



Customary Sanctions from the Perspective of 'Urf: Cancellation of Engagement According to the Customary Leaders of Langsa City

Muharrani

Langsa State Islamic Institute, Indonesia

muharrani@gmail.com

Received: 03-06-2023; Accepted: 22-08-2023; Published: 02-12-2023;

ABSTRACT

The people of Langsa City impose customary sanctions for couples who cancel their engagement by returning the gold if the woman cancels and forfeiting the gold if the man cancels. This research aims to look at the theory of 'Urf on the customary sanctions imposed by the customary leaders of Langsa City. This research method is empirical law with a qualitative approach, what is meant by empirical law is the legal behavior of the community which is a social symptom that is not written, the source of empirical legal research data does not rely on written positive law but the results of observations at the research location. The results showed that the Urf theory and the value of the benefit that is trying to be maintained in the customary sanctions imposed on the party who canceled the engagement. Then it is appropriate and does not contradict anything. This is reinforced by the elimination of the return of double fines from the woman's side.

Keywords: Sanctions, Custom, Engagement, 'Urf.

ABSTRAK

Masyarakat Kota Langsa, memberlakukan sanksi adat bagi pasangan yang melakukan pembatalan tunangan dengan pengembalian emas hantaran jika pihak perempuan yang membatalkan dan hangusnya emas hantaran bila pihak laki laki yang membatalkan. Penelitian ini bertujuan untuk melihat teori 'Urf terhadap sanksi adat yang diberlakukan oleh pemuka adat Kota Langsa. Metode penelitian ini ialah hukum empiris dengan pendekatan kualitatif, yang maksud dengan hukum empiris ialah

perilaku hukum masyarakat yang menjadi gejala sosial yang sifatnya tidak tertulis, sumber data penelitian hukum empiris tidak bertolak pada hukum positif tertulis melainkan hasil observasi lokasi penelitian. Hasil penelitian menunjukkan bahwa teori '*Urf*' dan nilai-nilai kemaslahatan yang berusaha dijaga dalam sanksi adat yang dijatuhkan bagi pihak yang membatalkan pertunangan. Maka hal tersebut sudah tepat dan tidak bertentangan dengan hal apapun. Hal ini diperkuat dengan tidak adanya pengembalian denda dua kali lipat dari pihak perempuan.

Kata Kunci: Sanksi, Adat, Pertunangan, '*Urf*'.

A. INTRODUCTION

Islamic law regulates the issue of marriage in detail, starting from how to find a partner to the process of life after marriage. This is because forming a family is not as easy as doing other muamalah matters even though marriage is a contract. Carefulness in choosing and determining someone who will become a life companion is a task that must be completed by both parties, both the woman and the man. A choice will produce something good if it is carried out through a process of reasoning because married life is not in a short period of time, but lasts for life. In addition, if seen in everyday life, not everyone can manage a household well (Husna et al., 2024).

Even Islam has explained about introductions to carry out an engagement or *khitbah*. The purpose of the engagement is not only to know each other but also to get to know each other's nature of the bride and groom with the condition that the meeting between the two should not be just the two of them. *Khitbah* (betrothal) is a preliminary step to a marriage (Inayatillah et al., 2022).

The majority of scholars state that an engagement is not obligatory. But it is a prelude that is almost certainly done. Because it contains moral messages and manners to initiate plans to build a household that is expected to be *Sakinah, Mawaddah Wa Rahmah* (Juliandi et al., 2024). It is permissible for a man who wants to propose to a woman to look at things that are common and permissible to look at. This can be done without the knowledge of the prospective bride and without being alone together with the woman, must also be accompanied by his mahram. In general, each

region and tribe has differences in the procedures for engagement, this is tailored to the needs and needs of the local community. Sometimes the values that grow and are applied in the community are legalized but sometimes they are only social values that develop in the community. hence the fiqh scholars did not mention this issue in their description of the engagement. In fact, Sayid Sabiq, the fiqh expert, stated that the procedures for this engagement are returned to the *urf* (custom) of each community.

Sometimes the engagement is not in line with what what is expected so that at any time it can be broken or canceled. Those who cancel or who decides can be from the male party or from the female party with several factors that cause the cancellation of the engagement. The city of Langsa is one of the regions of the province of Aceh, the majority of the people are Acehnese and the process of this engagement must be in accordance with the customary provisions that apply in the Langsa region as well as the process of canceling the engagement which results in customary sanctions in the form of fines, which are usually called in Acehnese "*Mee Ranup*." (Harnata & Andiko, 2021)

B. RESULT AND DISCUSSION

Engagement (*Khitbah*)

Betrothal (*khitbah*) is a preliminary step to a marriage. The fiqh scholars define by stating the desire of the male party to the female party of course to marry her and the female party spreads the news of this engagement. The word "engagement" comes from the word "betel nut", in Arabic called *Khithbah*. An engagement is an effort towards an arranged marriage between a man and a woman. To propose is also called proposing. According to etymology, to propose or propose means to ask a woman to be a wife (for yourself or someone else). According to terminology, an engagement is an effort towards an arranged relationship between a man and a woman or a man asking a woman to become his wife, in ways that are generally accepted in the midst of society (Huang et al., 2022).

Engagement is also known as the *Muqaddimah* of marriage, so based on the theory used, the theory in the worship of marriage is also the basis for the theory of engagement. *Khitbah* is a prelude to marriage,

mandated before the bond of husband and wife with the aim that when marriage is carried out based on research and knowledge and awareness of each party (Kujala et al., 2022).

Aceh Customary Engagement Process in Langsa

The traditional process of marriage among ethnic Acehnese is a series of activities that are not only personal or family affairs, but also ultimately become community affairs, especially the gampong community where they live. Generally, the business of finding a match for a young man and girl is carried out by his parents based on the development of age, the ability of the young man to settle down in a household (Wahyuni, 2022).

For the sake of happiness, harmony and the integrity of the household, in Islam a man is allowed to see the woman who will be proposed to. This is to avoid regrets in the future. In Islam, seeing the woman to be proposed to is permitted within certain limits. The parts of the body that can be seen according to the majority of scholars are the face and palms. Some Fuqqaha', such as Abu Daud, say that the entire body of the woman may be seen by the man who is proposing to her, except for her private parts (Jamal & Zubaidi, 2023).

In Acehnese society, there is a proverb that says "*meunyo hana ta lakee ngon bulekat, meu u rambat bek taba aneuk kamo*" meaning that if it has not been formalized with a traditional ceremony, it is taboo and considered a disgrace if a man comes to visit his fiancée's house, let alone to go together, the custom is strongly against it. Adat will allow this if it has been formalized in a marriage ceremony.

The trait of fulfilling promises is one of the noble traits in Islam. Keeping promises is among the characteristics of a believing Muslim, because every promise that is fulfilled perfectly can strengthen the relationship of friendship and can create an atmosphere of harmony and peace in a society and country.

As for the agreements and agreements made in the engagement ceremony in Aceh are: (Boyland et al., 2017)

1. If one of the parties, either the husband or the wife, dies before the marriage takes place, the goods that have been delivered are returned to the male parent.
2. If the man or prospective husband breaks his promise (does not want to remarry) then all the belongings and gold engagement tokens that have been handed over to the prospective wife are lost.
3. If the woman or future wife breaks her promise (does not want to remarry) then the woman must pay double the value of the goods she has received.

After all these matters had been settled between the two parties, the leader of the engagement party excused himself. Prior to this, each party made their farewell and send-off speeches, which were delivered by the head of their respective entourage.

'Urf in Islamic Law

Theoretically, the order of sources of Islamic law is the Qur'an and Sunnah, which are the two main sources of Islamic law. The results of the thoughts and opinions of the scholars then become the next source of law. The opinion agreed upon by all scholars (*ijma'*) is certainly higher in value and the possibility of being correct until it becomes the third source. Meanwhile, a special method that analogizes what is contained in the nash with a problem that is not listed in the nash but has the same characteristics *qiyas* becomes the fourth source. After this primary source, there is a set of legal arguments that are complementary in nature and their existence has not been agreed upon by all scholars including '*urf*' (Ismail et al., 2022).

'*Urf* is one of the sources of law taken by the Hanafi and Maliki madhabs, which is outside the scope of the nash. Historically, '*urf*' has been used among fiqh scholars since the development of *furu'iyah* issues that are contained in the nash but some of the rulings in the nash have become the custom ('*urf*') of the community at that time. The custom is acceptable to Islam as long as it does not contradict the nash. The word '*Urf*' etymologically means "something that is considered good and accepted by common sense." *al-urf* (custom) is something that the majority of people have believed in, whether in the form of speech or action that has been repeated- In the terminology of Abdul-Karim Zaidan, the term '*urf*' means : "Something that is familiar to one community because it has

become a habit and integrated into their lives in the form of actions or words." (Bello, 2013)

According to the Ulama *'Usuliyin 'Urf* is "What people (a group of people) can understand and practice, whether it is an action, word, or leaving." *al-'Urf* is what is known by humans and becomes their tradition; whether speech, actions or taboos, and is also called custom. From the above definitions, we can conclude the following: (Yamamah, 2016)

1. Custom must be formed from an act that people of different backgrounds and classes do continuously, and with this habit, it becomes a tradition and is accepted by their minds.
2. Customs fall into two categories: speech and action. A custom in the form of speech, for example, is the use of the word *walad* only for male children, even though the language includes both boys and girls and this is the language used by the Qur'an, "Allah has prescribed for you concerning your children. That is: The share of a son is equal to the share of two daughters" (QS. An-Nisa'(4):11). As for customs in the form of actions, these are actions that people are accustomed to doing, such as buying and selling, where they simply take and give without saying anything, and the custom of giving part of the dowry first and delaying the rest until an agreed time.

Based on its position that has been accepted by the community, *'Urf* (good customs) has legal force that is binding and recognized. This is because every custom that develops is certainly in accordance with the culture of the community and does not conflict with the religious values of the community. So that in one of the rules of Fiqh it is stated "*al-'adatu Muhakkamah*" (custom is one source of Law) (Azni et al., 2022).

Customary Sanctions for breaking the Engagement according to the customary leaders of Kota Langsa

After receiving a proposal from the man, the girl's family is not allowed to accept another person's proposal. If this rule is violated, the girl's family will be subject to a customary fine of 2 (two) times. And the *kong haba* (dowry) must also be returned to the male party as well as 2 (two) times (Musarrofa & Rohman, 2023).

The double return is in the sense that if the woman cancels the engagement, then the woman must return the gold that the man brought at the time of the *ba tanda*. If it was 2 *mayam*, then the woman must return the 2 *mayam* that the man brought. Since it was the woman who canceled (*wan prestasi*), she is subject to as much fine as the man brought. If what was brought was 2 *mayam*, the woman's fine is also 2 *mayam*. In this case, the woman must return 4 *mayam* to the man.

Likewise with the male party, if he cancels the engagement the customary sanction given to him is also 1 part, namely the goods that he brought at the time of the engagement become *hagus*. So it is clear here that men and women are given the same or equal burden of customary sanctions. On the day of the engagement (*ba tanda*) in Langsa, there is always an agreement between the suitor and the girl's parents. The agreement is made in front of all those present at the event. The agreement is about:

1. Amount of *Jeuname* (dowry or bride price).
2. Amount of scorching money.
3. Introduction Money (*bu gateng*).
4. The stages of the marriage process that must be passed such as: fiancée, return marriage, hanging marriage, and others.
5. Marriage schedule (inauguration).

The breakup of an engagement occurs due to the annulment of one of the parties or an agreement between the two. An engagement also ends if one of the partners dies. An engagement is a request from a man to a woman to become his wife. An accepted proposal does not create a bond that requires the proposal to be continued in marriage. Each party involved in an engagement has the right to cancel the engagement unilaterally, whether for a clear reason or not. If a woman cancels a proposal because another man proposes to her, then she marries the second suitor, the woman's action is *haraam* but her marriage is still valid.

As a result of the breakup of the engagement, the one who has given the engagement goods has the right to demand the return of these goods and the party who has received is obliged to return them in their original form or compensate for the loss of the same value of the engagement goods that can no longer be returned in their original form.

During the engagement period in Aceh, if the man withdraws or cancels the engagement, the gold brought at the time of the *ba tanda* will be forfeited, but if the woman withdraws or cancels the engagement, then the engagement token is returned with double (2x). In the Langsa City area, the gold given as a sign of *kong haba* is part of the dowry which will be recalculated later at the time of *meugatib* (marriage), and some are not part of the dowry. The dowry that has been given by the suitor to his fiancée has the right to be requested again, if the marriage contract does not take place because the dowry is given in exchange for marriage. As long as the marriage has not taken place, the woman does not have any rights over it, and she is obliged to return it to its owner, because he is the one who owns it.

Islamic Law Analysis of Customary Sanctions for the Cancellation of Engagement

In this case, to obtain valid and concrete data, the author has interviewed one of the traditional leaders from the Aceh Customary Council Institute and obtained the conclusion that when there is an annulment of the engagement, the dowry given at the beginning of the engagement will be addressed based on 2 possibilities, namely: (Saiin et al., 2023)

First, when it is the man who breaks off the engagement, the dowry becomes the woman's property because it is an attempt to compensate for the costs incurred by the family during the engagement process. The dowry also serves to cover the embarrassment experienced by the woman's family. *Secondly*, if the woman cancels the engagement, the dowry given by the man is returned in full without having to be doubled.

So far the provision of customary sanctions has been running for 2 years, he said. When viewed from the reasons expressed and the causes of the cancellation of the engagement, the customary sanction is quite effective and provides order in the community. Considering that none of the families are ready to bear the shame of canceling the engagement. In addition, when viewed from the opinions of the Imams of the *madhhab*, the dowry given at the time of engagement can be seen as follows:

The Hanfiyah scholars are of the opinion that gifts given as part of an engagement are similar to grants. The suitor can take it back unless the

item has been damaged or does not exist. The Shafi'iyah scholars state that the gift must be returned if the item is still available, or the equation or price returned if the item has been damaged or destroyed, whether the termination of the proposal comes from the woman or from the man. The Malikiyah are of the view that it is not permissible for the breaker to ask for the gift back, whether the item is still there or has disappeared. The one who has the right to ask for the goods is the one who did not break off the proposal. He has the right to receive the item if it is still available, or to receive its price if it is no longer available. This view of the Malikiyah scholars is logical, because it is not appropriate for the woman who did not renounce to have the burden of being left behind and the burden of returning the gift, and it is not appropriate for the man who did not renounce to have the disadvantages of being left behind and giving away property without reward.

C. CONCLUSIONS

The procedure for engagement in the Acehese custom of Langsa city is that the male family who will propose to a girl always involves the village apparatus to discuss the procedures and obligations that will be fulfilled, as well as the agreement that will be made at the time of the engagement. Likewise, the female party involves the village apparatus in welcoming the arrival of the male party's entourage, besides that they also involve the Aceh Customary Council and local scholars in terms of agreements or agreements that they make based on Acehese customs.

The agreement made by both parties is witnessed by village officials who are present from both sides to obtain legal force for the agreement they make. The Qur'an and Sunnah only mention the order to propose, but do not specify the procedures for the proposal. In Islamic law, the procedure of the engagement is left to the culture of each region which is certainly in line with Islamic law. *Urf* theory and the value of the benefit that is trying to be maintained in the customary sanctions imposed on the party who canceled the engagement. Then it is appropriate and does not contradict anything. This is reinforced by the elimination of the return of the double fine from the woman's side.

References:

- Azni, A., Wahidin, W., Kurniawan, R., & Jupendri, A. (2022). Tinjauan Kehujahan 'Urf Terhadap Ijab Qabul dalam Perspektif Hukum Islam. *Al-Fikru: Jurnal Ilmiah*, 16(1). <https://doi.org/10.51672/alfikru.v16i1.83>
- Bello, S. A. A. (2013). Application of 'Urf in Islamic Law. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2199354>
- Boyland, M., Nugroho, A., & Thomalla, F. (2017). *The Role of the Panglima Laot Customary Institution in the 2004 Indian Ocean Tsunami Recovery in Aceh*. https://doi.org/10.1007/978-3-319-54466-3_14
- Harnata, T., & Andiko, T. (2021). Selaghian Traditional Sanctions Upon A Perspective Of Islamic Law (Study on Serawai Community in Air Nipis District, South Bengkulu Regency). *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, Dan Keagamaan*, 8(2). <https://doi.org/10.29300/mzn.v8i2.5430>
- Huang, S. Y. B., Huang, C. H., & Chang, T. W. (2022). A New Concept of Work Engagement Theory in Cognitive Engagement, Emotional Engagement, and Physical Engagement. *Frontiers in Psychology*, 12. <https://doi.org/10.3389/fpsyg.2021.663440>
- Husna, N., Asy Ari, M. K. H. al, Suryani, S., Anizar, A., & Juliandi, B. (2024). Children Citizenship Status of Acehnese-Rohingya Mixed Marriage in Aceh: Maqāṣid Sharī'ah Perspective. *Al-Ahkam*, 34(1), 169–192. <https://doi.org/10.21580/ahkam.2024.34.1.20162>
- Inayatillah, Mohd Nor, M. R., Asy'ari, A., & Faisal, M. (2022). Social History of Islamic Law from Gender Perspective in Aceh: A Study of Marriage Traditions in South Aceh, Indonesia. *Samarah*, 6(2). <https://doi.org/10.22373/sjkh.v6i2.14598>
- Ismail, Busyro, Nofiardi, Wadi, F., & Alwana, H. A. (2022). The Contribution Of 'Urf To The Reform Of Islamic Inheritance Law In Indonesia. *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan*, 22(2). <https://doi.org/10.30631/alrisalah.v22i2.1243>
- Jamal, I. M., & Zubaidi, Z. (2023). RICE FIELDS MANAGEMENT AGREEMENT SYSTEM IN ACEH BESAR (Study of Engagement

- Patterns and Sharing of Harvest Results). *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan Dan Pranata Sosial*, 13(2).
<https://doi.org/10.22373/dusturiyah.v13i2.19418>
- Juliandi, B., Husna, N., Annisa, D., Rezeki, D. S., Primanty, D. A., 'Ulya, K., Juliadi, & Hasbi, M. (2024). Pemberdayaan Hukum dan Kesehatan Masyarakat di Desa Kota Lintang Bawah Aceh Tamiang. *Catimore: Jurnal Pengabdian Kepada Masyarakat*, 3(1), 101–109.
<https://doi.org/10.56921/cpkm.v3i1.187>
- Kujala, J., Sachs, S., Leinonen, H., Heikkinen, A., & Laude, D. (2022). Stakeholder Engagement: Past, Present, and Future. *Business and Society*, 61(5). <https://doi.org/10.1177/00076503211066595>
- Musarrofa, I., & Rohman, H. (2023). 'Urf of Cyberspace: Solutions to the Problems of Islamic Law in the Digital Age. *Al-Ahkam*, 33(1).
<https://doi.org/10.21580/ahkam.2023.33.1.13236>
- Saiin, A., Karuok, M. A., Hajazi, M. Z., & Radiamoda, A. M. (2023). Examining Malay Customary Marriage Law in the Malay Countries: An 'Urf Perspective. *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan*, 10(1).
<https://doi.org/10.32505/qadha.v10i1.4725>
- Wahyuni, S. (2022). Peng Angoh Dalam Tradisi Ba Ranup Nisam Studi Kasus Di Gampong Cot Leupée Kecamatan Nisam Kabupaten Aceh Utara. *Jurnal Sosiologi Dialektika Sosial*, 8(1).
<https://doi.org/10.29103/jsds.v8i1.6517>
- Yamamah, A. (2016). The Existence of Al-Urf (Social Tradition) in Islamic Law Theory. *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)*, 21(7).