

Return of Sinamot Money from the Perspective of Al'adatu Muhakkamah (Analysis of the Decision of the Padangsidimpuan City Religious Court Number 129/Pdt.G/2015/PA.Psk)

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Abstract: This paper is a study on the return of sinamot money in the decision of the Religious Court by examining based on the perspective of the Fiqh rule Al'adatu Muhakkamah, which examines the reality that the lawsuit for the return of sinamot money submitted to the Padangsidimpuan City Religious Court, by the Panel of Judges was partially returned, with considerations that contain justice, certainty and legal benefits and cannot be separated from the consideration that custom is the law "Al-Adatu Muhakkamah". Marriage dowry in Mandailing and Batak customs is generally known as Sinamot/Tuhor, referred to as Sinamot or Marhata Sinamot because it is a sale and purchase between the male party (paranak) and the female party (parboru) or it can also be said to be a dowry. Marhata Sinamot is one of the traditional events at the wedding and aims to explore the extent of the burden that can be shouldered by both parties, namely the male and female parties, so that the marriage can be carried out. In the Compilation of Islamic Law, Article 1 letter d states that dowry is a gift from the prospective groom to the prospective bride, whether in the form of goods, money or services that are not contrary to Islamic law, in line with this in chapter V of the Compilation of Islamic Law from Article 30 to Article 38 all discuss dowry with the provision that the dowry belongs to the wife after being given by the husband, but interestingly Article 35 paragraph 1 regulates that a husband who divorces his wife qobla al dukhul is obliged to pay half the dowry determined in the marriage contract. However, the reality in the decision of case 129/Pdt.G/2015/PA.Psk in the case of a divorce suit with a counterclaim for a full return of the dowry, but the Panel of Judges partially granted it with the consideration that after the marriage the Plaintiff and the Defendant had never had conjugal relations and the Plaintiff's status was still a girl, so the judge did istinbath law using the qiyas method of Article 35 paragraph (1) of the Compilation of Islamic Law for the case of a divorce suit. In addition, the judge's consideration also prioritizes customary law in the Mandailing indigenous community.

Keywords: Divorce; Dowry; Marriage; Sinamot.

1. INTRODUCTION

Marriage is a form of worship to Allah SWT and the sunnah of the Prophet Muhammad SAW, has a purpose that can basically be detailed as follows:¹

1. Legalizing the relationship between husband and wife to fulfill the demands of human nature;
2. To form/realize a peaceful, tranquil and eternal family based on love and affection;
3. Acquire legitimate offspring and will perpetuate offspring and develop human tribes.

Furthermore, the normative purpose of marriage can be found in Article 1 of Law Number 1 of 1974 which has been amended by Law Number 16 of 2019 concerning Marriage, that marriage is to form a happy and eternal family (household) based on God Almighty, while in Article 3 of the Compilation of Islamic Law, marriage aims to realize a *sakinah*, *mawaddah* and *rahmah* household life.²

However, marriage is not an activity that can be carried out instantly, a series of processes must be followed in the rules of law and practice, one of which is the obligation that must be submitted by the prospective groom to the prospective bride, namely the obligation to provide a dowry.

Mahr is an obligatory gift from the prospective husband to the prospective wife as the sincerity of the prospective husband's heart to create a sense of love for a wife to her prospective husband, or a gift that is required for the prospective husband to his prospective wife both in the form of objects and services.³

In general, each region has different customs, so the wording of the dowry in each region and custom also has a different language, such as in Padangsidimpuan City which holds strong Mandailing Custom, the obligation of the prospective husband before the marriage is known as "*Sinamot*". Marriage dowry in Mandailing and Batak customs in general is known as *Sinamot/Tuhor*. It is called *Sinamot* or *Marhata Sinamot* because it is a sale and purchase between the male party (*paranak*) and the female party (*parboru*) or it can also be said as a dowry. *Marhata Sinamot* is one of the traditional events at the wedding and

¹ Abdul Ghofur Anshori, (2011), *Hukum Perkawinan Islam Perspektif Fikih dan Hukum Positif*, Yogyakarta: UII Press, p. 175. 175.

² *Ibid.*

³ Tihami and Sohari Sahrani, (2019), *Fiqh Munakahat Kajian Fiqh Lengkap*, Jakarta: Rajawali Pers, 4th Cet., 1st edition, p. 36-37.

aims to explore the extent of the burden that can be shouldered by both parties, namely the male and female parties, so that the marriage can be carried out.⁴

Household problems that end in divorce have their own legal rules, households cannot be resolved alone without the rule of law. The Religious Court as a judicial institution normatively through Article 39 paragraph (1) of Law Number 01 of 1974 which has been amended by Law Number 16 of 2019 concerning Marriage, reads "*Divorce can only be carried out in front of a Court Session after the Court concerned has tried and failed to reconcile the two parties*". In addition, it can also be found in Article 49 of Law Number 7 of 1989 as amended several times last by Law Number 50 of 2009 concerning Religious Courts, that the Religious Courts are authorized to hear cases, one of which is in the field of marriage.

Some of the articles above are normative legal rules that provide authority for Religious Courts in resolving various Islamic civil issues related to marriage, one of which is in the Padangsidempuan City Religious Court.

The Padangsidempuan City Religious Court is one of the agencies that exercise judicial power, which has the authority to accept, examine, hear and decide cases of people who are Muslim. The definition of people who are Muslim here is not limited to that, but other people (other than Muslims) or legal entities who voluntarily submit themselves to Islamic law.

Cases entered and received by the Padangsidempuan City Religious Court are very varied, one of which is a divorce suit which at the trial stage contains a counterclaim requesting the return of *Sinamot* Money. In case Number 129/Pdt.G/2015/PA.Pspk which was decided by the Panel of Judges on September 08, 2015. In the Reconvention lawsuit, the Plaintiff (husband) demanded the return of *Sinamot* money and the Panel of Judges partially granted the Plaintiff's claim to return *Sinamot* Money.

This paper examines the return of sinamot money from the perspective of *Al-Adatu Muhakkamah* which the author considers as a legal discovery by the judge, by granting a partial return of dowry in a case of contested divorce. The formulation of Islamic law, positive law and customary law can deliver the law to its purpose. The fact that customary law is often not taken into consideration in various court decisions, creates a gap as if customary law does not accommodate justice, certainty, and legal objectives, but in reality in the case that the author examines, the Panel of Judges decided based on considerations of customary law that lives in the community "*Al-Adatu Muhakkamah*".

Before the author conducted this research, there were many similar writings

⁴ Gultom Rajamarpaodang, (1992), *Dalihan Na Tolu Nilai Budaya Suku Batak*, Medan: CV. Armada Medan, p. 290. 290.

that examined sinamot money in indigenous peoples, and to distinguish this research from previous research, the author will describe several similar studies that have been published, both in the form of journals and other scientific works, as follows:

1. Ria Damayanti in her thesis in 2019 entitled "*The Phenomenon of Sinamot Amount in Batak Tribe Marriage (Case Study in Hajoran Julu Village, South Labuhan Batu Regency, North Sumatra Province)*". This thesis explains that *Sinamot* has a very deep value for the Hulu Hajoran community, moreover, the size of *Sinamot* is a family pride. *Sinamot* is a form of appreciation and respect to both female parents for their hard work in educating and raising their daughters. The size of the *Sinamot* is determined based on negotiations between the two parties accompanied by the *Harajaon* (royal). The practice of *Sinamot* is a tradition that must be maintained from the beginning and cannot be changed anymore, the community believes that maintaining this tradition can provide convenience for their children and grandchildren later.⁵
2. Tommy Tius in his journal in 2018 entitled "*The Meaning and Function of the Sinamot Tradition in Toba Batak Marriage in Mandau District*". This article explains that traditional ceremonies are an obligation for the Toba Batak community. Because custom is a legacy from previous ancestors that must be preserved (*na pinukka ni na parjolo sihuttonon ni na parpudi*). People who have not paid *Sinamot* are not allowed to *Mangulosi* and participate in the traditional feast, because every stage in marriage must always be carried out with the applicable provisions, it is even illegal to visit in-laws or brothers if there are stages that have not been carried out.⁶
3. Rumasta Simalango and Yusna Melianti in their 2011 journal entitled "*The Function of Honest Money (Sinamot) in Marriage According to the Customs of the Toba Batak Community in Sabungan Ni Huta Village, Ronggur Ni Huta District, Samosir Regency*". This journal explains that honest money (*sinamot*) still has a function in marriage according to Toba Batak custom, especially in Sabungan Ni Huta Village, Ronggur Ni Huta District, Samosir Regency. Giving *Sinamot* is not solely for profit, more than that to connect kinship between one group and another. People who have not paid *Sinamot* may not visit a woman's family home and may not attend traditional events.⁷

⁵ Ria Damayanti, (2019), *Fenomena Jumlah Sinamot Dalam Perkawinan Suku Batak (Studi Kasus Di Desa Hajoran Julu, Kabupaten Labuhan Batu Selatan, Provinsi Sumatera Utara)*", Tesis S2 Fakultas Syari'ah dan Hukum Universitas Islam Negeri Sunan Kalijaga, Yogyakarta, p. 91-92. 91-92.

⁶ Tommy Tius, (2018), Makna dan Fungsi Tradisi Sinamot dalam Pernikahan Batak Toba Di Kecamatan Mandau, *Jurnal Online Mahasiswa: Fakultas Ilmu Sosial dan Ilmu Politik*, Volume 5, No. 2, p. 12.

⁷ Rumasta Simalango, (2011), Fungsi Uang Jujur (*Sinamot*) Pada Perkawinan Menurut Adat Masyarakat Batak Toba Di Desa Sabungan Ni Huta, Kecamatan Ronggur Ni Huta, Kabupaten Samosir", *Jurnal Pendidikan Ilmu-Ilmu Sosial*, Volume 3, No. 2, p. 40. 40.

From some of the scientific works above, the author has not found research that analyzes the decision in the case of dispute resolution over the return of *Sinamot Money*, so this is a new research. In the previous research mentioned earlier, it only discusses the function or philosophical meaning of *Sinamot Money* in a marriage, while this research more specifically discusses the settlement of the dispute over the return of *Sinamot Money* through a court decision.

2. RESEARCH METHODS

This research is *library* research with the type of research is *normative law* research. The research approach uses a statutory approach, case approach, and conceptual approach. Data sources are obtained from primary data on the decision of the Padangsidimpuan City Religious Court, as well as data sources from books and legislation.

3. RESULT AND DISCUSSION

The concept of dowry is understood as a gift of property that must be given by the prospective husband and is the right of the prospective wife in exchange for the authorization to have intercourse with her in a marriage. In carrying out marriage, dowry is a top priority even though dowry is not included in the category of pillars of marriage. According to syarak terms, dowry means something given by a man to his wife as an exchange or guarantee for what is received from her. Dowry is also known as *shadaq*, *nihilah* and *faridah*.⁸ In addition to these terms, some classical *Fiqh* books mention dowry has several other terms such as *ajr*, *hiba'*, *'uqr*, *'alaiq*, *thaul* and *nikah*.⁹ Dowry is a noble honor for women and can be said to be a down payment of a token of love. It also means a man's recognition of the humanity, nobility and honor of women.¹⁰ According to Wahbah Az-Zuhaili, the dowry is the original law in marriage and a marriage bond is not valid without a dowry, because the dowry is a compensation for the right to enjoy the wife.¹¹ Then, the majority of scholars argue that giving the dowry of the prospective husband to the prospective wife is obligatory, related to the amount and form is returned to the mutual

⁸ Ade Dedi Rohayana, (2008), *Ilmu Qowa'id Fiqhiyyah: Kaidah-Kaidah Hukum Islam*, Jakarta: Gaya Media Pratama, p. 35.

⁹ Ahmad Sarwat, (2018), *Serial Fiqih Kehidupan 8: Pernikahan*, Yogyakarta: Mitra Pustaka, p. 160.

¹⁰ Muhammad Fauzil Adhim, (2003), *Kupinang Engkau dengan Hamdalah*, Yogyakarta: Mitra Pustaka, p. 195.

¹¹ Wahbah Az-Zuhaili, (2019), *Fiqih Islam Wa Adillatuhu*, Volume 9, Transl. Abdul Hayyie al-Kattani, p. 97.

agreement.¹² The legal basis for the delivery of the dowry is based on the word of Allah SWT which reads:¹³

وَأَنْوَى النِّسَاءَ صَدْقَتْهُنَّ نِحْلَةً فَإِنْ طَبِنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِئًا مَّرِيًّا

Meaning : "Give the dowry to the women (whom you marry) as a willing gift. Then, if they give you part of it gladly, accept it and enjoy it gladly". (QS. An-Nisa: 4)

In the history of its development, dowry since the time of the Prophet Muhammad SAW until the companions, has various forms that are generally of material value, such as money or other valuables. However, Islamic sha'riat allows giving dowry in the form of services such as doing something, even the majority of scholars hold this opinion based on the Qur'an and As-Sunnah.¹⁴ Based on its forms, dowry can be grouped into 4 (four) forms, namely: dowry in the form of goods or money, dowry in the form of services, dowry with freedom or freeing slaves, and dowry by entering Islam.

3.1 Forfeiture Of Dowry

The legal basis for giving a dowry is that it is obligatory, although the presence of a dowry in a marriage contract does not make the marriage void or invalid. However, this obligation can be waived under certain circumstances. The *mahr* becomes void or falls due to one of the following:¹⁵

- a. Divorce that takes place before the wife has had intercourse or *khalwat* (being alone together in a quiet or closed place). Divorce because of this causes the entire *mahr* to be forfeited, whether the divorce comes from the husband or the wife. This divorce is like a woman who has left Islam (apostatized) or she refuses to convert to Islam after her husband has converted to Islam or she wants to annul her marriage because there is a defect in her husband.
- b. *Khulu'* with regard to the *mahr* before or after intercourse. If the wife claims *khul'* against her husband in exchange for the *mahr*, then the entire *mahr* must be paid. If the *mahr* has not been received, the husband is not obliged to pay it, and if the *mahr* has been received, the wife must return it.

¹² M. Ali Hasan, (2006), *Pedoman Hidup Berumah Tangga dalam Islam*, Jakarta: Siraja Prenada Media Group, p. 116-118.

¹³ Ministry of Religious Affairs of the Republic of Indonesia, (2019), *Al-Qur'an Dan Terjemahannya : Edisi Penyempurnaan 2019 Improvement Edition*, p. 105.

¹⁴ Amir Syarifuddin, (2007), *Fiqh Munaqahat Hukum Perkawinan Islam Di Indonesia: Antara Fiqh Munakahat dan Undang-Undang Perkawinan*, Jakarta: Kencana, p. 92.

¹⁵ Ash-Sharbini al-Khatib, (1998), *Mughnii Muhtaaaj Syarh al-Minhaaj*, Volume 3, Egypt: al-Baab al-Halabi, p. 240. 240.

- c. Waiver of the entire *mahr* before or after intercourse. The *mahr* is waived if the wife is able to make a contribution, because the *mahr* is a debt owed to the husband.
- d. The wife donates the entire dowry to the husband. If the wife is one who is able to make a donation. The husband accepts the wife's gift in the assembly, either before or after the receipt of the dowry.

3.2 Dowry in the Compilation of Islamic Law

The Compilation of Islamic Law explains that dowry is not a pillar of marriage. Article 14 states that the pillars of marriage are "prospective husband, prospective wife, guardian, two witnesses and Ijab Kabul". Then it is also contained in Article 34 paragraph (1) that "the obligation to submit dowry is not a pillar of marriage". In the Compilation of Islamic Law Article 35 paragraph (1), it is explained that "a husband who divorces his wife *qobla al dukhul* is obliged to pay half the *mahr* that was determined in the marriage contract". The article explains that the husband is obliged to pay half of the *mahr* that has been determined, if he divorces his wife before intercourse. But if there is a divorce before intercourse and the *mahr* has not been determined, then the husband must pay the *mahr mitsil*. As in Article 35 paragraph (3) "if the divorce occurs *qobla al dukhul* but the amount of the *mahr* has not been determined, the husband is obliged to pay *mahr mitsil*". *Mahr mitsil* is a dowry whose amount is not mentioned in the implementation or before the marriage contract. It can also be said to be a dowry that is commensurate and has been received by relatives of the wife's family.

In the Compilation of Islamic Law Article 38 paragraph (1) it is explained that "if the dowry submitted contains defects or is lacking, but the prospective woman is still willing to accept it without conditions, the delivery of the dowry is considered paid in full". The article explains that if the husband gives a dowry that is defective or lacking and the wife is still willing to accept it without giving any conditions, even though it was previously known by his wife, the delivery of the dowry in this case is considered paid in full. Meanwhile, if the wife rejects the *mahr*, the husband must replace it with another *mahr* until the *mahr* given is considered paid in full by the wife. As explained in the Compilation of Islamic Law Article 38 paragraph (2) that "if the wife refuses to accept the *mahr* because of a defect, the husband must replace it with another *mahr* that is not defective. As long as the replacement has not been handed over, the dowry is considered still not paid in full". So, from the above article it is clear that if the wife refuses a defective dowry, the husband must replace it until the dowry is considered paid in full.

3.3 Dowry from The Perspective of Mandailing Custom

In Mandailing society, dowry is also known as *sinamot*. *Sinamot* or called honest money is the name of the dowry that the prospective husband will give to the prospective wife whose form and amount are determined in the customary agreement.¹⁶ The history of the origin of *sinamot*, purely a policy of the ancestors, while in the Batak area itself, *sinamot* was originally from a worker who mostly farmed, while in Mandailing due to the large deposits of gold *pounds* (metal gold pieces) of the previous kings.¹⁷ In general, farming work is done by women, when the woman wants to get married and automatically has to go along with her husband, so the work of the woman's family will increase because of the departure of the woman. Therefore, the man who marries her is obliged to compensate either a woman or a man (person for person).¹⁸ The amount of *sinamot* given by the prospective husband determines how much self-esteem or social status the prospective wife and her extended family have. In addition, *sinamot* in Mandailing customs has an important position and is also an obligation.¹⁹ *Sinamot* is also a measuring tool for the male party to the female party in the customary marriage system. With the existence of *sinamot*, it will give birth to an agreement and create social relations between the male and female parties which are contained by the bond of *dalihan na tolu* as a binder of social relations in Batak society.²⁰

Marriage in Mandailing Custom is divided into 3 (three) phases, namely before marriage, during marriage and after marriage. *Sinamot* is in the *pre-marriage* phase and its provision will be carried out through several stages starting from *manyapai boru* (getting to know a woman), *mangaririt boru* (choosing a woman), *padomos hata* (conveying goals), *patobang hata* (solidifying goals), *manulak sere* (delivery of dowry) and finally *mangalehen mangan pamunan* (farewell meal).²¹

As with dowry in Islamic law, *sinamot* in Mandailing custom also requires that the goods given must have benefits and can be used by the prospective wife. *Sinamot* given is usually in the form of money, because it can be flexible in its use

¹⁶ Lanna Khairani, (2019), Mangalehen Tuor: Fenomena Living Hadis dalam Adat Mandailing", *Jurnal Mashdar*, Volume 1, No. 1, p. 3. 3.

¹⁷ Muhammad Syukri Albani Nasution, (2015), Analisis Kompilasi Hukum Islam Tentang Tipologi Pelaksanaan Hukum Keluarga Islam di Mandailing Natal", *Jurnal Manhaj*, Volume 1, Number 9, p. 34. 34.

¹⁸ Adesh Febriyeni and Payerli Pasaribu, (2020), Perubahan Fungsi *Sinamot* pada Etnik Batak Toba", *Jurnal Buddayah*, Volume 2, No. 1, p. 26. 26.

¹⁹ Lanna Khairani, (2020), Mangalehen Tuor: Fenomena Living Hadis dalam Adat Mandailing", p. 3-4.

²⁰ *Ibid*, p. 22.

²¹ Pandapotan Nasution, (2005), *Adat Budaya Mandailing Dalam Tantangan Zaman*, North Sumatra: Forkala, p.270.

in buying all household needs, but there are some people who give sinamot in the form of land, gardens or gold.

Historically, sinamot was not given in the form of money, but in the form of property that is considered to have meaning. These assets include houses, land, rice fields, gold, livestock consisting of buffaloes, cows and horses, because in ancient times the woman's family did not own land, rice fields or houses in her son-in-law's village, so this is what is called *sinamot*.²² For *sinamot* in the form of livestock, after there is an agreement on the amount of sinamot, the parents or delegates from the female family will go *maningkir lobu* (visit the cage) of the male parent's house to see the livestock used as *sinamot*. It is then agreed when the animals will be delivered and on the day of delivery, the villagers will open the village gates and bring the animals into the pen of one of the brothers of the woman's father. This is called *pamarai* (the one who loads the animals).²³

A habit (custom) and belief will certainly continue to be preserved by its successors, especially if the habit brings good things. Likewise, the function of *sinamot* in Mandailing customs is as follows:²⁴

- a. As a two-family reinforcement
- b. Upholding the traditions inherited from previous generations
- c. Respect for the girl's parents
- d. Respect for women's educational status
- e. Obtain customary marriage recognition

3.4 Analysis Of Decision 129/PDT.G/PA.PSK from The Perspective of *Fiqh* Rules *Al-Adatu Muhakkamah*

Decision number 129/Pdt.G/PA.Psk is a divorce suit filed by a wife to the Religious Court so that the judge divorces her and her husband. During the trial, the husband filed a counterclaim requesting that the entire dowry/sinamot - which had been given to his wife - be returned in the form of money totaling IDR. 12,000,000.00 (twelve million rupiah), on the grounds that his wife was still qobla dukhul and had never been touched by the husband after the marriage. During the trial, it was proven that a marriage had taken place between the two,

²² Adesh Febrieni and Payerli Pasaribu, (2017), *Perubahan Fungsi Sinamot pada Etnik Batak Toba*", p. 27. 27.

²³ Ali Raja Nasution, (2011), *Penetapan Mahar Dalam Adat Mandailing Dan Dampaknya Terhadap Kelangsungan Pernikahan Ditinjau Menurut Hukum Islam (Studi Kasus Di Desa Tambusai Barat, Kecamatan Tambusai, Kabupaten Rokan Hulu)"*, Skripsi S1 Fakultas Syariah dan Ilmu Hukum Universitas Islam Negeri Suska Riau, p. 53.

²⁴ Yulia Risa and Emizal Amri, (2021), *Fungsi Tuor Bagi Orang Mandailing", Culture & Society: Journal of Anthropological Research*, Volume 3, No. 2, p. 90-95.

and that part of the dowry/sinamot had been spent on a party and household furniture that the two planned to use after the marriage, but an incident occurred during the wedding party, the Defendant, namely the husband, suddenly became ill and was taken away from the party location while his wife did not participate with her husband and until the lawsuit was filed the two had never lived in the same house and the wife was still a girl.

The Panel of Judges who tried the case considered each trial process and trial facts as part of the construction of the judge's consideration to produce a decision. The Panel of Judges decided to grant the wife's claim for divorce from her husband, and grant the husband's counterclaim in part to return the dowry/sinamot given in the form of cash in the amount of IDR. 6,000,000.00. With the following considerations:

a. Consideration of the Counterclaim Defendant's Recognition

Considering, that because the Defendant of the Counterclaim recognizes the arguments put forward by the Plaintiff of the Counterclaim, namely regarding the money given by the Plaintiff of the Counterclaim to the Defendant of the Counterclaim in the amount of IDR12,000,000.00 (twelve million rupiah), the argument is automatically declared to have been proven which does not require further proof (Article 311 R.Bg).

b. Consideration of *Sinamot* Money in Customary Law

Considering this issue, the Panel of Judges will state the following:

1. That in the community of Padangsidimpuan City there is a custom (customary law) that if a man and a woman will carry out a marriage contract, then the prospective bridegroom in addition to providing a dowry also provides money which is often termed *sinamot* or namosok / *hangus* money.
2. That the *sinamot* or namosok/*hangus* money according to custom will be used by the prospective bride for matters related to the implementation of the marriage, including for the reception and to buy household furniture for the bride and groom.
3. That if the marriage does not take place and the cause comes from the prospective bridegroom, then the "*sinamot* / *namosok* money" will belong to the prospective bride, otherwise if the cause comes from the bride, then the prospective bride will be punished to return the "*sinamot* / *namosok* money" even usually greater than what has been submitted / agreed upon.

c. Consideration of trial facts

Considering, that as has been explained in the Convention section that the Plaintiff Reconvention and the Defendant Reconvention have been proven to be legitimate husband and wife, then after the marriage contract was carried out the Defendant Reconvention should have lived together with the Plaintiff Reconvention regardless of whether there was permission from the family of the Defendant Reconvention because legally the responsibility of the parents of the Defendant Reconvention towards the Defendant Reconvention has passed to the Plaintiff Reconvention.

Therefore, when the Plaintiff Reconvened and the Defendant Reconvened were about to leave the residence of the parents of the Defendant Reconvened to go to the joint residence of the Plaintiff Reconvened and the Defendant Reconvened, the household furniture that was supposed to have been prepared by the Defendant Reconvened, the source of funds for its purchase came from the gift money / *sinamot money / namosok money of the Plaintiff Reconvened*, was handed over to be taken by the Plaintiff Reconvened and the Defendant Reconvened.

Considering, that because let alone the household furniture in question, the Defendant Reconvention who has officially become the wife of the Plaintiff Reconvention was not handed over by the parents of the Defendant Reconvention to the Plaintiff Reconvention, then according to the Panel of Judges it is legally reasonable for the Plaintiff Reconvention to file a counterclaim against the Defendant Reconvention regarding the money given (*sinamot money / namosok money*), this is in accordance with the *Fiqhiyyah* rule which reads: "al'Aadat al-Muhakkamah" which means that custom is a source of law, where the Defendant Reconvention must obey the applicable customary law as explained above.

Considering, that as for the reasons for the refusal of the Defendant Reconvention to return the money given (*sinamot money / namosok money*) in the amount of IDR.12,000,000, - (twelve million rupiah), namely because it has been spent to buy furniture, has been used for the wedding reception of the Plaintiff Reconvention with the Defendant Reconvention and because they feel cheated by the Plaintiff Reconvention.

d. *Ratio Decidendi* Considerations

Considering, that as for the reasons for the rejection of the Defendant Reconvention, the Panel of Judges will consider as follows:

1. That the reason for the Defendant Reconvention's refusal because it has been bought for furniture, actually strengthens that it is something that the Defendant Reconvention is aware of that the money given (*sinamot money*

/ *namosok money*) is used, among others, to buy household furniture that will be used by the Plaintiff Reconvention with the Defendant Reconvention as customary law applies in the Padangsidimpuan City community.

2. As for the reason that the Defendant Reconvened had used it for the reception, the Panel of Judges is of the opinion that this reason is justified because it is in accordance with the facts based on the testimony of the three witnesses of the Plaintiff Reconvened that on the day of the marriage contract a reception was also held for the marriage of the Plaintiff Reconvened and the Defendant Reconvened where part of the funds for the event came from the money given by the Plaintiff Reconvened (in accordance with customary law).
3. As for the reason for refusal because they felt cheated by the Counterclaim Plaintiff, the Panel of Judges is of the opinion that this reason cannot be justified, because if the Counterclaim Defendant felt cheated by the Counterclaim Plaintiff, then the Counterclaim Defendant should not have filed a Divorce Case such as the case *a quo* but a Marriage Cancellation case, this is as specified in Article 72 paragraph (2) of the Compilation of Islamic Law, because by filing a Divorce Case, it means that legally the Counterclaim Defendant has recognized the validity of the Counterclaim Defendant's marriage with the Counterclaim Plaintiff;

Considering, that as explained above, the marriage ceremony of the Plaintiff of the Reconvention and the Defendant of the Reconvention has been held by the Defendant of the Reconvention, which means that part of the money given by the Plaintiff of the Reconvention above has been used for the purposes of the event.

Considering, that therefore the Panel of Judges is of the opinion that the claim of the Plaintiff in Counterclaim is fair if only granted in the amount of IDR6,000,000.00 (six million rupiah) where the money should be used to purchase household furniture that will be used/used by the Plaintiff in Counterclaim and the Defendant in building a household, this is in accordance with the provisions of Article 27 paragraph (1) of Law Number 14 of 1970 concerning Basic Provisions of Judicial Power which has been last amended by Law Number 48 of 2009.

Considering, that the amount of money charged to the Counterclaim Defendant is based on the analogy or *qiyyas* to the amount of dowry that must be returned by a wife when she is divorced by her husband when she has never had conjugal relations (*qobla ad-dukhul*).

The Religious Court decision in case No. 129/Pdt.G/2015/PA.Psk is a decision that resolves the case of returning sinamot money. Chronologically, this decision is

based on the wife's claim to be separated from her husband and the husband's counterclaim for the return of the entire dowry that has been submitted. The consideration of the decision is full of benefits that are born from the use of the *Fiqh* rule "*Al-Adatu Muhakkamah*".

Islam is a special religion, one of the features of Islam lies in its teachings that provide sufficient space to accept the entry of elements of outside culture. This is evident when Islam was brought by the mubaligh to new areas, then Islam did not completely get rid of the teachings that had been prevailing for a long time in the community, but gave enough space and place to adapt to local culture, as among others in Indonesian society which shows Islam and local culture appear to be so intimate and understand each other. Mutual acculturation between Islam and local culture, in Islamic law methodologically as something that wants to be accommodated. This accommodative nature of Islam can be found in the rules of *Fiqh* which states "*Al-Adatu Muhakkamah*".²⁵

Thus, Al-adah or *Urf* is one of the sources in istinbath law, stipulating that it can be an argument if no *nash* is found from the book (Al-Qur'an) and Sunnah. The conditions under which *Adah* or "*Urf* can be used as a legal basis are as follows:

- a. Not contradicting the *nash*. This means that a tradition can be used as a legal guideline if it does not contradict the text of the Qur'an or the Prophet's hadith. Therefore, a tradition that does not fulfill this condition must be rejected and cannot be used as a legal basis for the community. The texts referred to here are those that are qat'i (definite), i.e. texts that are clear and unequivocal in their legal content, so that there is no possibility of takwil or other interpretations.²⁶
- b. 'Adah or Urf must be general. This means that the Urf must be understood by all levels of society, both in all regions and in certain regions. Therefore, if it is only the "*Urf* of certain people, it cannot be used as a legal basis.
- c. An Adah or Urf that has been in effect for a long time, not a new Urf. In this case, an example would be if someone said for the sake of Allah, I will not eat meat forever. When he said that, he meant mutton and beef, but five years later, the Urf of the community changed to mean all meat, including fish. If the person then eats fish meat, he is not ruled to have broken his vow, because his words were not based on a later Urf.

²⁵ Saiful Jazil, (2018), *Al-„Adah Muhakkamah, Adah dan „Urf sebagai metode Istibat Hukum Islam, Porsiding Halaqoh Nasional dan Seminar Pendidikan Fakultas Tarbiyah dan keguruan*, Surabaya: UIN Sunan Ampel, p. 320. 320.

²⁶ Husnul Haq, (2017), *Kaidah Al-„Adah Muhakkamah dalam Tradisi Pernikahan Masyarakat Jawa*, Skripsi Institut Agama Islam Negeri Tulungagung, Jawa timur: IAIN Tulungagung, p. 300.

d. It does not clash with tashrih (one's firmness on a matter). If an Urf clashes with tashrih, then it is invalid.²⁷

The consideration of the Panel of Judges who prioritize justice, certainty and legal benefits by using the *Fiqh* rule of *Al-Adatu Muhakkamah* is considered very maslahat and prioritizes the values that live and develop in society. As well as from the discussion above, the use of these rules is appropriate because it has met the requirements of a custom to be made into a law. In addition, the return of sinamot money is considered not contrary to Islamic law because it has become a custom in Mandailing society related to the return of sinamot. In addition, when viewed in the context of positive law, granting part of the husband's claim is an implementation of Article 35 paragraph (1) of the Compilation of Islamic Law that a husband who divorces his wife *qobla al dukhul* is obliged to pay half the dowry specified in the marriage contract, and this is also contained in the judge's consideration.

Interestingly, in this case, the divorce initiative came from the wife and not the husband, so, if it is related to the article above, it is certainly irrelevant, considering that the article regulates the return of dowry for divorce cases or if the divorce initiative comes from the husband. However, a judge is considered to know all the laws, even for issues where there are no rules, the judge must know the law in accordance with the adage "*ius curia novit*".

Judges are obliged to provide a sense of security and protection to justice seekers. Humane, sociological, psychological and religious philosophical approaches, in addition to juridical approaches can provide a sense of security and protection to the parties so that the judge's decision will be more in touch with the coveted sense of justice. Caliph Umar R.A said: "Equalize the position of the parties and your council in your view (face) and in your decision, so that the noble person is not greedy for your shortcomings and the weak person does not despair of your justice".

Judges are law makers, so of course every decision must contain the values of justice. So from the decision of case 129/Pdt.G/2015/PA.Pspk by punishing the wife to return half the gift of sinamot / scorched *money* by the husband is considered fair. The Panel of Judges in their decision expressed very good considerations by paying attention to one of the *Fiqh* rules, namely "*al-'Aadat al-Muhakkamah*" which means that custom is a source of law by paying attention to customs and habits in the community that apply as law.

²⁷ Fatmah Taufik Hidayat, (2016), Kaerah Adat Muhakkamah dalam pandangan Islan (sebuah tinjauan sosiologi hukum), Jurnal Sosiologi USK, volume 9, number 1, Banda Aceh: Syiah Kuala University, p. 72-73, t.d.

In Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which reads "*Judges and constitutional judges are obliged to explore, follow and understand the legal values and sense of justice that live in society*". To be able to implement this article, Carbonnier's advice is very appropriate "Thus it has always been the case that for thousands of years, judges who think are required".²⁸ In order for judicial reform with the Supreme Court as the spearhead, the participation of the entire community is also very instrumental, namely not to impose their will on what must be decided by the judiciary, because the "tradition of intervention" against the judiciary through opinions that arise due to the subjective interests of certain individuals or groups is also a wrong tradition that must be reformed.

On the other hand, to be effective, a law must have the support of the majority of the people. To get that support, a law must be well implemented, well understood and consistent with the values of its community.²⁹ So it is very reasonable if in determining a law it must contain various philosophical values, including laws that apply and develop in society, namely laws that have grown and lived in the place where the decision is made and certainly do not conflict with existing legal values in general. Therefore, by ordering the Plaintiff/Convention Defendant to return the sinamot/scorched money is an appropriate and fair decision in line with the values that live in the community.

The consideration of the panel of judges in determining the nominal also prioritizes the value of justice, which is based on the fact and becomes a fact of the trial that the *sinamot* money given is used to purchase household equipment and for reception costs. With the reception, some of the *sinamot* money has been used until the end of the reception, so punishing the wife to return all the *sinamot* money is very contrary to a sense of justice, because the implementation of the reception has involved many parties and is also enjoyed by the husband both in the form of services, entertainment and food.

4. CONCLUSION

Dowry is the right of the prospective wife given by the prospective husband before the marriage takes place. The dowry will belong to the wife completely if the marriage has taken place, but in various legal rules, the ownership of the dowry becomes absolute if there has been a husband and wife relationship, where the wife has taken rights over her wife who has been legalized by the provision of dowry and ijab qabul. However, in various cases, the dowry can be

²⁸ Achmad Ali, (2009), *Menguak Teori Hukum (Legal Theory) & Teori Peradilan (Judicialprudence): Termasuk Interpretasi Undang-Undang (Legisprudence) Volume I Pemahaman Awal*, Jakarta: Kencana Prenada Media Group, p. 479. 479.

²⁹ Achmad Ali, (2013), *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence)*, cet. Ke-5, (Jakarta: Kencana Prenada Grup, p. 477-479).

returned if the wife is divorced by her husband and the wife is still a girl, then part of the dowry can be returned, but what if the one who wants a divorce is the wife, while the wife is still a girl? Then in accordance with the customary law prevailing in Mandailing society, if the marriage fails because of the wife then the *mahr/sinamot* must be returned in full, while for similar cases the Compilation of Islamic Law does not regulate it. The Panel of Judges who tried the case 129/Pdt.G/2015/PA.Psk had considered all the facts of the trial so carefully and prioritized legal objectives with consideration from various aspects, including sociological aspects, that judges must explore the values or laws that exist and apply in society in accordance with the proverb "where the sky is upheld, there the earth is trodden". So by punishing the wife to return half of the *dowry/sinamot* to the husband is very wise and contains maslahat value, considering that half of the *dowry/sinamot* has been used together. So punishing the wife to return a portion is very fair for the husband and does not burden the wife. Thus, the correlation of customary law and positive law can deliver the law to its purpose.

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