddin, *Memahami Bahasa Agama.*, 23.

<sup>5</sup>Hammurabi was the sixth king of the first Babylonian dynasty (r. 1792-1750 BC). Although Hammurabi fought many wars to conquer other kingdoms, he is more famous because during his reign the first official code (written law) recorded in the world, called the Hammurabi Charter (Codex Hammurabi) was made. In 1901, French archaeologists discovered the charter while excavating under the ruins of the ancient Babylonian city of Susa.

<sup>6</sup> <http://id.wikipedia.org/wiki/Mahar>

In a society that adheres to a patrilineal kinship system, after marriage a woman will be taken/expelled from her original extended family membership and become a member of her husband's extended family. Therefore, the husband will give a dowry to the wife's family as payment for the woman taken by the husband and his family. As a consequence, children born from such marriages are not considered as descendants of the family from which the woman (mother) originates, but are descendants of the family from the husband (father) and become members of her extended family. Therefore, anthropologically, dowry in a patrilineal society is often seen as another form of buying and selling transactions as compensation for the losses suffered by the woman's family due to the loss of several supporting factors in the family such as loss of labor and reduced fertility rates in the group.<sup>7</sup>

If the marriage is carried out, and the husband has not paid the wife, then the husband works to serve his father-in-law until the amount of payment is considered paid off.<sup>8</sup> The marriage, which Ter Haar called a service marriage (*dienhuwelijk*), is found among the Toba Batak people as well as the marginalized people in Lampung.<sup>9</sup>

However, if the husband and wife agree to include the offspring from their marriage into the wife's extended family, for example because the wife is an only child or her family does not have a son, the husband may not pay the wife. This marriage, which is known as a child-taking marriage (*inlijfhuwlijke*), results in the husband entering his wife's extended family and being cut off from his original extended family.<sup>10</sup>

In contrast to a patrilineal society that requires the husband to pay a high value, marriage in a matrilineal society does not cause a wife to be included in her husband's

---

<sup>7</sup> Koentjaraningrat, *Pengantar Antropologi II* (Jakarta: Rineka Cipta, 2005), 101.

<sup>8</sup> This practice occurred in the marriage of the Prophet Musa with one of the daughters of the Prophet Shu'ayb, as informed by the Qur'an surah al-Qaṣaṣ [28]: 27-28.

<sup>9</sup> Soerjono, *Hukum Adat Indonesia* (Jakarta: Rajawali Press, 2008), 241.

<sup>10</sup> *Ibid.*, 240.

extended family and, conversely, the husband is also excluded from his wife's extended family. Each remains a member of his extended family, but the children born of their marriage are included in the wife's extended family. Therefore, the husband-wife bond in a matrilineal society is not so strong.

At the time of the marriage, the husband is picked up from his family home with a ceremony just to let him go. Even though there are gifts in the marriage, the value is not as big as in patrilineal marriages, and its function is not as payment for women.<sup>11</sup>

Similar to the value and function of gift giving in matrilineal society marriages, gift giving in bilateral marriages does not function as payment for the wife, and can be given by the wife or by the husband. In bilateral societies such as Malay, Javanese, Acehnese, Sulawesi and Minahasa, the gift is only a marriage gift (*huwelijksgift*), and is not a marriage payment which has implications for taking a wife from her extended family of origin.<sup>12</sup>

### **Dowry in Islam**

In Islam, as is the opinion of the fuqaha', dowry is not a condition or pillar of marriage but an obligation that must be paid by a husband to his wife. If in the marriage contract a husband has not paid the dowry to his wife, then the marriage contract is still valid and the dowry becomes the husband's debt to his wife.<sup>13</sup> The obligation to pay the dowry is based on the Qur'an and Hadith.<sup>14</sup> The Qur'an in question is surah al-Nisā' verse 4:

---

<sup>11</sup> *Ibid.*, 242.

<sup>12</sup> *Ibid.*, 243.

<sup>13</sup> Wahbah al-Zuhayfī, *al-Fiqh al-Islāmī wa Adillatuh*, Vol. 7 (Beirut: Dār al-Fikr, 2010), 247-249.

<sup>14</sup> Meanwhile, the hadith that forms the legal basis for the obligatory dowry of which is the hadith of Sahl bin Sa'd al-Sā'idi narrated by many hadith experts, including al-Bukhārī and Muslim, in which the Prophet saw. ordered a friend who was willing to marry a woman to give her a dowry. He said, "Seek by you (dowry) even if it is only a ring of iron". See Muḥammad bin 'Alī bin Muḥammad al-Shawkānī, *Nayl al-Awṭār Sharḥ Muntaqā al-Akḥbār min Ahādīth Sayyid al-Akhyār* (Cairo : Dār al-Hadīth, 2005), 557.

وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا

Give a dowry to the woman (whom you marry) as an obligatory gift. Then if they hand over to you some of the dowry with pleasure, then eat (take) it (as food) which is delicious and with good results.

The verse instructs the groom to give a dowry to the woman who is his wife and allows (to her husband, father, brother, etc.) to take the dowry that has been received by the woman only if the woman gives it up. Al-Qurṭubī wrote a narration from al-Kulabiy Abū Ṣāliḥ, that among pre-Islamic Arabs (jahiliyah), if a man marries a woman who is under his guardianship, then the dowry from the marriage is taken and owned by the man, not by the woman he marries. Then Allah forbade this and sent down the above verse.<sup>15</sup>

Meanwhile, Ibn 'Ashur in explaining this verse said:

Dowry is a feature (symbol) that is known to distinguish between marriage and mukhādanah. It's just that in the Jahiliyah society there is a custom where the groom gives a certain amount of property to the guardian of the woman he wants which they usually call ḥulwān and the woman does not get anything at all. So Allah canceled this in Islam by making the property (dowry) the property of the woman (wife) with His words: "Give a dowry to the woman (whom you marry) as an obligatory gift".<sup>16</sup>

What was informed by al-Qurṭubī and stated by Ibn 'Ashur shows how the customary rules of dowry in pre-Islamic Arab society, namely that dowry is a payment from the prospective husband or family to the guardian of the prospective wife as the price of the woman to be married.<sup>17</sup> This customary rule was later reformed by Islam. First, Islam changes the person who is entitled to the dowry. If in pre-Islamic times the dowry was the right of the guardian of the bride, then Islam turned it into the full right of

---

<sup>15</sup> Al-Qurṭubī, *al-Jāmi'*, 211; See also al-Ṭabariy, *Mafātiḥ al-Ghayb*, VII: 533-554, and Ibn Kathir, *Tafsīr*, 592.

<sup>16</sup> Muḥammad al-Ṭāhir ibn 'Ashūr, *Tafsīr al-Taḥrīr wa al-Tanwīr*, Vol. 4 (Tunis: al-Dār al-Tūnīsiyyah, 1984), 230.

<sup>17</sup> However, Jawwād 'Alī said that some Arabs gave the dowry to the wife. However, the dowry that has been received by the wife is then asked by her guardian because in her view it is her right. See Jawwād 'Alī, *al-Mufaṣṣal li Tārīkh al-'Arabiyyah qabl al-Islām*, Vol. 5 (Bagdad: Jāmi'ah Bagdād, 1993) , 531-532.

the woman herself. This right may not be taken by the father, brother, grandfather or other guardian or his future husband, unless the woman has given up. Second, if originally the dowry was the price that had to be paid by the husband or his family for the woman who was married, by Islam the dowry was seen as a religious obligation and the initial maintenance of a husband. Because there is no definite size and amount in the dowry, it is relatively adjusted to the ability and appropriateness in a society. A hadith sourced from Sahl bin Sa'd al-Sā'idi<sup>18</sup> gives an indication that the dowry is not seen from its economic value. Another hadith sourced from 'Ā'ishah also teaches Muslims not to overdo it in determining the amount of dowry.<sup>19</sup>

### **From Patrilineal Kinship System to Bilateral Kinship System**

From a gender perspective, the determination of dowry by Islam as a wife's right and a husband's religious obligation, not a payment by a husband for the woman he marries, shows Islam's respect for women. In marriage, Islam does not view women as objects which then become the property of the husband because he has 'bought' it from his family. The small economic value of the dowry shows that the dowry is not a payment for women but rather a symbol of a husband's love and commitment to his wife.

From an anthropological perspective, pre-Islamic Arab customs regarding the dowry and Islamic reforms to it represent the reality of the Arab kinship system on the one hand, and the Islamic ideal of the kinship system on the other. Marriage is a subsystem of the kinship system. This subsystem is designed to be able to maintain the

---

<sup>18</sup> See footnote no. 12 above.

<sup>19</sup> Rasulullah saw. informed said, النِّكَاحُ أَيسْرُهُ (A marriage with a greater blessing is a lighter dowry). Aḥmad ibn Muḥammad ibn Ḥanbal, *al-Musnad*, chapter 17 (Cairo: Dār al-Hadith, 1995), 259. This hadith was also narrated by Ibn Ḥibbān in his *Ṣaḥīḥ* and Abu Dawud in his *Sunan* with the sentence النِّكَاحُ . See al-Amīr 'Alā' al-Dīn 'Alī ibn Balbān al-Fārisī, *Ṣaḥīḥ Ibn Hibbān bi Tartīb Ibn Balbān*, Vol. 9 (ttp.: Mu'assasah al-Risālah, tth.), 381 and Abū Dāwūd Sulaymān bin al-Ash'ath al-Sijistānī, *Sunan Abī Dāwūd* Vol. 2 (Beirut: Maktabah al-'Aṣriyyah), 238.

existence of the group of relatives who use the system as much as possible. As stated in subchapter A, there are customary rules regarding marriage in each kinship system.

In a patrilineal kinship system, a woman will not give birth to offspring who become the successors of her original family. The child she gave birth to only became the successor to her husband's family. When a woman marries, she will enter into her husband's family. Because of that, a woman's family of origin will lose her family members when she marries. And the man who marries her or the family of the man who marries her gets a new member who will give birth to offspring who become the successor to the husband's family of origin. From here, in marriage, communities that adhere to the patrilineal kinship system, the prospective husband or family is obliged to pay payments to the prospective wife's family (not to the prospective wife) as respect for the woman they marry. In the patrilineal Batak society, the payment is known as *honesty* and the form of marriage is known as *jujuran* marriage.

To whom the dowry was paid or who was entitled to receive and control the dowry in pre-Islamic Arab society represented a kinship system, namely the patrilineal kinship system. The right to receive and control the dowry in pre-Islamic Arab society was the father or brother who married a woman, not the woman herself. The high value of the dowry that must be paid to the prospective wife's family also shows the function of the dowry in a patrilineal society, namely that the dowry is a payment for a woman because it is taken by her prospective husband or family and will enter the husband's family of origin and will participate in preserving the husband's family of origin, namely by giving birth to offspring who become the successor of the family.

Thus, the changes made by Islam to the dowry system when viewed systemically are actually part of the big changes that are aspired to. The stipulation by Islam that the

dowry is the right of the wife and its suggestion not to be excessive in the amount of the dowry is actually part of the Islamic project to direct the Islamic community to a certain kinship system. Giving the right of dowry to the wife not only gives her better treatment but is a way to place the dowry not as a right of the family of origin. So, coupled with the recommendation to be simple in terms of dowry, the transfer of rights to the dowry is actually a change from the function of the dowry as a payment given to parents or relatives who represent the wife's family of origin because the wife has been deprived of them by the husband or the husband's family of origin – as stated applies in a patrilineal society—becomes a religious obligation and the husband's first livelihood to his wife. In other words, the changes made by Islam, which seem small, to the dowry system are actually part of an Islamic project to direct Islamic society towards a bilateral kinship system, not parental.

### **Closing**

Reading the texts of the Qur'an and Hadith with an integrative approach, namely using the social sciences as a tool, in addition to the Islamic sciences (*'ulūm al-dīn*), is proven to be more able to provide comprehensive and comprehensive reading results. systemic, and able to capture the weltanschauung or worldview of the text as a whole. On the other hand, the use of a linguistic approach (*al-qawā'id al-lughawiyyah*) without a social science approach is easier to get caught in partial reading.



## References

- Abū Dāwūd Sulaymān bin al-Ash‘ath al-Sijistānī, *Sunan Abī Dāwūd*. Beirut: Maktabah al-‘Asriyyah, tth.
- Abū Zayd, Naṣr Ḥāmid, *Dawā’ir al-Khawf: Qirā’ah fī Khiṭāb al-Mar’ah*, Beirut: al-Markaz al-Thaqāfī al-‘Arabi, 2000.
- Aḥmad ibn Muḥammad ibn Ḥanbal, *al-Musnad*, Kairo: Dār al-Hadith, 1995.
- al-Ghazālī, Muḥammad, *Kayfa Nata‘amal ma‘a al-Qur‘ān*, Mesir: Nahḍah, 2005.
- al-Qurṭubī, Abū ‘Abd Allāh Muḥammad bin Aḥmad al-Anṣārī, *al-Jāmi’ li Aḥkām al-Qur‘ān*, Kairo: Maktabah al-Imān, tth.
- al-Shawkānī, Muḥammad bin ‘Alī bin Muḥammad *Nayl al-Awṭār Sharḥ Muntaqā al-Akhbār min Ahādīth Sayyid al-Akhyār*. Kairo: Dār al-Hadith, 2005.
- al-Ṭabarī, Abū Ja‘far Muḥammad ibn Jarīr, *Jāmi‘ al-Bayān ‘an Ta’wīl Āyi al-Qur‘ān*, Kairo: Maktabah Ibn Taymiyyah, tth.
- al-Zuḥaylī, Wahbah, *al-Fiqh al-Islāmī wa Adillatuh*. Beirut: Dār al-Fikr, 2010.
- Barlas, Asma, *Cara Quran Membebaskan Perempuan*, alih bahasa R. Cecep Lukman Yasin, Jakarta: Serambi, 2005.
- Engineer, Asghar Ali, *Hak-hak Perempuan dalam Islam*, terj. Farid Wajidi dan Cici Farkha Assegaf, Yogyakarta: Benteng Budaya, 1994.
- Hidayat, Komaruddin, *Memahami Bahasa Agama: Sebuah Kajian Hermeneutik*, Jakarta: Paramadina, 1996.
- Ibn ‘Ashūr, Muḥammad al-Ṭāhir, *Tafsīr al-Taḥrīr wa al-Tanwīr*, Tunis: al-Dār al-Tūnisiyyah, 1984.
- Ibn Balbān al-Fārisī, al-Amīr ‘Alā’ al-Dīn ‘Alī, *Ṣaḥīḥ Ibn Hibbān bi Tartīb Ibn Balbān*, ttp.: Mu’assasah al-Risālah, tth.
- Ibn Kathīr, Abū al-Fidā’ ‘Imād al-Dīn, *Tafsīr al-Qur‘ān al-‘Aẓīm*, Kairo: Maktabah al-Imān, 2006
- Jawwād ‘Alī, *al-Mufaṣṣal li Tārīkh al-‘Arab qabl al-Islām*, Bagdad: Jāmi‘ah Bagdād, 1993.
- Nasution, Khoiruddin, *Fazlur Rahman tentang Wanita*, Yogyakarta: Tazzafa dan ACAdemia, 2002.
- Soekanto, Soerjono, *Hukum Adat Indonesia*, Jakarta: Rajawali Press, 2008.
- Wadud, Amina. *Quran Menurut Perempuan*, terjemahan Abdullah Ali. Jakarta: Serambi, 2001.