

The Law of *Passorong* Ownership in Mandar Community Marriage, Majene Regency: A Comparison Study of Islamic Law and Positive Law

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Abstract

The presence of *Passorong* in the Mandar ethnicity of Majene Regency is a gift of wealth from the prospective husband to his prospective wife to enter into a marriage. *Passorong* in terms is similar to dowry in Islamic law, which is a gift from the groom to the bride. This study is a field study with a qualitative descriptive research type. The source of data in this research is the Office of Religious Affairs in Majene Regency. The approach used consists of normative theological, juridical, sociological, anthropological, and philosophical approaches. Methods of data collection obtained directly from the field using observation techniques, interviews, and documentation. Data processing using deductive techniques with qualitative descriptive analysis. The results of the study show that the mechanism for giving *passorong* in the marriage of the Mandar community in Majene Regency is usually in the form of objects that have value or benefits. The mechanism for giving *Passorong* goes through several stages before the marriage contract, namely an agreement is made after the proposal process takes place, such as *mattandajari* and *maccanring*. *Passorong* objects given by prospective husbands to prospective wives vary, but are usually in the form of gold and land and coconut trees accompanied by land, real or converted in rupiah. The practice of giving a *passorong* is in line with Islamic law, giving a *passorong* is classified as a *musamma* dowry, because it determines the amount and type of item that is used as a dowry at the time the marriage contract takes place. While in positive law, legally speaking a certificate has not been issued in the name of the wife, in the Law on Basic Agrarian Regulations and Government Regulation Number 24 of 1997 concerning land registration

that a *passorong* is in the form of land if to obtain *eigendom* rights over land must be certified in the name of the wife.

Kehadiran *Passorong* dalam etnis Mandar Kabupaten Majene merupakan sebuah pemberian harta dari calon suami kepada calon istrinya untuk melangsungkan perkawinan. *Passorong* secara istilah semisal dengan mahar dalam hukum Islam, yang merupakan pemberian mempelai laki-laki kepada mempelai perempuan. Kajian ini merupakan studi lapangan dengan jenis penelitian deskriptif kualitatif. Sumber data dalam penelitian ini adalah Kantor Urusan Agama Kabupaten Majene. Pendekatan yang digunakan terdiri dari pendekatan teologis normatif, yuridis, sosiologis, antropologi dan filosofis. Metode pengumpulan data diperoleh langsung dari lapangan dengan menggunakan teknik observasi, wawancara serta dokumentasi. Pengolahan data dengan menggunakan teknik deduktif dengan analisis deskriptif kualitatif. Hasil penelitian menunjukkan bahwa mekanisme pemberian *passorong* pada perkawinan masyarakat Mandar Kabupaten Majene lazimnya berbentuk benda yang memiliki nilai atau manfaat. Mekanisme pemberian *Passorong* melalui beberapa tahap sebelum akad nikah yakni dilakukan kesepakatan pada saat setelah proses peminangan berlangsung seperti *mattanda jari* dan *maccaring*. Objek *passorong* yang diberikan oleh calon suami kepada calon istrinya beragam, namun lazimnya berupa emas dan tanah dan pohon kelapa disertai dengan tanah, *Real* atau dikonversi dalam mata uang rupiah. Praktik pemberian *passorong* sejalan dengan hukum Islam, pemberian *passorong* tergolong dalam bentuk mahar *musamma*, karena ditentukan jumlah dan jenis sesuatu barang yang dijadikan mahar pada saat terjadinya akad nikah. Sementara dalam hukum positif, secara legalitas belum diterbitkan sertifikat atas nama istri, dalam Undang-Undang Peraturan Dasar Pokok-Pokok Agraria dan Peraturan Pemerintah Nomor 24 tahun 1997 tentang pendaftaran tanah bahwa *passorong* berupa tanah jika untuk mendapatkan hak *eigendom* atas tanah harus bersertifikat atas nama istri.

Key words: *Passorong; marriage; Islamic law; positive law.*

Introduction

Fiqh scholars agree that dowry in marriage is a must that must be paid by a husband to his wife, giving dowry must be in accordance with the agreement in the marriage contract. In addition to the dowry, which is a must that must be fulfilled by the husband, it is also the right of a wife.¹

The Messenger of Allah once said to someone who wanted to marry: "give the dowry, even if it is an iron ring". So the most important thing is giving to the

¹Ahmad Azhar Basyir, *Hukum Perkawinan Islam* (Yogyakarta: UII Pres, 2000), p. 65.

wife and not in terms of value. As long as both parties agree and are willing. Another hadith narrated by al-Bukhari "The Prophet (pbuh) also asked: Have you memorized the Qur'an? People replied: I memorized this surah and that surah. 'He then mentioned the names of several letters in the Quran. The Prophet (pbuh) asked again: Can you read it by rote? "Yes," replied the man. Go, I will marry you to that woman with the Quran that you memorized." Another example is that when the Prophet himself married Sofiyah at that time he was still a servant with a dowry that freed Sofiyah. From this example, the object of dowry in the view of Islamic law can be a service.

Seeing that the practice of giving dowry has the potential for disputes to occur in the future, as a research conducted by Nur Annisa Asjaksan et al. With Dowry Disputes After Divorce (Study of Decision of the Sungguminasa Religious Court No.14 6/Pdt.G/2017/PA.Sgm.) published in Qawanin Journal of Legal Sciences, Law Study Program, Faculty of Law, Indonesian Muslim University Makassar Vol. 1, No. 1 (August 2020) explains in conclusion that the legal considerations of judges in dowry disputes filed by the ex-wife to the ex-husband who has not submitted the dowry that is the right of the wife depending on the evidence submitted by the plaintiff in accordance with Article 1365 of the Civil Code and Article 1366 of the Civil Code. Judges remain bound by the provisions of civil procedural law that apply within the scope of the Religious Courts.² From this case, it is clear that giving a dowry has the potential to cause disputes, so there is a need for legal certainty to provide legal guarantees for the wife.

Dowry, especially in the Mandar Society of Majene Regency, is referred to as *Passorong*, which is a gift made by the prospective husband to his prospective wife to enter into a marriage contract. Besides, there is also known the term *erang-erang* as a supplement or dowry supporter. This *erang-erang* is usually in the form of a cupboard containing women's equipment, for example a set of prayer tools, clothing, beauty equipment, shoes and others. This is a distinct characteristic of Mandar marriages in Majene Regency. In addition, the Mandar Society of Majene Regency has an understanding that the object of the *passorong* is a very valuable treasure so that the *passorong* is considered a marriage token.³

A dispute over granting a *passorong* occurred in Majene Regency, a woman from Banggae District, Majene Regency sued for a *passorong* in the form of land that

² Nur Annisa Asjaksan et al, *Sengketa Mahar Setelah Terjadi Perceraian "Studi Putusan Pengadilan Agama Sungguminasa No.14 6/Pdt.G/2017/PA.Sgm"*. ([Qawanin Jurnal Ilmu Hukum](#) Program Studi Ilmu Hukum Fakultas Hukum Universitas Muslim Indonesia Makassar Vol. 1, No. 1:2020) h. 82

³ Abdul Gaffar Haris, Tamiroddo Village Community Figures, Tammiroddo Sendana District, Majene Regency. Interview; on Tuesday 9 March 2021 at 11.00 WITA

had been given by her husband.⁴ Based on the description above, the writer is interested in conducting an in-depth study of the law of *passorong* ownership. The aim is to get factual answers about the position of *passorong* within the framework of Islamic law and positive law.

Method

Research methodology as a method used to find, record, analyze to formulate to achieve a goal. This research is classified as field research, namely a type of research whose data sources come from field studies and this research also includes a type of qualitative descriptive research, namely research that produces data in a descriptive way.⁵

This research will be carried out at the Offices of Religious Affairs in Majene Regency, which consists of the Offices of Religious Affairs in the Districts of Banggae, Banggae Timur, Pamboang, Sendana, Tammerodo Sendana and Sendana. The approaches used are the normative theological approach, the juridical approach, the sociological approach, the anthropological approach and the philosophical approach.

Methods of data collection obtained directly from the field using observation techniques, interviews, and documentation. Besides that, the researcher also conducted a search through books related to dowry or *Passorong*. Data processing uses deductive techniques, starting from general propositions and ending with specific conclusions. While data analysis using descriptive qualitative analysis.

Discussion

Mechanism of Giving and Objects of Giving *Passorong* in Mandar Marriage, Majene Regency

Based on the data obtained from the six districts, it shows that the mechanism for giving *Passorong* from the prospective husband to the prospective wife has diversity, the form of giving *Passorong* is usually objects that have value or benefits, but as for *passorong* in the form of services according to Islamic law, this has never been encountered in the Mandar Society of Majene Regency because it is

⁴ H.M. Syahid, Head of Banggae Timur Office of Religious Affairs, Interview on Wednesday, 10 March 2021

⁵Jalaluddin Rachmat, *Metode Penelitian Kualitatif*, (1st Print; Jakarta: RajaGrafindo Persada, 2000), p. 1

considered that *passorong* in the form of services is a dowry that has no form so that it cannot be a sign of marriage or a wedding souvenir.⁶

The mechanism for granting *passorong* is usually carried out through several stages before the marriage contract, the granting of *passorong* is carried out by agreement after the proposal process takes place, while the stages that determine the agreement on the provision of *passorong* include; (1) Determination of the amount and form of dowry is usually carried out during the *mattandajari* procession (this stage of the procession is the determination of the wedding day as well as the determination of the object and amount of *Passorong* and others;⁷ and (2) *Maccanring* procession (this stage of the procession is the consolidation as well as the inauguration of all the series of wedding events to be held.⁸

Based on the data obtained from the field, the shape of the *Passorong* object given by the prospective husband to his prospective wife varies, while the data is as follows.

- a. Banggae District shows that marriage events in the 2019-2021 period included the provision of a *passorong* of 50% Gold Ring + A Set of Prayer Tools, 20% Real⁹ or converted in Rupiah 10% A plot of land and 10% Coconut Trees / Cloves + 10% Land and others.¹⁰
- b. East Banggae District shows that marriage events in the 2019-2021 period included the giving of 60% Gold Ring + A Set of Prayer Tools, 15% Land, 15% Coconut Trees / Cloves + Land and 10% Real or converted in Rupiah and others.¹¹
- c. Pamboang District shows that in the 2019-2021 period, marriage events were given a *passorong* of 60% Gold Ring + A Set of Prayer Tools, 15% Land, 15% Coconut Trees + Land and 10% Real or converted in Rupiah and others.¹²
- d. Sendana District shows that marriage events in the 2019-2021 period included the provision of a 60% gold ring + a set of prayer tools. 15% Land 15%

⁶ Abdul Gaffar Haris, Tammerodo Village Community Figure, Tammerodo Sendana District, Interview on Tuesday, October 26 2021, 16.00 WITA

⁷ Husain, *Community Figure of Polewali Regency*, Interview on Tuesday 19 October 2021 at 10.00 WITA

⁸ Abdul Gaffar Haris, Tammerodo Village Community Figure, Tammerodo Sendana District, Interview on Tuesday, October 26 2021, 16.00 WITA

⁹ *Real* is the Currency Value of Saudi Arabia, it is commonly used as a dowry in the Mandar and Bugis ethnicities

¹⁰ Data source of the Banggae District Office of Religious Affairs, accessed on Monday 18 October 2021 at 09.00 WITA

¹¹ Data Source Office of Religious Affairs in East Banggae District, accessed on Thursday 21 October 2021 at 09.00 WITA

¹² Data source Pamboang District Religious Affairs Office, accessed on Tuesday, October 19 2021 at 09.00 WITA

Coconut Trees/ Cloves + Land and 10% Real or converted in Rupiah and others.¹³

- e. Tammerodo Sendana District shows that marriage events in the 2019-2021 period included the provision of a *passorong* of 60% Gold Ring + A Set of Prayer Tools, 15% Land 15% Coconut Trees/Cloves + Land and 10% Real or converted in Rupiah and others.¹⁴
- f. Tubo Sendana District shows that marriage events in the 2019-2021 period included the provision of a *passorong* of 60% Gold Ring + A Set of Prayer Tools, 15% Land 15% Coconut Trees / Cloves + Land and 10% Real or converted in Rupiah and others.¹⁵

From these data, the six districts sampled as a population to represent all sub-districts in Majene Regency, it can be understood that marriage passes in the Mandar Regency community are still dominated in the form of gold and land and coconut trees accompanied by land, real or converted in rupiah currency. Based on the information from the interview results, the *passorong* in the form of a set of prayer tools is a tradition that must be fulfilled even though it was not discussed beforehand or not mentioned in the marriage contract.

Considering that a dispute over the granting of a *passorong* has occurred in Majene Regency, so especially for a *passorong* (dowry) in the form of land for the prospective husband, he must attach a certificate of *passorong* from *Lurah* or the village head. The *passorong* land certificate aims to ensure that there is and where the place or location of the dowry in the form of land is located.¹⁶

Comparative Analysis of Law of *Passorong* Ownership According to Islamic Law and Positive Law

The term *Passorong* in the Mandar ethnicity of Majene Regency is a gift of wealth from a prospective husband to a prospective wife to carry out a marriage, this is similar to giving a dowry in Islamic law. As previously explained, the mechanism for giving *passorong* varies, but the dowry object is usually in the form of objects that have value or benefits, such as gold, land and coconut trees along with

¹³ Data source Sendana District Religious Affairs Office, accessed on Friday, October 22 2021 at 09.00 WITA

¹⁴ Data Source Office of Religious Affairs in Tammeroddo Sendana District, accessed on Tuesday 26 October 2021 at 09.00 WITA

¹⁵ Data Source Office of Religious Affairs in Tubo Sendana District, accessed on Monday 25 October 2021 at 09.00 WITA

¹⁶ M. Syahid, Head of the Office of Religious Affairs in Banggae Timur District, Interview on Thursday 21 October 2021 at 09.00 WITA

the land and so on. This custom has been passed down from generation to generation.

Giving *Passorong* in the Mandar Society of Majene Regency is mandatory, even part of the community understands that *passorong* is a wedding token or souvenir so that the dowry is very valuable in marriage. The provision of a *passorong* is usually agreed before the marriage contract (*ijab-qabul*) takes place, this is in line with Islamic law, as classified by the ulema, namely dowry is divided into two types, namely *musamma* dowry and *mitsil* dowry, but the giving of *Passorong* (dowry) is not known as the term dowry in the form of services so that the giving of *Passorong* (dowry) in Mandar community of Majene Regency seems only in the form of material.

The practice of giving *passorong* in the Mandar community of Majene Regency is still classified as giving a *musamma* dowry. *Musamma* dowry¹⁷ is a gift of dowry that is strictly determined regarding the amount and type of something that is used as dowry at the time the marriage contract takes place, as is the case in the Mandar Society of Majene Regency. The scholars have also agreed that the *musamma* dowry must be paid in full by a husband, if one of the following occurs, namely:

- (1) Husband has intercourse with his wife¹⁸

Word of Allah swt. in QS. an-Nisa/4: 21

وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا

The translation:

And how could you take it while you have gone in unto each other and they have taken from you a solemn covenant?¹⁹

This verse teaches that if a husband has sexual intercourse with his wife, he is no longer allowed to take back any dowry he has given. With this verse, Islamic law stipulates that the mixing of a husband and wife results in the prohibition of a husband taking back the dowry he has given.

- (2) One of the husband and wife died

The *musamma* dowry must also be paid in full if the husband has mixed with his wife, and it turns out that the marriage is broken for certain reasons, such as it turns out that his wife is a mahram herself, or it turns out that a virgin turns out to be a widow, or is pregnant from a previous husband. However, if the wife is

¹⁷Sayyid Sabiq, *Fiqh al-Sunnah II* (Beirut: Dar al-Fikr, 1983), p. 140.

¹⁸Peunoh Daly, *Hukum Perkawinan Islam* (Jakarta: PT. Bulan Bintang, 1988), p. 224.

¹⁹Saheeh International. *The Qur'an: English Meanings*. Al-Muntada Al-Islami Trust, (2010).

divorced before mixing,²⁰ based on the word of Allah swt. in QS. Al-Baqarah/2: 237.

وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ إِلَّا أَنْ يَعْفُونَ أَوْ يَعْفُوا الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَى وَلَا تَنْسُوا الْفَضْلَ بَيْنَكُمْ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

The translation:

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. And to forego it is nearer to righteousness. And do not forget graciousness between you. Indeed Allah, of whatever you do, is Seeing.²¹

As previously explained, the mechanism for giving *passorong* in the Mandar community in Majene Regency is usually in the form of objects that have value or benefits, for example gold, land and coconut trees along with the land and so on. However, the Law no. 1 of 1974 concerning Marriage has several weaknesses because the dowry is not clearly explained regarding the object and procedure for surrender and civil ownership rights so that this will have the potential for disputes to occur in the future.

According to Sudikno Mertokusumo Legal certainty is a legal guarantee that must be carried out, those who have the right to sue the law can obtain their rights and decisions must be carried out. Although legal certainty is closely related to justice, law is not synonymous with justice. General law binds everyone, socializes, while justice is subjective, individualistic and does not presuppose.²²

Giving *Passorong* is an act of transfer of ownership rights to an object from the original owner (prospective husband) to another person (prospective wife). In the Indonesian civil law system, the transfer of ownership rights can be found in Article 584 of the Civil Code. "Property rights to something material cannot be obtained in any other way, but by ownership, because of attachment, because of expiration, because of inheritance either according to law or according to a will and because of the appointment or surrender of a civil event to transfer property rights, carried out by a person who has the right to act freely on that object"²³.

²⁰Abdul Rahman Ghozali, *Fiqh Munakahat* (Jakarta: Kencana Prenada Media Group, 2008), p. 93

²¹Saheeh International. *The Qur'an: English Meanings*. Al-Muntada Al-Islami Trust, (2010).

²²Sudikno Mertokusumo, *Kapita Selektta Ilmu Hukum*, p. 23

²³Soesilo and Pramudji R, *Kitab Undang-undang..*, p. 154

According to the provisions of Article 584 of the Civil Code mentioned above it clearly stipulates that the giving (levering)²⁴ namely one of the ways to obtain property rights over an object, in addition to other methods that have been regulated in a limited way for the acquisition of property rights over an object. In fact, from the methods of obtaining property rights as regulated in Article 584 of the Civil Code, the most important and even what often occurs in society, the method of obtaining property rights is by giving (levering).

In particular, the granting of a *passorong* in the form of land attached with a certificate from the Village head or *Lurah* still has the potential for disputes to occur because there is no legal guarantee as proof of ownership of the dowry land for the wife, proof of dowry ownership rights in the form of land as stipulated in Law Number 5 of 1960 concerning The Basic Regulations on Agrarian Principles jo Government Regulation Number 24 of 1997 Concerning Land Registration, that the strongest evidence for land ownership is certified land or land ownership certificates.

Based on the results of the comparative analysis above, it can be concluded that the provision of *passorong* in Majene Regency takes various forms so that there is a need for legal guarantees to provide legal certainty to wives. The practice of giving a *passorong* in the form of land in the Mandar community, Majene Regency still has several weaknesses because the land that is commonly used as a dowry by the prospective husband is still in the name of the prospective husband or in the name of the prospective husband's parents.

As is meant in the Law on Basic Agrarian Regulations and Government Regulation number 24 of 1997 concerning land registration in conjunction with Article 584 of the Civil Code, a *passorong* is in the form of land if to obtain eigendom rights over land it must be certified. Furthermore, in order to further strengthen the strength of proof of ownership, the *passorong* land certificate must be in the name of the wife.

Conclusion

Giving *Passorong* in the Mandar Society of Majene Regency is something that must be handed over from the prospective husband to his prospective wife. Even the community understands that the *passorong* is a wedding token or souvenir so that the dowry is very valuable in marriage. The practice of giving *passorong* in the community is agreed before the marriage contract and *passorong* is mentioned at the time of the marriage contract. This is in line with Islamic Sharia, as previously

²⁴*Levering* is an act or deed of transferring ownership rights to an item or object from one person to another. See, M. Susilo, M. Marwan and Jimmi P, *Kamus Hukum*, p. 408

explained that the practice of giving dowries in the Mandar Community of Majene Regency is classified as giving the form of *musamma* dowry.

The granting of a *passorong* in Majene Regency takes various forms so there needs to be a legal guarantee to provide legal certainty to the wife, for example the practice of giving a *passorong* in the form of land in the Mandar community of Majene Regency needs to make a special regulation from the government regarding the mechanism for being registered and issuing a *passorong* land certificate in the name of the wife such as referred to in the Law on Basic Agrarian Regulations and Government Regulation number 24 of 1997 concerning land registration that a *passorong* in the form of land if to obtain eigendom rights over land must be certified. Furthermore, in order to further strengthen the strength of proof of ownership, the *passorong* land certificate must be in the name of the wife.

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