

Discrimination of Mahar Privileges for Women Based on The'Urf Practice in Archipelago's Fiqh

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DISCRIMINATION OF *MAHAR* PRIVILEGES FOR WOMEN BASED ON THE '*URF* REALITY IN ARCHIPELAGO'S FIQH

DISKRIMINASI PEMBAYARAN MAHAR UNTUK PEREMPUAN DALAM REALITAS '*URF* FIQH NUSANTARA

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Abstract: The provisions of *Mahar* in Islam which was practiced by the Prophet Muhammad SAW and his companions were substantially used as the standards of giving *Mahar* in a marriage. *Mahar* provided by the Prophet as well as those by his companions had a high value; unless they were fortuneless. However, what had been lately practiced by many societies did not seem to reflect the way the Prophet Muhammad did. Nowadays, people tend to provide a set of prayer outfits as the *Mahar* which could not financially support the family. Even if some people did provide high-priced *Mahar*, many of them were used before *Akad* (the marriage vow) , as a payment to hold the wedding reception, not given to the wife. This article aimed at evaluating this current tradition since they seemed to discriminate against the privilege of *Mahar* given to a woman. From the findings of the research, it was concluded that traditions; giving a set of prayer outfits to the woman, or using the *Mahar* as a payment to have a wedding reception did discriminate the women's rights since the *Mahar* given should have been able to economically support or help the wife later in the future. Seen from the provisions of *urf*, this tradition did not fit the laws in Islam and could not be legitimated as a part of the Archipelago's fiqh.

Keyword: Discrimination, *Mahar*, '*urf*, Archipelago's fiqh

Introduction

Urf is a tradition practiced in a society, in the form of deeds or words, which then becomes a provision and implemented by Muslims continuously.¹ '*Urf* can be implemented after being verified previously by *Mujtahid* so that they

¹ Fatmah Taufik Hidayat and Mohd Izhar Ariff Bin Mohd Qasim, "Kaedah Adat "Muhakkamah Dalam Pandangan Islam", *Jurnal Sosiologi USK* 9, no. 1 (2016): 70.

will contradict any provisions stated by al-Qur'an and Sunnah.² Then, the traditions will be parts of Islamic law.

One of the traditions practiced by the Muslim in Indonesia is the way *Mahar* is provided in marriage and differs from that given in other Islamic countries. In Indonesia, commonly, the groom provides a set of prayer outfits as a *Mahar*. It is dissimilar from that modeled by the Prophet Muhammad who provided *Mahar* that could be used by his wives to fulfill their needs. The *Mahar* also functions as a living capital if one day the husband cannot support his wife financially. There are histories stated that the Prophet Muhammad let his companions give *Mahar* in form of an iron ring or the reciting of al-Quran, but it was due to a certain reason; fortuneless.³

Giving a set of prayer outfits seems to give the impression that the couple is holding a religious marriage⁴ that the husband wants to make his wife a *ṣaliḥah* woman. The effect of this tradition is that a marriage does not seem to be complete if this kind of *Mahar* is not provided. Generally, Muslims in Indonesia believe that this is the *Shariah* of *Mahar*. According to Aini, 70% of the marriages use the religious symbol (a set of prayer outfits) as a *Mahar* in West Sumatera.⁵ This *Mahar* is not only given by the fortuneless, but also by the wealthy. Although the value of the *Mahar* might be different, yet a set of prayer outfits has been always included as the *Mahar*; the main one or the additional one.

A discussion on using a set of prayer outfits as the main *Mahar* has not yet been confirmed. However, the phenomenon does indicate that there is a different purpose in giving *Mahar* practiced by Muslim Indonesia, especially in West Sumatera. It is now being questioned whether the tradition of providing this kind of *Mahar* discriminate women and whether the tradition can be categorized as an *urf ṣaḥīḥ* that can be included as a part of the Nusantara fiqh. This study uses qualitative-normative research using previous research findings and studies as the references and the source of data. The data were analyzed by comparing each research which then benchmarked to the provisions and regulations stated in al-Qur'an and Sunnah.

Archipelago's Fiqh

Referring to some previous studies, the term Archipelago's Fiqh (*Fiqh Nusantara*) has not yet been confirmed. Yet, it does not mean that this term is outlawed. Fiqh, according to al-Banānī is knowledge about applicable syara' laws

² Syamsul Azizul Marinsah et al., "Pengamb[28]raan 'Urf dan Adat Dalam Fatwa Semasa: Analisis Terhadap Adat Kematian Bajau di Sabah", *Journal of Fatwa Management and Research / Jurnal [3]ngurusan dan Penyelidikan Fatwa* 12, no. 1 (2018), p. 77.

³ Muhammad ibn Ismā'īl Abū 'Abdillāh al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣaḥīḥ al-Mukhtaṣar Min Umūr Rasūlillāh SAW Wa Sunanuh Wa Ayyāmuh* 6, (Damaskus: Dār Ṭūq al-Najāh, 1422), 192.

⁴ Noryamin Aini, "Tradisi Mah[14]i Ranah Lokalitas Umat Islam: Mahar dan Struktur Sosial di Masyarakat Muslim Indonesia", *Ahkam: Jurnal Ilmu Syariah* 17, no. 1 (29 July 2014): 17, doi:10.15408/ajis.v17i1.1239.

⁵ Ibid., 21.

obtained from lucid proposition.⁶ Fiqh can also be defined as an understanding of laws sourced from *Ijtihad* referring to the propositions stated in al-Quran and sunnah. The term *Nusantara*, according to Kroef, is a region covering Indonesia; from Sumatra up to Papua. In the literature, the *Nusantara* covered Malay regions, which Ki Hadjar Dewantara commonly refers to the region of Hindia-Belanda.⁷ The Malay region covers several countries; some parts of Malaysia, Brunei, Singapore, South Thailand, and Philipinnes. However, nowadays, the *Nusantara* is limited to Indonesia only,⁸ Therefore, it is possible to say the term as Indonesia fiqh. Indonesia Fiqh refers to an understanding of Islamic laws regulated based on the condition and situation in Indonesia. It is probably different from other Islamic countries. According to ibn Qayyim al-Jauziyyah, laws should be adjusted based on the era, place, situation, condition, and habits.⁹

According to A. Murfi and M. Noor Harisuddin, the term *Nusantara Fiqh* has been proclaimed recently during the 35th *Muktamar NU* In Jombang, East Java in 2015. The main theme was Islam Nusantara. Fiqh, which is a part of Islamic teachings is practiced accordingly to the condition of Islam in Nusantara.¹⁰ Previously, the used term was fiqh Indonesia, it was popularized by Hasbi Ash-Shiddieqy in the 1960s, allowing the *Urf* to generalize fiqh Indonesia.¹¹

According to Astuti, Islam Nusantara is Islam that combines the values of theology and local cultures in Indonesia. This proves that there are local customs that are accepted and not contrary to Islamic teachings. There is a synergy between Islamic teachings and the local cultures of Indonesia.¹² A similar definition is also proposed by Muhajir and Bizawie.¹³ However, according to M.Ali, the term Islam Nusantara is a paradox term since it may have two definitions; Islam in Indonesia, or Indonesian Islam. The same paradox also occurs in America; American Islam or Islam in America.¹⁴ If the term used in

⁶ Al-'Allāmah al-Bānānī, *Hashiyah Al-Banānī 'Alā Sharh al-Mahallī 'Alā Matan Jam'u al-Jawām* 30, (Beirut: Dār al-Fikr, 1992), 25.

⁷ Khabibi Muhammad Luthfi, "Islam Nusantara: Relasi Islam Dan Budaya Lokal", *Shahih: Journal of Islamicate Multidisciplinary* 1, no. 1 (2016), p. 3.

⁸ Mark Woodward, "Islam Nusantara: A Semantic and Symbolic Analysis", *Heritage of Nusantara: International Journal of Religious Literature and Heritage* 6, no. 2 (27 December 2017): 183-43, doi:10.31291/hn.v6i2.398.

⁹ Ibn Qayyim al-Jauziyyah, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn* 3, (Kairo: Dār al-Hadīth, 2004) 5.

¹⁰ A. Murfi and Fitriyani, "Islam Nusantara: Religion Dialectic and Cultural for Pluralism-Democratic Society", *KnE Social Sciences* 3, no. 5 (2018), pp. 44-5; M. Noor Harisudin, "'Urf Sebagai Sumber Hukum Islam (Fiqh) Nusantara", *Al-Fikr* 20, no. 1, pp. 72-5.

¹¹ Aris Nur Qadar Ar.Razak, "Pelaksanaan Mahar Dalam Perkawinan Adat Masyarakat Muna (Sebuah Tinjauan Akomodasi Hukum)", *Jurnal Al-'Adl* 11, no. 1 (2018): 126.

¹² Hanum Jazimah Puji Astuti, "Islam Nusantara: Sebuah Argumentasi Beragama Dalam Bingkai Kultural", *INJECT: Interdisciplinary Journal of Communication* 2, no. 1 (2017): 38.

¹³ Donald Qomaidiansyah Tungkagi, "Varian Islam Nusantara: Jawa, Minangkabau dan Gorontalo", *Jurnal Lektur Keagamaan* 15, no. 2 (30 December 2017): 276, doi:10.1791/jlk.v15i2.524.

¹⁴ Saiful Mustofā, "Meneguhkan Islam Nusantara Untuk Islam Berkemajuan: Melacak Akar Epistemologis dan Historis Islam (di) Nusantara", *Epistémé: Jurnal Pengembangan Ilmu Keislaman* 10, no. 2 (6 December 2015): 407-8, doi:10.21274/epis.2015.10.2.405-434.

Islam in Indonesia, it implies how Indonesian people practice their religious belief, yet if the term used is Indonesian Islam, it indicates that there are Islamic teachings practiced in Indonesia and they are dissimilar from the practices done by any other Islamic countries. Both definitions have been disallowed by Oman Fathurrahman. According to him, Islam Nusantara is not a normative Islam, it is closer to the first definition.¹⁵ The arguments continue if the term Islam Nusantara contains a certain motif that is different from other Islamic groups, as how Agus Sunyoto assumes that the Islam Nusantara concept is an effort done by the Nahdatul Ulama to Muslims in Indonesia.¹⁶

There have been some debates on Islamic teachings practiced in Indonesia, especially those which are influenced by the local cultures, particularly, on the aspect of fiqh. How fiqh is developed in Indonesia, as how it happens in other countries, occurs according to the development of the culture. Many activities are done by the Muslims in Indonesia seen as a visualization of integrity between Islam and culture,¹⁷ which of course, different from any other activities practiced by other Islamic countries. For instance, how prayer outfits are worn by male and female Muslims in Indonesia, how *Halal bi halaal* is held, how an Islamic scholar leads the prayer, the palimony, sulking spouse in Minangkabau and many other things. These examples indicate that Muslims in Indonesia are engaged in certain traditions that are different from those practiced by other Muslims in other regions. It is probably difficult to find Islamic postulates which are explicitly related to the traditions, yet the traditions have been the living laws and practiced by the Muslims in Indonesia. Thus, it is possible to say that Islamic teachings and cultural traditions are integrated and reflected in Indonesian Muslims activities.

'Urf as The Theory of Islamic Laws

'Urf is one of the Islamic law theories originated from the traditions in a society which have been practiced within a long period.¹⁸ 'Urf as one of the Islamic postulates is legitimated by Allah and the Prophet as how it was done to the traditions of the Qureys stated in the al-Quran and Sunnah. Many Islamic postulates are originated from the 'Urf, such as the responsibilities of wali and guardians in a marriage, that a husband should give *Mahar* to his wife, *kafā'ah*, *haḍānah*, those who are forbidden to be married, and *ḥalaq*,¹⁹ Though the practices were originated from the Qureys, Islam did make some adjustments so that the traditions are not contrary to Islamic teachings. For instance, during the era of *Jahiliyah*, *Mahar* was the right of the guardians, but then, according to the

¹⁵ Murfi and Fitriyani, "Islam Nusantara", 45–46.

38 ¹⁶ Taufik Bilfagih, "Islam Nusantara; Strategi Kebudayaan NU di Tengah Tantangan Global", *Jurnal Aqlam - Journal of Islam and Plurality* 2, no. 1 (2016), p. 59.

¹⁷ Moh Mukri, Imam Mustofa, and Fauzan, "Constructing The Epistemological Aspect Fiqh Nusantara", *Akademika: Jurnal Pemikiran Islam* 24, no. 01 (2019), pp. 142–3.

¹⁸ Hafiz Abdul Ghani, "Conditions of a Valid Custom in Islamic and Common Laws", *International Journal of Business and Social Science* 3, no. 4 (2012): 306.

¹⁹ Aishatu Abubakar Kumo, Sayed Sikandar Shah, and Luqman Zakariyah, "Consideration of Custom ('Urf) by the Izalah Organization in Gombe, Nigeria: A Critical Examination", *International Journal of Fiqh and Usul Al-Fiqh Studies* 2, no. 1 (2018): 109.

Islamic teachings, the right belongs to the bride.²⁰ Another example is the practice of polygamy, which previously could be done unlimitedly, while Islam perfects it by limiting the tradition; *urf* can marry not more than four women.

Referring to the al-Qur'an and Sunnah, the Islamic scholars specialized in *uṣul fiqh* decide to set *urf* as a way to designate laws. Even Imām Mālik sets *urf* fixed by the Madinah as a prominent law if there are other contrary laws,²¹ and Imām al-Shāfi'ī changed his perceptions based on the differences of *urf* when he was in Iraq and Egypt. He then constituted two opinions in a case ' *qawl al-qadīm* dan *qawl al-jadīd* .²² The postulates used by the *Uṣulīyyin* is a Hadith narrated by ibn Mas'ūd saying that if Muslims believed that a matter was a good thing, then Allah considered it as a good deed.²³ But this hadith is not to be implemented at once, often, Muslims initiated traditions which are good according to their knowledge, in which Allah disagrees. Therefore, in many books of *uṣul fiqh*, requirements, and conditions that allow traditions to become *urf* is explained.

Among the requirements to let traditions admitted as parts of Islamic laws, the most important consideration is that the traditions should not contradict *Nash* agreed by the Islamic scholars. Often, both traditions and requirements become the problem in designating the *urf*, that a legal advisor is needed to study whether or not a tradition meets the *naṣ*. Thus, the Islamic scholars divide the *urf* into two; *urf ṣahīh* and *urf fāsid*. *Urf ṣahīh* is a tradition which is according to the provisions of *Nash*; not justifying what is not legal, and vice versa. Meanwhile, *urf fāsid* is a tradition which contradicts *naṣ*; justifying what is illegal and vice versa.²⁴ The power of *urf* as a part of Islamic law is included as *al-ādah muḥakkamah* (a tradition that can be a law or a consideration). Furthermore, the existence of *urf* is strengthened by the law of *mā thubita bi al-urf ka al-thābit bi al-naṣ* (a law which is set based on *urf*, the quality is equal to that of *naṣ*).²⁵ Therefore, it can be seen that the position of *urf* in Islam is prominent.

²⁰ Muhamad Harun, "Konsep 'Urf Dalam Pandangan Ulama Ushul Fiqh (Telaah Historis)", *Nurani* 34, no. 2 (2014), p. 18.

²¹ Sirajuddin M, "Eksistensi 'Urf Sebagai Sumber Pelembagaan Hukum Nasional", *Madania Jurnal Ilmu-ilmu Keislaman* 19, no. 1 (2015), 33-18; Ansari Yamamah, "The Existence of Al-Urf (Social Tradition) in Islamic Law Theory", *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 21, no. 12 (2016), p. 45.

²² Shihji Abdul Azeez Bello et al., "Al-'urf and Its Applicability in Islamic Deposit Product", *American Journal of Economics, Finance and Management* 1, no. 2 (2015), p. 36.

²³ Hafiz Abdul Ghani, "'Urf -or-Ādah (Custom and Usage) as a Source of Islamic Law", *American International Journal of Contemporary Research* 1, no. 2 (2011): 180.

²⁴ Sunan Autad Sarjana and Imam Kamaluddin Suratman, "Pengaruh Realitas Sosial terhadap Perubahan Hukum Islam: Telaah atas Konsep 'urf", *Tsaqafah* 13, no. 2 (2018), pp. 287-316; Jim Fahimah, "Akomodasi Budaya Lokal ('urf) Dalam Pemahaman Fikih Ulama Mujtahidin", *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 15, no. 1 (2018), p. 13-27; 'afi' Mubarak, "Living Law dan 'urf Sebagai Sumber Hukum Positif di Indonesia", *Islamica: Jurnal Studi Keislaman* 11, no. 1 (2016), p. 141.

²⁵ Ach Maimun, "Memperkuat 'Urf dalam Pengembangan Hukum Islam", *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 1 (2017), p. 28.

Mahar in a Marriage

Mahar is the responsibility of a man toward a woman that he means to marry. If the *Mahar* is announced in the marriage contract, it is called *Mahar Musammā*, if it is not mentioned, it is called *Mahar Mithil* and the value of *Mahar* is usually adjusted based on local habits.²⁶ *Mahar* can be given during the procession of the marriage or after.

Some Islamic scholars have different perceptions about when *Mahar* should be given. It refers to the meaning brought by the word *al-nikāḥ* (marriage). According to the Shāfi'iyah and most Islamic scholars, *al-nikāḥ* is defined as an act that allows a man and a woman to have *waṭa`* (intercourse), meanwhile, according to Hanafiyah scholars, the word is directly defined as *waṭa`*.²⁷ According to most Islamic scholars, *al-nikāḥ* is defined as the marriage contract; thus, once the contract is legalized, the man should give the *Mahar* although the intercourse has not been done yet. Hanafiyah scholars believe that *Mahar* can only be given if there is intercourse; therefore, a marriage contract does not indicate that a groom should directly give his *Mahar* to the bride.

The two different perceptions in interpreting the word *al-nikāḥ* do not only prevail the issue about *Mahar*, but also the issue about the position of illegitimate children in the family, and whether or not a man has responsibilities toward them. According to most Islamic scholars (*Jumhur Ulama*), illegitimate children do not have civil relations to their illegitimate fathers, yet they have civil relations with their mother. Therefore, the responsibilities are not given to their father. Meanwhile, according to Hanafiyah, the illegitimate children may have civil relations with their illegitimate father, but their father cannot be their marriage guardian when they are getting married (female child), they cannot be close, they cannot mutual inherit,²⁸ but he still has responsibilities to support their lives.

Giving *Mahar* in a marriage has been done by the Arabians before Prophet Muhammad was sent, and he confirmed the practice as Islamic teaching, with minor changes. Before, *Mahar* was the right of the marriage guardians and impressing that the marriage guardians might seem to 'sell' his daughter to a man who wants to marry her. When Islam came, the regulation about *Mahar* was changed, and the Prophet said that *Mahar* is the right of the woman who is about to be married.²⁹ Because *Mahar* is the right of the woman, thus the woman may determine the value of the *Mahar*; she may somehow free the man from the

²⁶ Sami Faidhullah, "Konsep Mahar Perkawinan Berupa Hafalan Surah Al-Qur'an (Perspektif Keadilan Gender)", *Jurnal Al-Risalah* 14, no. 2 (2018): 252.

²⁷ Dahlia Haliah Ma'ui, "Nikah Sirri Dan Perlindungan Hak-Hak Wanita Dan Anak (Analisis Dan Solusi Dalam Bingkai Syari'ah)", *Al-Ahkām Jurnal Ilmu Syari'ah Dan Hukum* 1, no. 1 (2016): 37.

²⁸ Micky Ivanni Montol, "Tinjauan Yuridis Anak Hasil Zina Dilihat Dari Ketentuan Hukum Islam", *Lex Crimen* 6, no. 5 (2017): 148.

²⁹ Halimah B., "Konsep Mahar (Mas Kawin) Dalam Tafsir Kontemporer", *Al-Daulah* 6, no. 2 (2017): 311; Mukhammad Nur Adi, "Mahar Produktif Dalam Penalaran Ta'lili", *Jurnal Qolamuna* 4, no. 2 (2019): 178; Putra Halomoan, "Penetapan Mahar Terhadap Kelangsungan Pernikahan Ditinjau Menurut Hukum Islam", *JURIS (Jurnal Ilmiah Syariah)* 14, no. 2 (18 October 2016): 111, doi:10.31958/juris.v14i2.301.

responsibilities to give *Mahar* after the marriage (QS. al-Nisâ` [4]: 4).⁴²

The main references used as the guidelines to give *Mahar* are the al-Qur'an and Sunnah. The verses in al-Qur'an are QS al-Nisâ` [4]: 4, 20, dan 25, and QS al-Qashas [28]: 26 (Moses's *Mahar* was herding the goats for 10 years). Among those verses, none mentioned the amount of given *Mahar*. It is clear that al-Qur'an states and informs the responsibility of giving *Mahar*. The references related to the amount of given *Mahar* is found in *bi al-ma'rûf* stated in QS al-Nisâ` [4]: 25 and *qinṭār* in QS al-Nisâ` [4]: 20. According to al-Qurṭubî, the *bi al-ma'rûf* means according to the provisions of sunnah,³⁰ while al-Marāghî said the term means according to the current condition of the social economics.³¹ Therefore, there is no exact amount stated in al-Qur'an. Moreover, the word *qinṭār* according to al-Rāzā is properties in the form of gold and silver, he interpreted the word by referring to QS Ali Imran [3]:14.³²

More information about the amount of *Mahar* is found in hadiths by the prophet Muhammad. The information was based on the marriage practices done by the Prophet Muhammad and also by his companions. In hadith narrated by 'Aishah from Abī Salamah, 'Aishah said that the Prophet's *Mahar* when he married his wives were 12 *uqiyah* of gold and 1 *nassh* (1/2 *uqiyah*) where 1 *nassh* equals to 500 dirhams.³³ If it is converted to Indonesian currency, (1 dirham = Rp 5.000 X 6250 dirham), therefore, the *Mahar* given by the Prophet Muhammad to his wives was about Rp. 31.250.000 (thirty-one million, two hundred and fifty thousand). In addition to that, when the Prophet married Ṣafiyyah, the prophet Muhammad gave freedom to Ṣafiyyah as her *Mahar*.³⁴ Furthermore, the Prophet gives the same *Mahar* when he married Juwairiyah bint Khubaib, the leader of Bani Qurayzah in Madinah. It is concluded that the Prophet Muhammad always gave high-priced *Mahar* to her wives.

How the Prophet provided *Mahar* for his wives was then followed by his companions, for example, *Mahar* is given by Tsābit ibn Qais which was a plot of the garden,³⁵ and *Mahar* given by Abdurrahmān ibn 'Awf which was a bar of gold as big as a date plum.³⁶ Moreover, as narrated by 'Uqbah ibn Amīr, one of the Prophet companions gave properties of Khaibar war which equaled to 100.000

³⁰ Shams al-Dīn al-Qurṭubī, *Al-Jāmi' Li Ahkām al-Qur'ān* 5, (Kairo: Dār al-Kutub al-Miṣriyyah, 1964) 9: 42.

³¹ Ahmad Mustafā al-Marāghī, *Tafsīr Al-Marāghī* 5, (Mesir: Mustafā al-Bābī al-Ḥalabī, 1946), 23

³² Fakhr al-Dīn al-Rāzī, *Mafātiḥ Al-Ghaib al-Tafsīr al-Kabīr* 10, (Beirut: Dār Ihyā' al-Turāth al-'Arabi, 1420), 13.

³³ Muslim ibn Hajjāj Abū Yūsuf al-Qushairi al-Naysabūri, *Al-Musnad al-Ṣahīh al-Mukhtaṣar Bi Naql al-'Adl Ilā Rasūlillāh SAW* 2, (Beirut: Dār al-Ihyā' al-Turāth al-'Arabi, n.d), 1042; Abū Dāwūd 3 Iaimān, *Sunan Abī Dāwūd* 2, (Beirut: Maktabah al-'Aṣriyah, n.d), 234.

³⁴ Muhammad ibn Ismā'īl Abū 'Abdillāh al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣahīh al-Mukhtaṣar Min Umūr Rasūlillāh SAW Wa Sunanuh Wa Ayyāmuh* 1, (Damaskus: Dār Ṭūq al-Najāh, 1422), 83; al-Naysabūri, *Al-Musnad al-Ṣahīh al-Mukhtaṣar Bi Naql al-'Adl Ilā Rasūlillāh SAW*, 2:1043–45.

³⁵ al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣahīh al-Mukhtaṣar Min Umūr Rasūlillāh SAW Wa Sunanuh Wa Ayyāmuh*, 1: 47.

³⁶ al-Naysabūri, *Al-Musnad al-Ṣahīh al-Mukhtaṣar Bi Naql al-'Adl Ilā Rasūlillāh SAW*, 2:1042; Sulaimān, *Sunan Abī Dāwūd*, 3: 479.

dirhams, if it was converted to Indonesian currency that was about Rp. 500.000.000 (five hundred million)³⁷ Thus, it can be said that *the Mahar* given should be high-priced.

However, there were *Mahar* given by the companions which were not high-priced. *Mahar* which was given by Ali ibn Abi Ṭalib when he married Fatimah was his harness, because the harness was the only property that Ali had, and he did that based on the instruction given by the Prophet Muhammad.³⁸ The Prophet also let his companion marry a woman and gave an iron ring as her *Mahar*, yet, he did not even have the ring, that the Prophet asked him to recite verses from the al-Qur'an which he memorized as his *Mahar*.³⁹

Referring to these hadiths, it can be understood that *Mahar* must be given even if the man does not possess any properties. Although the companions were allowed to give very simple *Mahar*, the acts were instructed by the Prophet himself, where it was an exception for unfortunate men, not generally applicable for any men.

'Urf Mahar in the Reality Perspective of Archipelago's Fiqh (Fiqh Nusantara)

As how it is explained previously, tradition²² can be claimed as Islamic laws (fiqh) as long as they are not contradicting to the provisions stated in al-Qur'an and Sunnah. Islamic scholars agree to reject a tradition if it is contradicting, since the process of administrating the laws should refer to the decision-maker *al-Shāri'*, not adjusting to what people intend to. Although some of the Islamic jurist (mujtahid) see problems in their *ijtihad*, they often more prioritize society's interest than the interest of the decision-maker. This is pointed out by al-Shāṭibī when developing the theory of maqāṣid al-sharī'ah, where an Islamic jurist should prioritize the interest of *al-Shāri'*, not the society's.⁴⁰

Issues about *Mahar* have been discussed in many fiqh *mazhab* books, and mostly the differences lie on how much *Mahar* should be given. Imām Abū Hanīfah and Imām Mālik require the amount of *Mahar* should be economically valuable, the minimum amount is 10 dirham. Imām Abū Hanīfah bases his ideas on the similarity between sale and purchase agreement and the marriage contract; as a replacement of certain things, or in the marriage contract is to substitute *waṭa'*, or a hand being cut off as a punishment for thieves.⁴¹ The arrangement of minimum amount of *Mahar* refers to a hadith narrated by Ali that

³⁷ Sulaimān, *Sunan Abī Dāwūd* 2, n.d, 238.

³⁸ Ibid., 240. ²

³⁹ al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣahīh al-Mukhtaṣar Min Umūr Rasūlillāh SAW Wa Sunanuh Wa Ayyāmuh* 7, 1422, 20.

⁴⁰ Eko Saputra and Busyro, "Kawin Maupah: An Obligation To Get Married After Talak Tiga in The Tradition of Binjai Village in Pasaman District A Maqashid al-Syari'ah Review", *Qudus International Journal of Islamic Studies* 6, no. 2 (2018): 189–90.

⁴¹ Winarno, "Eksistensi Mahar Dalam Perkawinan Menurut Abu Hanifah: Sebuah Pendekatan Hukum Melalui Kerangka Metodologi Ushul Fiqh", *Asy Syar'iyah: Jurnal Ilmu Syari'ah dan Perbankan Islam* 3, no. 2 (2018): 20.

the Prophet said *Mahar* should not be less than 10 dirhams,⁴² According to Wahbah al-Zuhaylī, the standard made is meant to honor women.⁴³ Besides, Imām Abū Hanīfah is influenced by his attention toward women's rights; that a woman can be a judge, a woman can marry, a woman can be a witness, even a woman may have responsibilities to support the family financially if her husband is less fortunate.⁴⁴

Imām Mālik defines the minimum value of *Mahar* is one-quarter dinar or three dirhams or comparable with that.⁴⁵ Imām Mālik says that *Mahar* value is analogous (*Qiyas*) to the value (*Nishab*) of punishment for thieves. They will be punished by cutting off their hands only if three dirhams or more are stolen. It indicates that the amount is considered valuable when somebody steals it, that person receives its *ḥadd*. However, the opinion was given by Imām Mālik disputed by the followers of *Maliki* mazhab, al-Qurṭubī He states, using a person's hand as an analogy of parts of the body to *faraj* is not suitable because the parts are different things.⁴⁶ However, Imām Mālik has set the minimum standard of *Mahar*, the amount is reasonable and simple as how Prophet Muhammad instructs that a good *Mahar* is *Mahar* that provides simplicity.⁴⁷

According to *mazhab* by al-Shāfi'ī dan Hanbali, how much *Mahar* should be given is not standardized. *Mahar*, according to them, should be valuable, it can be things or benefits that can be substituted and sold and others. The amount given is based on the propriety, it is not forbidden to give high-priced *Mahar*, as long as the man can afford it. Based on previous explanations, it is pointed out that *Mahar* should be valuable and beneficial.⁴⁸ Mazhab al-Shāfi'ī is used as a primary law to give *Mahar*, thus in the constitution UU no.1 year 1974, and the compilation of Islamic laws, the amount of *Mahar* is not mentioned. In Malaysia, using the same mazhab, the amount of *Mahar* refers to local traditions, which equals to 2.250 and 2.500 ringgit, accordingly to the bride status.⁴⁹

Indonesia, in general, does not administer the standard amount of

⁴² Abū Bakr 'Abd al-Razzāq al-Yamanī al-Ṣan'ānī, *Al-Muṣannif* 6, (Beirut: al-Maktab al-Islāmī, 1403), 179; Muhammad ibn 'Isā ibn Sawrah ibn Mūsā ibn al-Ḍahāk al-Tirmidhī, *Sunan Al-Tirmidhī* 2, (Beirut: Dār al-Gharb al-Islāmī, 1998), 412; Subhan, "Nalar Kesetaraan Mahar Dalam Perspektif Syariah Islam", *At-Turās* 4, no. 1 (2017): 11.

⁴³ Sa'diyah Binti Hawwa, "Pemberian Mahar Kepada Perempuan Dalam Pandangan Wahbah Zuhailly dan As Sya'rawi" (Skripsi, UIN Sunan Ampel, 2019), 44.

⁴⁴ Busyro Busyro, "Pengaruhutanamaan Gender Dalam Pemikiran Hukum Imam Abū Hanīfah Dan Relevansinya Dengan Pembaharuan Hukum Islam", *Al-Hurriyah Jurnal Hukum Islam* 1, no. 1 (2016): 15–26.

⁴⁵ Syaiful Muda'i, "Kontroversi Mahar Hafalan Al-Qur'an Dalam Literatur Fikih Klasik", *Ustratunā* 1, no. 2 (2018): 55; Subhan, "Nalar Kesetaraan Mahar Dalam Perspektif Syariah Islam", 11.

⁴⁶ Bambang Sugianto, "Kualitas dan Kuantitas Mahar dalam Perkawinan (Kasus Wanita yang Menyerahkan Diri kepada Nabi Saw)", *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum* 45, no. 2 (2011): 2472–73.

⁴⁷ Abū 'Abdillāh Ahmad ibn Muhammad ibn Hanbal, *Musnad Imām Ahmad Ibn Hanbal* 41, (Kairo: Muassasah al-Risālah, 2001), 75.

⁴⁸ Muḥammad Iqbal, "Konsep Mahar Dalam Pesrpektif Mazhab Mazhab Imam Syafi'i", *Al-Mursalāh* 1, no. 2 (6) 15): 18–19.

⁴⁹ Muhamad Shobirin, "Studi Komparasi Penerapan Mahar Di Indonesia Dan Malaysia" (Thesis, UIN Maulana Malik Ibrahim, 2013), 20.

given *Mahar*, many differences are found in many different regions; Aceh, Sulawesi, and others. In each region, the amount of *Mahar* refers to the local traditions. According to Roswita Sitompul, the amount of *Mahar* in Aceh Pidie is highly expensive, it is around 50-70 *mayam* of gold, and the tradition lasts for years.⁵⁰ This is influenced by the *Mahar* of Muslims in Saudi Arabia because Aceh is known as the *Serambi Makkah*. In *Bugis* culture, *Mahar* is named as *Sompa* or *real*, the amount is around 6 grams of gold or a hectare of garden or field, a house, depending on the agreement between the two families.⁵¹ It is understood that the amount of *Mahar* in these two regions is highly expensive, and it seems they apply what Prophet Muhammad did. How *Mahar* is given in other parts of Indonesia are different, depending on the agreement and the status of the woman.

However, in some cases, where a groom family gives money to the bride family as support to hold the reception, such as one done by people in Jambi, the money given during the proposal, or the tradition done by people in Aceh, that M. Jafar states the money given does not fully belong to the woman, because the family uses it for other wedding purposes, therefore, he categorizes this tradition into *'urf fāsid*.⁵² It means, though a great amount of money is given earlier, it cannot be included as *Mahar*.

Different from people in West Sumatera, in general, the *Mahar* given is in form of a set of prayer outfits (70%), referring to the research findings confirmed by Noryamin Aini.⁵³ The same thing occurs in some other parts of Nusantara. A set of prayer outfit is symbolized as a religious act. Thus, a marriage without a set of prayer outfits as the *Mahar* is considered less religious.

Referring to *Mahar* given by the Prophet Muhammad to his wives, as narrated by 'Aishah, it can be said that the *Mahar* are economically valuable properties that can be used to support his wives' lives. If his companions cannot do the same thing, it is because they are being unfortunate. In that condition, the Prophet Muhammad gives an exception. Thus, an exception cannot be taken as a ground law to give *Mahar* which is not expensive or less valuable, because it contradicts the acts done by the Prophet.

In his dissertation, Hasbi Haji Muh. Ali writes that philosophically, there are several purposes of giving *Mahar*; to give the rights of property ownership, to protect the woman socially and economically, as a warranty in the marriage, as a support if they are faced with financial problems due to divorced or death.⁵⁴ It is in line with a statement given by Muhammad Nur Hadi that *Mahar* is not only a symbol that marriage is held, it is also a proof that the husband can support the

⁵⁰ Roswita Sitompul, Alesyanti, and Nurul Hakim, "Marriage Mahar to Minimize the Low Rate of Marriage in Aceh Pidie, Indonesia", *Italian Sociological Review* 8, no. 1 (2018): 6, doi:10.13136/isr.

⁵¹ Muh Tang, "Mahar in Bugis Traditional Marriage Review from the Islamic Law Perspective", *Jurnal Bimas Islam* 10, no. 3 (2017): 557–58.

⁵² M. Jafar, "Kepemilikan Mahar Dalam Adat Masyarakat Aceh", *Al-Manahij: Jurnal Kajian Hukum Islam* 9, no. 1 (2015): 74–76.

⁵³ 6 ii, "Tradisi Mahar Di Ranah Lokalitas Umat Islam", pp. 13–30.

⁵⁴ Hasbi Haji Muh. Ali, "Mahar Sebagai Satu Bentuk Jaminan Sosio-Ekonomi Wanita: Kajian Di Tawau, Sabah" (Disertasi, Jabatan Fiqh dan Ushul University Malaya, 2013), 44–55.

family.⁵⁵ Although it is not meant that *Mahar* is high-priced, it is economically valuable that it can warrant her future life.

Therefore, a set of prayer outfit is not categorized into a valuable *Mahar*. It is allowed if the man has a financial problem, not applicable in general. Although the prayer outfit is brand new and is possible to be sold again, however, once it is worn, it becomes economically invaluable. Thus, the purpose of *Mahar* as an economic guarantee is never achieved.

Associating *Mahar* and the woman's right in a marriage, then giving a set of prayer outfits as the *Mahar* cannot be categorized as honoring the woman, it is possible to say that the woman is being discriminated because she does not get her rights as how the Prophet Muhammad instructed. There is no economic guarantee given to the woman that she later can use if she faces financial problems in the future. Thus, a woman needs to pay attention to her husband-to-be economic ability, asking for appropriate *Mahar*.

Referring to the perspective of *'urf*, that tradition does not suit the appropriateness (*ma'rūf*) and the value (*qinṭār*) of *Mahar* as how it has been managed in al-Qur'an. Comparing to those given by the Prophet Muhammad to his wives, a set of prayer outfits does not meet the purposes of giving *Mahar* in Islam. In short, this tradition is seen as *'urf fāsīd* and does not fit the parts of Archipelagos's Fiqh.

Conclusion

Mahar should economically guarantee the life of a married woman; it is her right and can be used to support her matrimonial life. If the *Mahar* given is in the form of a set of prayer outfits, this *Mahar* cannot be categorized as an act of honoring the woman since it cannot be used to support her financially. This type of *Mahar* discriminates the woman's rights. There is no economic guarantee that the woman cannot use it beneficially. As how the Prophet Muhammad instructs, *Mahar* should be given based on the economic ability of the man.

Referring to the perspective of *'urf*, that tradition does not meet the instructions mentioned in al-Qur'an, managing how *Mahar* should be appropriate (*ma'rūf*) and valuable (*qinṭār*). The incompatibility is seen from the practice of giving *Mahar* done by the Prophet Muhammad, where he always gives economically valuable *Mahar*. In conclusion, a set of prayer outfits cannot help the woman to get the purposes of being given *Mahar* as how Allah and the Prophet want. It is included as *'urf fāsīd* and does not belong to parts of Archipelagos's Fiqh.

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