

An Evaluation of Marriage Dowry Using Digital Money from the Perspective of the Four Madhhabs

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Abstract

This study aims to determine the position of the four madhhabs and understand their point regarding giving dowry using digital money. The library study method was adopted with a comparative approach. Based on the arguments mentioned by the al-Shafi'i madhhab, giving a dowry using digital money can be used or valid, inasmuch as the contract is in accordance with existing provisions. Therefore, the provision of dowry using digital money is still an agreement between the parties concerned. In this contemporary era, everything will shift to the world of technology or digital, and all possibilities will occur, including the transformation of purchasing and selling tools into digital money. The madhhab priest explains that it is permissible and legal, insofar as it does not deprive him of the rights and obligations in the dowry.

Keywords: Dowry; Digital/Electronic Money; Madzhab

Abstrak

Penelitian ini bertujuan untuk mengetahui posisi keempat madhhab tersebut dan memahami maksudnya terkait pemberian mahar menggunakan uang digital. Metode studi kepustakaan diadopsi dengan pendekatan komparatif. Berdasarkan argumentasi yang disebutkan oleh madhhab al-Syafi'i, pemberian mahar dengan menggunakan uang digital dapat digunakan atau sah, sejauh kontraknya sesuai dengan ketentuan yang ada. Oleh karena itu, pemberian mahar menggunakan uang digital masih menjadi kesepakatan antara pihak-pihak yang bersangkutan. Di era kontemporer ini, semuanya akan bergeser ke dunia teknologi atau digital, dan segala kemungkinan akan terjadi, termasuk transformasi alat jual beli menjadi uang digital. Imam madhhab menjelaskan bahwa hal itu diperbolehkan dan sah, sepanjang tidak merampas hak dan kewajibannya dalam mahar.

Kata kunci: Mahar; Uang Digital/Elektronik; Madzhab

1. Introduction

All creatures created by Allah SWT on this earth have their respective partners. Likewise, with other aspects of life, it has two sides. Allah SWT creates the sky and earth, day and night, and moon and sun. Allah SWT creates all humans in this world in pairs so that they tend to live. Therefore, marriage is included in one of the forms or means carried out by humans to avoid the word adultery. Marriage comes from the Arabic words *zawwaja* and *nakaha* (Marnis et al., 2019). The word *nakaha* means to gather, while

the word *zawwaja* means a couple (Toyibah et al., 2022). From a language perspective, marriage means the gathering of 2 (two) people who are initially separated into one unit (Kaharuddin, 2015).

Therefore, Islam really pays attention to and respects the position of a woman by giving her rights (Akbar & Sastrawati, 2021). The right given to a woman in marriage is the right to receive a dowry (Kohar, 2016). Dowry is the right of the wife received from the husband. (Elyana & Ma'rifah, 2017) The husband gives it voluntarily without any expectation of reward as a statement of the husband's love and responsibility for the welfare of his family (Peunoh, 2013).

The term giving something related to the marriage contract from a prospective husband to a prospective wife is mentioned in various vocabularies by the Al-Qur'an. According to Wahbah Zuhaili, dowry is the property and rights of the wife given by the husband because of the marriage contract or bodily relationship (copulation) in essence. (Al-Zuhaily, 1989)

Dowry is a legal requirement in a marriage that is mandatory for the husband (Qayyum & Ekasari, 2020). The Prophet Muhammad SAW called on the husband to try his best to find the property he had in any form to serve as a dowry to his wife, even if it was only an iron ring. The Prophet Muhammad advised women to make their dowry easier because reducing a legal dowry is *sunnah* (Fiqriadi, 2021).

In general, the marriage dowry used by prospective married couples, in general, is a set of prayer tools or an amount of money that has been agreed upon by both parties of the prospective bride and groom (Suryadin, 2017). Even long before Indonesia had regulated the dowry for someone who wanted to get married, as has been written in Article 30 of the Islamic Law Compilation (ILC) concerning the dowry, which states that "the prospective groom is obliged to pay a dowry to the prospective bride whose amount, both parties agree upon form and type." (Departemen Agama, 2001) The conditions for a dowry have been determined in articles 31 to 38 of the Islamic Law Compilation (ILC) (Setyowati, 2020). This is in line with the principles in Islamic law regarding dowry, namely Islam is very concerned about the position of women by giving their rights, including the right to receive dowries.

Previously, Indonesia had regulated the dowry for someone who wanted to get married as stated in Article 30 of the Islamic Law Compilation (ILC) regarding the dowry (Muslim & Ja'far, 2019). This article states that the prospective groom must pay a dowry to the prospective bride whose amount both parties agree upon in form and type. The conditions for a dowry have been determined in articles 31 to 38 of the Islamic Law Compilation (ILC) (Kafi, 2020). This is in line with the principles in Islamic law regarding dowry, namely Islam is very concerned about the position of women by giving their rights, including the right to receive dowries.

Another requirement, the dowry should be lawful and valued in Islamic law. (Jawad, 2007) In general, the marriage dowry used by prospective married couples, in general, is a set

of prayer tools or an amount of money that has been agreed upon by both parties of the prospective bride and groom. However, after seeing the phenomenon of marriage that had occurred some time ago, the marriage used a dowry in the form of a Gopay balance which was included in the category of digital money. Because along with the development of today's increasingly sophisticated era, the phenomenon of dowry in marriage using digital currency is in the spotlight in society. In short, the use of digital money has become a trend in recent years because it is very practical, has many advantages, and almost all people, especially those who are technology literate, have used it.

Therefore, the development of technology makes the use of digital money increase (Ramadani, 2016). As the data presented by Katadata regarding the number of digital (electronic) money users, the data showed that the value of electronic money transactions from the beginning of January to July 2020 reached Rp. 16.7 trillion. This is because people prefer to transact using digital money, which is safer than cash.

Digital money is non-physical cash where the value of the money is from the value of money that has been deposited earlier to the issuer, then stored electronically in electronic media networks such as servers (hard drivers) or in chip cards that have a function as a means of payment in the form of non-cash to merchants who are not the issuers of the relevant digital money (Suseno, 2002).

Bank Indonesia, as the only money maker in the Republic of Indonesia, recommends using digital money as a dowry to urge the public not to destroy rupiah money for wedding dowries. As in Law Number 7 of 2011 concerning Currency, there is a prohibition for the public not to damage paper money. According to this law, anyone who intentionally damages the symbol of the state in the form of a rupiah will be threatened with 5 years in prison and a maximum fine of 1 billion rupiahs.

Based on the description above, the researcher is interested in reviewing the differences in opinion of the four madzhabs, namely the Maliki Madzhab, Shafi'i Madzhab, Hambali Madzhab, and Hanafi Madzhab, how the dowry in the Islamic Law Compilation (ILC), and how the opinion of fiqh scholars about digital money as a dowry.

2. Research Methods

The type of this study was library research. Library research is a series of activities related to the methods of collecting library data, reading and recording, and managing research materials (Zed, 2004). In conclusion, library research is to utilize library resources in order to obtain more accurate research data because the data sources refer to books related to the problem. The sources of data in this study were primary data and secondary data.

3. Discussion

3.1. Dowry in Islamic Law

Dowry is a gift from the groom to a woman he marries, which will later become his wife's property in full (Ghozali, 2008). In practice, there is actually no specific limit on the amount of dowry in Islamic marriages.

Dowry can also be something that is hereafter, such as faith. As has been told in history to Umm Salamah from Abu Talhah, it can also be in the form of knowledge or memorizing the Al-Qur'an. In addition, it can also be in the form of slavery and taken from the wages/benefits. In QS. Al-Qashash/28:27 explained that:

"He (Syekh Madyan) said: "I intend to wed one of these my daughters to thee, on condition that thou serve me for eight years; but if thou complete ten years, it will be (grace) from thee. But I intend not to place thee under a difficulty: thou wilt find me, indeed, if Allah wills, one of the righteous."

In another story, Rasulullah SAW ever married his daughter Fatimah to Sayyidina Ali using Sayyidina Ali's dowry of armor. Even if a man does not have property that can be given as a dowry, the Messenger of Allah never refused to marry his daughter using the dowry of several letters they had memorized in the Al-Qur'an.

From some of the Hadiths and verses of the Al-Qur'an above, we can conclude that there is indeed no limit on the form and size of the marriage dowry in Islam. However, the sunnah is the dowry adjusted to the ability of the prospective husband. As a prospective husband, of course, he wants to give the best dowry for his wife, but often the prospective husband gives a dowry in the form of something his wife needs, or at least not something she wants (Sahrani, 2009).

3.2. Types of Mahar

Wahbah Zuhaili explained two types of dowry, namely the *musamma* dowry and *mitsil* dowry. The detail explanation can be seen in the following below:

1. The *musamma* dowry is a dowry that is clearly stated in the contract, and its delivery can be done when the contract is held or after the contract as long as it is based on the agreement of the prospective husband and wife.
2. The *mitsil* dowry is an amount of dowry equal in value to the dowry received by a married woman at the father's party (such as the father's younger sister and niece). Each region has different dowry provisions; the size taken is the custom that applies in marriage.

The husband must give the *musamma* dowry in accordance with the amount agreed in the contract. Regarding the *mitsil* dowry, scholars stated that the obligation to pay the dowry arises in the following circumstances:

1. If the marriage contract does not mention the type and amount of the dowry by the husband.

2. If the husband and wife have an agreement not to use the dowry in their marriage. According to scholars, *mitsil* dowry is also required because the agreement is not justified even though the dowry is the wife's right.
3. The objects used as a dowry during the marriage contract are not valuable in Islam, such as *khamr* (alcohol) and pork.
4. If the marriage is a *fasid* marriage.

The level of dowry in Islam does not specify how much dowry should be given to the prospective wife. This is due to the differences between human beings. Some people are rich, some are poor, some are spacious, and some are limited in sustenance. In addition, each community has different customs and habits (Az-Zuhaili, 2011). Therefore, the issue of dowry is submitted based on each person's ability in accordance with the customs and traditions prevailing in the community. Even Islam allows giving a dowry with anything, as long as it is useful, for example, an iron ring, a handful of dates, teaching the Al-Qur'an, and so on, with the agreement of both parties.

The damage to the dowry can occur because of the item itself or because of the properties of the item itself, such as being unknown or difficult to deliver. Dowry damaged because of its own substance, such as *khamr*, pork and other items are not allowed to be owned, while dowry damaged because it is difficult to own or know is basically adjusted to buying and selling, which contains five main issues, namely: (Soemiyati, 1982).

1. The items/goods cannot be owned.
2. Dowry is combined with buying and selling.
3. The combination of dowry with gifts.
4. Defects in the dowry.
5. The requirements in the dowry.

If items/goods cannot be owned, such as *khamr*, pork, and unripe fruit or camels, that come loose. Then, Imam Hanifah stated that the marriage contract is still valid if it has fulfilled the *mitsil* dowry. However, Imam Malik stated that two narrations regarding this issue.

First, he said that the marriage contract was broken and had to be canceled (*fasakh*), both before and after (*dukhl*). This opinion was also expressed by Abu Ubaid.

Second, he said that if it was *dukhl*, then the marriage contract became permanent, and the wife received the *mitsil* dowry.

If a man is really unable to give a dowry in the form of material (property), then he can give a dowry in the form of non-material (not property). It is suggested that the non-material form benefits returning to the woman. Dowry does not have to be in the form of money or property but may also be other things. Thus, in Islamic law, the dowry given by the groom to the bride is not interpreted as payment, as if the woman to be married has been bought like an item.

Giving dowry in Islamic law is intended to raise the dignity of women, whose dignity has been trampled on since the days of ignorance. Women's status is not considered as goods

traded, so women have no right to hold their own property, or their guardians can arbitrarily spend their wealth rights.

One of the efforts of Islam is to pay attention to and respect the position of women, namely to give them the right to control their affairs. In the Jahiliyah era, women's rights were removed and wasted, so their guardians could use their assets arbitrarily and did not allow them to manage and use their assets. Then, Islam came to remove these shackles and was given a dowry (*Sabiq*) (Syarifudin, 2009).

In the discussion of *munakahat* fiqh, dowry has several names. Even in the book of Subulus salam mentioned eight other names for *shidaaq*, *mahar*, *nahalah*, *fardhah*, *hiba'*, *ajr*, *'uqr*, and *'alaik*. If interpreted in Indonesian, this terms can be interpreted as a dowry. Meanwhile, in terms, the madzhab provides several meanings, namely:

The Hanafi madzhab defines dowry as property required of the husband during the marriage contract as a reward for sexual pleasure received. The Maliki madzhab defines dowry as making a wife lawful for intercourse. The Hambali madzhab argues that the dowry is a reward for a marriage, whether it is clearly stated in the marriage contract, determined after the contract with the approval of both parties, or determined by the judge. The Shafi'i madzhab defines dowry as something that must be paid due to a marriage contract or intercourse. Furthermore, according to Imam Malik, there is a minimum limit for dowry. Imam Malik set a dowry limit of at least a quarter of a dinar of gold or silver weighing three dirhams or can be equated with the weight of gold and silver (Wijaya, 2015).

Imam Hanafi stated that the minimum dowry is ten dirhams. According to other accounts, it was five dirhams. Another narration mentioned forty dirhams. From a sociocultural perspective, Malik and Abu Hanifah's thoughts are to avoid the attitude of men, sometimes seeing women as an inferior group so that it is not entertaining. At that time, Imam Malik and Imam Hanafi noticed that some women complained to him for giving too low a dowry, even though his future husband was rich. This incident prompted Imam Malik and Imam Hanafi to take the initiative so that the fate of women would no longer be humiliated (Bakry, 2009).

The dowry should not be too burdensome for the prospective husband so that there is an agreement in implementing Islamic teachings, especially in matters relating to the benefit of marriage. The dowry must be in accordance with the level of the husband's ability. If the husband is indeed a capable person, then there is nothing wrong with giving a high dowry to please his wife.

However, if he is an underprivileged person, the wife must be pleased with the dowry the husband can afford. The problem now is that people no longer look at Islamic law due to pressure from a tradition that makes a guardian who will marry off a child must do a massive reception so that the burden is on the party who will marry the siwali's child. Legally, this is very burdensome and is no longer in accordance with the law of the marriage contract itself, especially when there will be an application from the male side to the female side (Ghazaly,

2019). This is due to a lack of understanding on the part of women in carrying out marriage contracts that are adjusted to Islamic law. According to Islamic rules, the dowry is given sincerely and willingly as a contract or agreement based on both parties agreeing to the marriage.

Based on the above problems, it is necessary to review the Islamic dowry law, which has been misunderstood. This is because most people think that the dowry must be sufficient for the reception or the invitation will come to him or spread the good news to people. However, sometimes they impose the actual law on *qias* law or enforce laws that seem to be true in society. This is because of the public's view that if you don't make or hold a big wedding reception, it's not considered a family, or marriage is not considered legal.

3.3. The Requirements of Dowry in Islamic law

The requirements of dowry in Islamic law given to the prospective wife should not be arbitrary but must meet certain requirements. Al-Fiqh 'ala Madzahib al-Arba'ah by Abdurrahman Al-Jaziri mentioned several requirements of dowry as follows:

- a. Valuable property. Something worthless is not valid as a dowry. If the dowry is small but valuable, then the item is still valid and is called a dowry. In fact, there is no stipulation of a lot or a minimum dowry.
- b. The goods/items are sacred and useful. Therefore, if the dowry is in the form of *khamr*, pork, or other things considered prohibited in Islamic teachings and not valuable, then the law is invalid.
- c. Not *ghasab* goods/items. *Ghasab* means taking something belonging to another person without his permission but not intending to own it because he intends to return it later. The dowry from the *ghasab* is invalid, but the contract is still valid.
- d. Not clear goods/items. If the goods/items' condition is unclear or the type is not stated, then the goods/items cannot be used as a dowry.

According to the Islamic Law Compilation (ILC), a dowry is a gift from the prospective groom to the prospective bride, either in the form of goods, money, or services that do not conflict with Islamic law in article 1 letter d. Based on the Islamic Law Compilation (ILC), the dowry problem is formulated as follows:

- a. Article 30: The prospective groom must pay a dowry to the prospective bride whose amount both parties agree upon in form and type.
- b. Article 31: The determination of dowry based on the principles of simplicity and convenience recommended by Islamic teachings.

The dowry payment can be in cash, debt, or partial debt. Article 33 of the Islamic Law Compilation (ILC) in Indonesia regulates about:

- a. Article 33: The dowry is delivered in cash if the prospective bride agrees. The delivery of the dowry may be suspended either in whole or part. The dowry that has not been delivered is the debt of the prospective groom.

Meanwhile, in Law Number 1 of 1974 concerning Marriage, the issue of dowry is not regulated, while in the Islamic Law Compilation (ILC), the dowry is regulated in Articles 30-38, which aims to:

- a. Issue a dowry issue
- b. Establish certainty that it is not a pillar of marriage
- c. Establish the ethical dowry on the principle of simplicity and convenience, not based on the economic principle of status and prestige.
- d. Uniform juridical and ethical conceptions of dowry in order to foster order and the same perception among the public and law enforcement officers.

3.4. Legal Istinbath of Mazhab Scholars regarding Digital Money as a Dowry

Regarding the amount of dowry, the jurists agree that there is no maximum limit on the dowry. They disagreed about the lower limit. Imam Shafi'i, Ahmad, Ishaq, Abu Thaur, and the jurists of Medina among the tabi'in stated that there is no lower limit for the dowry. Anything of value can be turned into a dowry. While a group of jurists obliges to set a lower limit, they differ in two opinions. Imam Malik and his supporters expressed their first opinion. The second opinion was expressed by Imam Abu Hanifah and his supporters, Imam Malik, who argued that the minimum limit for the dowry is a quarter of a gold dinar, or silver weighing three dirhams on the scales, or items equivalent to these three dirhams. Meanwhile, based on other narrations, goods have the same value as one of them.

Imam Abu Hanifa stated that the lower limit of the dowry is ten dirhams. It can be seen that from the point of view of Imam Hanafi, the minimum dowry limit is 10 dirhams. Meanwhile, Imam Shafi'i and Hambali do not have a minimum limit in giving the dowry. Then, according to Imam Malik, the lowest dowry limit is the gold dinar (Musyahid, 2019). A quarter of a gold dinar equals a quarter of a gram of gold. If the value is silver, a quarter of a gold dinar is worth Rp. 700,000, with the following calculation (1 gram = Rp. 120,000 + gram = 140,000 = Rp. 700,000).

Indonesia is one of the countries that use electronic money, and this policy regulation is based on the policy issued by Bank Indonesia, namely PBI Number: 11/12/PBI/2009 concerning electronic money. It can be said that Indonesia has recognized the use of electronic money. The use of electronic money as a dowry in the perspective of the Maliki madzhab. Imam Malik is more concerned with the benefits it brings. If the use of digital money fulfills contracts according to sharia, then the dowry using digital money is considered valid. Moreover, in contemporary times, technological progress is growing rapidly, so the world will focus more on the world of electronics.

The use of digital money as a marriage dowry can be viewed in terms of benefit or *maslahah mursalah*, as in the sense of being independent or free from information that indicates whether or not it is permissible. Therefore, it can be concluded that giving a dowry

using electronic money is legal and may be used as a dowry as long as it does not violate the rules of dowry requirements in Islamic law and Islamic Law Compilation (ILC).

4. Conclusion

In Islamic law, the dowry given to the prospective wife should not be arbitrary but must meet certain requirements. Al-Fiqh 'ala Madzahib al-Arba'ah by Abdurrahman Al-Jaziri mentions several dowry requirements as follows: a) Valuable property. Something worthless is not valid as a dowry. If the dowry is small but valuable, then the item is still valid and is called a dowry. In fact, there is no stipulation of a lot or a minimum dowry; b) The goods/items are sacred and useful. Therefore, if the dowry is in the form of *khamr*, pork, or other things considered prohibited in Islamic teachings and not valuable, then the law is invalid; c) Not *ghasab* goods/items. *Ghasab* means taking something belonging to another person without permission but not intending to own it because he intends to return it later. The dowry from the *ghasab* is invalid, but the contract is still valid; and d) Not clear goods/items. If the goods/items' condition is unclear or the type is not stated, then the goods/items cannot be used as a dowry. According to the Islamic Law Compilation (ILC), a dowry is a gift from the prospective groom to the prospective bride, either in the form of goods, money, or services that do not conflict with Islamic law in article 1 letter d. The use of digital money as a marriage dowry can be viewed in terms of benefit or *maslahah mursalah*. *Maslahah Mursalah* consists of two words, namely *maslahah* and *mursalah*. Etymologically, *maslahah* comes from the word *salaha*, which means good, while *mursalah* comes from *arsala*, detached or free. Thus, if the two words are juxtaposed in the form of *maslahah mursalah* or *al-maslahah al-mursalah*, the meaning is detached or free from information that indicates whether or not it is permissible to do so. Therefore, it can be concluded that giving a dowry using digital money is legal and may be used as a dowry as long as it does not violate the rules of dowry requirements in Islamic law and Islamic Law Compilation (ILC).

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