

Harmonization of “Uang Panaik” as Customary Term in Bugis-Makassar Ethnic Group and Dowry in Indonesian Marriage System

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Abstract

Indonesian Law No. 1 Year 1974 has defined the basic principles regarding marriage and everything related to marriage that has been adapted to the current development. Law of marriage under Customary Law in Indonesia contains several parts of marriage ceremonies that later on turn into arts in culture and tradition. It is handed back to the discretion of the local community. In the process of the customary marriage in Bugis-Makassar ethnic group, “*uang Panaik*” is the first thing that must be discussed in addition to dowry and must be approved by both parties. The method used in this research is a normative legal research with statute, historical, conceptual and comparative approach presented in descriptive analysis. The conclusion is that the “*uang panaik*” is an absolute requirement in customary law in Bugis-Makassar ethnic group. The “*uang panaik*” itself and the dowry must be met together for marriage eligibility.

Keywords: Dowry; Civil Law; Customary Law; Marriage Law; Islamic Law

INTRODUCTION

Marriage is one of the most important stage in human life. Every adult wants marriage to form a harmonious family and it became the ultimate purpose of every human being. In Indonesia, it was authorized in the Law No. 1 Year 1974 about Marriage. This regulation has defined the basic principles regarding marriage and everything related to marriage has been adapted to the current development.

The basic principles in marriage is to form a happy and eternal family, the husband and wife should help and complementing each other, so that each of them can develop his personality and achieve spiritual welfare along with material welfare. In the Article 1 of Law No. 1 Year 1974, the meaning of marriage affirmed that “marriage is the spiritual and physical bond between a man and a woman as husband and wife with the purpose of forming a happy and eternal family (household) by the divinity of one true God”.

Regarding marriage, we must remember one aspect of Indonesian law, which is the Customary Law. Indonesian Customary Law is not a formal legislation, but it is recognized by the Article II Transitional Provisions in The 1945 Constitution of The Republic of Indonesia. “All existing laws and regulations shall remain in effect as long as new laws and regulations have not yet taken effect under this Constitution”.¹

Customary Law is an unwritten law and held a place in the legal system in Indonesia, which recognized two forms of law, through written law and unwritten law. Both forms of this law are equally binding in the context of each, because both contain sanctions. Written law binding on the whole community, while Customary Law binding on customary communities.

In the customary communities, the Customary law is viewed as an applicable legal normative matter. Furthermore, from the perspective of indigenous people, the law is something ordinary and must be simply understood by them. The way the indigenous people viewed the idea of marriage in their life, while keep the customary norms in their community.

According to the Customary Law, marriage contains patterns of Customary Law ceremonies that become arts in the field of culture and ethics under discretion of the local community. The scope of Customary Law can be seen from two sides, namely the scope of place (space) or the working area of the law (legal field) and scope in legal substance.²

Subsequently, marriage is not only a social, cultural and religious magical act, but also a legal act. Social act of marriage is reflected from the social product. Which means that sociologically, marriage binds all the elements of social life, either individual, many individuals, communities, and even society itself. It called ‘magical religious act’ because marriage involves ancestral spirits of religion. There are ceremonies and rituals that must be performed in order to survive in both the wedding and the journey of the couples who enter the marriage life.

A ‘good marriage’ is a marriage conducted according to Religious Law, Customary Law, and the State Law.

¹ Article II Transitional Provision. *The 1945 Constitution of The Republic of Indonesia*. Unofficial Translation Version by International Labor Organization, p. 18.

² Sally Folk Moore dalam Dominikus Rato. (2015). *Hukum Perkawinan dan Waris Adat di Indonesia*. Yogyakarta : LaksBang PRESSindo, p. 9.

Similarly, in the process of customary marriage, for the purpose of customary marriage, then the norms must be fulfilled first.

In Bugis-Makassar ethnic group marriage system, there are stages that should be met in order not to violate the traditional hereditary norms that has been recognized by the community. This stages includes several important things to consider when families trying to execute a celebration of marriage. This happens because for Bugis-Makassar people, celebration of marriage is a big event that should not be considered insignificant or trivial, large families from both sides should immediately make consensus for an exquisite process before and after the celebration.

In Indonesia, marriage preceded by a proposal. This is the foundation of a marriage. When a man held the proposal, it also start the whole process of negotiation to reach agreement about the desirable matter before the wedding celebration, requested by the prospective bride to the groom. Typically, the proposal carried out by an intermediary.

At the time the proposal take place, it also become a legally binding process, with provisions that are follows:

1. The duration of engagement;
2. The dowry;
3. Measures if engagement is canceled unilaterally;
4. The costs of the wedding ceremony and how to share it;
5. Debriefing for the prospective bride.

One thing that must be considered when trying to implement this great celebration is "*uang panaik*" (spending money) and dowry. In the process of Bugis-Makassar customary marriage, these two things should be discussed and must be approved by both parties, the first meeting of the two sides is particularly talks about the "*uang panaik*" and dowry.

Based on this background, the following article will try to analyze how to harmonize "*uang panaik*" as a condition of customary marriage and dowry in the Indonesian marriage system. Harmonization of "*uang panaik*" as costumary terms in Bugis-Makassar ethnic group and dowry in Indonesian marriage system is very interesting to study because the marriage in Bugis-Makassar ethnic group is highly dependent on the "*uang panaik*" as one of the conditions. Moreover, the dowry is a religious obligation that must be fulfilled by men who will enter the marriage life.¹

Compliance of "*uang panaik*" and dowry as requirements to be fulfilled by the male resulting in the marriage itself. The payment of "*uang panaik*" can affect the survival of the marriage ceremony. If the man overdue the payment, then the wedding can be delayed either. Further explanation about "*uang panaik*" and dowry is also important, in term to view how the man take the responsibility by proposing for the woman.

RESEARCH METHOD

This study is a normative legal research using secondary data consists of primary, secondary and tertiary legal materials. All the materials obtain in this study will be collected and grouped according to each variable. Hereinafter, these sources analyzed with qualitative method by using several approaches. Some approach used in the study is statute/legislation approach, historical approach, conceptual approach, and comparative approach². The results of this study will be presented in the form of descriptive analysis argument.

ANALYSIS AND DISCUSSION

Legislation is the form of law in the society, especially for the countries that adhere the Civil Law system, like Indonesia. Legislation is just one component of the legal system. In addition, there are other legal form such as jurisprudence, legal customs, legal doctrines, and legal treaties. These diverse legal forms is a series of interrelated connection in the unity of the system. Moreover, legislations made by the authorities should be complementary and not contradictory with each other. The legal establishment by the government should realize accurate harmonization with other rules and laws, resulting in synergy of legislations in the country.

Human was created with classification of sex, consist of man and woman. Thereafter, man and woman mutually attracted to each other and join hands in matrimony. Marriage is a legal institution that bind man and woman who are destined to each other.

In the social order, simple to modern one, marriage regarded as a sacred bond, because marriage is more than just fulfillment of biological needs. The ultimate purpose of marriage is to procreate and lead to formation of further generations.

In a country like Indonesia, Marriage Legislations is an absolute necessity to accommodate the principles and provide legal basis of marriage which has been the guidance and applied to various group in our society.

¹ Suriyaman Mustari Pide. (2014). *Hukum Adat, Dulu, Kini dan Akan Datang*. Jakarta : Prenada Media Grup, p. 27.

² Peter Mahmud Marzuki. (2015). *Penelitian Hukum*. Jakarta : Kencana, p. 132.

Based on the national ground philosophy of Pancasila and The 1945 Constitution of the Republic of Indonesia, every legislation should be able to embody the basic principles of Pancasila and The 1945 Constitution of the Republic of Indonesia and also shall resettle the empirical condition in today's society. Marriage Law has accommodate the elements and arrangements of religions and belief system.

Law No. 1 Year 1974 determined the principles regarding marriage and every aspects related to marriage that has been adapted to the current society. The fundamental principles are stated in this Law as follows:

- a. The purpose of marriage is to form a happy and eternal family. The basic principles in marriage is to form a happy and eternal family, the husband and wife should help and complementing each other, so that each of them can develop his personality and achieve spiritual welfare along with material welfare.
- b. This Law stated that a marriage is valid if it is done according to the law of each religion and belief system and also, every marriage must be recorded in accordance with the legislation in force.
- c. This law adopt the principle of monogamous marriage. It requires a permit, if a husband wants to take more than one wife. However, the marriage that consist of a husband and more than one wife, may only be made to the terms of various specific terms and decided by the Court.
- d. One of the basic principle in this Law is the husband and wife must be mature for married, so the both parties can fulfill the purpose of marriage, does not end in divorce and to get good and healthy children.
- e. The purpose of marriage is to form a happy, eternal, and welfare family. In consequence, this Law was designed to hamper divorce.
- f. The status and the rights of the husband and wife are balanced in domestic life and in the community association. Therefore, every decision in the family must be a joint decision between husband and wife.

Marriage Law has regulated the Basic Marriage, consist of:

1. Article 1 of Law No. 1 Year 1974 confirmed that:

“Marriage is the emotional and physical bond between a man and a woman as husband and wife with the intention of forming a happy and eternal family (household) by the divinity of one true God”.

In the Explication Section of this Law, we can find more detail that a country based on Pancasila, which the first precept arrange the belief in God Almighty, then the marriage has a very close relation with religious/spiritual aspects. So that, marriage is not only held the elements of both physical / spiritual aspects, but also the element of spirituality has a very important role.

2. Concerning the legality of marriages registration, this Law arranged:

- a. The marriage is legal if it is done according to the law of each religion and belief system.
- b. Every marriage is registered according to the legislation in force.

The marriage create the institution of marriage and form a family unit. When viewed and impregnated, it is very clear that the family is the smallest part of the society but also the core of the society itself. The institution of marriage is a starting point of group conformation. Every order in the society has characters and identities that valued the institution of marriage and adherence to religious elements held by the group in question. Not surprisingly, the marriage as the pillar of collectivity will acquire the settings that often loaded with various norms strictly upheld the levels of purity. Moreover, the development in the society become the attributes used in the wedding ceremony with full meaning of chastity. Banners and leaves that assemble in the wedding ceremony announce the hope and message of the family. Every equipment, banners and prays that been given continuously in order to be maintained and preserved by the next generations. Eventually, the intrinsic values in group conformation will develop and obeyed in social life.

The explanation described above is the result of ethnic group and religions diversity in the Republic of Indonesia that concern towards marriage. It cannot be avoided, every ethnic group and religion has its own way that shall be met to formation of a family through marriage. The differences in ordinances and liabilities that shall be met from each ethnic group and religion depends on their Customary Law and religious dogma.

There is no validation about Customary Law position in Indonesia after the enactment of Law No. 1 Year 1974. According to the opinion of M. Yahya Harahap, this legislation was replace the Customary Law. The primary principal of marriage has taken over by this legislation and the Customary Law only used as a complement or secondary element that is no longer reaffirm the validity of a marriage, divorce or other things related to the children custody.¹

Hazairin² stated that in Customary Law of Marriage, is no longer applies to the community after the legalization of Law No. 1 Year 1974, the pattern on Customary Law of Marriage change onto cultural ceremony in art and morality. About the validity of marriages, the Customary Law refers them to the family system adopted by the community belong to the bride and the groom. As we know, the lineage under the Customary Law can be withdrawn from patrilineal, matrilineal or parental line.

In the society, marriage is not only applies as intercourse for both sexes, it also aims to forms a happy and

¹ M. Yahya Harahap dalam Otje Salma Soemadiningrat. 2002. *Rekonseptualisasi Hukum Adat Kontemporer*. Bandung : Alumni, p. 173.

² Hazairin on Hilman Hadikusuma. 2003. *Hukum Perkawinan Adat Dengan Adat Istiadat Dan Upacara Adatnya*. Bandung : Citra Aditya Bakti, p. 57.

eternal bond¹. As for the indigenous people, marriage aims to build, develop, and maintain kinship in peace and harmony. In reality, Customary Law of Marriage is still valid and binding for the society. A marriage is a subject to customary arrangement in order to protect the honor and dignity of the families. Everything depends on the life values regarding the marriage purposes in the society.

Basically, according to customary law, marriage is a personal, family, and society matter. It is the material difference between Customary Law of Marriage and modern concept of marriage, because the modern concept of marriage only belong to the bride and groom.

The kinship system based on genealogical bonding is still highly respected in the society. Therefore, a marriage is one of the fundamental principal to preserve the kinship, lineage and social status. Marriage, according to the Customary Law, is a personal, family, and society matter², so marriage is not only an event for the man and the woman.

Likewise, in Bugis Makassar ethnic group, the wedding ceremony is a long and complicated process. It has to go through several stages as follows :

1. “*A’jangan-do / ma’manu-manu*”: The investigation secretly done by the groom to learn about the background of the prospective bride.
2. “*A’suro / massuro*”: This is a formal proposal by the prospective groom to the prospective bride. This process can be done in several phases and can last many months before the agreement.
3. “*Appa’nasa / patenre*”: The next stage after the formal proposal, “*Appa’nasa / patenre*” aims to determine the specific date for the wedding ceremony and agreement regarding the dowry and “*uang panaik*” (spending money).
4. “*Appanai leko lombo*” (“*erang-erang*”): After the proposal is officially accepted, then the next stage (called “*A’bayuang*”), held by the family of the prospective groom, by delivering “*passio*” / “*passiko*” or “*pattere*”. Usually, this process symbolize with an engagement ring.
5. “*A’barumbung*”: A traditional steam shower event, conducted by the prospective bride.
6. “*Appisili Bunting*”: Another traditional steam shower. This event is intended as an emotional and physical self-cleaning, so when the bride and groom entering the marriage life, they will guarded by the God and have the protection from God.

Bugis-Makassar ethnic group cognates patrilineal line but does not use the form of “*uang jujur*”. It is equated with dowry or “*sunrang*” (in Makassar language), usually pain in the form of “*uang adat*”, rice field, farm, heirloom, boat, etc. In terms of the value of “*sunrang*”, it is similar to “*uang jujur*” because it also prevailing among the people of Gowa.³

In addition of dowry, another thing that shall be agreed upon in the process of marriage proposal is the amount of “*uang panaik*”. The amount itself is depend on the prospective bride. “*uang panaik*” is one of the requirement for marriage proposal that also serve as the spending money for the wedding ceremony.

In the process of “*A’suro / massuro*” or the formal proposal by the prospective groom to the prospective bride. This part can be done in several phases and can last many months before it reach the agreement, including the agreement upon the “*uang panaik*” and dowry.

The definition of “*uang panaik*” or “*doe panaik*” itself in Bugis Makassar tradition is certain amount of money given by the prospective groom to the prospective bride as a tribute to her social status. There is a culture of mortification (*siri*) from the family if the prospective groom cannot fulfill the requirement of “*uang panaik*”. Therefore, “*uang panaik*” then become a symbol of sincerity and the proof of love from the groom to his bride.

The amount of “*uang panaik*” in Bugis Makassar is depend on the social status of the prospective bride. But, the recent progress shows that the amount of “*uang panaik*” is also depend on the bride education level. If the education level of the bride is high, then her “*uang panaik*” is likely going to be higher either.

Another agreement that shall be met in the whole process of marriage in Bugis Makassar ethnic group is dowry (*sunrang*). *Sunrang* is an absolute requirement under Islamic Law as the majority religion practiced by Bugis Makassar people. *Sunrang* is intended as a gift from the groom to the bride.

In Islamic Law of marriage, Islam requires man to give “*mahar*” (dowry) to his prospective bride. Dowry is anything submitted by prospective groom to his prospective bride in order to get married. Usually, a dowry is a symbol of love from a man to his woman and it also shows the willingness of the prospective bride to be a wife.

Mahar is a gift giving by a man to his prospective bride, either in the form of goods or money in accordance to the rules of Islamic Law (as apply in Indonesia through The Compilation of Islamic Law 1991). *Mahar* is compulsory for a man to give to his prospective bride as written in Holy Qur’an, “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”.⁴ *Mahar* also shows as reflection of a man determination to live together and form a family

¹ *Ibid.*

² *Ibid.*

³ *Ibid.*

⁴ (2016). The Holy Qur’an. Surah An-Nisa’. 4th verse. Available from: <https://quran.com/4>. [Accessed October 20, 2016].

with the woman he desired. In Islam, *mahar* is not a part of marriage principle. Therefore, if it is not mentioned during the wedding vows, the validity of the marriage is ensured.

In Bugis-Makassar ethnic group, who inhabited the Southern region of Sulawesi island, “*uang panaik*” and “*mahar*” are two requirements that shall be met by a man who wants to propose for a woman. It because “*uang panaik*” is an obligation, although for some people, “*uang panaik*” can be aggravating factor for a proper wedding. Sometimes, “*uang panaik*” can be the reason of delayed marriage when the prospective groom could not meet the payment deadline for “*uang panaik*” and *mahar*.

The amount of “*uang panaik*” which sometimes reaches the number of millions rupiah. If the woman come from higher social strata and have good educational background, then “*uang panaik*” can be very influential for her wedding. “*uang panaik*” has become the symbol of dignity of Bugis-Makassar woman who wants to get married. This fact is widely known in South Sulawesi province.

The genuine intention of a man as a prospective groom is shown from his ability to fulfill the request of “*uang panaik*” from the woman he desired and her family. His sincerity, honor and dignity will be proven once he pays as requested. The man will work hard to get his “*uang panaik*” according to the amount that had been agreed before.

This is the weakness point of marriage process that still uphold the Customary Law. The agreement on both families in determining of the “*uang panaik*” and dowry impact the whole marriage process. The demand of “*uang panaik*” can be very burdensome for the prospective groom and as result, the marriage can be delayed or even canceled due to disagreement in the amount of “*uang panaik*”.

The advantages of “*uang panaik*” are :

1. It is a gift for the bride given by the groom;
2. “*Uang panaik*” determine whether the wedding ceremony will be celebrate pretentiously or not.
3. The genuine intention of the prospective groom shown by the fulfillment of “*uang panaik*” as requested by the prospective bride.¹

In Bugis Makassar ethnic group, “*uang panaik*” has become a cultural practice. “*uang panaik*” as customary requirement is a priority for both of the families. The implementation of marriage even determined by the amount of “*uang panaik*” and it occur to be a weakness in the marriage process. It is visible that there is no harmonization between the cultural practice of “*uang panaik*” and dowry.

The cultural phenomenon of “*uang panaik*” replace the position of dowry demand by the prospective bride and her family. The requested dowry usually not in large amount of money or goods. “*Uang panaik*” is only a customary terms and a complimentary part for the whole process of marriage, but it is preferred because the prestige and honor of a Bugis Makassar woman shown by the amount of her “*uang panaik*” at her wedding ceremony.

CONCLUSION

Written law is a personification of law. In addition, there are other form of law, such as jurisprudence, legal customs, legal doctrines and legal treaty. These diverse legal form is a series of interrelated parts in the unity of the system.

Article 1, Law No. 1 Year 1974 about Marriage stated that “Marriage is the spiritual and physical bond between a man and a woman as husband and wife with the purpose of forming a happy and eternal family (household) by the divinity of one true God”

In Bugis Makassar ethnic group, marriage are depend on “*uang panaik*” as customary terms and it even become a priority that shall be agreed upon between the two families. Subsequently, the consummation of marriage is determined by the amount of “*uang panaik*” and it turn out to be a weakness in Bugis Makassar marriage process. Later on, harmonization between “*uang panaik*” as customary terms and dowry is totally invisible.

The total amount of “*uang panaik*” in Bugis Makassar ethnic group highly dependent on the social status owned by the prospective bride and her family. But in recent times, the amount of “*uang panaik*” is also determined by the education level of the prospective bride. If the education level of the bride is high, then her “*uang panaik*” is likely going to be higher either.

The cultural phenomenon of “*uang panaik*” replace the position of dowry demand by the prospective bride and her family. The requested dowry usually not in large amount of money or goods. Although “*uang panaik*” is only a customary terms and a complimentary part for the whole process of marriage, but it is preferred because the prestige and honor of a Bugis Makassar woman shown by the amount of her “*uang panaik*” at her wedding ceremony. Harmonization between these two things are necessary so that customary terms as a complementary element of marriage process shall not dictate the terms of marriage in religious aspect.

¹ Fridayani Abdul Karim. (2015). ‘Ngeri’nya “Uang Panai” Untuk Melamar Wanita Bugis-Makassar. Available from: <https://fridayaniabdulkarim.wordpress.com/2015/05/08/ngeri-nya-uang-panai-untuk-melamar-wanita-bugis-makassar>. [Accessed October 19, 2016].

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