

العقوبات العرفية لإلغاء الخطبة في منطقة كرونغ بارونا جايا، أتشيه باسار

(في منظور المصلحة)

مقالة علمية

مقدمة إلى قسم الأحوال الشخصية بكلية الإمام الشافعي للدراسات الإسلامية

لاستيفاء شروط التخرج ونيل الدرجة الجامعية (S.H)



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قسم الأحوال الشخصية

كلية الإمام الشافعي للدراسات الإسلامية بجمبر

2023

**CUSTOMARY SANCTIONS FOR THE CANCELLATION OF A MARRIAGE
PROPOSAL IN KRUENG BARONA JAYA SUBDISTRICT, ACEH BESAR**

(An Examination from the Perspective of Mashlahah)

ARTIKEL ILMIAH

Diajukan Kepada Program Studi Hukum Keluarga Islam
Sekolah Tinggi Dirasat Islamiyah Imam Syafi'i Jember
Sebagai Syarat Memperoleh Gelar Sarjana Hukum (S.H)



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PROGRAM STUDI HUKUM KELUARGA ISLAM
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الأحوال الشخصية، فأمل من فضلكم الموافقة عليها.

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الملخص

ABSTRAK

الخطبة هي وعد من الرجل بزواج المرأة التي يخطبها. ومن المحتمل أن الوعد ملغى بعوامل معينة من جانب كل من الرجل والمرأة. ومع ذلك، وفقاً للعادات المطبقة في آتشييه بشكل عام، إذا كانت الخطبة ملغاة، فإن الطرف الذي يلغي سيكون عرضة للعقوبات العرفية. في هذا البحث، المسألة التي ستطرح هي ما هي العقوبات العرفية لإلغاء الخطبة وكيف ينظر من منظور المصلحة إلى هذه العقوبات. يستخدم هذا البحث الأساليب النوعية مع النهج القانوني التحريبي. ومن النتائج التي تم الحصول عليها من هذا البحث أن العقوبات العرفية لإلغاء الخطبة هو الذهب كعلامة الربط سقط إذا كان الملغى هو الرجل. وبالعكس إذا كانت المرأة هي التي تلغي، فيجب عليها إعادة الذهب كعلامة الربط ضعفين. أما هدايا الخطبة فهي بحسب العرف هدية لا ترد إذا كان هناك إلغاء، سواء كان الإلغاء من قبل الرجل أو المرأة. من حيث المصلحة أن العقوبات العرفية لا يصح تطبيقها، لأنه يخالف عدداً من ضوابط المصلحة، منها: أنه يعارض إجماع العلماء في حكم المهر، ويعارض النصوص الشرعية من القرآن والسنة في تحريم أخذ أموال الناس بما لا يجوز شرعاً، ويزيل المصلحة الأكبر، ويفتح باب الضرر. الكلمات الدالة: العقوبات العرفية، إجماع العلماء، أخذ أموال الناس، المصلحة المرسله.



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Customary Sanctions for the Cancellation of a Marriage Proposal in Krueng Barona Jaya Subdistrict, Aceh Besar

(An Examination from the Perspective of Mashlahah)

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Abstract

A marriage proposal, or '*meminang*' in Indonesian, is a promise a man makes to marry a woman he proposes to. This promise is subject to cancellation due to various factors, either from the man or the woman. However, according to the prevailing customs in Aceh, Indonesia, when a marriage proposal is canceled, the party responsible for the cancellation is subjected to customary sanctions. This research explores the forms of customary sanctions imposed for the cancellation of marriage proposals and examines their compatibility with the concept of 'Mashlahah Mursalah' (public interest). This study employs a qualitative method with an empirical juridical approach. The findings reveal that customary sanctions for canceling a marriage proposal involve the forfeiture of the gold given as a symbol of the bond if the man initiates the cancellation. On the other hand, if the cancellation is initiated by the woman, the gold must be returned twofold. The '*pinangan*' gift is considered a non-refundable grant in case of cancellation, regardless of whether the man or the woman initiates it. However, when evaluating the customary sanctions for canceling marriage proposals in light of Mashlahah Mursalah, they are deemed invalid as they contravene several principles of Mashlahah Mursalah, including conflict with the consensus of scholars regarding the law of dowry, contradicting the evidence from the Quran and Sunnah regarding the prohibition of unlawfully taking others' property, and negating greater public interest while opening the door to potential harm.

Keywords: customary punishment; the consensus of ulama; taking other's goods; Mashlahah Mursalah

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Introduction

Marriage is a sacred and strong bond that is mandated to be implemented, as Allah stated in Surah An-Nisa, verse 3:

فَأَنْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلثَ وَرُبْعَ

“then marry other women of your choice—two, three, or four.” (Q.S. An-Nisa: 3).

Based on Shariah, this institution of marriage transforms the interaction between men and women from initially being prohibited (haram) to permissible (halal), and it is considered an act of worship in the sight of Allah.¹

In the journey towards the bond of marriage, the Shariah has outlined some steps to be taken, one of which is the institution of the proposal known in fiqh terminology as "*kebitbab*." A proposal (*pinangan*) refers to a man's promise to marry a woman. Subsequently, it is mandated for a man to observe the woman, both in terms of her physical appearance and to seek valid information about her personality, to strengthen his intention to marry her. Similarly, this also applies to women, as they also need to gather information about the condition of the man who will become their husband.

The tradition of a marriage proposal (*pinangan*) is a cultural practice that has become ingrained in society and is carried out according to local traditions. Essentially, cultural customs that exist and evolve result from human creativity, including feelings, ideas, and creations, which give rise to various diverse cultures.² As a diverse country, Indonesia consists of 34 provinces with distinct customs and traditions. Among these provinces, five major provinces in Indonesia are designated as special regions: DKI Jakarta, DIY (Yogyakarta Special Region), Aceh, Papua, and West Papua.³ Among these five major provinces, Aceh has the distinction of being able to govern its province and regencies/cities based on the principles of Islam. The regulations for government administration and the lives of the Acehnese people are governed by Law Number 11 of 2006 concerning the Governance of Aceh.⁴ Indeed, the implementation of Islamic principles in the governance of Aceh will touch upon various aspects of Acehnese society. It encompasses the administration and legal system but also social, cultural, and religious dimensions. The aim is to align governance with the values and teachings of Islam, which can influence areas such as education, family law, morality, public behavior, and the promotion of Islamic practices. This comprehensive approach seeks to create a society in Aceh that reflects the principles and teachings of Islam in multiple facets of daily life.⁵

In the matter of marriage in Aceh, the Acehnese community has practiced the regulations regarding the process of a marriage proposal (*meminang*) for generations and it has become an established tradition. When a man intends to marry, Islam guides him to begin by proposing to the woman he wishes to marry. This process of marriage proposal holds significance as it signifies the intention

¹ Nurliana Nurliana, “Pernikahan dalam Islam Antara Ibadah dan Kesehatan Menuju Keselamatan,” *Al-Mutharahab: Jurnal Penelitian dan Kajian Sosial Keagamaan* 19, no. 1 (2022): 39–49, <https://doi.org/10.46781/al-mutharahab.v19i1.397>.

² Khalid Ismudin, Muhammad Syukri Albani Nasution, “Tradisi Peminangan Melalaken Menurut Majelis Permusyawaratan Ulama (MPU) Dan Majelis Adat Aceh (MAA) Kota Subulussalam,” *Al-Mashlahab*, 2022, 315–26, <http://dx.doi.org/10.30868/am.v10i001.3657>.

³ Dianora Alivia, “Politik Hukum Pengaturan Pemerintahan Daerah Yang Bersifat Khusus Aatau Bersifat Istimewa Di Indonesia,” *RechtIdee*, no. Vol 14, No 2 (2019): December (2019): 150–66, <https://journal.trunojoyo.ac.id/rechtidee/article/view/5456/pdf>.

⁴ Debora Sanur, “Implementasi Kebijakan Otonomi Khusus di Aceh [Implementation of Special Autonomy Policies In Aceh],” *Jurnal Politika Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional* 11, no. 1 (2020): 65–83, <https://doi.org/10.22212/jp.v11i1.1580>.

⁵ Meri Andani; Edi Yuhermansyah, “Tanggapan Masyarakat Kecamatan Pulau Banyak Terhadap Pemberlakuan Qanun Nomor 6 Tahun 2014 Tentang Hukum Jinayat,” *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum*, no. Vol 7, No 1 (2018) (2018): 43–66, <https://jurnal.ar-raniry.ac.id/index.php/legitimasi/article/view/3964/2583>.

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and commitment of the man toward entering into a marital relationship. It is a customary practice deeply rooted in the culture of Aceh, reflecting the values and teachings of Islam in the context of marriage.⁶ Similarly, in the Acehese customs, the marriage proposal process is called "*jak meulakee*," which means "to propose." This process continues when the prospective bride responds affirmatively, indicating her willingness to marry the prospective groom. The subsequent process is called "*jak ba tanda*" or "bringing the token." During this stage, the groom's family returns to the bride's family to discuss various aspects of the wedding, such as the dowry amount, the timing of the wedding, and the number of invited guests. These discussions serve to finalize the arrangements and details for the upcoming wedding ceremony.⁷

In the process of a marriage proposal, it is customary for the man to bring a set of offerings, typically in the form of gold jewelry, as a symbol of the engagement bond.⁸ However, a marriage proposal (*pinangan*) is merely a promise from a man to marry a woman who has been proposed to. Therefore, both parties have the right to proceed with the marriage or terminate it. In Acehese customs, there is a unique aspect where during the marriage proposal process, both parties mutually agree that if either the man or the woman cancels the proposal, the canceling party will face certain sanctions.⁹

Several previous studies have discussed the cancellation of marriage proposals in Aceh. *Firstly*, Nida Desianti conducted a study in 2015 titled "Pembatalan Peminangan Dan Akibat Hukumnya Ditinjau Dari Hukum Islam Dan Adat Aceh (Studi Kasus Di Kecamatan Pidie-Sigli, NAD)" which translates to "Cancellation of Marriage Proposals and its Legal Consequences from the Perspective of Islamic Law and Acehese Custom (A Case Study in Pidie-Sigli District, NAD)."¹⁰ The research findings indicate that the legal consequences of canceling a marriage proposal according to Islamic law are as follows: all gifts given by the man to the woman who was proposed to can be requested back as long as the items are still intact. If the items are no longer intact, the woman has no right to request them back. On the other hand, the consequences of canceling a marriage proposal, according to Acehese custom, are as follows: if the man breaks his promise, all the brought items and the engagement gold given to the prospective wife are forfeited. However, if the prospective wife breaks her promise, she is required to pay double the value of the items she has received. For example, if the man brought two *mayam* of gold during the proposal, the prospective wife would have to return double the amount, which is four *mayam* of gold.¹¹

Secondly, Saifuddin Sa'dan and Arif Afandi conducted a study in 2017 titled "Pengembalian Mahar Berganda Karena Pembatalan Pinangan Dalam Pandangan Islam: Analisis Terhadap Persepsi Dan Praktek Masyarakat Kuta Baro Aceh Besar," which translates to "The Return of Double Dowry due to the Cancellation of Marriage Proposals from the Islamic Perspective: Analysis of the

⁶ Abu Malik Kamal Ibn As-Sayyid Salim, *shahib Fiqh As-Sunnab Wa Adillatubu Wa Taudhib Mazabib Al-Arba'ab* (Cairo: Al-Maktabah At-Tawfikia, 2003).

⁷ M Zainuddin, "Tradisi Jeulamee Di Kecamatan Peunaron Dalam Pernikahan Suku Aceh Perspektif Mashlahah," *Sakina: Journal of Family Studies* 4, no. 1 (2020): 30–39, <http://urj.uin-malang.ac.id/index.php/jfs/article/view/437%0A>.

⁸ Rahmi Ramadhani dan Elsy Renie, "Tinjauan Hukum Islam Terhadap Pengembalian Mahar Berganda Akibat Pembatalan Peminangan Dalam (Studi Di Kelurahan Belawan II Kota Medan)," *JISR AH: Jurnal Integrasi Ilmu Syariat* 2, no. 3 (2021): 83, <https://doi.org/10.31958/jisrah.v2i3.4962>.

⁹ Analiansyah Analiansyah dan Muhammad Iqbal, "Pengembalian Tanda Pertunangan Karena Gagal Pernikahan (Analisis Fatwa Majelis Permusyawaratan Ulama Aceh Nomor 5 Tahun 2016 Tentang Mahar Dalam Perspektif Fiqh, Undang-undang dan Adat Aceh)," *El-Usrab: Jurnal Hukum Keluarga* 1, no. 2 (2020): 246, <https://doi.org/10.22373/ujhk.v1i2.7636>.

¹⁰ Nida Desianti, "Pembatalan Peminangan dan Akibat Hukumnya Ditinjau dari Hukum Islam dan Adat Aceh (Studi Kasus di Kecamatan Pidie-sigli, Nad)," *Premise Law Journal* 14 (2015).

¹¹ 1 mayam setara dengan 3.3 gram emas. Lihat di Zainuddin, "Tradisi Jeulamee Di Kecamatan Peunaron Dalam Pernikahan Suku Aceh Perspektif Mashlahah."

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Perceptions and Practices of the Kuta Baro Community in Aceh Besar.¹² The findings of this research indicate that the practice of returning double dowry due to the cancellation of marriage proposals in the Kuta Baro community in Aceh Besar is done by returning the dowry given by the prospective groom twice the amount of the original dowry offered during the proposal. As for the Islamic perspective on the cancellation of marriage proposals by the prospective bride, where she is required to pay double the dowry as commonly practiced in the Kuta Baro community, it is considered a form of *ta'zir* punishment due to the violation of the promise or agreement to proceed with the marriage.

Thirdly, Yuni Roslaili conducted a study in 2019 titled "Kajian 'Urf tentang Adat Ranub Kong Haba dan Akibat Pembatalannya di Aceh," which translates to "Study of 'Urf on the Custom of Ranub Kong Haba and the Consequences of its Cancellation in Aceh."¹³ The findings of the study indicate that "*ranub kong haba*" is a local wisdom in determining the process of marriage proposal based on Islamic law. However, the practice of returning double dowry during the marriage proposal process is a valid *'urf* practice, even though there is no specific command or prohibition in Islam regarding this matter. However, it is perceived as a virtuous act because the return of double dowry helps to prevent oneself (*sadd al-zariah*) from breaking promises to others.

Based on previous research, scholars have not yet obtained a comprehensive exposition on several aspects, including the status of belongings brought by the prospective groom during the process of proposal and whether those belongings are considered gifts or symbols of the bond and part of the dowry. Furthermore, previous researchers have regarded the practice of returning multiple dowry payments as an effort to prevent the breach of promise (*sadd al-zariah*), which is strongly condemned by Islamic law as a characteristic of hypocrites. Similarly, the act of returning double the dowry is seen as a form of *ta'zir* punishment for breaking the promise, in this case, canceling the proposal. However, further clarification regarding the provisions that allow the confiscation of someone else's property in the event of a breach of promise, specifically in the context of canceling the marriage proposal, has not been sufficiently explored. Therefore, researchers need to delve into various sources to deduce the legal rulings pertaining to the cancellation of marriage proposals and whether it permits the confiscation of someone else's property as a form of punishment for the party canceling the proposal.

This research employs a qualitative methodology, which aims to understand human and social phenomena by creating a comprehensive and complex portrayal that can be conveyed through words, reporting detailed perspectives obtained from informant sources, and conducted in a natural setting.¹⁴ The approach used in this research is the juridical-empirical approach. This approach is a method of legal research that examines the applicable legal provisions and the reality of what occurs in society with the aim of discovering facts that serve as research data. These data are then analyzed to identify issues, ultimately leading to problem resolution.¹⁵ The data sources used in this research consist of primary data obtained through interviews with village officials and official village documents. Secondary data is also utilized, which includes journal articles, books, and important information found on the official government website of Aceh. The research is conducted in Krueng Barona Jaya Subdistrict, Aceh Besar.

¹² Saifuddin Sa'dan dan Arif Afandi, "Pengembalian Mahar Berganda Karena Pembatalan Khitbah dalam Pandangan Islam: Analisis terhadap Persepsi dan Praktek Masyarakat Kuta Baro Aceh Besar" 1, no. 1 (2017), doi: <http://dx.doi.org/10.22373/sjhc.v1i1.1573>.

¹³ Yuni Roslaili, "Kajian 'urf tentang adat ranub kong haba dan akibat pembatalannya di Aceh," *Samarah* 3, no. 2 (2019): 417–37, <https://doi.org/10.22373/sjhc.v3i2.5192>.

¹⁴ Muhammad Rijal Fadli, "Memahami desain metode penelitian kualitatif," *Humanika* 21, no. 1 (2021): 33–54, <https://doi.org/10.21831/hum.v21i1.38075>.

¹⁵ Kornelius Benuf, Siti Mahmudah, dan Ery Agus Priyono, "Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019): 145–60, <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>.

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This research aims to address two issues: (1) What are the forms of sanctions resulting from the cancellation of the marriage proposal in Krueng Barona Jaya Subdistrict, Aceh Besar? (2) How does the concept of *Mashlahah Mursalah* (consideration of public interest) relate to these sanctions? From preliminary observations, the researcher has found that the sanctions imposed on the party canceling the marriage proposal can be categorized into two forms:

Firstly, if it is the male party who cancels the engagement, the gold jewelry given to the female party becomes null and void and cannot be reclaimed.

Secondly, if it is the female party who cancels the engagement, the gold jewelry, which is part of the dowry, must be returned double-fold. If the amount of gold brought is two mithqals, then the female party must return four mithqals. However, the researcher's hypothesis regarding the examination of *Mashlahah Mursalah* on the imposed sanction above is deemed invalid. This is based on the fact that the sanction includes conditions that justify unlawfully taking someone else's property, while Islamic Sharia has established that the default ruling for a Muslim's property is that it is forbidden to be used by others unless based on the owner's willingness.

The purpose of this research is to provide an overview of the forms of sanctions that will be imposed on the party who cancels the proposal in the Krueng Barona Jaya sub-district, Aceh Besar, and to examine whether the application of these sanctions in light of *Mashlahah Mursalah* is appropriate to be implemented and maintained as it is in line with Islamic Sharia, or whether it should be abandoned as it contradicts Islamic Sharia. This is based on the understanding that not all conditions set by local customs and traditions may be implemented until they are aligned with the provisions of Islamic Sharia, based on the hadith narrated from Ummul Mu'minin Aisha (may Allah be pleased with her) that the Prophet Muhammad (peace be upon him) said,

مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَإِنْ كَانَ مِائَةً شَرْطٍ، كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ

"Whoever introduces a condition that is not found in the Book of Allah, then that condition is invalid, even if it is a hundred conditions. The Book of Allah is more truthful, and the conditions set by Allah are stronger." (Narrated by Bukhari)¹⁶

Result and Discussion

The Shari'ah of Marriage Proposal in Islam

Linguistically, "*pinangan*" refers to a man's request to a specific woman for her willingness to marry him. Terminologically, "*meminang*" is the man's request to marry a woman as permitted by Islamic law (Shariah). The act of marriage proposal is mandated in the Quran, Sunnah, and the consensus of scholars (ijma). This is evident in Allah's statement in Surah Al-Baqarah, verse 235:

وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ ۗ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لَا تُؤَاعِدُوهُنَّ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا ۗ وَلَا تَعْرِمُوا عُقْدَةَ النِّكَاحِ حَتَّىٰ يَبْلُغَ الْكِتَابَ أَجَلَهُ ۗ وَاعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ ۗ وَاعْلَمُوا أَنَّ اللَّهَ عَفُورٌ حَلِيمٌ

"And there is no sin upon you if you propose to women through indirect means or conceal your intention within yourselves. Allah knows that you will have them in mind. But do not make a secret agreement with them except in terms that are recognized. And do not commit to marriage until the prescribed waiting period is fulfilled. Know that Allah knows what is within yourselves, so fear Him. And know that Allah is Forgiving and Forbearing." (Quran, Surah Al-Baqarah: 235)

As for the Sunnah, there is a hadith that states the permissibility of marriage proposal. It is narrated by the companion Jabir bin Abdullah (may Allah be pleased with him) who reported that the Prophet Muhammad (peace be upon him) said::

¹⁶ Muhammad bin Ismail Abu Abdillah Al-Bukhari., *Shahih Al-Bukhari*, 2 ed. (Riyadh: Maktabah Darussalam, 1422H). No. 2561.

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إِذَا خَطَبَ أَحَدُكُمْ الْمَرْأَةَ، فَإِنْ اسْتَطَاعَ أَنْ يَنْظُرَ إِلَى مَا يَدْعُوهُ إِلَى نِكَاحِهَا فَلْيَفْعَلْ

"When one of you proposes to a woman, if he is able to look at what will encourage him to marry her, then let him do so." (Narrated by Abu Dawud)¹⁷

The companions of the Prophet Muhammad (peace be upon him) used to engage in the process of "*khitbab*" (marriage proposal) before proceeding with the marriage. As mentioned in the above hadith, the Prophet (peace be upon him) instructed Jabir bin Abdullah to look at the woman he intended to propose to in order to strengthen his resolve to marry her. Furthermore, there is no recorded objection from earlier or later scholars regarding the practice of "*khitbab*" being sanctioned in Islam.¹⁸

Women Who Can Be Proposed to and Those Who Can Not

When a man intends to propose to a woman, initially he is allowed to propose to anyone he desires. This is evident from the general statement of Allah in the Quran to marry women of your choice, as mentioned in Surah An-Nisa, verse 3:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلثَ وَرُبْعَ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَدْنَىٰ أَلَّا تَعُولُوا ۗ

"And if you fear that you will not be able to act justly towards orphan girls in terms of marriage, then marry those women who seem good to you: two, three, or four. But if you fear that you will not be able to treat them with fairness, then marry only one of those whom your right hands possess. That is more suitable so that you may not deviate from justice." (Quran, Surah An-Nisa: 3).

The general provision regarding the permissibility of marrying anyone one desires is found in the principle of Ushul Fiqh (Principles of Islamic Jurisprudence), where the principle states that "Al-'Am" (general wording) encompasses all individuals without limitation. There are seven types of general wording, including Asmaul Maushulah, which is represented by the words (الَّذِي) (مَنْ), and (مَا).

Therefore, it is obligatory for someone who encounters a general wording in evidence, whether from the Quran or Sunnah, to apply the generality of the wording until they find another piece of evidence that specifies it.¹⁹ However, there are specific provisions that mention certain women who are prohibited from marrying, based on the statement of Allah in Surah An-Nisa, verses 22-24:

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ ۚ إِنَّهُ كَانَ فَاحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا ۚ ٢٢ حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأَخْتِ وَأُمَّهَاتُكُمُ اللَّاتِي أَرْضَعْنَكُمْ وَأَخَوَاتُكُمُ مِنَ الرَّضَاعَةِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَابِكُمُ اللَّاتِي فِي حُجُورِكُمْ مِّنْ نِّسَائِكُمُ اللَّاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَّمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ ۗ إِنَّ اللَّهَ كَانَ غَفُورًا رَّحِيمًا ۚ ٢٣ وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ ۗ كَتَبَ اللَّهُ عَلَيْكُمْ ۗ وَإِجْلٌ لَّكُمْ مَا وَرَاءَ ذَٰلِكُمْ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ ۗ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً ۗ وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرْضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ۚ ٢٤

¹⁷ Sulaiman Bin Al-Asy'ats As-Sijistani., *Shabih Sunan Abu Dawud*, 1st ed. (Kuwait: Muassasah Gharas, 1423H). No. 1816.

¹⁸ عزراوي, "أحكام خطبة النساء في الفقه الإسلامي

¹⁹ Muhammad Bin Shalih Al-Utsaimin, *Al-Ushul Min Ilm Al-Ushul* (Dammam: Dar Ibn Al-Jauzy, 1430). Hal: 34-43.

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Artinya: "*And do not marry women whom your fathers have married, except what has already occurred. Indeed, it was an immorality and hateful [to Allah] and was evil as a way. Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters, your milk mothers who nursed you, your sisters by breastfeeding, your wives' mothers (mothers-in-law), your step-daughters under your guardianship from your wives with whom you have consummated the marriage, but if you have not consummated the marriage with them, then there is no sin upon you [to marry their daughters]. And [also prohibited are] the wives of your sons who are from your [own] loins, and that you take [in marriage] two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful. And [also prohibited to you are] married women, except those whom your right hands possess [i.e., captives of war]. This is the decree of Allah upon you. And lawful to you are [all others] beyond these, [provided] that you seek them [in marriage] with [gifts from] your property, desiring chastity, not unlawful sexual intercourse. So for whatever you enjoy [of marriage] from them, give them their due compensation as an obligation. And there is no blame upon you for what you mutually agree to beyond the obligation. Indeed, Allah is ever Knowing and Wise." (Quran, Surah An-Nisa: 22-24)*

From the above verses, it can be detailed that the women who are prohibited from being married can be divided into two categories: permanently and temporarily prohibited. Women who are permanently prohibited from being married fall into three factors: lineage (*nasab*), existing marriages, and breastfeeding relationships. As for women who are temporarily prohibited from marriage, if the obstacle to marriage is removed, it is permissible to marry them.²⁰ Here is a detailed explanation of women who are permanently prohibited:

Firstly, women who are permanently prohibited due to lineage factors consist of seven individuals: mother (including paternal and maternal grandmothers), daughters (including granddaughters), sisters (including full and half-sisters), paternal aunts and above, maternal aunts and above, nieces, and nieces from the sister's side.

Secondly, women who are prohibited due to marriage factors consist of four individuals: father's wife, mother-in-law, daughter from the wife (step-daughter) with the condition of having consummated the marriage with the wife, and biological son's wife.

Thirdly, women who are prohibited due to breastfeeding factors include all women who are prohibited based on lineage, as mentioned in the hadith narrated by Ummul Mu'minin Aisha (may Allah be pleased with her) that the Prophet Muhammad (peace be upon him) said:

الرِّضَاعَةُ تُحَرِّمُ مَا تُحَرِّمُ الْوَلَادَةُ

"The breastfeeding relationship forbids what the lineage relationship forbids." (Narrated by Bukhari)²¹

The women who are temporarily prohibited from marriage are as follows: sister-in-law, paternal and maternal aunts-in-law, and women who are still in a marital bond with another man (except for women who are captives of war and wives of non-Muslim men if they embrace Islam), women who have undergone a triple divorce and are no longer permissible for their former husband until they marry another man in a valid marriage (not a temporary marriage known as *nikah tahlil*) and then get divorced unrelated to their first husband, women who are in the waiting period (*iddah*) due to the death of their husband, polytheistic women until they embrace Islam, women involved in adultery until they repent and confirm that they are not pregnant through one menstrual cycle, women in the state of *ihram* (during pilgrimage) until they complete their *ihram*, women who are being married as a fifth wife, and women who have already accepted a marriage proposal from another man.

²⁰ Salim, *shabih Fiqh As-Sunnah Wa Adillatuhu Wa Taudhib Mazahib Al-Arba'ah*. Hal: 77-96.

²¹ Al-Bukhari., *Shabih Al-Bukhari*. No. 5099.

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General Provisions on Islamic Law regarding Proposal (Memming)

In Islam, a proposal (*pinangan*) can be made in two ways: straightforwardly and indirectly. A straightforward proposal involves a statement that explicitly expresses the intention to marry without any hidden meanings. On the other hand, an indirect proposal is conveyed through expressions that do not directly indicate the proposal but contain indicators that suggest the intention of marriage.²² Regarding the women who are temporarily prohibited from being married, there are among them those who are allowed by Islamic law to be proposed to through *ta'ridh* or indirect means. These include women who are in the waiting period (*iddah*) due to the death of their husbands and women who are in the waiting period due to being divorced three times by their husbands.²³ Therefore, for a man who intends to propose, it is important to consider the situation of the woman he wishes to marry to avoid engaging in actions prohibited by Islamic law. Therefore, a proposal is not a marriage contract, and the woman being proposed to remains a stranger to the man until a marriage contract is established between them. Thus, a proposal serves as a preliminary step toward marriage and does not entail any legal implications related to marriage laws. A proposal is considered valid when the woman or her guardian accepts the proposal. If the proposal is accepted, certain rules apply, including the permissibility for a man to observe the woman he has proposed to within limits prescribed by Islamic law, such as looking at her hands and face to strengthen his decision to marry her. However, a proposal does not establish the same legal status as a husband and wife. The man and the woman who have been proposed to remain strangers, and it is not permissible to seclude themselves (*kebahwat*), see each other's private parts (*aurat*), engage in physical contact, or engage in sexual relations. These actions are only permissible after a proper Islamic marriage contract has been conducted. Furthermore, once a proposal has been accepted, it is not permissible for another man to propose to the same woman. The scholars have unanimously agreed (*ijma*) on the prohibition of proposing to someone who has already been proposed to by someone else, as narrated in a hadith from Abu Hurairah (may Allah be pleased with him) that the Prophet Muhammad (peace be upon him) said:

وَلَا يَبِيعُ الرَّجُلُ عَلَى بَيْعِ أَخِيهِ , وَلَا يَخْطُبُ عَلَى خِطْبَةِ أَخِيهِ

"Do not outbid one another in trade, and do not propose over the proposal of your brother." (Narrated by Bukhari).²⁴

However, if the acceptance of the proposal has not been explicitly stated, most scholars allow other men to come forward and propose to the woman. This is evident in the case of Fatimah bint Qais, who received proposals from two men, Muawiyah and Abu Jahm bin Hudzafah. Fatimah bint Qais then sought the opinion of the Prophet Muhammad (peace be upon him) regarding the two men. However, the Prophet Muhammad (peace be upon him) advised her to marry Usamah.²⁵

The process of proposing in Islam is not detailed. If a man intends to marry a woman, it is sufficient for him to express his intention to the woman or through her guardian. If the proposal is accepted, the man can immediately marry her. It is still valid even if the marriage does not go through the formal proposal process. This is because the proposal is merely a precursor to marriage. Therefore, the process of proposing is left to individual customs and practices as long as they are not in conflict with Sharia law, based on the *fiqh* principle:²⁶

الْعَادَةُ مُحَكَّمَةٌ

"Custom is a valid legal reference."

²² عزاوي, "أحكام خطبة النساء في الفقه الإسلامي." 22

²³ Salim, *shabih Fiqh As-Sunnah Wa Adillatubu Wa Taudhib Mazhabib Al-Arba'ab*. Hal: 111.

²⁴ Al-Bukhari., *Shabih Al-Bukhari*. no. 2140.

²⁵ Abu Al-Husain Muslim bin Al-Hajaj Al-Qusyairi An-Naisabury, *Shabih Muslim*, 1st ed. (Cairo: Dar Al-Hadis, 1412H). No. 1480.

²⁶ Kholid Saifulloh, "Aplikasi Kaidah 'Al-'Adah Muhakkamah' Dalam Kasus Penetapan Jumlah Dan Jenis Mahar," *Al-Majaalis* 8, no. 1 (2020): 57–85, <https://doi.org/10.37397/almajaalis.v8i1.153>.

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Some several conditions and provisions allow customs to be used as a general standard in community life, especially in matters of the proposal:²⁷

First condition: It should not contradict stronger Islamic legal evidence (*dalil*). If a custom contradicts stronger Islamic legal evidence, then the legal evidence takes precedence.

Second condition: The custom is more frequently practiced than abandoned, or the majority of people follow the custom. If a custom is rarely practiced or only a few people follow it, it cannot be considered a legal reference.

Third condition: No statement or declaration by the performer of the custom should contradict the custom itself. This is because the statement or declaration of the performer shows their definite intention, which is stronger than mere custom. Therefore, if there is a contradiction between someone's custom and their statement, the statement takes precedence as the legal reference, not the custom.

Fourth condition: The custom exists during the contract (*akad*). This is because a custom that does not exist at the time of the contract cannot be considered a legal reference.

The provisions of Proposal and Customary Sanctions on the Cancellation of Proposals in Gla Meunasah Baro Village

The process of proposing in Aceh follows a set of customary procedures that are widely practiced. These procedures are outlined in the village regulations known as Qanun Gampong (village regulations). In the Krueng Barona Jaya sub-district of Aceh Besar district, the specific procedures for proposing are documented in "Qanun Gampong (village regulations) of Gla Meunasah Baro No. 1 of 2019 regarding the Agreement of Acceptance of Proposal for Calon Dara Baro (prospective brides)." This Qanun (regulation) was established through a joint consultation between Tuha Peut Gampong (four village elders) of Gla Meunasah Baro and Keuchik Gampong (village head) of Gla Meunasah Baro. The detailed procedure for proposing is outlined in Chapter 2, Article 2, Paragraph 4:

The proposal ceremony from the Lintho Baro side (the prospective groom) must adhere to the customary rules in Gampong (village) Gla Meunasah Baro, with the following provisions:

Firstly, the proposer should arrive on the agreed date, month, and time.

Secondly, the proposer should come accompanied by the village elders, including the village head (*keuchik*), religious figure (*imam gampong*), four village elders (*Tuha Peut*), village officials (*perangkat gampong*), and other important community figures.

Thirdly, according to the agreement between parties, the proposer should come with a set of gold as a symbol of commitment for Calon Dara Baro (the prospective bride).

Fourthly, the gold for the proposal should be given in the form of jewelry, and the amount given will be reduced by 0.5 *mayam* (e.g., if a ring weighs two *mayam*, which is equivalent to 6.6 grams, it will be counted as 1.5 *mayam*, and 0.5 *mayam* is considered void).

Fifthly, the gifts in the form of dishes (proposal gifts) are given by the proposer, and there is no return ceremony.

Sixthly, both parties will determine the wedding date during the proposal ceremony or at a later time.

Seventhly, the agreements reached during the proposal ceremony are binding agreements that must be fulfilled.

In the event of a dispute leading to the proposal's cancellation, it is regulated in Chapter 2, Article 3, Paragraphs 1 and 2. Paragraph 1 states:

If a dispute arises, it will be resolved by the village head of Gla Meunasah Baro, together with the four village elders, village officials, and community figures, according to the following provisions:

²⁷ Saifulloh.

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Firstly, the family of Calon Dara Baro (the prospective bride) should report the dispute to the village head of Gla Meunasah Baro, stating that both Calon Dara (the prospective bride) and Lintho Baro (the prospective groom) have decided to cancel the proposal and will not proceed to the wedding. *Secondly*, the village head will meet with village officials, the religious figure, the four village elders, and relevant community figures to gather input.

Thirdly, if the cancellation comes from the Lintho Baro side (the prospective groom), the gold given as an engagement symbol is considered lost or not returned to the Lintho Baro side (the prospective groom).

Fourthly, suppose the cancellation comes from the Dara Baro side (the prospective bride). In that case, the gold given as a symbol of the engagement will be returned in double the amount after deducting 0.5 *mayam* (1 *mayam* = 3.3 grams).

Fifthly, the gifts in the form of dishes (proposal gifts) will not be returned as they are considered gifts.

Ayat 2 states:

Regarding the return of the engagement symbol, it will be assessed by the representatives of Dara Baro Gampong (the village of the prospective bride) and Gla Meunasah Baro Gampong (the village of the prospective groom) to determine the reasons for the termination of the engagement, based on the presented evidence and following the agreements made during the proposal ceremony. If the cancellation of the engagement, initiated by either the man or the woman, is due to disgraceful acts or factors that can potentially harm the future marital relationship, which was only discovered after the proposal ceremony, the prescribed sanctions in the Qanun Gampong (village regulations) would not be enforced. This is in accordance with the statement made by Mr. Parsilan, the secretary of the four village elders (Tuha Peut) of Gla Meunasah Baro, "If the woman cancels the engagement due to newly discovered information after the completion of the proposal ceremony, such as the man being an alcoholic, heavy smoker, having poor moral conduct, or other matters that may cause harm if the marriage takes place, in this case, the customary sanctions stipulated in the Qanun Gampong (village regulations), which involve the return of the engagement gold in double the amount, will not be applied. Therefore, the woman only needs to return the engagement symbol of equal value to the gift given by the man. Similarly, suppose the man cancels the engagement due to newly discovered information after the proposal ceremony, such as the woman no longer being a virgin, having been pregnant before, or even still having a relationship with another man. In that case, the gold as the engagement symbol must be returned to the Lintho Baro side (the prospective groom)."²⁸

Status of Gold as a Symbol of Engagement Bond in the Event of Engagement Cancellation

Based on classical fiqh literature, scholars differentiate between the rulings regarding gold as a symbol of the engagement bond and gifts: As a symbol of the engagement bond, scholars classify gold as part of the dowry (mahar). In the event of an engagement cancellation, the person proposing the marriage has the right to retrieve the dowry that has been given, whether the dowry is still intact, damaged, or fully spent. If the dowry has been damaged or fully spent, the person proposing the marriage can claim its monetary value. The permissibility to retrieve the given dowry is not contingent upon the reason for the cancellation, whether initiated by the proposing party or the woman being proposed to. There is no difference of opinion among scholars on this matter, as quoted by some researchers.²⁹

Here are the views of several scholars regarding the status of items that are part of the dowry:

²⁸ Wawancara dengan Pak Parsilan, S.IP. sekretaris Tuha Peut Gampong Gla Meunasah Baro, Aceh Besar tanggal 5 April 2023.

²⁹ "عوضية عبد الله حسب سيدو،" العُدُولُ عَنِ الْخُطْبَةِ وَأَثَرُهُ بَيْنَ الْفِقْهِ الْإِسْلَامِيِّ وَقَانُونِ الْأَحْوَالِ الشَّخْصِيَّةِ السُّودَانِيِّ - دراسة تحليلية", *Arrasikhun Journal* 8, no. 1 (2022): 140–60, <http://ojs.mediu.edu.my/index.php/arrasikhun/article/view/3725/1311>.

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Firstly, Ibn Abidin, a scholar of the Hanafi school, stated that "if a man proposes to a woman and sends her a certain amount of property, but the woman's father does not marry her to the proposer, then the property sent by the proposer as dowry may be withdrawn if it is still intact. If it has changed because it was used, then the value of the dowry may be withdrawn. This is permissible because the marriage contract is a reciprocal contract (*mu'awadhab*), but the contract did not take place in this case."³⁰

Kedua, Zainuddin Al-Malibary, a scholar of the Shafi'i school, mentioned that "if someone proposes to a woman and sends or gives her property without specifying anything to the woman before the marriage contract, and the proposal is subsequently canceled, either by the man or the woman, then the man is allowed to retrieve the property he had given."³¹

From the above opinions, it can be understood that the scholars unanimously agree that the dowry (*mabar*) is an obligation that must be fulfilled when the marriage contract (*akad nikah*) takes place. If a marriage proposal is canceled, a woman is not entitled to the dowry even if it has been given to her before the marriage contract, as the intended purpose of the dowry, which is marriage, did not materialize. This is further reinforced by the ruling of the Aceh Consultative Assembly (Majelis Permusyawaratan Ulama Aceh) Number 6 of 2016, which states that "the partial payment of the dowry before the marriage contract must be returned when the marriage fails to take place."³²

The Status of Engagement Gifts When an Engagement is Cancelled

Scholars have differing opinions regarding the status of engagement gifts when an engagement is canceled:³³

Firstly, the Hanafi school of thought states that "engagement gifts are considered gifts (*hibah*). Therefore, it is permissible for the proposer who gave the gift to withdraw the gift unless there are certain impediments to its withdrawal, such as if the gift has been damaged or consumed. If the gift is still intact, the proposer may withdraw it. However, if the gift has been damaged or consumed, then the proposer is no longer entitled to withdraw the gift."

Secondly, some scholars from the Maliki school of thought argue that the gift should not be withdrawn even if the woman initiates the cancellation unless a stipulation or customary practice (*urf*) is in place. This opinion is based on the understanding that the gift carries the meaning of a gift (*hibah*), and a gift cannot be withdrawn by the giver, as stated in a hadith narrated from the companion Ibn Abbas (may Allah be pleased with him) that the Prophet Muhammad (peace be upon him) said:

لَيْسَ لَنَا مَثَلُ السَّوْءِ الَّذِي يَعُودُ فِي هَبْتِهِ كَالْكَلْبِ يَرْجِعُ فِي قَبِيئِهِ

"It is not befitting for us to give an example of something undesirable, such as withdrawing a gift, which is like a dog that eats its own vomit." (Narrated by Bukhari)³⁴

Similarly, there is the story of Umar ibn al-Khattab (may Allah be pleased with him) when he gifted a horse to a man so that he could participate in jihad with the horse. However, the man did not care for the horse well, so Umar intended to buy it back. In response to this, the Prophet Muhammad (peace be upon him) narrated in a hadith from Umar ibn al-Khattab (may Allah be pleased with him), saying:

³⁰ Muhammad Amin Bin Umar bin Abdil Aziz Abidin, *Rad Al-Mubtar 'Ala Ad-Dur Al-Mukhtar Syarh Tanwir Al-Absar* (Riyadh: Dar Alam Al-Kutub, 1423H). Jld 4, hal. 304.

³¹ Zainuddin Bin Abdil Aziz Al-Malibari, *Fatwal Mu'in*, 1 ed. (Jakarta: Dar Al-Kutub Al-Islamiyah, 1430H). Hal. 220.

³² Analiansyah dan Iqbal, "Pengembalian Tanda Pertunangan Karena Gagal Pernikahan (Analisis Fatwa Majelis Permusyawaratan Ulama Aceh Nomor 5 Tahun 2016 Tentang Mahar Dalam Perspektif Fiqh, Undang-undang dan Adat Aceh)."

³³ Salim, *shabih Fiqh As-Sunnah Wa Adillatuhu Wa Taudhib Mazahib Al-Arba'ah*. jld. 3, Hal: 125-127.

³⁴ Al-Bukhari., *Shabih Al-Bukhari*. No. 2622.

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لَا تَشْتَرِهِ وَإِنْ أَعْطَاكَ بِدِرْهِمٍ وَاحِدٍ فَإِنَّ الْعَائِدَ فِي صَدَقَتِهِ كَالْكَلْبِ يَعُودُ فِي قَيْئِهِ

"Do not buy it, even if he sells it for one dirham, for indeed, the one who takes back his charity is like a dog that eats its own vomit." (Narrated by Bukhari).³⁵

Thirdly, the proposer can withdraw their gift, whether intact or unavailable. If the item remains intact, it should be returned to its original condition. If the item has been damaged, it should be returned according to its value. This is the view of the majority of Shafi'i and Hanbali scholars. What is apparent from their statements is that an engagement gift is not considered a *hibab* (gift), as the condition of reciprocity (according to them) is not present. When someone gives a gift during the engagement process, it is given with the condition that the engagement continues until marriage. Therefore, when the engagement is canceled, the giver can withdraw the gift. This is called a *hibab* with a common condition (*hibab bisyarth at-tsaub*). It is as if what is possessed is due to the reason for marriage, so its ruling is similar to the ruling of *mabar* (dowry).

Fourthly, if the engagement cancellation originates from the proposer's side, they do not have the right to withdraw the engagement gift. However, if the cancellation comes from the woman's side, then the proposer has the right to withdraw the engagement gift. This is because the reason for giving the gift is not fulfilled, which is the realization of marriage. This opinion is stated by Ar-Rafi'i, a scholar of the Shafi'i school, Ibn Rushd, a scholar of the Maliki school, and it is also the choice of Sheikhul Islam Ibn Taymiyyah. If the woman is required to return the engagement gift when the proposer cancels the engagement, she will experience two types of pain: the pain of the cancellation and the pain of having to return the gift. Similarly, if the woman cancels the engagement and does not return the gift to the proposer, the proposer would also experience two types of pain: the pain of the cancellation and the pain of losing their property.

Based on the various opinions presented, researchers view that opinion number 3 is stronger, which is the opinion of most Shafi'i and Hanbali scholars. The basis for this opinion can be seen from several perspectives:

Firstly, the majority of Shafi'i and Hanbali scholars consider the gift to have the meaning of a *hibab* (gift), and it is unanimously agreed (ijma) among scholars that withdrawing a *hibab* intended as charity is not permissible for anyone.³⁶ This is based on the principle that *hibab* (gift) should not have a common condition (*iwadh*). However, according to the viewpoint of the Shafi'i and Hanbali schools, the gift a proposer gives to a woman being proposed to is a conditional *hibab* intended to have reciprocity from the gift, which is the realization of marriage.

Secondly, when looking at some opinions of the Maliki school, they allow the withdrawal of an engagement gift when customary practice (*urf*) and conditions exist. Thus, this aligns with the majority opinion of the Shafi'i and Hanbali schools.

Thirdly, the Hanafi school also believes it is permissible to withdraw a gift as long as the gift is not damaged. Therefore, this opinion agrees with the Shafi'i and Hanbali schools' viewpoints regarding the general permissibility of withdrawing a gift.

Fourthly, the scholars unanimously agree that a conditional *hibab* is a gift intended to receive reciprocity for the gift given.³⁷

Fifthly, the scholars unanimously agree that no material consequences result from the cancellation of an engagement for either party, whether the man or the woman initiates it. This is because an engagement is merely a promise without legal implications or consequences for both parties.³⁸

³⁵ Al-Bukhari. No. 2623

³⁶ Muhammad Bin Ahmad Bin Muhammad Bin Ahmad Bin Rusyd Al-Qurthuby, *Bidayatul Mujtahid Wa Nihayah Al-Muqtashid*, 2 ed. (Beirut: Dar Ibn Hazm, 1427). Hal: 666

³⁷ "عماد عبدالحفيظ علي الزيادات, "هبة التراب وأحكامها في الفقه الإسلامي", 46, no. 3 (2019): 203–28, <https://archives.ju.edu.jo/index.php/law/article/view/103497>.

³⁸ Umar Sulaiman Al-Asyqar, *Abkam Az-Zawaj fii Dhau Al-Kitab Wa As-Sunnah*, 1 ed. (Yordan: Dar An-Nafais, 1418H). Hal. 75.

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The Shariah Rulings Regarding Utilizing Other People's Wealth

The default ruling in Islam is that someone's wealth is prohibited (haram) from being utilized by others unless there are two conditions met: (1) when the Shariah commands to take a portion of that wealth, and (2) based on the voluntary consent of the owner of the wealth. This is supported by a hadith narrated by the companion Abu Bakrah (may Allah be pleased with him) that the Prophet Muhammad (peace be upon him) said during his farewell pilgrimage (*haji wada'*):

فَإِنَّ دِمَاءَكُمْ، وَأَمْوَالَكُمْ، وَأَعْرَاضَكُمْ، وَأَبْشَارَكُمْ بَيْنَكُمْ حَرَامٌ، كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا

"Verily, your lives, your wealth, and your honor are sacred among you like the sanctity of this day of yours, in this month of yours, in this land of yours." (Narrated by Bukhari).³⁹

The commandment of Shariah to take a portion of someone else's wealth is called zakat. This command is found in the verse of Allah in Surah At-Taubah, verse 103.

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ

"Take, [O, Muhammad], from their wealth a charity by which you purify them and cause them increase, and invoke [Allah's blessings] upon them. Indeed, your invocations are reassurance for them. And Allah is Hearing and Knowing." (Quran, Surah At-Taubah: 103)

The following is a hadith that illustrates that zakat is one of the pillars of Islam that must be fulfilled. It is narrated by the companion Ibn Umar (may Allah be pleased with him) that the Prophet Muhammad (peace be upon him) said:

بُنِيَ الْإِسْلَامُ عَلَى خَمْسٍ: شَهَادَةِ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ، وَإِقَامِ الصَّلَاةِ، وَإِيتَاءِ الزَّكَاةِ، وَصَوْمِ رَمَضَانَ، وَحَجِّ الْبَيْتِ

"Islam is built upon five pillars: bearing witness that there is no deity worthy of worship except Allah and that Muhammad is the Messenger of Allah, establishing the prayer, giving zakat, fasting in the month of Ramadan, and performing the pilgrimage to the House of Allah." (Narrated by Bukhari).⁴⁰

The next provision that allows for the utilization of someone else's wealth is based on their consent, as stated in the verse of Allah in Surah An-Nisa, verse 29.

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبُطْلِ إِلَّا أَنْ تَكُونَ تِجْرَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful." (Quran, Surah An-Nisa: 29)

Next is a hadith narrated by the companion Anas Bin Malik (may Allah be pleased with him) that the Messenger of Allah (peace be upon him) said

لَا يَجِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا بِطِيبِ نَفْسِهِ

It is not permissible to take the wealth of a Muslim except with his consent." (H.R. Ad-Daruquthni).⁴¹

The perspective of Mashlahah Mursalah

Mashlahah is an expression to attain benefit and reject harm. The intended benefits and harms are those the Shariah desires to be achieved and avoided, specifically in safeguarding the five fundamental matters that the Shariah commands to be protected: religion, life, lineage, intellect,

³⁹ Al-Bukhari., *Shahih Al-Bukhari*. no. 7078.

⁴⁰ Al-Bukhari. no. 8.

⁴¹ Aly Bin Umar Ad-Daruquthny, *Sunan Ad-Daruquthny*, 1 ed. (Beirut: Muassasah Ar-Risalah, 1424H). No.

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and wealth. Therefore, anything that aims to preserve these five matters is considered *mashlahah*, while anything that can undermine them is considered *mafsadah* or harm. Rejecting harm is referred to as *mashlahah*. Izz Bin Abdissalam stated, "The entire Shariah is based on *mashlahah*, whether in the form of rejecting harm or attaining benefit."⁴²

Mashlahah is divided into three categories, namely: *Mashlahah Rajihah* (preponderant/public interest), *Mashlahah Mulghah* (presumed interest), and *Mashlahah Mursalah* (general/public interest).⁴³

Firstly, *Mashlahah Rajihah* refers to the public interest for which there is evidence from *Shariah* that confirms its validity (*mu'tabarah*). There is no difference of opinion regarding its validity.

Secondly, *Mashlahah Mulghah* refers to the presumed public interest for which there is evidence from the *Shariah* that it is not considered valid, and there is no difference of opinion regarding its invalidity.

Thirdly, *Mashlahah Mursalah* refers to the public interest for which there is no specific evidence from *Shariah* regarding its validity or invalidity. This is the subject of discussion and interpretation in Islamic jurisprudence.

There are certain specific provisions through which a discussion classified under *Mashlahah Mursalah* is recognized as valid (*mu'tabar*), namely:⁴⁴ 1) Following the objectives of *Shariah* (*Maqasid al-Shariah*). 2) No contradiction with the evidence from the *Quran* and *Sunnah*. 3) No contradiction with the consensus (*ijma'*). 4) Does not lead to the elimination of a greater benefit (*mashlahah*). 5) Pertains to matters of transactions (*muamalat*). 6) Has a general nature.

Customary Sanctions against the Cancellation of a Marriage Proposal in the Perspective of Mashlahah Mursalah

Based on the discussion of the cancellation of a marriage proposal, referring to classical fiqh literature, it can be classified into two discussions:

First, gold as a symbol of engagement is considered *mahar* (dowry), and the applicable law regarding gold is the law of *mahar*. Thus, the *mahar* becomes the woman's rightful claim only if the marriage contract has been solemnized. If the marriage contract does not take place, the woman has no right to the *mahar* and should be returned to the proposing party. Scholars have agreed upon this issue. Second, returning the engagement gift is the stronger opinion because the engagement gift falls under the category of a conditional gift. Therefore, the gift can be revoked if the condition is not fulfilled.

From the above discussion, it can be understood that the customary sanctions against the cancellation of a marriage proposal, when viewed from the perspective of *Mashlahah Mursalah*, are not valid to be applied because they violate several provisions of *Mashlahah Mursalah*, including: They contradict the consensus of scholars regarding the law of *mahar*, where the woman has no right to the *mahar* until the marriage contract is solemnized.

They go against the evidence from the *Quran* and *Sunnah* that prohibits unjustly taking someone else's property. The sanction requires the woman who cancels the proposal to return the gold, which serves as a symbol of the engagement, twice the amount. It prevents the man who cancels the proposal from reclaiming the gold as the symbol of the engagement because it is considered null and void. Additionally, the cancellation of the proposal prevents the man from reclaiming the engagement gift, as the customary law considers it a conditional gift (*hibah*), even though the man presented the engagement gift with the intention of marriage, which was not realized.

These sanctions can eliminate a greater benefit, the realization of marriage, and open the door to harm, such as dating and adultery. This is due to the concerns of young men and women that if an engagement takes place and they later feel incompatible, they will be haunted by these sanctions if

⁴² Muhammad Sa'ad Bin Ahmad Bin Mas'ood Al-yuby, *Maqasid As-Syari'ah Al-Islamiyyah*, 1 ed. (Riyadh: Dar Al-Hijrah, 1418H). hal. 390.

⁴³ Muhammad Sa'ad Bin Ahmad Bin Mas'ood Al-yuby. 396.

⁴⁴ Muhammad Sa'ad Bin Ahmad Bin Mas'ood Al-yuby. 396-397.

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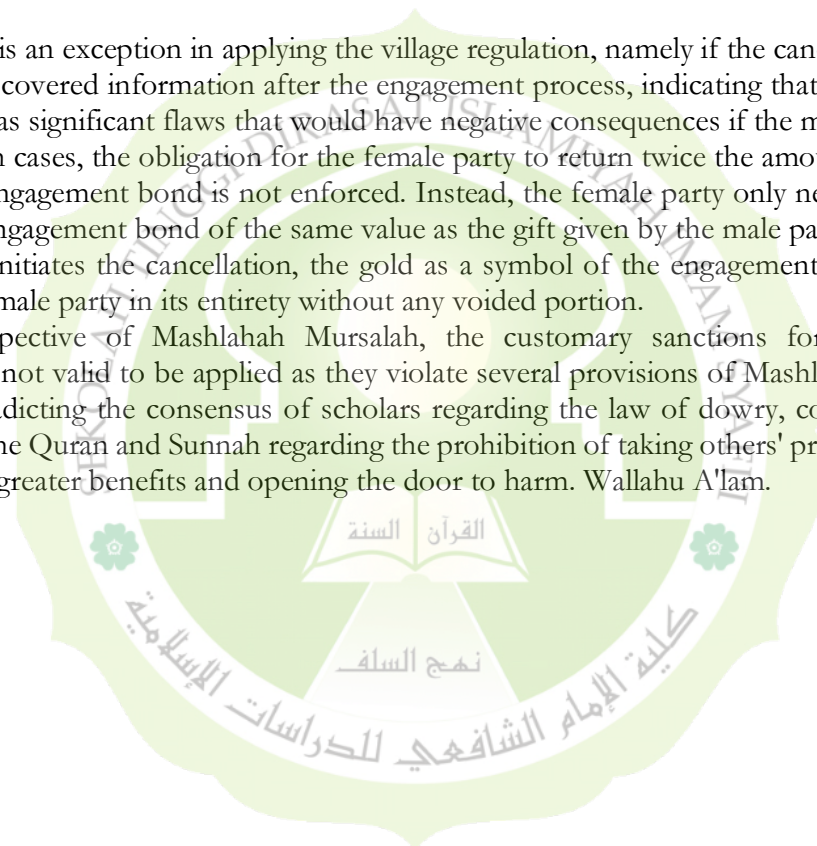
they cancel the engagement. This situation can make them afraid to marry promptly, leading them to choose a path without any sanctions, such as engaging in dating, which can potentially lead to adultery. Wallahu 'Alam (And Allah knows best).

Conclusion

Based on the above explanation, it can be concluded that the customary sanctions for canceling an engagement in the Krueng Barona Jaya sub-district, Aceh Besar, based on the Qanun Gampong (village regulation) of Gla Meunasah Baro, are divided into two categories: from the perspective of the male party and the female party. If the male party cancels the engagement, the gold used as a symbol of the bond, amounting to two *mayam*, is considered void. If the female party initiates the cancellation, she must return twice the gold brought by the male party, which is three *mayam*. This is because the two *mayam* of gold brought by the male party has been reduced by 0.5 *mayam* as a form of voided money. Thus, the gold considered a symbol of the bond is equivalent to 1.5 *mayam*. The engagement gift brought by the proposing party is considered a conditional gift, so when a cancellation occurs, the gift is not returned, regardless of whether the male or female party initiates the cancellation.

However, there is an exception in applying the village regulation, namely if the cancellation occurs due to newly discovered information after the engagement process, indicating that either the man or the woman has significant flaws that would have negative consequences if the marriage were to proceed. In such cases, the obligation for the female party to return twice the amount of gold as a symbol of the engagement bond is not enforced. Instead, the female party only needs to return a symbol of the engagement bond of the same value as the gift given by the male party. Likewise, if the male party initiates the cancellation, the gold as a symbol of the engagement bond must be returned to the male party in its entirety without any voided portion.

From the perspective of Mashlahah Mursalah, the customary sanctions for canceling an engagement are not valid to be applied as they violate several provisions of Mashlahah Mursalah, including contradicting the consensus of scholars regarding the law of dowry, contradicting the evidence from the Quran and Sunnah regarding the prohibition of taking others' property unjustly, and eliminating greater benefits and opening the door to harm. Wallahu A'lam.



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