LEGAL STATUS OF DOWRIES PROVISION BY THIRD PARTIES

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Abstract
This article discusses the issue of the legal validity of marriage contract in the case dowry is paid by a third party. Legal analysis will be performed on the legal principles and regulations found in The Law Number 1 Year 1974 on Marriage, The Compilation of Islamic Law and sources in Islamic Law . One important finding is does not forbid the payment of dowry by a third party and that this practice does not affect the validity of the marriage contract.

Keywords:
dowry, marriage contract, third party, legal validity

Abstrak
Artikel ini membahas persoalan keabsahan dan status hukum perjanjian perkawinan yang maharnya diberikan pihak ketiga. Telaah hukum akan dilakukan berpedomankan prinsip dan ketentuan-ketentuan yang termaktub di dalam Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Kompilasi Hukum Islam dan sumber-sumber hukum Islam. Satu temuan penelitian adalah bahwa ternyata pemberian mahar oleh pihak ketiga dalam teori hukum maupun praktik diperbolehkan dan tidak mempengaruhi keabsahan perkawinan.

Kata Kunci:
mahar, perjanjian perkawinan, pihak ketiga, keabsahan

Introduction

Human beings are in essence social animals, as they by necessity of life require each other to survive and have developed the instincts to do so. This

instinctual tendency to live together have also cause human beings to want to have a line of descendants, the process of which has the first step of being tied by Marriage. marriage means a covenant that violates the relationship between a man and a woman who is not a *muhrim* and creates rights and obligations between the two[1].

Marriage can be defined as a social institution that legitimizes a man and a woman living together in one household (a family). What is defined as living together here is regardless of that which can be found in biology, which is the presence of intercourse activities between a man and a woman, but that there is also the fulfilment of certain requirements and rules laid out by the law. [2]

Islamic law has provided that a marriage is an agreement to "make halal" (or legitimize) sexual intercourse between a man and a woman with the intention of establishing a life and family that is peaceful, happy, and caring through the methods that have been blessed by Allah.[3] This can be seen if referring to the Qur'an, Chapter 4 (An-Nissa') verse 1.

Other verses of the Qur'an that give provisions and as a basis for marriage among others, contained in the letter Ar-Rum: 21 meaning: "And among the signs of His power, is He created for you your wives of your own kind that you are inclined to and feel at ease with him. And made Him between you love and affection, truly on these are really signs for people who think "[4]

According to Anderson, there has existed patterns and forms of marriages that predates the Islamic Era (Jahiliyyah Arab), with those ranging from patrilineal and patrilocal, matrilineal and matrilocal marriages, to contemporary-like marriages that are temporary and does not mainly revolve around starting a family (*mut'ah* marriages). During those times, the most common and expected marriages were patrilineal, where the groom would provide a certain amount of money

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1 Asbar Tantu, Arti Pentingnya Pernikahan (2013), Vol.XIV Nomor 2/2013, p.257.
2 Wirjono Prodjodikoro, Hukum Perkawinan Di Indonesia, Sumur Bandung, 1984, p. 7.
3 Ahmad Azhar Basyir, Hukum Perkawinan Islam, UII Press, Yogyakarta, 2004, p. 11.
4 Syafrnesia Yudowibowo, Tinjauan Hukum Perkawinan di Indonesia Terhadap Konsep Kafaah, Dalam Hukum Perkawinan Islam (2012),Vol.1 No 2 Mei, Jurnal Yustisia, 98, p.101

(dowry) towards the groom-to-be.[5] This concept slowly evolved and culturally became mandatory, paid towards the family of the groom to compensate for the loss of economic benefits that the groom could have provided towards her family. In addition, the payment is also seen as an act to bridge the two families that are about to be connected through the marriage in order to establish a stable relationship. Based on these findings, it can safely be concluded that dowries have existed before Islamic times, with purpose of financially assisting the bride's.[6]

The term dowry itself is used to describe the items and properties that must be paid to the bride as a result of marriage. Dowries, as a requirement for the groom to marry the bride, is meant to represent the seriousness of the groom to love and marry his future wife, a sign of respect of her as a person of value, and to symbolize the groom's intention to be lawfully associated (in all its meaning) with the bride.[7] Article 30 and 31 of the Compilation of Islamic Law stipulates that:

> "The groom must provide a dowry to the bride, in which the form, amount, and type of such dowry to be agreed upon by both parties." and "The determination of the dowry relies on the principle of simpleness and easiness as is taught by Islamic teachings".

Mahar is a condition of marriage. In history Islamic law, type and amount of dowry never standardized. Mahar constantly changing and patterned social-cultural-economic[8]. Dowries are only given by the groom to the bride, and not towards other women or anyone else no matter the proximity of the relationship between that person and the groom or bride. Other parties also cannot use, or better yet receive the dowry, even by groom himself unless done by the consent and willingness of the groom. This is in accordance with what has been stated by Allah SWT in An-Nissa' verse 4: "And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease".

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5 John Anderson, Hukum Islam di Dunia Moder*n*, Amarpress , Yogyakarta, 1990, p. 48.

6 Id.

7 Husein Muhammad, Fiqh Perempuan: Refleksi Kiai atau Wacana Agama dan Gender, LKIS, Yogyakarta, 2001, p. 108-109.

8 Noryamin Aini, Tradisi Mahar di Ranah Lokalitas umat islam: Mahar Dan Struktur Sosial Di Masyarakat Muslim Indonesia, (2014), Vol. XIV No. 1, jurnal Ahkam,1, p.2.

Within that verse, Allah SWT orders the provision of dowry towards the bride whom the groom will marry, and thus makes it a prerequisite for marriage according to Islamic law. This is regardless of if the bride has accepted if the groom does not provide any dowry. When the Qur'an arrives the dowry order continues, only the concept is changing. Before Islam the dowry was paid to people prospective wife's parents, then the dowry is intended for future wives[9].

Islam submit the quality (type and quality) and quantity (quantity) of the dowry to the agreement of both parties. So the provisions about the quality and quantity of the dowry is not mentioned in the text except for shows how important the value of the dowry (shows the glory of women in the Islamic view) without looking big small amount of dowry[10].

A problem then potentially arises if a third party provides for that dowry. This is indeed a real case between the marriage of Risty Tagor and Stuart Collin in a Bogor Novotel Hotel. Before the marriage, it was agreed upon that the dowry would be paid in full in the form of prayer items and a diamond ring. However, several moments prior to the commencement of the wedding, the groom (Stuart Collin) was unable to provide the diamond ring as agreed. Fearing that something would go wrong in her daughter's wedding, Tjut Mutia, the mother of the bride, provided her diamond ring to the groom to be used as dowry. Several months after, Risty then questioned the validity of her wedding, as her dowry was provided by her mother and not the groom.

A similar case can be found in the Purawakarta, where a man by the name of Agus W.S. married Enok Surtiharti. The marriage contract was finalized upon in the residence of the bride in the district Purwakarta. The dowry agreed upon was 20 grams of gold and money to the amount of Rp10.000.000,00- (ten million Rupiah). In that case, the gold for the dowry was ultimately provided for by Tarwono Darwanto, a close friend of the groom.

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9 Halimah B., Konsep Mahar (Mas Kawin) Dalam Tafsir Kontemporer, (2017) Vol.6/No.2, Al-daulah Jurnal, 310, p. 311.

10 Burhanuddin A. Gani, Ainun Hayati, Pembatasan Jumlah Mahar Melalui Keputusan Musyawarah Adat Kluet Timur, (2017), Volume 1 No. 1, Jurnal Hukum Keluarga dan Hukum Islam, 174, p. 175.

Result and Discussion

Legal Framework

The etymological term of marriage in the Indonesian language (perkawinan) is derived from the word "kawin" (mate; copulate) with the added "per" prefix and "an" suffix. A synonym of the word "kawin" is "nikah" (wed), with the word "pernikahan" (wedding) a result of adding the same prefix and suffix. The two terms in Indonesian is interpreted as an agreement between a man and a woman to be married.[11]

As to the terminological understanding of "marriage", several exists from different experts. According to Wirjono Prodjodikoro,[12] marriage is the state of living together between a man and a woman that has fulfilled certain conditions, and if observed closer is a product of an agreement that is spiritually and physically binding and is conducted under the principle of faith. Meanwhile Sayuti Thalib,[13] regards marriage as a sacred covenant between a man and a woman to create a family.

Marriages have a general purpose of establishing a family that is peaceful, hopeful, and loving (sakinah, mawaddah, warohmah), in addition to having children that are faithful and religious. This chance of having a line of descendants is usually sought upon by many people getting married.[14]

Article 1 of the Marriage Law (Law Number 1 Year 1974 on Marriage) stipulates that marriage has the purpose of "establishing a happy and lasting family founded on the Belief in God Almighty". Whereas in Islamic Law, the purpose of marriage is to fulfil one of the guidance of religion in order to establish a family that is harmonious, prosperous, and happy. Allah SWT has commanded that:

> " And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought." (QS. Ar-Rum ayat (21))

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11 W.J.S. Poerwadarminta, Kamus Umum Bahasa Indonesia, Balai Pustaka, Jakarta, 1994, p. 453.
12 Wirjono Prodjodikoro, Supra No 2, p. 7-8.
13 Sayuti Thalib, Hukum Kekeluargaan Indonesia, UI-Press, Jakarta, 2009, p. 47.
14 Ahmad Rafi Baihaqi, Membangun Syurga Rumah Tangga, Gita Mediah Press, Surabaya, 2006, p. 8.

According to Islamic law it is said to be a marriage if it meets the pillars and conditions. The law determines a legal action, especially concerning legal action or not[15]. According to A. Zuhdi Mudlor, there are five conditions or elements of marriage, which are as follows:

a. A groom;
b. A bride;
c. A guardian of marriage;
d. Two witnesses;
e. *Shighat (aqad)* solemnization (of marriage).[16]

Soetojo Prawirohamidjojo opines that the elements of marriage can be categorized into that which are internal (material) and external (formal).[17] The internal elements or conditions concerns the parties themselves who are about to be married, while the external elements revolve around the formalities that must be fulfilled in conducting a marriage.[18] The internal conditions are:

1. The marriage must be the result of consent between the two parties;
2. Permission from both parents are required if the parties are under the age of;
3. The groom must be 19 years of age, and the bride 16 years, unless otherwise ruled upon by a court or an official appointed by the parents of both parties;
4. Men can only marry women. Same-sex marriages are against the law.[19]

The external conditions are as follows:

1. Report
2. Announcement
3. Prevention
4. Commencement

The applicable marriage law in Indonesia can be found in Law Number 1 Year 1974 on Marriage. In addition, Islamic Law norms that is laid out in the Compilation of Islamic Law, which includes provisions on dowries, also binds Muslims who

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15 Asep Aulia Ulfan, Destri Budi Nugraheni, Analisis Yuridis Peluang Pencatatan Perkawinan sebagai Rukun Dalam Perkawinan Islam,(2014), Vol 1 No.1, Jurnal Penelitian Hukum,1, p. 2

16 A. Zuhdi Muhdlor, Memahami Hukum Perkawinan, Penerbit Al Bayan, Surakarta, 1994, p. 53.

17 Soetojo Prawirohamidjojo, Pluralisme dalam Perundang-undangan Perkawinan di Indonesia, Airlangga University Press, Surabaya, 2002, p. 39.

18 Id., 40.

19 Munir Fuady, Konsep Hukum Perdata, Raja Grafindo Persada, Depok, 2014, p. 14.

intend to be married in Indonesia. The Marriage Law does not in any way regulate dowries, but its terms can be found in the Quran, hadiths, and the Compilation Islamic Law, specifically, Article 30-38, which is considered to be the result of a complete adoption of the fiqh of Islamic scholars.

Within Islamic fiqh, dowries are seen as a right that must be provided to the bride, but not necessarily at the time of the wedding. Rather, the parties can decide upon the timing of when the dowries are given.[20] This can differ, based on factors ranging from the conditions and financial capabilities of the groom, and the culture or customs of the local society. In addition, dowries do not have to come in a specific form of object, and can be in the form of the pronouncing of certain chapters of the Quran or certain services that the groom provide to the family of the bride, or other beneficial things.

If the dowries are objects, then they must adhere to certain conditions as laid out in the tome of *al-Muhadzdzab li asy-Syayrazi*. Within this chapter, analysis towards the provision of dowries by third parties in two separate cases mentioned above, and will be in accordance with the following elements of what constitutes as a dowry:

a. A clear and definitive form and nature. If otherwise, then that specific object does not constitute as a dowry. In addition, the object must be of value.

   By seeing the dowry given within the marriage Agus Enok, it can be concluded that such dowry is valid as it has a clear form and nature and is of value, which are 20 grams of gold and a certain amount of money.

   The gold given can later be of use, such as for jewelry, and that the money given has a determined amount.

   Within the marriage between Stuart and Risty, the dowry of praying items and a diamond ring can also be said to be valid, as those objects also have a distinct form and are of value

b. Has to be halal and has value as property according to *urf'* and *shari'a.*

   It is very clear that the dowry within the Agus and Enok case is an object that is halal. The two objects in question, gold and money, is recognized by *urf'*

[20] Abdul Aziz Muhammad Azzam, dkk, Fiqh Munakahat, Amzah, Jakarta, 2009, p. 184.

and *shari'a.* The two items are often used as dowry and has been accepted as such by society. The two only differ in value, which is of little importance as long as they are acceptable by the applicable regulations and Islamic principles.

The items given as dowry within the Stuart and Rizky marriage are also clearly valid. It is only reasonable that prayer items are halal, whose intention are to be used to be closer to God, and that the diamond ring has *urf'* and *shari'a* value.

c. The items are not the result of *ghasab. Ghasab* here means items that were unlawfully taken from other people with the intention of being returned in the future. Marriages whose dowries are items of *ghasab* are still valid, though the dowries are not.

The dowries used within the Agus and Enok marriages are not items of *ghasab* as they were willingly provided by Tarwono, a friend of the groom. That act of giving the dowry by Tarwono is a grant towards Agus, as it was previously agreed upon by the two.

The items within the Stuart and Risty marriages were also not of *ghasab*. Since *ghasab* is defined as unlawfully taking another's property, then the dowry within this case does not qualify as such since it was the mother of the bride herself willingly provided the item (the diamond ring). However, the status of ownership of the ring is potentially questionable.

d. The item's ownership is fully held by the groom whose benefits can be fully taken.

While it is true that the item used within the Agus and Enok marriage were originally owned by Tarwono, the mere fact that its ownership was transferred to Agus means that it is now of Agus' property. The benefits of the items are also of full use to Agus (and later the bride) since the gold can be used to create items such as jewellery, while the money can be used within transactions.

The items used as dowry within the Stuart case, which are the prayer items and the diamond ring, also are of value as they have a degree of usage towards them. However, the diamond ring was provided for by the mother

of the bride without any prior agreements to transfer the ownership to the groom. Therefore, the diamond ring's ownership does not rest completely with the groom, making it unable to be deemed as a valid dowry for this element.

One must look towards the theories on grants (*hibah*) to discover why this is so. The general theory on grants stipulate that for there to be a grant, there must also be the act of agreeing to the grant, in the form of offering and accepting. These did not take place within the Stuart case, and the diamond ring therefore cannot be deemed as a valid dowry.

The doctrine of grant (*hibah*) is generally accepted within Islamic Law. A *jumhur* (majority) of Islamic Law scholars have agreed upon the definition of *hibah* as an agreement that results in the voluntary transfer of ownership of an asset without compensation. The ruling on *hibah* is Sunnah (strongly encouraged), to be done through the offering and accepting that happens while the grantor is still alive.[21] Hibah itself has a set of its own conditions to be considered as valid. The three conditions are as follows:

1. *Aqid (wahib* and *mauhud lahu*) or a grantee and a grantor.

   Not unlike the requirement of legally competent parties within the law of contracts, there must exist a grantor and a grantee of a *hibah*. The grantor itself must also fulfil the following conditions:

   a. The asset to be granted is of the grantor's ownership;
   b. The grantor does not have his or her rights be limited for legal reasons;
   c. The grantor is not under duress by any party to grant the hibah. In other words, the act must be purely voluntary.

      The receiver or grantee of the hibah is required to be "real" (or is legally a person) at the time that the hibah is granted.

   Within the marriage between Agus and Enok, the first condition of a grantor and grantee is clearly fulfilled, with Tarwono being the grantor and Agus the grantee.

[21] Idris Ramulyo, Perbandingan Pelaksanaan Hukum Kewarisan Islam Dengan Kewarisan Menurut Hukum Perdata (BW), Sinar Grafika, Jakarta, 1994, p. 145-146.

The second case between Risty and Stuart also has a clear grantor and grantee. What must be noted in this case is that the grantee was Risty, not Stuart, as the ring was given directly to her by her mother as opposed to the groom.

2. *Mauhud*, which is that the object in question that is to be granted as *hibah*. Generally, any object towards which ownership could apply is viable as an object of *hibah*, whether it is movable or immovable, as long as the following conditions are fulfilled:
   a. The object is real and exists;
   b. The object has value;
   c. The object can be owned, and its ownership be transferred;
   d. The object can be separated (from the grantor) and given to the grantee;
   e. The object has been received or held by the grantee;
   f. Sole ownership. However, this point is divisive. According to Hanafiyah the object in question must not involve another person's, while that is permitted according to Malikiyah, Hambaliyah and Syafi'iyah;
   g. The receiver of the *hibah* is under the permission of wahib.[22]

   According to the researcher, the objects that are the 20 grams of gold given by Tarwono to Agus, and the diamond ring given by Risty's mother to her has fulfilled all of these elements.
3. *Sighat* or Offer and Acceptance

   Sighat is the verbal statement made by a grantor of *hibah* in order to "solemnize" it, which involves the offering and provision of the object (*ijab*) and the receiving of that object by the grantee (*qabul*). According to followers of the teachings of Hanafi, qabul is an inseparable part of *hibah*.[23]

   The conditions of *sighat* and *ijab qabul* is as follows:

   Ijab is the purpose of the statement is made clear, and so the *aqad* is clear in its type as there are several types of *aqad* according to Islamic Law; The

[22] Rahmat Syafe'i, Fiqih Muamalah, Pustaka Setia, Bandung, 2000, p. 247.
[23] Dewan Redaksi Ensiklopedia Islam, Ensiklopedia Islam, Jilid 2, Ictiar Baru van Hoeven, Jakarta, 1997, p.106.

statement of *ijab* and *qabul* must refer to the specific intention of both parties.

Based on the above, it can be concluded that the agreement of *hibah* is complete if the *ijab* and *qabul* has fulfilled the abovementioned conditions. However, there are also several other agreements of *hibah* that is only deemed to be complete if there has been a formal transfer of the object, not just the statements of *ijab qabul*. Several scholars are of this opinion, as a *fiqih* states that:

> " a transaction that is to assist in nature, is not complete if the object of the transaction has not been presented to and owned by the receiver [grantee]".

The giving of 20 grams of gold by Tarwono towards Agus has fulfilled the *sighat* condition of *hibah*, as there was *ijab* and *qabul* between the two.

However, the case involving Risty and Stuart does not fulfil the aforementioned elements of *ijab qabul*.The mother of the Bride did not directly conduct the statement of ijab in giving the ring to Stuart, and neither did Stuart conduct any form of qabul upon receiving the ring. Usually, the statement of ijab is along the lines of: "*Aku hibahkan kepadamu; Aku hadiahkan kepadamu; Aku berikan kepadamu* (I grant to you' I gift you; I give to you [the object]" or something similar, and that the qabul usually comes in the form of a statement of acceptance: "With this, I receive [the hibah]". By referring to the opinion of Hanafi, it can also be said that this case does not fulfil the elements as Risty's mother granted the ring directly to her, not Stuart.

In light of what has been elaborated above, no substantial problems can be found within the marriage between Agus and Enok and the provision of 20 grams of gold as the requirements of dowries and hibah has been met. On the contrary, the validity of the dowry is potentially questionable within the Risty and Stuart case, as the act of *hibah* of the diamond ring that acts as a part of the dowry does not fulfil the elements of it being a valid and complete hibah.

Legal Consequences

One of the great virtues of Islam is that it recognizes and provides freedom to women. Islam also stipulates that women have their own rights, including that which is to receive a dowry from their husbands and that no one can take a single

part of that dowry without her consent.[24] Dowry is an absolute right women (wife's rights) as a result marriage. Dowry given by the candidate husband as an expression of a man's desires towards a woman, as one a sign of affection for a future husband to his future wife.[25]

Dowries are one of the requirements of a valid wedding. Those requirements themselves are part of a legal action or revolves around a legal event where a right and/or obligation arises within a legal subject. A requirement of a marriage does not automatically cause that marriage to be null and void, but rather only causes that specific act which does not fulfil the condition to be "voidable". Different from the conduct of *mahdah*, requirements is a factor in determining the validity of a certain act, such as shalat. The act of shalat requires wudhu, which itself has its own principles and requirements. Dowries must be clear, and be given within a short time span, as it potentially endangers the marriage. If a husband no longer feels that he is to be with his wife, he may feel required to stay by virtue of not having paid the dowry.

Article 34 number (1) elaborates, "The obligation to provide dowry is not a pillar to marriage," however dowries are an obligation of the man to provide to his bride (Article 30), in addition to it being a right of the wife (Article 32). Dowries are therefore strongly encouraged to be a part of the marriage agreement as it may resolve disputes and be of use to the bride. It is not, however, a condition.

The obligation of dowry is not a pillar within Islamic marriage, as previously mentioned, as there are five pillars according to Article 14, which states that there must be:

1. A groom. The requirements of a groom is that he must be Muslim, the person is known and specific, does not contradict norms in marrying the bride, is not under any form of duress in marrying the bride, is not under ihram, and does not already have four wives.

   According to this Researcher, the groom within the cases analysed above, both Agus and Stuart, fulfils the element of being a groom. Their legal statuses

[24] Zainal Arifin, Fiqh Wanita Muslimah, Penerbit Zaman, Jakarta, 2012, p. 239.
[25] Harijah Damis, Konsep Mahar Dalam Perspektif Fikih Dan Perundang-Undangan, (2016), Vol. 9 No. 1, Jurnal Yudisial, 19, 20.

of being a man that can be wed are clear and bona fide. The clarity of the legal status of the groom is vital, as, if not, problems could arise in the future that could trouble the marriage, such as if the man already has four wives. The fulfilment of this condition of there being a legal groom can be seen in the fact that there were no disputes or other problems that arose after the wedding, in which if that were the case, could give way to madharat especially on the side of the bride.

2. A bride. The requirements of the bride is that which is almost identical to the groom.

   The bride within the cases, which are Enok and Risty, has fulfilled these conditions. This is proven by the fact that like the case with the groom, no disputes arose after the marriage agreement took place. What must be stressed here is the consent of the bride, so that the wedding was not done under any undue pressure. This is sadly often the case with many marriages, in which the bride is forced to be married by her parents, which usually results in a household that is not harmonious.

3. A guardian, with the condition that the guardian is male, a Muslim, is mentally healthy, an adult, and has a value of fairness.

   According to the researcher, the two weddings which are the objects of this research have the same type of guardian; namely, the father of the bride. Therefore, the two cases are unproblematic on this aspect.

4. Two witnesses, with the condition that like a guardian they too are adults, Muslims, and mentally healthy, with the added condition that they must be able to hear. However, they do not have to be males.

   The witnesses within the two cases analysed by the researcher have fulfilled the above conditions, as they are proven to be physically healthy and capable people, and that understood their role as witnesses. Here, that role is to fulfil the purpose of being a party who have seen the solemnization of the marriage and the oaths that were said, lest one of the parties who are married breaks them in the future.

5. *Sighat ijab qabul*. The ijab is to be conducted by the guardian of the bride and the qabul be conducted by the groom.

Within the technicalities of marriage law, ijab is the assertion of the intention of the bride to be bound by marriage towards the groom, whereas qabul is the assertion of the intention of the groom to be bound to the bride through marriage. The statement of qabul must be done after the statement of ijab, and that it must be conducted within the same assembly and that the time span between ijab and qabul must be brief.

The ijab qabul done within the Stuart and Risty marriage, and the Agus and Enok marriage, was conducted in the Indonesian language (Bahasa Indonesia). This fact does not in any way devalue the validity of the marriage agreement.

Article 14 of the Compilation of Islamic Law does not specifically mention that dowries are a pillar of a wedding. In addition, Article 34 number (1) also denotes that dowries are not a pillar of marriage. However, even if dowries are not a pillar of being wed, Article 30 stipulates that the man must pay dowry to the bride-to-be of which the value, shape, and form is to be agreed upon by the two parties (the bride and groom).

The provisions of Article 30 and 34 of the Islamic Code is in accordance with what is written within QS. An-Nisa verse (4) and (20), in addition to Al-Baqarah verse (236). Dalam Surat An-Nisa ayat (4) ditentukan bahwa:

"And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease"" (QS. An-Nisa, verse (4)).

This verse defines the importance of dowries, even if it is not a pillar of wedding per se. It is also a testament to the ease that Islam as a religion provides to the concept of marriage.

According to Islamic Law, the five tenants or pillars of weddings are necessary to validate a marriage. Referring to those sources, it can be seen that dowries are not one of them. As this is the case, then Article 31 of the Islamic Code elaborate that the determination of dowries must adhere to the principles of simplicity and ease, which is strongly encouraged in Islam. Principally, the question of dowries is indeed a matter that is relative to the wife that determines whether a

dowry is received, and that since dowries that are found wanting, or not provided at all does not cause the marriage to be null and void.

The dowry within the Stuart wedding was stated within the vows upon the ijab by the bride's guardian, which was then followed through with the qabul by Stuart. This seemingly negligent act of stating the dowry in the ijab, dsoes not necessarily cause the wedding to be null and void.

According to Sayid Al-Hakim, within the Tome Minhaj ash-Shalihin, if there is a delay or a time set indefinitely upon *sighat* and that the groom says the vows: "With this I accept the marriage of … daughter of … with a dowry of … paid in full", then the dowry is invalid even if the wedding is not so. The bride then has the right of *mitsil* dowry after intercourse has occurred. *Mitsil* dowry is dowry whose value, shape, and form is not determined, whether before nor after marriage.[26] A marriage with a *mitsil* dowry would then have its object determined by referring to the dowry of the female siblings or relatives of the bride, and if such does not exist, to another woman of the same degree.

Based upon the analysis on the status and validity of dowries elaborated previously, Stuart within his case must pay another dowry, as his original dowry was not valid in that it lacked the necessary element to be a valid *hibah* from the third party (who originally owned the diamond ring) to Stuart. The payment of dowry must come in the form of a *mitsil* dowry, based on a value that is in accordance with what is generally reasonable, fair, and is acceptable or is the norm according to local customs. Alternatively, it could also be to the amount that suits the capability of the groom, or with the same value that the groom's brothers provided to their respective wives.

In the case of the marriage between Agus and Enok, no substantial legal problems could be found, whether the conditions of the *ijab qabul*, and the dowry and *hibah* of the dowry from a third party to the groom.

Conclusion

Based on what has been elaborated in the previous pages, it could be concluded that:

Marriages that are valid are those that is in accordance with Article 2 number (1) of the Marriage Law, which are marriages that is legitimate according to the respective religion or beliefs of the parties. With the existence of this Article, the provision of dowries within marriages by a third party is allowed and that marriages conducted with such a dowry does not detract from Article 2 number (1), nor Islamic Law, as Islamic Law itself also does not explicitly provide a basis on the practice of dowries but also does not forbid it. A third party providing a dowry is valid as long as there existed a clear *hibah* of the object, which includes the *ijab qabul* of the *hibah*. If this is not fulfilled, then the asset or object being used for the dowry that is provided by a third party cannot be deemed as a valid dowry.

Dowries are not a part of the pillars or tenants of a legitimate marriage within Islamic Law, as stated in Article 14 number (1) of the Islamic Code. Nonetheless, Article 30 elaborates that the groom must pay a certain amount of dowry whose amount, value, shape, and form is to be agreed by both the bride and groom. If the element of *hibah* has not been fulfilled by the groom in preparing and providing his dowry, then the groom must pay another form of dowry known as *mitsil* dowries. The value of such a dowry will be according to the dowry provided by a groom of a female sibling or relative of the bride, or another woman that is of similar degree, and that it must also be mindful of fairness, or the local customs, or the capabilities of the groom. On the legal status of the marriage, Article 34 number (1) elaborates that the obligation of providing dowry is not a pillar of marriage and that the marriage is accordingly is still valid according to the law.

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