

Legal Comparison on Dowry In Islamic Countries

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Legal Comparison on Dowry In Islamic Countries

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Abstract – Various problems that arise because of dowry. Even though the provisions regarding dowry in the laws and regulations in Islamic countries have similarities and differences. The purpose of this paper is to describe the comparative law regarding dowry in Islamic countries. This research method is a literature study. The results of this study are that in general the basic provisions regarding dowry refer to the Koran and hadith as well as ijma'. There is also the influence of the Mazhab which is followed by the majority of the population in that country as well as the socio-cultural color in each country. From the two Arab countries, namely Egypt and Morocco, it appears that there are no restrictions regarding the maximum and minimum dowry limits. However, in practice in these two countries, the dowry is quite expensive, so that young people need a very long time to work to collect money to be able to pay the dowry. In two Southeast Asian countries, Malaysia and Indonesia, the dowry practice is not that expensive. However, in Malaysia, several states regulate maximum dowry limits, but in Indonesia there are no minimum or maximum dowry nominal restrictions.

Keywords – standart, dowry, state, law, Islam.

1. INTRODUCTION

Islam has perfectly regulated all aspects of human life. Al-Qur'an and Sunnah become torches in the dark, in the course of human civilization. The values contained in the Qur'an and Sunnah are timeless, and continue to be explored and live in the daily lives of Muslims. Islam regulates the Shari'a about the fundamental thing in civilization, namely the family. How to build a family according to Islamic rules, starting from choosing a potential spouse to the details of how to get married is regulated in Islamic teachings, including the dowry. An understanding of the dowry law adopted by legislators in a country influences the laws that are made. Then the school of thought adhered to by the majority of the population will become a reference in the formation of laws, in addition to the influence of socio-cultural conditions and habits in that country.

This then causes the provisions regarding dowry in the laws of a country to have similarities and also differences between one another. There are countries that regulate the provisions regarding dowry very rigidly. There are also countries that regulate dowry only in general. In Egypt, there is no set maximum or minimum dowry limit. However, in daily practice, the dowry in this country is very expensive, so young Egyptians have to work very long hours to earn enough money to pay the dowry, they also find it difficult to get job opportunities in Egypt. Likewise in Morocco, there are no rules that regulate the maximum and minimum dowry limits. However, in practice, the dowry is quite expensive, so many young people are reluctant to get married, because they find it difficult to get a job.

Contrary to the two countries in the Arab region, in Southeast Asia the dowry is actually very cheap. In Malaysia, a number of regions impose restrictions on the amount of dowry. The nominal value is quite low. Meanwhile in Indonesia, there is no provision regarding the minimum dowry standard. This has recently become a loophole that appears as if it is a trend to pay dowries cheaply, such as a pair of flip-flops and a glass of water. In this article, the author will show how the regulation of dowry is regulated in the laws of Egypt, Morocco, Malaysia and Indonesia.

2. METHODOLOGY

The research method in this paper is a mixed method research (mixed method) in which the researcher uses a combination of normative legal methods and sociological (empirical) legal methods. This study uses secondary data or data obtained through library materials as well as empirical facts taken from human behavior, both verbal behavior obtained through interviews and real behavior through direct observation.

3. RESULTS

A. Dowry in Islamic Shari'ah

In terminology, dowry is interpreted as "an obligatory gift from the prospective husband to the prospective wife as the sincerity of the prospective husband to create a feeling of love for a wife to her future husband". Dowry is property that is entitled to be obtained by a wife that must be given by the husband; both because of the contract and true intercourse. The Shafi'i school defines dowry as something that is obligatory because of marriage or

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intercourse, or the loss of a woman's honor without power, such as the result of breastfeeding and the withdrawal of witnesses. Meanwhile, the Hambali School defines dowry as a substitute in a marriage contract, whether the dowry is determined in the contract, or determined afterwards with the consent of both parties or the judge, or a substitute in conditions of marriage, such as intercourse with doubts, and forced intercourse. Mahar is a gift given by a husband to his wife at the time of the contract or because the contract is a mandatory gift. Dowry is also defined as something handed over by the prospective husband to the prospective wife in the context of a marriage contract between the two, as a symbol of the prospective husband's love for the prospective wife and the willingness of the prospective wife to become his wife.

The command to pay the dowry is very clear in the Qur'an, sunnah and ijma'. In Surah Annisa' verse 4 the command to pay the dowry is mentioned using the word shaduqah:

وَأَتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً فَإِن طِبْنَ لَكُمْ عَن شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيًّا

"Give a dowry (dowry) to the woman (whom you marry) as a gift willingly." (QS. An-Nisa 'verse 4).

The order to pay the dowry is also explained in the hadith of 'Aisyah which clearly mentions the term dowry, narrated by the four Imams except al-Nasai:

حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ أَخْبَرَنَا سُفْيَانُ بْنُ عُيَيْنَةَ أَنَّهُ سَمِعَ أَبَا بَرزَةَ

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَيُّمَا امْرَأَةٍ نَكَحْتِ بِغَيْرِ إِذْنِ مَوْلَاهَا فَكَأَنَّهَا بَاطِلٌ قَالُوا يَا رَسُولَ اللَّهِ مَا بَاطِلٌ قَالَتْ فَإِن دَخَلَ بِهَا فَالْمَهْرُ لَهَا بِمَا أَصَابَ مِنْهَا فَإِن تَشَاجَرُوا فَالسُّلْطَانُ وَلِيٌّ مِنْ لَدُنِّي لَهَا

"Has told us Muhammad bin Kathir, has told us Sufyan, has told us Ibn Juraij, from Sulaiman bin Musa from Az Zuhri from Urwah, from Aisha, he said: Rasulullah shallallahu 'alaihi wasallam said: "Every woman who is married without the permission of the guardian, then the marriage is void."

He said it three times. If he has interfered with it, then for him the dowry is because of what he gets from it, then if they are in dispute then the ruler is a guardian for people who do not have a guardian ". Regarding the amount of dowry, the scholars differed. The Qur'an uses a very flexible term, namely ma'rûf. The word ma'rûf can be interpreted as "appropriately", "reasonably" or "as much as possible". In his hadith, the Prophet Muhammad SAW. also mentions the dowry value with an amount that is sometimes very cheap and sometimes sounds quite expensive.

Meanwhile, the Imams of the Mazhab have different views regarding the minimum dowry limit. According to Imam Hanafi, the minimum limit is 10 dirhams, which, if converted to the current rupiah currency, is Rp. 140,000.00. This standard is based on the size of theft which results in the thief's hand being cut off, namely one dinar or 10 dirhams. This is to reveal the position of women.

But when they look for a "base" to establish a maximum and minimum dowry limit, what is similar is the basis for the punishment of cutting off a hand in the case of theft, because these two laws both provide the authority to obtain benefits for limbs in return for wealth,

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namely cutting hands for committing acts of theft of assets that have reached one nishab and intercourse with a reward in the form of a dowry. But the difference between these two things is very striking, and qiyas like this is considered weak, because the punishment for cutting off one's hand is very different from sexual intercourse.

Meanwhile, Imam Malik stipulates that the minimum dowry is a quarter of a gold or silver dinar weighing three dirhams or something comparable in weight to the gold and silver. A quarter of a gold dinar is equivalent to Rp. 700,000.00 at the moment. The thinking of Abu Hanifah and Imam Malik in setting a minimum standard of dowry is to avoid the attitude of men who sometimes regard women as lowly people only to be worthy of entertainment. At that time, Imam Malik and Imam Hanafi experienced incidents where several women came to complain about the dowry being given too low, even though the prospective husbands were classified as well-to-do people. This event, among other things, encouraged Imam Malik and Imam Hanafi to seek ijthihad so that the fate of women would no longer be humiliated.

B. Provisions regarding Dowry in Laws and Regulations in Islamic Countries

1. Egypt

The Arab Republic of Egypt had a Constitution on September 11, 1971. As a country that was once occupied by Turkey, or was part of that country, in law, Egypt was influenced by the laws in force in Turkey at that time, before finally Turkey itself changed its laws. While Egypt itself still adheres to inherited laws. According to article 1 of the country's Constitution, Egypt is a democratic, socialist state based on an alliance of influential people's power. Even though it is a socialist country, Article 2 of its Constitution clearly states that Islam is the state religion and Arabic is the official language of the state.

Religious values are very strong in accompanying social life, including in the field of family law, so it is only natural that most of the country's family laws originate from Islam – in this case Fiqh. The Arab Republic of Egypt, located in Africa, has an estimated population of around 61 million. The majority of Egypt's population are Sunni Muslims, their number is nearly 90 percent. Religion plays a very big role in the country. The majority of the population of Egypt are followers of the Safi'i school and only a small portion adheres to the Hanafi school of thought.

The Family Law in Egypt is called قانون الأحوال الشخصية. This law regulates everything regarding marriage including dowry. Dowry is regulated in articles 19 to 22. The following are the articles that regulate dowry:

Article 19: (1) The wife has the right to receive a dowry as stipulated in the contract. If it is not specified or not stated at all, then he is entitled to a comparable dowry. (2) If the prospective husband gives property to his fiancé before the marriage contract, then one of the parties changes the decision not to carry out the marriage or one of them dies, then the property that has been given can be returned, even though it has been used, by providing a replacement. (3) Gifts are treated as gift laws.

Article 20: (1) It is permissible to hasten or postpone the dowry, either in part or in whole. If there are no provisions governing this, it will follow custom (adat). (2) The time limit stipulated in the contract for payment of the dowry does not apply in the event of divorce or death.

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Article 21: The wife has the right to receive the entire dowry that is determined as entry or when one of the husband or wife dies. The wife is entitled to half of the dowry determined as divorce before the marriage.

Article 22: If the separation occurs after the marriage is based on an invalid contract, then if the dowry is determined, then what applies is the lower dowry between the stipulated and comparable ones. If not specified, then what applies is a comparable dowry.

2. Morocco

Morocco is a country in the form of a kingdom, known in Arabic as al-mamlakah al-maghribiah (the kingdom in the West), sometimes also called al maghrib al aqsa (the kingdom farthest in the West). In English it is called Marocco, which comes from the Spanish Maruecos, the Latin is Morroch, in pre-modern Arabic it was known as Marrakesh. Morocco achieved independence from France in 1956 with a constitutional monarchy located in Northwest Africa. 99% of Morocco's population are Sunni Maliki Muslims.

The State of Morocco, between 1921-1956, was under French and Spanish political domination. The legal systems in these two countries more or less color the local laws that apply in Morocco. Only sharia family law, especially the Maliki School, is still firmly adhered to. However, within certain limits there are elements influenced by French and Spanish law and local customs. These jumbled rules are wrapped up in Moroccan family law. To avoid this condition, the state is called upon to codify family law and at the same time carry out reforms based on considerations of the benefit of mursalah.

The year of Morocco's independence (1956) coincided with the promulgation of family law in Tunisia. This circumstance greatly affected Morocco. The trend of family law reform in several Islamic countries has encouraged Morocco to take similar steps. Interpretations and habits that deviate from Islamic law that impede the progress of development and civilization must be removed. Therefore, it is deemed necessary to codify family law. On August 19, 1957 a law reform commission was created by royal decree. The commission is tasked with drafting individual and inheritance laws. The preparation of the draft law is based on: (1) Some of the principles of the Fiqh schools of law, especially the Maliki School. (2) The doctrine of maslahah is mursalah. (3) Laws in force in several other Muslim countries.

The draft then officially became law in 1958 which was named Mudawwanah al-Ahwâl al-Syakhshiyah. Most of these rules are based on the Maliki School and some other parts are the same as Tunisian family law, Majallah al-Ahwâl al-Syakhshiyah. This is due to the similarity of schools that are adhered to by the two countries, namely the Maliki School. Now Morocco has Legislation that regulates family law, namely الأسرة مدونة (Mudawwanatul Usrah). This regulation has been amended several times. The last amendment was made in 2016. In this law, dowry is discussed in separate discussions in nine articles, namely articles 26-34. In this provision it is stated that the amount of dowry is agreed upon at the end of the marriage contract, but if there is no agreement then "tafwid" will occur. But if the husband and wife do not agree with "tafwid" then the court will determine the amount of dowry taking into account the social background, both husband and wife.

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Then it is stated that the dowry may be paid in debt or in cash, in whole or in part, as long as there is an agreement between husband and wife. The wife is entitled to the full dowry for two reasons, namely because of death or having had a husband and wife relationship (ba'da dukhul). This law also regulates the status of dowry ownership.² It was emphasized that the dowry belongs to the wife which she is free to use at any time, and the husband has no right to ask for dowry or exchange the dowry he has given.

3. Malaysia

Malaysia is a country in Southeast Asia that has a fairly high level of ethnic and cultural diversity. It is the Malay ethnicity that occupies the largest percentage of the population in Malaysia, which is as much as 48.5%. After Malay there are still several indigenous ethnicities which have a percentage of 10.5%. The remaining 14.7% are non-indigenous people, namely Chinese and Indian ethnicities. Meanwhile in religion, Islam is the religion of the majority ethnic Malays. The percentage of adherents of Islam is 53%, the rest are Buddhists 29%, Hindus 9%, and other religions such as Christianity, Taoism and Confucius as much as 9%.

Before the arrival of the British colonialists, the law in force in Malaysia was Islamic law mixed with customary law. ¹² In other words, by Abdul Monir bin Yaacob, who has written extensively on laws in Malaysia, the laws that were in effect in Malay countries before British interference were the customary Pepateh for most Malay people in Negeri Sembilan and parts of the Naning area of Malacca, and adat temenggung in other parts of the Peninsula.¹³ When it came to power in Malaysia, the British introduced and gradually implemented English laws, eventually replacing Islamic laws.

Before being influenced by British law, customary law and religion became a reference in carrying it out, especially the issue of dowry/dowry in marriage. When Islam entered Malaysia, little by little the understanding of dowry began to be understood, at that time the Shafi'i school of thought was very strong in coloring Islam who came to Malaysia. Mahar is only proof that the prospective husband is able to provide a living. When the concept of Islam (religion) is acceptable and becomes the highest norm in society, then this religious norm becomes the law that is formed. Mahar, which used to be a customary (moral) norm, made people suffer. When they had to propose to a woman, they had to follow several rules and stages. At that time, there was no application of the dowry rate. not directly attached to it.

In its journey, dowry law in Islam has the highest position compared to local customs. Therefore, the dowry law in religion becomes a permanent law in the form of a law. Malaysia has its own policy regarding the regulation of the marriage process, especially regarding the application of the dowry value, therefore there are several states that stipulate it, but some do not. Provisions regarding dowry in Malaysia are regulated in Sekyen 21 (1) and (2) in the Deed of the Islamic Family Law (Federal Areas) 1984 (Deed 303). Set here things as follows:

The dowry should usually be paid by the man or his representative to the woman or his representative in the presence of the person who entered into the marriage ceremony and at least two other witnesses. Registrants should, regarding each marriage that they wish to register, determine and record:

1. the value and other details of the dowry;
2. value and other points of gift;

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3. the value and other details of the dowry or gifts or both that have been promised but not explained at the time of the marriage contract, and the promised date for explanation; and
4. The details of the guarantee given explain the dowry or gifts.

Apart from that, the states have given a determination in accordance with the JAI/local Religious Affairs Agency as follows:

¹ Negeri	Anak Dara	Janda
Johor	22.50	22.50
Melaka	40	40
Negeri Sembilan		
- Bukan Waris	24	12
- Ahli Waris	48	24
- Kerabat Diraja di Wilayah datukkelana dan kerabat	725	725
¹ Selangor		
- Putri Sultan	2,500	625
- Putri Raja Muda atau putrid kepada putra sultan yang bergelar	2,000	500
- Putrid kerabat	1,000	250
- Putri Anak Raja (waris)	137,50	550
¹		
- Putri Anak Raja (yang lain)	300	75
- Anak perempuan orang-orang besar	300	75
- Cucu orang besar	200	50
- Orang kebanyakan	300	300
Kuala Lumpur	80	40
Perak	101	101
Pulau Pinang	24	24
Kedah	Tidak di terapkan	
Perlis	Tidak di terapkan	

¹ Pahang	22.50	22.50
Terangganu	Tidak di terapkan	
Kelantan	Tidak di terapkan	
Sabah	100	80
Sarawak	120	120
Labuan	80	80

Information:

Nominal data uses the Malaysian currency (Ringgit) exchange rate. 1 ringgit = Rp. 3.73519 So, in rupiah, for example in Kuala Lumpur, 80 ringgit = Rp. 298,800, whereas in Selangor, the dowry is 300 ringgit = Rp. 1,120,500. However, this provision is not very binding. Laudya Cinthya Bella, Indonesian artist and Engku Emran, a Malaysian citizen, the dowry given by Engku Emran was RM300 or the equivalent of only Rp. 900,000.00. Even though Engku Emran is known as a wealthy businessman, this dowry is relatively cheap for Indonesians, but for Malaysians, the dowry standard follows the rules set by the government. For Kuala Lumpur, the maximum dowry is RM80 or around IDR 250,000.00. Emran's dowry exceeds that maximum standard.

The application of dowry in Malaysia is seen to follow the Syafi'i school of thought which does not apply levels in giving dowry. This can be seen in the stipulation of the Law/Sekyen regarding dowry, which does not regulate the amount of dowry. According to local customs and traditions, if the amount of dowry is small, then the luggage or delivery does not have to be a lot and it is strict about what to bring, but when the dowry value is high, there are not too many luggage rules.

5. Indonesia

In Indonesia, provisions regarding dowries are ¹² regulated in the **Compilation of Islamic Law** (KHI). KHI ¹⁵ is a summary of legal opinion taken from various books written by Fiqh scholars. KHI was ratified on June 10, 1991 as ⁶ the **Presidential Instruction of the Republic of Indonesia Number 1 of 1991**. Apart from ⁶ the Presidential Instruction, it was also in the form of a **Decree of the Minister of Religion of the Republic of Indonesia Number 154 of 1991 concerning Implementation of the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 dated July 22, 1991**. The ordinary KHI used as a legal basis for judges at the Religious Courts in deciding cases tried at the Religious Courts.

³ Provisions regarding dowry are regulated in a number of KHI articles in articles 30 to 38. **Article 30 states that the prospective groom is obliged to pay the dowry to the prospective bride, the amount, form and type ²¹ agreed by both parties.** This article ⁴ is in line with **Article 1 letter d regarding the meaning of dowry in the Compilation of Islamic Law, namely gifts from the groom to the bride, whether in the form of goods, money or services that are not contrary to Islamic law.**

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Furthermore, in Article 31 it is emphasized that the determination of the dowry is based on the simplicity and convenience recommended by Islamic teachings. The Compilation of Islamic Law does not include a minimum and maximum limit for the amount of dowry, which contains benefits for the groom because it intends and aims not to burden or complicate marriage due to regulations regarding the determination of dowry. The concept of dowry simplicity means that the dowry occupies a position that is neither lacking nor excessive. However, in accordance with the portion or can be called balanced. The simplicity of dowry in Islamic law basically means that the determination of the dowry must be in accordance with the abilities and abilities of the prospective groom. As a bride, it would be nice not to ask for a dowry beyond the ability of the prospective groom.

However, as a form of respect for the existence of women in Islam, the dowry given by the groom should not be too little or too much. Similar to the concept of dowry simplicity, the concept of easy dowry is an act that does not complicate things. The act of complicating the dowry in a marriage is included as an act that is contrary to the principle of convenience in Islam itself. It is on this basis that Islam calls for facilitating the dowry and moderation in marriage so that marriages are held in accordance with Islamic law.

It is clear that achieving a simple and easy dowry requires the agreement of both parties. In this context, the prospective groom gives the best dowry according to his ability, ability and does not make it difficult but still giving the dowry is in accordance with the terms and conditions of the dowry, including that the dowry does not lower the self-esteem of the prospective bride, because the existence of an obligation to pay dowry is a form of Islamic respect for women. Likewise, the prospective bride should see and understand the ability of the prospective groom to provide dowry. It is not permissible to demand dowry of an amount that the prospective groom cannot fulfill. Furthermore, in Article 32 it is emphasized that the dowry is given directly to the prospective bride and since then it has become her personal right. All forms and types of dowry at mutually agreed levels become the rights of the bride. prospective husband is required to provide it. It is not permissible for the least of his property to be touched by other people except for his pleasure.

Furthermore, Article 33 paragraph (1) stipulates that the delivery of dowry is done in cash; then in paragraph (2) it is emphasized that if the prospective bride agrees, the delivery of the dowry may be suspended either completely or partially. The dowry that has not been paid for is the debt of the prospective groom. The two paragraphs of Article 33 above contain the meaning that the delivery of the dowry is done in cash or can be deferred with several notes. If the dowry is handed over in cash at the time of the contract and has been received by the prospective bride, since then the dowry is fully the right and property of the bride. The second point relates to the suspension of the payment of the dowry, either partially or fully, which can be made with the consent of the prospective bride. If there is an agreement in this matter, the payment of the dowry may be suspended. So that the dowry that has not been submitted when the contract takes place, the dowry becomes a debt for the husband, and the husband is required to pay the debt.

In Article 34 Paragraph (1) it is stated that the obligation to give dowry is not a pillar of marriage, then Paragraph (2) also emphasizes that failure to mention the type and amount of dowry at the time of the marriage contract does not cause the marriage to be cancelled.

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Likewise in a state of is indebted, does not reduce the validity of the marriage. Next, Article 35 Paragraph (1) confirms that a husband who divorces his wife qobla al dukhul is obliged to pay half the dowry specified in the marriage contract. Then Paragraph (2) states that if the husband dies qobla dukhul, the entire dowry set becomes the full rights of his wife. Paragraph (3) states that if a divorce occurs qobla dukhul but the amount of the dowry has not been determined, then the husband is obliged to pay the mitsil dowry. The dowry payment provisions stipulated in Article 35 paragraph 3 mean that if in a divorce case there is a qabla dukhul (not yet having intercourse with husband and wife) but the amount of dowry has not been agreed upon, then the husband is required to pay mitsil dowry. The mitsil dowry is a dowry that is commensurate with the dowry that was received by the closest family, a bit far from the neighbors taking into account social status, beauty and other considerations.

Article 36 confirms that if the dowry is lost before it is handed over, the dowry can be replaced with other goods of the same form and type or with other goods of equal value or with money equivalent to the price of the lost dowry goods. Furthermore, it is regulated in Article 37, if there is a difference of opinion regarding the type and value of the dowry that has been determined, the settlement is submitted to the Religious Court.

4. CONCLUSION

From the description above, it can be concluded that the legal rules regarding dowry in Islamic countries such as Morocco, Egypt, Malaysia and Indonesia have similarities in the principle of maintaining justice and equality between husband and wife. The dowry itself can be in the form of money, assets, or other forms agreed upon by both parties. The existence of legal regulations governing dowry ensures that the wife's rights are protected and guarantees justice in marriage. Egypt, Morocco and Indonesia do not set minimum and maximum limits. However, Malaysia sets dowry standards in several states.

DECLARATIONS

Author Contributions Both authors contributed equally to the current research and read and approved the final published version of the article.

Conflicts of Interest The author declared no potential conflicts of interest.

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