

DOWRY (MAHAR) FROM AN ISLAMIC PERSPECTIVE

1. Definition of *Mahar*

Mahar is derived from Arabic. In the Holy Quran it has also been referred to as *al-sadaq*, *al-saduqah*, *al-nihlah*, *al-ajr*, *al-Faridah* and *al-'aqd*.

Mahar in Islamic Law refers to the gift that must be given by the husband to the wife at the time of wedding.

According to the 1984 Islamic Family Law (Federal Territories), it is stated that the dowry (*mas kahwin*) refers to a payment from the husband to the wife that is legally due by Islamic Law at the solemnisation ceremony (*akad nikah*), either in the form of money actually paid or recognized as a credit with or without security, or as something that, according to Islamic law, has monetary value.

There are many propositions (*dalil*) that supports the giving of the dowry as obligatory, such as in *Surah al-Nisa'*, verse 4:

وَعَاثُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ
هَنِيئًا مَّرِيَّتًا ﴿٤﴾

“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.”

In *Surah al-Nisa'*, verse 24:

فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً

“So for whatever you enjoy [of marriage] from them, give them their due compensation as an obligation.”

The giving of a dowry is a symbol of the husband's seriousness in marriage. In addition, it reflects the love and willingness of the husband to live with the wife, and to sacrifice for the welfare of his family. It is also a sign of respect from the husband to the wife.

However, the dowry is not included among the essential 'pillars' of marriage (*rukun*) or prerequisites for the validity of a marriage (*syarat sah*). If the couple agrees to marry without determining the amount of the dowry, the marriage is still valid but the husband is required to pay a commensurate dowry (*mahar mисil*) which entitles the wife to a dowry that befits her social status. This is based on a story that happened in the days of the Rasulullah (peace and blessings be upon him) in which a woman was married with no mention of a dowry. Not long after, the husband died before the marriage was consummated so the Rasulullah (peace and blessings be upon him) gave out an edict for the woman to receive a commensurate dowry (*mahar mисil*).

2. The Giving of the Dowry

The giving of dowry to the wife is a legal obligation. According to Abu Hanifah, the wife is entitled to a dowry as soon as the marriage contract (*akad nikah*) is valid. Meanwhile, the Syafi'e sect entitles the wife to the dowry with the validity of the marriage contract (*akad nikah*) and also the consummation of the marriage. If the marriage is flawed (*fasid*), the husband is not obliged to give the dowry unless the marriage has been consummated.

3. Dowry and Gifts According to the Islamic Family Law Provisions

According to the provisions of sections 21 (1) and (2) of the 1984 Islamic Family Law Act (Federal Territories), Act 303 reads as follows:

(1) The dowry must be paid by the groom or his representative to the bride or her representative before the person solemnising the marriage and at least two other witnesses.

(2) The registrar shall, with respect to each marriage to be registered, ascertain and record:-

- a) the value and particulars of the dowry;
- b) the value and particulars of gifts;
- c) the values and particulars of any part of the dowry or gifts or both which have been promised but not paid at the solemnisation ceremony, and the promised date of payment; and
- d) the particulars of the security given for the payment of dowry and gifts.

4. Mahar Rates

Islam does not set rates and maximum or minimum limits for the dowry. It depends on the circumstances (*uruf*) of the time, place and society. Nevertheless, Islam recommends moderation and not setting a rate that is too high or too low. The Rasulullah (peace and blessings be upon him) has encouraged us to simplify the giving of the dowry:

" اعظم النساء بركة أيسرهن مؤنة "

"The best woman is the one whose mahar is the easiest to pay."

(Reported by Ahmad and al-Hakim)

However, the husband is allowed to give to the wife a dowry of high value. This is based on *Surah al-Nisa'*, verse 20:

وَعَاثَيْتُمْ إِحْدَهُنَّ قِنْطَارًا

"...you have given one of them a great amount [in gifts]..."

In Malaysia, the dowry is given in the form of money and the rates differ from state to state.

5. Types of Dowry

a. Mahar Musamma

The dowry in which the type and value are clearly stated and agreed upon during the solemnisation ceremony (*akad nikah*), as is practised by our society today.

Ulamas have agreed that this type of dowry should be paid by the husband in the event of one of the followings:-

- (1) The consummation of the marriage.
- (2) The death of one of them, whether husband or wife.

b. Mahar misil (commensurate dowry)

The dowry in which the type and value are not stated or agreed upon during the solemnisation ceremony (*akad nikah*). If this situation occurs, the dowry that should be given is one that is to the value of a dowry befitting the wife's social status, such as that of her sisters of the same parents or sisters of the same father or her aunts. If she does not have any of the aforementioned female relatives, the dowry that should be given is one that is to the value of a dowry befitting one of the wife's standing in society. Otherwise, it is up to the husband, based on local customs and traditions.

In addition, there are other issues that need to be taken into account in determining this type of dowry, that is from her appearance, her wealth, the local conditions, her religion, her piousness (*taqwa*), her knowledge, her intelligence, her honour and her status, whether single or divorced/widowed, and other factors that can be assessed. This is because the different characteristics warrant different dowry rates.

6. Entitlement to Half of the Dowry or Complete Non-entitlement

As we know, as soon as the marriage contract is deemed valid, the dowry from husband to wife must be paid, whether in the form of *mahar musamma* or *mahar misil*, because this is one of the rights of a wife.

However, there are situations that may cause the wife to be entitled to only half of the dowry or even to no dowry at all, namely:-

a) The wife is entitled to only half of the dowry if she is divorced before the marriage is consummated. This is based on *Surah al-Baqarah*, verse 237:

وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ

“And if you divorce them before you have touched them and you have already specified for them an obligation, then [give] half of what you specified - unless they forego the right or the one in whose hand is the marriage contract foregoes it.”

The verse above has stated that if the type and value of the dowry have been clearly stated during the solemnisation ceremony (*akad nikah*) and then she is divorced before the marriage is consummated, the husband is obliged to pay only half the dowry. However, if the type and value of the dowry have not been stated during the solemnisation ceremony (*akad nikah*), the husband is obliged to give the wife a commensurate dowry (*mahar misil*).

According to Imam Syafi'e and Imam Malik, if the wife is divorced before the marriage is consummated; the husband is obliged to pay only half the dowry whether or not the type and value of the dowry have been stated during the solemnisation ceremony (*akad nikah*).

b) The wife is not entitled to the dowry if the divorce is through annulment by the request of the wife (*fasakh*) and the marriage has not been consummated.

7. Conclusion

The dowry is one of the wife's rights that and is sincerely given by the husband to the wife, without expectations, as an expression of his love and responsibility. It is intended to please the wife, so that she feels appreciated and more willing to begin a new life with the husband.