

A SET OF PRAYER OUTFITS AS A MAHAR? Discrimination against Women in the 'Urf Reality of the Archipelago's Fiqh

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DOI: 10.30631/al-risalah.v20i1.567

Submitted: April 18, 2020; Revised: April 29, 2020; Accepted: May 02, 2020

Abstract: Provisions of *mahar* (dowry) in Islam practiced by the Prophet Muhammad and his companions are substantially used as a standard of giving dowry in a marriage. *Mahar* provided by the Prophet as well as those by his companions had a high economic value; unless they were fortuneless. However, what has been practiced by many recently does not reflect the deed of the Prophet Muhammad. Nowadays, people tend to provide a set of prayer outfit as a *mahar*, an item which could not support a family financially. Even if some people do provide high-priced *mahar*, yet much of it is used before *akad* (the marriage vow) to finance a wedding reception, rather than handing out the money directly to the wife. This article aims at evaluating this tradition, since it discriminates against women's privilege of *mahar*. From the findings of the research, it is concluded that traditions; giving a set of prayer outfit to women, or using *mahar* as a payment for a wedding reception discriminate against women's rights because the essence of *mahar* is to economically support or help the wife in the future. According to the provisions of 'urf, this tradition does not fit in the Islamic law and is not legitimate to be incorporated into the Archipelago's fiqh.

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

Abstrak: Ketentuan Islam tentang mahar telah dipraktikkan oleh Nabi Muhammad dan para sahabatnya, dan hal itulah yang secara prinsip menjadi pedoman dalam pembayaran mahar perkawinan. Apabila dilihat yang dibayarkan oleh Nabi sebagai mahar semuanya mempunyai nilai yang tinggi, begitu juga nilai yang dibayarkan oleh para sahabat. Kalau ada kasus pembayaran mahar sahabat yang ringan dan terkesan tak bernilai, itu disebabkan mereka miskin. Adapun di nusantara, tradisi yang berlaku sepertinya tidak mencerminkan petunjuk Nabi Muhammad, karena mahar pernikahan pada umumnya hanya berupa seperangkat alat shalat yang tidak dapat membantu secara ekonomi dalam menjalani rumah tangga. Kalaupun ada mahar dengan jumlah tinggi, hal itu

dibayarkan sebelum akad nikah dilangsungkan dan digunakan untuk biaya pesta, bukan untuk istri. Artikel ini bertujuan untuk mengkritisi tradisi dimaksud karena terkesan telah mendiskriminasi hak mahar yang harus diterima perempuan ketika menikah. Hasil pembahasan menyimpulkan bahwa pemberian mahar berupa seperangkat alat shalat dan mahar yang digunakan untuk biaya pesta yang sudah menjadi tradisi di nusantara telah mendiskreditkan hak perempuan yang seharusnya dapat membantu seorang perempuan dalam mengatasi problem ekonominya dalam pernikahan. Dilihat dari ketentuan *'urf*, maka tradisi tersebut kurang sesuai dengan ketentuan *'urf* dalam hukum Islam dan tidak dapat dilegitimasi sebagai bagian khazanah fiqh nusantara.

Kata Kunci: Diskriminasi, Mahar, *'Urf*, Fikih Nusantara

Introduction

'Urf is a tradition practiced in a society in the forms of deeds or words that become a provision and is continuously implemented by Muslims.¹ *'Urf* is ready for implementation after verification by *mujtahid* so that it will not contradict any provisions in the Qur'an and Sunna.² Only after going through the process will a tradition be a part of Islamic law.

One tradition practiced by Muslims in Indonesia is the way *mahar* (dowry) is featured in marriages, which is different from that in other Islamic countries. In Indonesia, the groom generally provides a set of prayer outfit as a *mahar*. It differs from the custom demonstrated by the Prophet Muhammad who provided *mahars* that were useful for his wives to fulfill their needs. In fact, *mahar* also functions as financial capital should one day the husband cannot support his wife economically. While the Prophet Muhammad once let his companions give *mahar* in the forms of an iron ring or the Qur'an recitation, yet it was due to a certain reason; for-

tuneless.³

Giving a set of prayer outfit conveys a false impression of a religious marriage⁴ that the husband desires to turn his wife into a *ṣālihah* woman. The effect of this tradition is that a marriage is incomplete if this kind of *mahar* is not provided. Generally, Muslims in Indonesia believe that this is the *sharī'a* of *mahar*. According to Aini, 70% of marriages in West Sumatera used a religious symbol (a set of prayer outfit) for *mahar*.⁵ This *mahar* was not only given by the poor, but also the rich. Although the value of the *mahar* was diverse, yet a set of prayer outfit has always been featured; be it as the main item or an addition.

Scholarly discussions on featuring a set of prayer outfit for the main *mahar* has not yet been conclusive. However, the phenomenon does indicate that there is a different purpose in giving *mahar* practiced by Indonesian Muslims, especially in West Sumatra. It is now being questioned whether such a tradition discriminates against women and whether or not it can be categorized as

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.

² Syamsul Azizul Marinsah et al., "Pengambilkiraan 'Urf dan Adat Dalam Fatwa Semasa: Analisis Terhadap Adat Kematian Bajau di Sabah", *Journal of Fatwa Management and Research Jurnal Pengurusan dan Penyelidikan Fatwa* 12, no. 1 (2018): 77.

³ Muhammad ibn Ismā'il Abū 'Abdillāh al-Bukhārī, *Al-Jāmi' al-Musnad al-Ṣāhīh al-Mukhtasar Min Umūr Rasūlillah SAW Wa Sunanuh Wa Ayyāmuh* 6, (Damaskus: Dār Ṭūq al-Najāh, 1422), p. 192.

⁴ Noryamin Aini, "Tradisi Mahar di Ranah Lokalitas Umat Islam: Mahar dan Struktur Sosial di Masyarakat Muslim Indonesia", *Ahkam: Jurnal Ilmu Syariah* 17, no. 1 (29 July 2014): 17.

⁵ *Ibid.*, p. 21.

an *'urf ṣahīh* that can be incorporated into the Nusantara fiqh. This study uses qualitative-normative research using previous research findings and studies as references and the sources of data. The data were analyzed by comparing each research which was then benchmarked to the provisions and regulations stated in the Qur'ān and Sunna.

The Archipelago's Fiqh

Referring to the 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 sharia laws that is obtained from lucid proposition.⁶ Fiqh can also be defined as an understanding of laws that results from *ijtihad* by referring to propositions stated in the Qur'ān and Sunna. The term *Nusantara*, according to Kroef, is a region covering Indonesia; from Sumatra up to Papua. In literature, *Nusantara* covers the Malay Archipelago, which Ki Hadjar Dewantara commonly referred to the regions of the Dutch East Indies.⁷ The Malay Archipelago covers several countries; some parts of Malaysia, Brunei, Singapore, South Thailand, and The Philippines. However, nowadays, *Nusantara* is limited to Indonesia only,⁸ which therefore, it is possible to use the term as the Indonesia fiqh. The Indonesia Fiqh refers to an understanding of Islamic laws regulated based on conditions and circumstances in Indonesia that are generally different from those in other Islamic countries. Ac-

ording to ibn Qayyim al-Jauziyyah, laws should be adjusted based on an era, place, situation, condition, and custom.⁹

According to A. Murfi and M. Noor Harisuddin, the term *Nusantara Fiqh* was proclaimed 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 in line with the conditions of Islam in Nusantara.¹⁰ Previously, the term coined was fiqh Indonesia, which was popularized by Hasbi Ash-Shiddieqy in the 1960s, allowing the *'urf* to be generalized as fiqh Indonesia.¹¹

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

⁶ Al-'Allāmah al-Bānānī, *Hashiyah Al-Banānī 'Alā Sharh al-Mahallī 'Alā Matan Jam'u al-Jawāmi'* 1, (Beirut: Dār al-Fikr, 1992), p. 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): 183–84.

⁹ Ibn Qayyim al-Jauziyah, *I'lām al-Muwaqqi'in 'an Rabb al-'Ālamīn* 3, (Cairo: Dār al-Hadīth, 2004), p. 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.

or Islam in America.¹⁴ If the term used is Islam in Indonesia, it implies how Indonesian Muslims exercise their religious belief, yet with the Indonesian Islam term, it indicates that there are Islamic teachings practiced in Indonesia and they are dissimilar from those applied in other Islamic countries. Both definitions have been refuted by Oman Fathurrahman. According to him, Islam Nusantara is not a normative Islam, but it is closer to the first definition.¹⁵ The arguments continue with regards to whether the term Islam Nusantara contains a certain theme that is different from other Islamic groups, as how Agus Sunyoto assumes that the Islam Nusantara concept is an effort of the Nahdlatul Ulama for Muslims in Indonesia.¹⁶

There have been some debates on Islamic teachings practiced in Indonesia, especially those that are influenced by local cultures, particularly on the aspects of fiqh. How fiqh is developed in Indonesia, as is in other countries, occurs according to the development of cultures. Many activities conducted by Indonesian Muslims are understood as an integrity visualization between Islam and cultures,¹⁷ which of course, is different from any other activities practiced in other Islamic countries, such as how a prayer outfit is worn by male and female Muslims in Indonesia, how *halāl bi halāl* is held, how an Islamic scholar leads a congregational prayer, the palimony, sulking a spouse in Minangkabau and so on so forth. These ex-

amples indicate that Muslims in Indonesia are engaged in certain traditions that are different from those practiced by other Muslims in other regions of the world. It is probably challenging to find Islamic postulates which are explicitly related to traditions, yet traditions have been the living law and are practiced by Indonesian Muslims. Thus, it can be said that Islamic teachings and cultural traditions are integrated and reflected in the activities of Indonesian Muslims.

'Urf as a Theory of Islamic Laws

'Urf is an Islamic law theory originated from traditions of a society that have been practiced for a long period.¹⁸ 'Urf as one of the Islamic postulates is legitimated by Allah and the Prophet as were the traditions of the Quraysh stated in the Qur'ān and Sunna. Many Islamic postulates are originated from 'urf, such as the responsibilities of *wālī* and guardians in a marriage, that a husband should give *mahar* to his wife, *kafā'a*, *hadāna*, individuals who are prohibited to be married, and *ṭalaq*,¹⁹ Though the practices were from the Quraysh, Islam did make some adjustments so that they are not contradictory to Islamic teachings. For instance, during the era of *jāhiliya*, *mahar* was the right of the guardians, but then, according to Islam, the right belonged to the bride.²⁰ Another example is the practice of polygamy, which was previously limitless. Islam limited the exercise that a man was only allowed to marry

¹⁴ Saiful Mustofa, "Meneguhkan Islam Nusantara Untuk Islam Berkemajuan: Melacak Akar Epistemologis dan Historis Islam (di) Nusantara", *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 10, no. 2 (6 December 2015): 407–8.

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

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): 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.

²⁰ Muhamad Harun, "Konsep 'Urf Dalam Pandangan Ulama Ushul Fiqh (Telaah Historis)", *Nurani* 14, no. 2 (2014): 18.

up to four women.

Referring to the Qur'ān and Sunna, Islamic scholars specialized in *uṣūl al-fiqh* have decided to set *'urf* as a way to designate laws. Even Imām Mālik set *'urf* fixed by Madinah as a prominent law if there were no other contrary laws,²¹ and Imām al-Shāfi'ī altered his insights 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 *Uṣūliyyīn* is a Hadith narrated by ibn Mas'ūd saying that if Muslims believe that a matter is a good thing, then Allah will consider it a good deed.²³ But this hadith must not be misunderstood because often-times Muslims' traditions are merely good according to their knowledge, but yet they are against Allah's pleasure. Therefore, the requirements and conditions that permit traditions to become *'urf* are clarified in many *uṣūl al-fiqh* books.

Of the requirements to let traditions be admitted as parts of Islamic laws, the most essential respect is that the traditions must not contradict the *Nash* agreed by Islamic scholars. Often, both traditions and requirements become the problem in designating *urf* that a legal advisor is required to study whether or not a tradition meets the *naṣṣ*. Thus, Islamic scholars have divided *'urf* into two: *'urf ṣahīh* and *'urf fāsid*. *'Urf ṣahīh* is a tradition in line with the provisions of *Nash*,

which does not justify illegal deeds, and vice versa. Meanwhile, *'urf fāsid* is a tradition which contradicts *Nash* justifying prohibited activities and vice versa.²⁴ The power of *'urf* as 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-naṣṣ* (a law which is set based on *'urf*, and its quality is equal to that of *naṣṣ*).²⁵ Hence, it can be seen that the position of *'urf* in Islam is prominent.

Mahar in a Marriage

Mahar is the responsibility of a man to a woman whom he marries. If a *Mahar* is stated in a marriage contract, it is called *mahar musammā*, and if it is not, it is called *mahar mithīl*. The value of a *mahar* is usually adjusted to local customs,²⁶ and *mahar* can be given during a marriage procession or afterwards.

Some Islamic scholars have different perceptions about the best time *Mahar* should be given. It refers to the meaning of the word *al-nikāḥ* (marriage). According to the Shāfi'īya School and most Islamic scholars, *al-nikāḥ* is defined as an act that allows a man and a woman to have *watā`* (intercourse), meanwhile, according to Hanafiya scholars, the

²¹ Sirajuddin M, "Eksistensi 'Urf Sebagai Sumber Pelembagaan Hukum Nasional", *Madania Jurnal Ilmu-ilmu Keislaman* 19, no. 1 (2015), p. 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): 45.

²² Shafi'ī Abdul Azeez Bello et al., "Al-'urf and Its Applicability in Islamic Deposit Products", *American Journal of Economics, Finance and Management* 1, no. 2 (2015): 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): 287-8; Iim Fahimah, "Akomodasi Budaya Lokal ('urf) Dalam Pemahaman Fikih Ulama Mujtahidin", *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 15, no. 1 (2018): 13; Nafi' Mubarak, "Living Law dan 'urf Sebagai Sumber Hukum Positif di Indonesia", *Islamica: Jurnal Studi Keislaman* 11, no. 1 (2016): 141.

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

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

word is directly defined as *waṭa*'.²⁷ Most Islamic scholars argue that *al-nikāḥ* is defined as a marriage contract; thus, once it is legalized, a man must give a *mahar* although an intercourse has not been done yet. Hanafiya scholars believe that *mahar* can only be given if there is an intercourse; hence, a marriage contract does not indicate that the groom has to give his *mahar* directly to the bride.

The two different perceptions in interpreting the word *al-nikāḥ* not only prevail over the issue of *mahar*, but also of the status of illegitimate children in a family, and whether or not the father has responsibilities over them. According to most Islamic scholars, illegitimate children do not have civil relations to their illegitimate fathers, yet they do have civil relations with their mothers. Therefore, the responsibilities are not given to their fathers. Meanwhile, according to Hanafiya, illegitimate children may have civil relations with their illegitimate fathers, but their fathers are not qualified to be their marriage guardians when they get married (females), they are forbidden to maintain a close physical contact, they cannot inherit,²⁸ but they do still have responsibilities to support the children's lives.

Giving a *mahar* in a marriage had been practiced by the Arabs before The Prophet Muhammad was sent, and he then confirmed the practice as an Islamic teaching, with minor modifications. Before, *mahar* was the right of the marriage guardians which gives an impression that they 'sold' women to prospective grooms. The coming of Islam changed the traditional rule, and the Prophet said that *mahar* is the right of a woman who

is to get married.²⁹ Thus, women may decide the worth of a *mahar*; they may even free their men from the obligation to give *mahar* after marriage (QS. al-Nisā' [4]: 4).

The main references used as guidelines to give *mahar* are the Qur'an and Sunna, such as QS al-Nisā' [4]: 4, 20, 25, and QS al-Qaṣaṣ [28]: 26 (Moses's *mahar* was to herd goats for 10 years). Of these verses, none mentions the amount of *mahar*. It is clear that the Qur'an states and informs the responsibility of giving *mahar*. The references related to the amount of *mahar* are found in *bi al-ma'rūf* in QS al-Nisā' [4]: 25 and *qinṭār* in QS al-Nisā' [4]: 20. According to al-Qurṭubī, *bi al-ma'rūf* means consistency with the provisions of Sunna,³⁰ while al-Marāghī said the term means in accordance with current socio-economic conditions.³¹ Therefore, there is no exact amount of *Mahar* stated in the Qur'an. Moreover, the word *qinṭār* according to al-Rāzī is assets in the forms of gold and silver, an interpretation made by referring to QS Ali Imran [3]:14.³²

More explanation about the amount of *mahar* is stated in several hadiths of the Prophet Muhammad. The information is based on the Prophet Muhammad's marriages as well as his companions'. In a hadith narrated by 'Aisha from Abī Salama, 'Aisha said that the Prophet's *mahar* when he wed-

²⁷ Dahlia Haliah Ma'u, "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 Giovanni 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 Hadi, "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.

³⁰ Shams al-Dīn al-Qurṭubī, *Al-Jāmi' Li Ahkām al-Qur'an* 5, (Cairo: Dār al-Kutub al-Miṣriyyah, 1964), p. 142.

³¹ Ahmad Mustafā al-Marāghī, *Tafsir Al-Marāghī* 5, (Mesir: Mustafā al-Bābī al-Ḥalabī, 1946), p. 10.

³² Fakhr al-Dīn al-Rāzī, *Mafātiḥ Al-Ghaib al-Tafsir al-Kabir* 10, (Beirut: Dār Ihyā' al-Turāth al-'Arabiyy, 1420), 13.

ded his wives were 12 *uqiyah* of gold and 1 *nassh* (1/2 *uqiyah*). 1 *nassh* equals to 500 dirhams.³³ If it is converted into Indonesian currency, (1 dirham = Rp 5.000 X 6250 dirham), therefore, the *mahar* given by the Prophet Muhammad to his wives was approximately Rp. 31.250.000 (thirty-one million two hundred and fifty thousand Rupiahs). In addition, when the Prophet married Şafiyya, he gave freedom to Şafiyyah for her *Mahar*.³⁴ Furthermore, the Prophet gave the same *mahar* when he married Juwairiya bint Khubaib, the leader of the Bani Qurayza Jews of Medina. Hence it can be concluded that the Prophet Muhammad always gave exclusive *mahar* to her wives.

The kind of *mahar* provided by the Prophet was then emulated by his companions. For example, Tsâbit ibn Qais's *Mahar* was a plot of garden,³⁵ and Abdurrahmân ibn 'Awf gave a bar of gold which was as big as the date plum.³⁶ Moreover, as narrated by 'Uqbah ibn Amîr, one Prophet's companion gave goods seized in the Khaibar War which equaled to 100.000 dirhams. In Indonesian Rupiah it is about Rp. 500.000.000 (five hundred million).³⁷ Thus, it can be assumed that *mahar* has to be exclusive.

However, not high-priced *mahar* was also given by Prophet's companions. The *ma-*

har given by Ali ibn Abi Ṭalib when he married Fatimah was his harness because it was an only property he had, and he did it under the advice of the Prophet Muhammad.³⁸ The Prophet also let his companions marry women with *mahar* of iron rings. Should a man do not possess one, the Prophet asked him to recite verses of the Qur'ân from his memory for a *mahar*.³⁹

Referring to these hadiths, it can be understood that *mahar* must be given even if a man does not possess any possessions. Although the companions were allowed to give very modest *mahar*, which was instructed by the Prophet himself, yet it was for unfortunate men only, or in other words it is not applicable to all prospective husbands.

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

As previously explained, traditions can be turned into Islamic laws (*fiqh*) as long as they are not contradictory to provisions stated in the Qur'ân and Sunna. Islamic scholars have agreed to reject conflicting traditions, since the process of administrating a law must refer to the creator of the *al-Shâri'*, rather than adjusting to people's intension. Although some Islamic jurists (*mujtahid*) encounter problems in their *ijtihad*, oftentimes they prioritize society's interests more than the interest of the creator. This is pointed out by al-Shâṭibî when developing the theory of *maqâsid al-sharî'a*, where an Islamic jurist should prioritize the concern of *al-Shâri'*, not the society's.⁴⁰

³³ Muslim ibn Hajjâj Abû Yûsuf al-Qushairi al-Naysabûri, *Al-Musnad al-Şahîh al-Mukhtaşar Bi Naql al-'Adl Ilâ Rasûlillâh SAW* 2, (Beirut: Dâr al-Ihyâ` al-Turâth al-'Arabi, n.d), p. 1042; Abû Dâwûd Sulaimân, *Sunan Abî Dâwûd* 2, (Beirut: Maktabah al-'Aşriyah, n.d), p. 234.

³⁴ Muhammad ibn Ismâ'il Abû 'Abdillâh al-Bukhârî, *Al-Jâmi' al-Musnad al-Şahîh al-Mukhtaşar Min Umûr Rasûlillâh SAW Wa Sunanuh Wa Ayyâmuh* 1, (Damaskus: Dâr Ṭuq al-Najâh, 1422), 83; al-Naysabûri, *Al-Musnad al-Şahîh al-Mukhtaşar Bi Naql al-'Adl Ilâ Rasûlillâh SAW*, 2:1043-45.

³⁵ Al-Bukhârî, *Al-Jâmi' al-Musnad al-Şahîh al-Mukhtaşar Min Umûr Rasûlillâh SAW Wa Sunanuh Wa Ayyâmuh*, 7, : 47.

³⁶ Al-Naysabûri, *Al-Musnad al-Şahîh al-Mukhtaşar Bi Naql al-'Adl Ilâ Rasûlillâh SAW*, 2:1042; Sulaimân, *Sunan Abî Dâwûd*, 3: 479.

³⁷ Sulaimân, *Sunan Abî Dâwûd* 2: 238.

³⁸ Ibid., p. 240.

³⁹ al-Bukhârî, *Al-Jâmi' al-Musnad al-Şahîh al-Mukhtaşar Min Umûr Rasûlillâh SAW Wa Sunanuh Wa Ayyâmuh* 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.

Issues about *mahar* have been deliberated in many fiqh *mazhab* books, and mostly the differences lie on how much *mahar* is best given. Imām Abū Hanīfa and Imām Mālik required that *mahar* should be economically valuable, with a minimum amount of 10 dirhams. Imām Abū Hanīfa based his idea on the similarity between a trade agreement and a marriage contract; to replace certain items, or in a marriage contract to substitute *waṭa'*, or a hand that is cut off as a punishment for thieves.⁴¹ The arrangement of the minimum amount of *Mahar* refers to a hadith narrated by Ali in which the Prophet said *Mahar* should not be less than 10 dirhams.⁴² According to Wahbah al-Zuhaylī, the standard is meant to honor women.⁴³ Besides, Imām Abū Hanīfa was influenced by his strong intention towards women's rights; that a woman can be a judge, a witness, marry, and even bear the responsibility to support her family financially if her husband is less fortunate.⁴⁴

Imām Mālik defined the minimum value of *mahar* as much as a quarter dinar or three dirhams or comparable with that.⁴⁵ Imām

Mālik stated that the value of *mahar* is analogous (*qiyās*) to the value of penalty for thieves. Thieves' hands will only be amputated if they have stolen three dirhams or more. It indicates that the amount is considered valuable when somebody steals it, for which a person receives *ḥadd*. However, Imām Mālik's argument has been disputed by the followers of the Maliki School. Al-Qurṭubī stated that using a person's hand as an analogy to *faraj* is not suitable because parts of the body are different things.⁴⁶ However, Imām Mālik has set the minimum standard of *mahar* that the amount is sensible and simple as instructed by the Prophet Muhammad that a good *mahar* is a *mahar* that offers simplicity.⁴⁷

According to al-Shāfi'ī and Hanbali Schools, the amount of *Mahar* is not standardized. *Mahar*, according to them, should be valuable. It can be items, assistance, or other things that can be substituted and sold. The fixed amount is based on propriety that it is not prohibited to give high-priced *mahar* as long as the groom can afford it. Based on the previous explanations, it is understood that *mahar* should be valuable and beneficial.⁴⁸ Al-Shāfi'ī School is used as a primary law with regards to *mahar*, thus in the constitution Law No.1 1974 and in the compilation of Islamic laws the amount of *mahar* is not mentioned. In Malaysia, using the same school, the amount of *mahar* refers to local traditions, which equals to 2.250 and 2.500 ringgit and in accordance with the bride sta-

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.

⁴² Abū Bakr 'Abd al-Razzāq al-Yamanī al-Ṣan'ānī, *Al-Muṣannif* 6, (Beirut: al-Maktab al-Islāmī, 1403), p. 179; Muhammad ibn 'Isā ibn Sawrah ibn Mūsā ibn al-Ḍahāk al-Tirmidhī, *Sunan Al-Tirmidhi* 2, (Beirut: Dār al-Gharb al-Islāmī, 1998), p. 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 Asy-Sya'rawi" (Skripsi, UIN Sunan Ampel, 2019), p. 44.

⁴⁴ Busyro Busyro, "Pengaruhutamaan Gender Dalam Pemikiran Hukum Imam Abū Hanifah 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", *Ustratunâ* 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): 1372-73.

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

⁴⁸ Muḥammad Iqbal, "Konsep Mahar Dalam Perspektif Mazhab Mazhab Imam Syafi'i", *Al-Mursalah* 1, no. 2 (2015): 18-19.

tus.⁴⁹

Indonesia in general does not administer the standard amount of *mahar*, thus many differences are found in many different regions; Aceh, Sulawesi, and others. In each region, the amount of *mahar* refers to local traditions. According to Roswita Sitompul, the amount of *mahar* in Aceh Pidie is extremely high, which is around 50-70 *mayam* of gold, and the tradition has been in practice for years.⁵⁰ The cultural conduct is influenced by the *mahar* principle in Saudi Arabia, since Aceh is known as a *Serambi Makkah* (A veranda of Mecca). In the *Bugis* culture, *mahar* is called *Sompa* or *real*. The amount is around 6 grams of gold, a hectare of garden or field, or a house, depending on an agreement made between the two families.⁵¹ It is understood that the amount of *mahar* in these two provinces is affluent, and it seems they apply what The Prophet Muhammad did. Nevertheless, in other parts of Indonesia the kind of *mahar* given is different, depending on an agreement and the status of a woman.

However, in another case such as one done by people in Jambi, a groom's family gives some money to a bride's to help support a reception. The money or the tradition practiced by the Acehnese, as argued by M. Jafar, does not belong to the bride exclusively because it is used for other wedding purposes. For this reason, he categorizes such a tradition into '*urf fāsīd*'.⁵² It means, though a huge amount of money is given in advance,

it cannot be included as *mahar*.

By contrast, people in West Sumatera in general give a set of prayer outfit (70%) for *mahar*, according to research conducted by Noryamin Aini.⁵³ The same pattern is also found in some other parts of Nusantara. Handing out a set of prayer outfit is symbolized as a religious deed, thus a marriage without it is considered less sacred.

Referring to the *mahar* given by The Prophet Muhammad to his wives, as narrated by 'Aishah, it is understood that *mahar* are valuable properties that can be used to support wives' lives. When his companions could not do the same, it was because they were economically unfortunate, under which condition the Prophet Muhammad gave an exception. Thus, an exception cannot be taken as a basis of law to give less expensive or less valuable *mahar* because it contradicts what the Prophet has done.

In his dissertation Hasbi Haji Muh. Ali writes that philosophically there are several purposes of giving *mahar*; to give ownership rights of properties, to protect women socially and economically, as a warranty in a marriage, and as a support if women face financial difficulties due to divorce or death.⁵⁴ These conditions are in line with Muhammad Nur Hadi's argument that *mahar* is not only a symbol of a marriage but also a proof that a husband is capable to support his family.⁵⁵ Although it is not meant that *mahar* must be high-priced, but it has to be economically valuable, which can warrant woman's future life. Therefore, it is clear that a set of prayer outfit is not categorized into a valuable *mahar*. It is allowed if a man has a

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

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.

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 Aini, "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.

⁵⁵ Hadi, "Mahar Produktif Dalam Penalaran Ta'lili", 185-86.

financial problem, which is not applicable in all circumstances. Although a prayer outfit is brand new and can be resold, however, once it is worn, its economic value will decrease. Hence, the purpose of *mahar* as an economic guarantee is not achieved.

The fact that *mahar* is the woman's right in a marriage excludes a set of prayer outfit as it cannot be categorized as honoring women. Instead, such a *mahar* discriminated against women because they do not get their rights in line with the instruction of the Prophet Muhammad. There is no economic guarantee given to them that they can use the *mahar* should they face financial constraints in the future. Thus, a woman needs to pay attention to her future husband's economic capacity and ask for an appropriate *mahar*.

Referring to the perspective of *'urf*, traditions do not suit the appropriateness (*ma'rūf*) and the value (*qintār*) of *mahar* as how it has been written in the Qur'ān. Comparing to the *mahars* given by the Prophet Muhammad to his wives, a set of prayer outfit does not meet the purposes of *mahar* in Islam. In short, this tradition is seen as *'urf fāsīd* and does not fit in the principles of the Archipelago's Fiqh.

Conclusion

Mahar should economically guarantee the life of a married woman; *mahar* is her right and it can be used to support her matrimonial life. If a *mahar* given is a set of prayer outfit, the *mahar* cannot be categorized as an act of honoring a woman, since it is incapable to support her financially. This type of *mahar* discriminates against woman's rights. There is an absence of economic guarantee that women can use it beneficially. As how the Prophet Muhammad has instructed, *mahar* should be based on the economic power of a man.

Referring to the perspective of *'urf*, the above tradition does not meet the instructions mentioned in the Qur'ān, which state that *mahar* should be appropriate (*ma'rūf*) and valuable (*qintār*). The incompatibility is seen in the practice of giving *Mahar* done by the Prophet Muhammad, where he always gave *mahar* with high economic value. In conclusion, a set of prayer outfit cannot help women to acquire the purposes of receiving *mahar* according to what Allah and the Prophet want. It is *'urf fāsīd* and does not belong to principles of the Archipelago's Fiqh.

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