Delayed Mahar: The Perspective of Islamic and Customary Law

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Abstract: This paper investigates one of a well-known phenomenon in Kolono district, South Konawe; the groom has to provide Mahar to the bride before their marriage held. The focus of this investigation is related to delayed Mahar; when the groom only affords partially or it becomes debt. This qualitative descriptive paper with ethnography approach indicates that the delayed Mahar affects the spouses negatively in Kolono. For instance, a divorce often happens in this village. This is due to the head of the family; in this case, the husband has not granted the Mahar even after they have children. One of the traditions in this district is marriage can also be held if the groom has not been able to provide any Mahar to the bride family. The research result on this paper points out that some divorces occurred because of this delayed Mahar which had been settled on by the groom and bride side before the marriage.

Keyword: Mahar

1. Introduction

Marriage is a sacred covenant between the prospective groom and bride who want to build a household with the aim of forming sakinah, mawaddah, warahmah families. Therefore, the most substantial of marriages is the achievement of that goal. However, before achieving the intended purpose, the terms and conditions of marriage must be fulfilled, especially from the formal legal aspect. It is the fulfilment of the requirements under Islamic law based on the Qur’an and As-Sunnah and according to the applicable law, resulting in legitimate marriage which is not solely based on fiqh, but also based on the relevant legislation.

A marriage can be said as a covenant agreement between men and women who consent together to conduct a more intimate life according to the terms and laws of righteousness justified by God; the Creator of Nature. In the eyes of the religious person, the emphasis of endorsement of relations is measured by the provisions set by God as an absolute condition. For those who do not base the weight of that endorsement on divine law, marriage in theory and practice is a social contract that contains the consent that they will live as a husband and a wife forever or for a certain period. The consent is acknowledged by law or by custom in a society or region. In connection with marriage aimed at building a peaceful family, islamic teachings advocate simplicity and sincere intention in accepting the nature of marriage. Islam suggests that women's families cannot reject men who come to propose for poverty reasons. On the contrary, Islam prohibits women's families from setting expensive tariffs on the part of men who want to marry their children. Similarly, young men should not delay marriage if they have both physical and biological abilities because the marriage becomes obligatory based on the Islamic law, especially if there is no force to withstand sexual desire.
Law no. 1 in 1974 about the marriage in Indonesia states that marriage is the personal bond between a man and a woman as husband and wife with the aim to form a happy and eternal family based on the divinity of the Almighty God. Terms that are related to *Ijab Qabul* is *Mahar* or often called a dowry. *Mahar* is the absolute right of the prospective bride, and the obligation of the groom to give it before the marriage. It may be in the form of jewellery, money, animal, housewares, services, trade treasures, or other valuable objects. The dowry is applicable clearly and globally, for example, a piece of gold, if not known from various facets, the amount of dowry. *Mahar* or often referred to dowry is the right of the first wife and must be given by the husband. It can be paid in cash or delayed, as long as his wife does not object. Even if his wife is willing, the dowry may be exploited by the husband for various household interests. The authors find out that in Kolono of South Konawe, many people provide a delayed dowry. This phenomenon has brought negative impact to some couples in Kolono village. For instance, the divorce cases are getting increased. This is because the men broke their promise to provide the dowry for the woman even until they have children.

Research on dowry has been done by many experts who discuss the determination of dowry in marriage and its implication to society in a review of Islamic law. The study reveals that in the decision of the dowry is based on the level of education of the woman. If the women graduated from higher education, the more significant dowry is demanded. Likewise, with families with middle to upper economic level, they also ask for high dowry. However, for those who come from low-income family, dowry is considered as one of the requirements of marriage without giving the fixed amount of dowry. Another similar study is the determination of the dowry to the continuity of marriage reviewed according to Islamic law. In the study found the decision of the dowry is the approval of traditional leaders and religious leaders. The amount of dowry given is determined by the woman and when the man does not fulfil it, it can lead to the marriage delay. Based on the findings of some research studies on dowry, the authors maintain that there are some similarities in marriage’s *Mahar* which is an absolute obligation that must be given by the groom to the bride. However, what makes this research is different from the previous ones is the amount level of the dowry itself which should be adjusted with the social status of a woman and must be agreed to be immediately paid because if not paid, the marriage will be delayed or may be cancelled. The research findings indicate that there is a possibility to pay the dowry when the man is ready to fulfil it or in other words it can be delayed.

2. Method

The approach used in this research is a normative and sociological approach. The normative approach is an approach to explain the problem being studied based on the norm or law, both the Qur'an and the *hadith* which is valid as the affirmation as well as with the human mind itself as formulated on *fiqh*. Meanwhile, sociological approach refers to a kind of approach facilitating research to obtain the data needed. This is important to do because the study of delayed dowry is part of the study of Islamic law.

3. Findings and Discussion

Islamic teaching always puts a lot of attention and respect for the women. One of the ways is providing the dowry. Meanwhile, women should take care of the household. Unlike in *jahiliyah* era, women's rights were eliminated and wasted so that their guardians could arbitrarily use their wealth. Besides, women in general or wives had no opportunity to take care of their property. The right of dowry has not been implemented; the woman is merely merchandise that is easily purchased to enjoy her body. If the people are bored, the woman will be sold to those who want it, even made them as a gambling activity. To raise the wealth and dignity of women, the giving of dowries when the marriage contract held is an attempt to break down the *Jahiliyah* civilization which is discriminatory and does not recognize gender equality.
Mahar is a gift given by the groom to the bride. Thus, the term ‘dowry’ is a term contained in the Qur’an, but the term better known in society, especially in Indonesia as Mahar. Mahar is a treasure or benefit that must be given by a groom because of marriage or watha’. It mentions that dowry is Sunnat, both regarding quantity and form of goods in a marriage contract. Whatever valuable item is legitimate to be a dowry. Similarly, according to Imam Shafi’I, dowry is something that a man must give to a woman to be able to control her. If the wife has accepted her dowry, she then wants to give it to someone else, it is allowed. However, if she is forced to do it, then it is prohibited in Islam.

About the delayed dowry, some experts in this field have different views on this; some forbid to delay the dowries, while some of them allow it. Imam Malik insists that the man may postpone the payment of the dowry, but if his husband is about to interfere with his wife, he should pay the other half. It should not take a long time if a man wants to delay the payment of the dowry. Therefore, the family should agree on this beforehand. The above statement contradicts to what the researchers discovered in real life in Kolono where most of the husbands have not fulfilled the dowry to the wives until they have children. As a result, their household life does not run as they expect. They often have an argument which leads to divorces and neglect the parents in law.

3.1 Having argument

Although the dowry aims to raise the wealth and dignity of women in general, in Islam, it is not done in a way that incriminates the husband, so the number of dowries is not limited. The amount is measured by the husband's economic ability. It is done because of the difference between rich and poor, wide and narrow of one's sustenance. In addition, every society has its traditions in making the payment of dowry. Most importantly, there is an agreement between the husband and wife. From the findings of the author, the payment of dowry in Kolono has been mixed with a certain amount of money which is often called panae. This amount of money is not adjusted to the men’s financial condition, so when the men could not afford the Mahar, they then delay the fulfilment. As a result, the women parents always insist on having the men fulfilled the dowry which eventually leads to the argument in the house because the men could not afford the dowry. They did not do it on purpose, but the amount of dowry is not based on the men ability.

3.2 Divorce

Arguing with a wife and a husband can lead to a severe case such as divorce. They argue because the wife's family often asks about the delayed dowry. This is based on the interview with some husbands in Kolono. As a result, the spouse starts to blame each other which lead to a divorce.

3.3 Being neglected

When the dowry is being delayed by the men, the male parents tend to neglect or abandon their son's wife. This phenomenon occurs when the woman demands her dowry to the male family. Based on the authors' finding, there is a case that the amount of dowry which is up to ten million rupiahs is demanded by the female, but the male parents could not afford it, so the female took the male's family's house and land. Based on the above findings in connection with the Islamic Law, the dowry is neither a pillar nor a marriage requirement, as explicitly stated in no law. In Article 34, it is stipulated that "the duty to prepare the dowry is not a requirement of marriage." The word "prepare" invites various interpretations, namely the payment of dowries by way of handing it directly to the prospective bride; payment of dowry by symbolically assigning it; paying dowries in a temporary paid manner, or giving up dowries, but only mentioning that he would provide dowry in the form of no cash.

In Article 34 verse 2, it says that "negligence refers to the type and amount of the dowry at the time of the marriage contract which does not lead to marital attitudes", whereas in the reality, the mentioning of the dowry is united in the title of the Kabul, and if in the pronunciation of Kabul is correct, the contract must be repeated. To clarify this, in Article 27 of the Akad Nikah it is said that the
consent and the mercy of the guardian and the groom must be clear and not timeless. Article 32, paragraph 2, and Article 27 are contradictory, namely: (1) Those who neglect to mention the type and amount of the duty of marriage contract does not result in the cancellation of marriage, but the mention of the dowry in the consent and Kabul according to Article 27, the way of pronunciation must be clear and not long (2) Mahar is an obligation to be paid by the prospective groom, and it is the bride rights. However, the transfer of dowry is not a harmonious and not an unlawful term as to the legal requirement of marriage; (3) The understanding of the second point can be interpreted that the payment of the dowry does not need to be incorporated into the reading of the Kabul. If such an understanding exists, the position of the dowry in marriage is reasonable to be declared, and how to position it when the marriage takes place.

The use of wrong words when the consent of Kabul held is related to the marriage contract which is the pillar of marriage. However, the misdemeanour blunders include misdirected dowry, must be repeated. It is as if only related to the sentence in the consent of Kabul, but when it is viewed from the implication of the wrong pronunciation, let alone misleading the type and amount of the dowry, but not repeated because it does not cancel the marriage, it affects the bride's side. The experts argue that the dowry is the pillar of the marriage contract and there are states as a legal requirement of marriage because that dowry position must exist in marriage. However, the Islamic Law does not establish the dowry as a pillar or a marriage requirement, which exists only as a duty to the groom and it is the right of the bride. A prospective groom who wants to marry the prospective bride is required to issue a dowry; it is just how to pay it is not determined; whether it is big or small, even the type and form of goods. It is just because the mandatory of the bride to pay the dowry, even iron ring is allowed.

This study explains that marriage between the two sides continues despite the fact that the dowry given from the men to the woman's side was delayed in Tolaki customary culture in Kolono, South Konawe, Indonesia. What is meant to be delayed here is that men could not pay dowries that women have set at the time of marriage. Although in the future they have had children, the women still have the right for the dowry. This means that the dowry is to be paid by the men and that it is the men's debt to the women. However, the delayed dowry affects their daily life. Among the implications is that arguing within the household often occur, divorce becomes a threat in the family, and the groom's parents' house can be confiscated by the woman when the men cannot afford the dowry at the agreed time. Even when he passed away, the bodies of the men cannot be buried before the dowry is paid off. Such is Tolaki tribe culture about delayed dowry in Kolono.

This is certainly different from the delayed dowry concept by Imam of the school. The scholars of the schools agree that the dowry may be indebted in whole or in part on condition that it must be known in detail and there must be a clear or definite time limit. If the payment time limit is not known, then the delay is not valid. If there is explicit agreement to pay the dowry on credit, then it can be done, because the agreement is a shari'ah thing, while the 'dalalah' is dalalah that is shari'ah is stronger than the dalalah. If there is no agreement to pay the dowry in cash or debt, then it is carried out by the customs prevailing in the country, because the things which are already known as custom are the same position with the things stipulated as a condition. If there is no custom which determines to pay the dowry in cash or debt, the dowry must be paid cash, because of the unpaid pay later (debt), the law is the same as paying cash because basically, the dowry is obligatory to be paid in cash after the entire contract. It is one of the effects of the contract. If it is indebted or by custom, it may be done according to its origin, because the marriage is an exchange agreement, so it is expected to have the agreement of both parties.

Research on dowries is also done in one village in South India which discusses dowries and domestic violence. An equation in the research lies in the function of dowry is to respect the women. The difference in the writing is dowry given to women before marriage and in granting dowries in South India based on the amount of dowry. The higher the dowry is, the less violence occurs in the household because it can improve the household economic condition. Finally this research confirms
that the delayed dowry in the Tolaki and Islamic cultures as well as in South India is different, if Imam of the school asserts the importance of a clear time limit on the payment of dowry, while Tolaki Kolono culture is inconsistent with the opinion of the Islamic Imam also means the delayed dowry in the Tolaki culture is in contrast to the pending dowry dowries that exist in the Islamic concept. This also means that the people in Tolaki culture in Kolono uphold the customary law rather than Islamic law. This is in line with the Tolaki saying that InaeKo Sara Ngoie Pinesara, Mano Inae Lia Sara Ngoie Pinekasara (Anyone who obeys customary law must be protected and defended by law, but whoever does not obey the customary law will subject to sanctions/penalties).

4. Conclusion

Giving dowries from the men to the women is a duty that must be fulfilled. It is just that in the case of Kolono Village, Indonesia granting the dowry can be postponed until the deadline has been determined. This depends on the ability of the men. As a result, it is not uncommon to get the fact that quarrels, divorces, and neglect of the men parents because land, vehicles, and even homes are sold only to redeem the dowry debt to the women. The delayed dowry research in a broader context and ethnicity may be undertaken for refinement of this research. Mahar is delayed in several ethnic cultures in Southeast Sulawesi such as Moronene, Buton, Muna which can be done in subsequent research. Besides, further research can also focus on the issue of society's customary awards to community life.

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