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Unveiling Gender Disparities in Legal Traditions: A Study of Deferred *Mahar* within Customary Law

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Abstract

In the framework of Indonesia's legal pluralism, the deferred *mahar* tradition leads to societal disputes, raises divorce rates, and encourages debt-related crimes by placing financial burdens on the groom's side. Such systemic issues critically need policy reforms. This paper primarily aims to critically analyse this phenomenon—the *mowindahako* tradition—within the legal plurality system observed by the *Tolaki* ethnic community in Southeast Sulawesi, Indonesia. Data was gathered through observation and in-depth interviews and subsequently analysed within the theoretical framework of Living Customary Law (LCL). The findings suggest that the practice of deferred *mahar* in Indonesia can be attributed to the complex interplay between customary law, the state, and religion within the country's framework of legal pluralism. Both legal politics and gender biases influence this phenomenon, evident in traditional institutions' policies that empower women to dictate substantial dowry sums, thereby imposing a financial burden on men. Concurrently, customary institutions provide men with credit to help them pay dowries, thereby enhancing their convenience. This approach has led to prolonged societal disputes, reflected in increased divorce rates and rising criminal prosecutions due to debt-related issues. This paper provides a comprehensive analysis of the Deferred Mahar policy implemented by the *Tolaki* tribal customary institution.

Keywords: Gender; Living customary law; *Mahar*, *Tolaki* tribe; Indonesia

Introduction

The practice of dowry, which is often incorporated into wedding ceremonies, continues to present a range of complex social, economic, and legal challenges in diverse societies worldwide.¹ According to Sitompul² and White,³ the practice of marriage dowry among individuals residing in the South and Southeast Asia region exhibits characteristics indicative of a political-economic framework. This is due to the susceptibility of the dowry to being utilised by the family of the women as a means to coerce the transfer of assets from the men.⁴ The rise in incidences of elopement, abortion practices, and suicides in these regions can be mainly attributed to the issue of dowry, which imposes significant financial constraints on men. In addition, proponents argue that the presence of such a dowry is inconsistent with the principles of gender equality. The rejection of dowry in marital tradition is a stance taken by feminist activists in several countries of Southeast and South Asia, as evidenced by scholarly works such as those by Makino.⁵ According to Yenti, the dowry serves as a means of demonstrating respect and providing security for women.⁶ The examination of the *mowindahako* or deferred *mahar* tradition, as practised by the *Tolaki* people in Southeast Sulawesi Province, Indonesia, is triggered by the debate surrounding the interplay between reality and the concept of dowry.

A study conducted by Pandang examined the phenomenon of delayed dowries among the *Tolaki* people in the Southeast Sulawesi region, Indonesia.⁷ Regarding his assertion, this customary practice has a beneficial influence on the local populace. The individual provided additional clarification regarding the practice, elucidating

¹ Stevan Harrell and Sara A. Dickey, "Dowry Systems in Complex Societies," *Ethnology* 24, no. 2 (1985): 105–20, <https://doi.org/10.2307/3773553>; Mukhammad Nur Hadi et al., "Wage-Based Dowry Legal Paradigm: Perspectives of Muslim Generation Z in Surabaya," *Al-Ahkam* 33, no. 2 (October 31, 2023): 157–84, <https://doi.org/10.21580/ahkam.2023.33.2.17591>; Nurnazli Nurnazli et al., "Productive Dowry and Women's Economic Empowerment and Their Influence on Marital Assets in Bandar Lampung," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (June 11, 2024): 954–79, <https://doi.org/10.22373/sjhk.v8i2.19887>; Fauzi Fauzi, "Urf and Its Role in The Development of Fiqh: Comparative Study of Family Law Between Egypt and Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (June 30, 2024): 346–71, <https://doi.org/10.22373/ujhk.v7i1.23968>; Imam Syafi'i, Ruqoyatul Faiqoh, and Vasco Fronzoni, "Concept of Misaqan Ghalidzan in Contemporary Interpretation of Quraish Shihab Thoughts," *MILRev: Metro Islamic Law Review* 2, no. 2 (November 9, 2023): 115–33, <https://doi.org/10.32332/milrev.v2i2.7807>.

² Roswita Sitompul, Alesyanti Alesyanti, and Nurul Hakim, "Marriage Mahar to Minimize the Low Rate of Marriage in Aceh Pidie, Indonesia," *Italian Sociological Review* 8, no. 3 (September 19, 2018): 487–487, <https://doi.org/10.13136/isr.v8i3.246>.

³ Sarah C. White, "Patriarchal Investments: Marriage, Dowry and the Political Economy of Development in Bangladesh," *Journal of Contemporary Asia* 47, no. 2 (March 15, 2017): 247–72, <https://doi.org/10.1080/00472336.2016.1239271>.

⁴ Shahnaz Huda, "Dowry in Bangladesh: Compromizing Women's Rights," *South Asia Research* 26, no. 3 (November 1, 2006): 249–68, <https://doi.org/10.1177/0262728006071707>.

⁵ Momoe Makino, "Female Labour Force Participation and Dowries in Pakistan," *Journal of International Development* 33, no. 3 (2021): 569–93, <https://doi.org/10.1002/jid.3537>.

⁶ Endri Yenti et al., "A Set of Prayer Outfits as a Mahar? Discrimination against Women in the 'Urf Reality of the Archipelago's Fiqh," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 20, no. 1 (May 28, 2020): 17–30, <https://doi.org/10.30631/alrisalah.v20i1.567>.

⁷ I Pandang et al., "Delayed Mahar: The Perspective of Islamic and Customary Law," *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (July 2018): 012140, <https://doi.org/10.1088/1755-1315/175/1/012140>.



that this customary norm serves to alleviate the financial burden faced by potential grooms who lack the means to immediately fulfil their bridal dowry obligation in monetary form to the bride. This is achieved by deferring the payment until after the formalisation of the matrimonial agreement. Nevertheless, the data presented in his research report remains confined to normative readings, thereby failing to uncover the ramifications of social conflict and concealed gender prejudice inherent in these Indigenous cultural customs. The customary law policy, in reality, carries social ramifications, as the bridegroom's choice of a deferred payment scheme entails ongoing indebtedness and potential financial difficulties. These issues have the potential to disturb the harmonious dynamics within the couple's family at any given moment.

In addition, prior research has documented a range of dowry-related concerns that continue to pose significant social, economic, and legal challenges. According to the findings of Alston⁸, Huda⁹ and Waheed,¹⁰ the practice of giving dowry in marriage in Bangladesh appears to function primarily as an economic transaction, reflecting the financial capacities of males. Palkar further elucidated that the process of determining the dowry amount for matrimonial purposes in India involves state political intervention, which appears to have the effect of marginalising the lower socioeconomic strata of society.¹¹ Supraptiningsih & Bariyyah conducted a study in Thailand that uncovered the presence of gender bias in the process of assessing the monetary value of marriage dowries among women.¹² In Malaysia, matters related to dowry are overseen by the Shariah Court and the Ministry of Islamic Religious Affairs (JAI), which operate under the authority of the Sultan in each state. The dowry amount varies across the country, depending on each state's JAI regulations. According to the Government of Selangor Gazette and the Administration of the Religion of Islam (State of Selangor) Enactment 2003, a fatwa under Section 47 stipulates that, as of January 1, 2010, the maximum dowry in Selangor is set at RM 300.00 for both single and widowed women. Previously, the dowry amount in Selangor was RM 80.00 for single women and RM 40.00 for widowed women. Similar regulations apply in Malacca, where the Malacca Islamic Religious Affairs Department established on June 1, 2016, increased the dowry amount from RM 40.00 to RM 100.00.¹³

⁸ Margaret Alston et al., "Are Climate Challenges Reinforcing Child and Forced Marriage and Dowry as Adaptation Strategies in the Context of Bangladesh?," *Women's Studies International Forum* 47 (November 1, 2014): 137–44, <https://doi.org/10.1016/j.wsif.2014.08.005>.

⁹ Huda, "Dowry in Bangladesh."

¹⁰ Abdul Waheed, "Dowry among Indian Muslims: Ideals and Practices," *Indian Journal of Gender Studies* 16, no. 1 (February 1, 2009): 47–75, <https://doi.org/10.1177/097152150801600103>.

¹¹ Vineeta Palkar, "Failing Gender Justice in Anti-Dowry Law," *South Asia Research* 23, no. 2 (November 1, 2003): 181–200, <https://doi.org/10.1177/0262728003232005>.

¹² Umi Supraptiningsih and Khoirul Bariyyah, "Marriage Settlement among Minority Moslem by Datok Imam Masjid in South Thailand," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 2 (December 10, 2019): 221–36, <https://doi.org/10.19105/al-lhkam.v14i2.2631>.

¹³ Musyaffa Amin Ash-Shabah, Nahrowi Nahrowi, and Masyrofah Masyrofah, "Dowry Amount in Aceh-Indonesia and Selangor-Malaysia: Between State Regulations and Customs," *AHKAM: Jurnal Ilmu Syariah* 21, no. 2 (December 30, 2021), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/19673>.

The studies above have made reference to the presence of social, economic, and legal political tensions in the context of dowry marriages across different nations, particularly in the Southeast and South Asia regions. However, these studies solely shed light on these conflicts in relation to the actual process of dowry payment preceding the wedding ceremony. This study presents a contrasting perspective to the aforementioned research since it highlights the adverse consequences associated with the practice of deferring payment in the context of marital dowries. Specifically, it suggests that this tradition can potentially instigate enduring social tensions.¹⁴

Building upon the aforementioned phenomena, this study posits three primary research problems. The first query seeks to elucidate the intricacies surrounding the notion of a postponed dowry within the cultural practices of the Tolaki community residing in Southeast Sulawesi, Indonesia. This inquiry aims to understand how customary law, governmental apparatus, and religious institutions interact in shaping the temporal progression of the dowry tradition within legal and political debates. This study also investigates the underlying factors that contribute to the propensity of the deferred dowry practice to incite protracted social conflicts. To address these three inquiries, this study employs a critical paradigm by utilising the perspective of the Living Customary Law (LCL) theory. Based on our investigation, it is hypothesised that the deferred *mahar* policy within the Tolaki customary culture is intricately linked to the interplay of customary law, the state, and religion. This interplay is likely to encompass elements of legal politics and gender bias affecting men and women. This research, therefore, investigates the moral dimensions of the dowry tradition and focuses on the social and political components of legal systems as its primary subject of analysis

Methods

The present study used a case study research approach to examine the discourse surrounding gender prejudice in the practice of delayed dowries in the Tolaki community in Indonesia. According to Merriam & Tisdell, the case study is a methodological technique that involves a comprehensive examination of an individual, group, or community's system or experience.¹⁵ The utilisation of case study design is regarded as a valuable approach for investigating the intricacies and relationships associated with the issue of deferred *mahar*, given its multifaceted nature within the realm of human experience. The utilisation of a phenomenological case study methodology can offer an overarching comprehension of the life experiences of individuals, specifically traditional elders, who are involved in the management of this particular situation.¹⁶

The present study was conducted in the sub-districts of Kolono and Moramo, situated within the Konawe Selatan district of Southeast Sulawesi Province, Indonesia, from 2021 to 2022. The selection of these sub-districts was based on the prevalence of deferred *mahar* practices in the local population, among many other

¹⁴ Supraptiningsih and Bariyyah, "Marriage Settlement among Minority Moslem by Datok Imam Masjid in South Thailand."

¹⁵ Sharan B. Merriam and Elizabeth J. Tisdell, *Qualitative Research: A Guide to Design and Implementation* (San Francisco: John Wiley & Sons, 2015).

¹⁶ Martyn Denscombe, *The Good Research Guide: For Small-Scale Social Research Projects* (United Kingdom: McGraw-Hill Education, 2017).



problems. This research encompassed the utilisation of many methodologies, including observations, documentation, and in-depth interviews, centring on the Tolaki community, specifically examining their adherence to the practice of deferred *mahar* in the context of marital unions. The man's financial incapacity mostly triggers this phenomenon to fulfil the dowry payment to the woman's family. Additionally, we employed documentary approaches to gather statistical data from the Central Bureau of Statistics of Southeast Sulawesi regarding the prevalence of divorce instances stemming from prolonged dowry customs. The study involved conducting in-depth interviews with four people. All the participants are male.

Puutobu and *Pabitara* were selected as informants because they were initially unaware of dowry practices. Moreover, individuals who engage in the practice of deferring dowry payments are also encouraged to share their experiences and lifestyles, which can be burdensome due to unpaid dowry obligations. Prior to commencing the interview, the researcher sought the interviewee's willingness to participate by presenting a consent form for their consideration. Upon completing the form as an expression of consent, participants willingly provided researchers with data pertaining to the implementation of delayed dowries and its consequential societal effects on those involved. To uphold the principle of confidentiality, pseudonyms were employed in the present investigation. Additional information regarding participant demographics can be found in the Table below

Table 1. An overview of the demographic characteristics of the participants involved in the research.

Participant	Pseudonym	Age	Gender	Role	District
Participant 1	RSM	70	Male	Traditional elder (<i>Patuubo</i>)	Kolono
Participant 2	DMS	65	Male	Traditional elder (<i>Pabbitara</i>)	Moramo
Participant 3	RD	27	Male	Main actor	Kolono
Participant 4	ZM	29	Male	Main actor	Moramo

Source: Multiple Interviewees, Interview by author, Southeast Sulawesi, 15th of March and 19th of June 2024

The individuals involved in the study will be referred to using pseudonyms to protect their identities and maintain confidentiality. The variables of interest in this study include age, gender, and role within the districts. The first participant in the study is identified as RSM, a 70-year-old male who holds the esteemed position of a traditional elder, commonly referred to as “*Patuubo*.” DMS, participant 2, is a 65-year-old male who holds the esteemed position of a traditional elder known as “*Pabbitara*.” The third participant, referred to as RD, 27 years old, is the main actor. The term “*kolono*” refers to a concept that is commonly used in a specific context. Participant 4 is identified as ZM, a 29-year-old male. The validity of the data in this study involved a rigorous process, including systematic transcription, structured analysis, and methodological triangulation. The interviews were performed with informants in *Tolaki*, their indigenous language, which was supplemented by the use of Indonesian as the official language. The duration of the interview ranged from 45 to 90 minutes. The interviews were recorded in audio format to facilitate

transcription into both Tolaki and Indonesian languages, followed by translation into Indonesian. The transcript was accompanied by a detailed account of the interview's timing. The transcription process involves organising the interview content systematically from start to finish. The process of preparing the transcription is considered a comprehensive artefact assessed based on a pre-established framework. Similarly, the process of interview data analysis commenced with the utilisation of recorded interviews, wherein pertinent information was transcribed. Subsequently, the collected data was organised, coded, interpreted, and validated through the application of the triangulation method. Moreover, the findings derived from the comprehensive analysis of the interview transcripts were subjected to a systematic procedure, resulting in the generation of novel perspectives within the context of the phenomenological approach employed in the case study. Additionally, the findings are subjected to a systematic procedure to ensure credibility. The integration of the Living Customary Law conceptual framework ensures that the analysis aligns with real-world customary practices, enhancing the authenticity and relevance of the study. This methodological rigour confirms that the data is both valid and reliable for drawing meaningful conclusions.

Result and Discussion

Gender Disparities in the Legal and Political History of Indonesia

Contemporary gender studies predominantly revolve around advocacy matters concerning the marginalisation of women in the public domain and the prevalence of misogyny.¹⁷ There exist several instances of gender bias that result in the marginalisation of men or misandry.¹⁸ The use of marriage dowry standards is prevalent among the Muslim communities in the South and Southeast Asia region. The issue of fulfilling the dowry as a primary prerequisite in the wedding ceremony

¹⁷ Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haver and London: Yale University Press, 2021); Nur Faizah et al., "The Role of Indonesian Women Ulama Congress (KUPI) in the Search for Gender Equality-Based Islamic Law," *Al-Adalah* 21, no. 2 (December 25, 2024): 323–46, <https://doi.org/10.24042/adalah.v21i2.23698>; Yusida Fitriyati et al., "Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (May 1, 2025): 122–40, <https://doi.org/10.19109/nurani.v25i1.27133>; Ramadhita Ramadhita, Mahrus Ali, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 2206347, <https://doi.org/10.1080/23311886.2023.2206347>; Susi Susilawati et al., "Manifestations of Gender Injustice in Divorced Marriages: The Kabalutan Tradition," *Jambura Law Review* 5, no. 1 (January 30, 2023): 136–55, <https://doi.org/10.33756/jlr.v5i1.17722>; Sudirman Sudirman et al., "Examining the Complexity of Child Marriage as Sexual Violence in Digital Era," *Legality : Jurnal Ilmiah Hukum* 31, no. 2 (September 30, 2023): 310–28, <https://doi.org/10.22219/ljih.v31i2.28881>; Rafea Khatun and Shakil Ahmed, "Hindu Women's Right to Property in Bangladesh: A Grave Denial of Gender Justice," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (April 28, 2025): 217–41, <https://doi.org/10.29303/ius.v13i1.1596>; Faisal Husen Ismail et al., "Customary and Islamic Practices in Inheritance Distribution: Insights from The Gampong Customary Court in Pidie," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 2 (December 30, 2024): 1–16, <https://doi.org/10.30631/alrisalah.v24i2.1544>.

¹⁸ Michelle M. Lazar, "Gender, Discourse and Semiotics: The Politics of Parenthood Representations," *Discourse & Society* 11, no. 3 (July 2000): 373–400, <https://doi.org/10.1177/0957926500011003005>.



poses a distinct challenge for the male population in that context.¹⁹ The prevalence of financial difficulties experienced by men in meeting the requested dowry amounts by women can be attributed to the presence of ambiguous legislation pertaining to minimum and maximum limits.²⁰ This explanation illustrates that gender bias encompasses concerns related to sexism and the potential involvement of misandry.

The discussion surrounding gender bias within home dynamics in Indonesia has a historical origin that can be traced back to the New Order era. This finding is consistent with the results of other investigations conducted by Saskia E. Wieringa.²¹ According to the author, the analysis of this discourse is inherently intertwined with the oppressive regime of the New Order, which governed for approximately 32 years, from 1966 to 1998. During that particular time period, there was a notable rise in the prominence of masculinity across multiple domains, including social, political, religious, educational, and economic spheres, which also had implications for the position and role of women within the household.²² Organizations advocating for women's rights are perceived as adversaries of governmental policy through the utilisation of power politics strategies. The movement in question is characterised by the state as a "new communist" faction, aiming to challenge the established masculinity framework established by the regime.²³ The dictatorship thereafter consolidated its dominant influence by establishing women's organisations, such as the Dharma Wanita, which comprised the wives of civil servants; the Dharma Pertiwi, consisting of the wives of national military personnel; and the state-sponsored Family Welfare Movement (PKK), which fostered various women's groups. These organisations were established to promote discussions on women's responsibilities, which were primarily confined to domestic tasks, such as laundry, cooking, and engaging in intimate relationships. The active participation of women in the household, particularly when they prioritise the care of their children and spouse, serves as a significant indicator of a prosperous family.²⁴ It is evident from

¹⁹ Ahmad Arif Masdar Hilmy and Ria Cahyaning Utami, "Classification of Women in The Class Concept of Dowry: A Study of Berger and Luckmann's Social Construction," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 27, 2021): 137–60, <https://doi.org/10.19105/al-lhkam.v16i1.4561>; Busyro Busyro et al., "The Reinforcement of the 'Dowry for Groom' Tradition in Customary Marriages of West Sumatra's Pariaman Society," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (March 31, 2023): 555–78, <https://doi.org/10.22373/sjhk.v7i1.15872>.

²⁰ Supraptiningsih and Bariyyah, "Marriage Settlement among Minority Moslem by Datok Imam Masjid in South Thailand"; Agus Suharsono, Nanik Prasetyoningsih, and Sunyoto Usman, "Women's Inheritance Rights in Indonesia from the Perspective of the Triangular Concept of Legal Pluralism," *El-Mashlahah* 14, no. 2 (November 8, 2024): 259–80, <https://doi.org/10.23971/el-mashlahah.v%vi%i.7657>.

²¹ Saskia E. Wieringa, "Sexual Politic in Indonesia: From Soekarno's Old Order to Soeharto's New Order," in *Women Resist Globalization: Mobilizing for Livelihood and Rights*, ed. Sheila Rowbotham and Stephanie Linkogle (London: Zed Books, 2000), 134–53.

²² Lukman Arake et al., "Non-Binary Gender in Siyasa Syar'iyah Perspective: Study at Religious Universities in South Sulawesi," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (October 19, 2023): 1708–33, <https://doi.org/10.22373/sjhk.v7i3.20152>.

²³ Saskia E. Wieringa, "Women Resisting Creeping Islamic Fundamentalism in Indonesia," *Asian Journal of Women's Studies* 15, no. 4 (January 1, 2009): 30–56, <https://doi.org/10.1080/12259276.2009.11666077>.

²⁴ Saskia E. Wieringa, "The Birth of the New Order State in Indonesia: Sexual Politics and Nationalism," *Journal of Women's History* 15, no. 1 (March 2003): 70–91, <https://doi.org/10.1353/jowh.2003.0039>.

the sources above²⁵ that religious, educational, and customary institutions or organisations serve as the channels via which this discourse is reinforced. Saskia E. Wieringa's research suggests that the establishment of customary law serves as a mechanism employed by authorities to disseminate specific gender-biased ideologies. Consequently, the presence of gender bias within contemporary customary law is to be expected.²⁶

During the Reformation period and the subsequent post-new order era, the Indonesian Government implemented policies that established laws and regulations supportive of gender-responsive principles. The policy above is clearly articulated in Law Number 12 of 2011, specifically in Article 6, paragraph 1. This legislation in Indonesia encompasses several key principles that serve as indicators of gender responsiveness in the formulation of applicable laws. These principles include the presence of justice and equality within the legal system and governance. This aligns with the study conducted by Erlina, which holds that in the context of rules and regulations, justice requires that all citizens be treated equally at all times without discrimination. In contrast, the concept of equality refers to the state of having an equitable position within the legal and governmental systems, free from any form of prejudice or bias related to religion, ethnicity, race, socioeconomic status, gender, or social standing. In other words, equality ensures that everyone is treated justly.

In the reform era, the government uses a set of measures—Access, Participation, Control, and Benefits (APKM)—to analyse gender equality when developing laws and regulations. Access refers to the determination of equitable opportunities for both men and women in relation to each resource that will be managed by rules and regulations, guaranteeing that the formed legal norms incorporate principles of justice and equality. Participation entails creating rules and regulations that ensure equal opportunities for men and women to exercise their rights and perform their obligations under all development plans and programs. Control refers to the assessment of whether the legal norms stated in laws and regulations contain consistent rules on power dynamics between individuals of different genders in their ability to exercise their rights and complete their obligations. The concept of benefit necessitates an examination of the extent to which established legal norms have the capacity to ensure that a specific policy or program will provide equal benefits for both men and women in the future.²⁷ Hence, it is evident that the legislation effectively governs the responsibilities pertaining to gender equality throughout all regulations implemented in Indonesia, encompassing national law, religious law, and customary law.

The Tradition of Deferred *Mahar* in Tolaki Tribe

²⁵ Saskia E. Wieringa, "Sexual Slander and the 1965/6 Mass Killings in Indonesia: Political and Methodological Considerations," *Journal of Contemporary Asia* 41, no. 4 (2011): 544–66, <https://doi.org/10.1080/00472336.2011.610613>; K. O'shaughnessy, *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law* (London: Routledge Publishing, 2009).

²⁶ Wieringa, "The Birth of the New Order State in Indonesia."

²⁷ Erlina Erlina and Nika Normadilla, "Gender Analysis in Indonesia's Legislation Regarding Political Laws," *Lentera Hukum* 7, no. 3 (November 23, 2020): 337–54, <https://doi.org/10.19184/ejlh.v7i3.20117>.



The concept of "*mahar*" as understood by the *Tolaki* indigenous community differs from the notion of "dowry" as defined by Islamic legal institutions and national law in Indonesia. As elucidated in the preceding discourse, the dowry, as denoted in the two legal sources, pertains to the transfer of tangible assets from the male party to the family of the female party during the matrimonial agreement. In contrast to the articulation of dowry in the *Tolaki* custom, it is interpreted as "*mowindadhako*" or traditional offerings that are separate from the marriage contract procession (interview with DSM, June 19, 2024). In the context of Islamic and national law, the term "dowry" is utilised to refer to the same concept. According to DSM, the determination of the dowry amount in Indonesia adheres to the regulations stipulated in Islamic and national law, which are commonly observed by the populace and are not explicitly outlined in customary law.

According to the accounts provided by *Tolaki* traditional leaders, including *Pu'utobu* (a traditional judge) and *Pabitara* (a traditional leader), the dowry practice within the *Tolaki* community may be categorised into two distinct types: the transfer of traditional symbolic items and the transfer of monetary contributions. According to the interview conducted on March 15, 2024, RSM explained two types of dowries. The first type, referred to as *mowindadhako puuno osara*, involves the presentation of 4+80 traditional symbols. The second type, *mowindadhako onggoso ndekonggo*, was also discussed. The initial kind of dowry entails the observance of customary symbols by the male party. A comprehensive elucidation of the conventional symbols associated with the initial form of dowry is provided as follows: The numeral four holds symbolic significance in this context, representing four distinct handover items. These items include a buffalo referred to as a "*kiriku*", a white blanket known as a "*kaci*" or shroud used for wrapping the deceased, a gold necklace referred to as a "*gumbang*" or "*o'eno*," and a gong, a traditional percussion instrument crafted from copper, commonly referred to as "*laughter*." Regarding the numerical value of 80, it signifies that the quantity of sarongs amounts to 80 units. (An interview with RSM, 70 years old, conducted on March 15, 2024).

The second dowry, known as *onggoso ndekonggo*, takes the form of monetary funds allocated to pay the expenses associated with hosting a wedding celebration, commonly referred to as a traditional wedding reception in Indonesia. The responsibility for providing the dowry falls exclusively on the male individuals. According to RSM, the present nominal value of party funds in the traditional *Tolaki* tradition is estimated to be no less than 50 million rupiah (Rp). The second form of dowry is likewise the obligation of the groom. The concept of dowry was elucidated by traditional authorities, emphasising two distinct kinds of dowry. These forms entail the payment of a monetary sum by the prospective groom, which must be settled prior to the procession of the marriage contract or the granting of consent. Nevertheless, in the event that the potential groom is incapable of providing the two dowries in monetary form, the woman's family considers them as a deferred or outstanding dowry, as said by RSM in the interview.

The determination of the marriage dowry in *Tolaki* customary law is contingent upon the woman's social rank. The status in question pertains to the historical record of a woman's prior marital unions. In the case of those who have never entered into marriage (referred to as a virgin), the conventional norms dictate that the male is expected to provide a typical nominal dowry. There is a notable distinction in the

event that a lady has undergone marriage multiple times, between one and three times, as it results in a decrease in the customary amount of dowry. Nevertheless, in the event that a woman has undergone marriage on four or more occasions, the dowry sum bestowed upon her remains equivalent to that of a woman who has not previously been married. The data for this material was acquired from interviews. The use of deferred *mahar* is intended to facilitate the process for men who face challenges in meeting the dowry demands set by the family of *Tolaki* women. Occasionally, individuals who submit applications belong to a socioeconomically disadvantaged group, rendering compliance with dowry obligations, as stipulated by legal rules that are challenging for them. To ensure compliance with the longstanding *Tolaki* customary law, the customary institution implemented a policy regarding credit payment methods as a viable option (Interview with DSM, 65, June 19, 2024).

Legal Politic Negotiations in the Deferred *Mahar* Tradition

The formulation of the deferred *mahar* policy was solely derived from customary law, without any influence from Islamic law or the state. According to Pu'utobu, it can be observed that the *Tolaki* group had been adhering to their traditional legal system prior to their acquaintance with Islamic and national law in Indonesia (An interview with RSM, 70 years old, conducted on March 15, 2024). However, it is essential to note that many customary law practices of the *Tolaki* community have been modified to align with the implementation of Islamic and national legal systems in Indonesia. One of the topics under consideration pertains to the policy of the deferred *mahar*. For instance, if an individual fails to fulfil their financial obligations according to customary legal norms, they may be deemed ineligible for customary services, such as the burial of their remains. In consideration of the principles of Islamic law, it is permissible for the body to be allowed some rights, provided that the male's family is willing to accept the subsequent consequences of the expulsion of the *mahar* (an interview with RSM, 70 years old, conducted on March 15, 2024). According to DMS, 65, in his interview conducted on June 19, 2024), the customary figure is described as having significance due to the prevalence of multiple customary laws and the fact that a significant portion of the *Tolaki* population has adopted Islam. Consequently, *Tolaki* customary figures hold prominent roles within the governmental structure, including positions such as village heads and religious leaders. The flexibility of the customary law structure of *Tolaki* is evident since it allows for adaptation to changing circumstances.

Furthermore, alongside the implementation of payment policies, including cash and credit, customary institutions also play a significant role in facilitating the distribution of material payments, known as *mahar*, which is primarily borne by the male party (refer to Table 2). The dispensation pertains to the initial category of *mahar*. The allocation of the *mahar* payment is facilitated through a provision that permits individuals to exchange materials of the 4+80 category with other materials they are unable to procure themselves. The customary term "*nilungga*" refers to the *mahar* conversion dispensation system. The indigenous characters, referred to as hornets, provide a comprehensive description of the policy-related information. In cases where the men are unable to prepare the cow, they are permitted to substitute it with alternative materials, such as cattle, rice, or an equivalent monetary value. Nevertheless, if the individuals are unable to afford the necessary resources to meet

the specified price for the cow, they are provided with an alternative option, which involves making a cash payment of IDR 250,000 according to the established rules. If the intention is to impose a penalty on males, then it must manifest as a deferment in the disbursement of funds through the utilisation of credit for a specified duration as stipulated in their contractual arrangement. (An interview with RSM, 70 years old, conducted on March 15, 2024).

Table 2. *Popolo* or dowry payment dispensation 4+80

Material <i>puuno osara</i> (<i>Mahar</i> 4+80)	Relief (<i>Nilungga</i>)	
	Substitute material	Cash conversion
One buffalo	Cattle, rice and cash	Rp. 250,000
One <i>pis</i> (sheet) shroud	-	-
One gold necklace (no minimum weight/gram limit)	Cash	Rp. 250,000
One gong	Cash	Rp. 250,000
80 <i>pis</i> (sheet) cover	A minimum of 16 pieces of sarong; the rest can be replaced with cash	Rp. 10,000/sheet

Source: Multiple Interviewees, Interview by author, Kolaka - Southeast Sulawesi, 15th of March and 19th of June 2024

Customary decisions pertaining to the horns have recently emerged in a historical context. The challenges faced by the Tolaki community in meeting the responsibilities of *mowindahako puuno osara* are being taken into consideration, thereby prompting the need for a choice to be made. As articulated by *Pu'utobu* in the subsequent excerpt from the interview, the statement mentioned above holds true. The *Nylongga* policy emerged as a result of deliberations between Indigenous institutions and the local government, culminating in an agreement reached in 1996 at customary exchanges in Unaaha and further solidified in 2002 in Kendari. This phenomenon can be attributed to various factors, one of which is the current inadequacy of conventional symbols, making it challenging to adhere to the requirements set by traditional symbols. For instance, the *Tolaki* people may opt to substitute crabs, whose availability in the market can be unreliable, with alternative resources such as livestock, rice, and other essential commodities. Additionally, economic factors come into play as not all members of the Tolaki community possess sufficient financial instruments. Consequently, they are permitted to substitute with monetary compensation, the specific value of which is determined by customary institutions. The evaluation of the customary settlement's outcome in Southeast Sulawesi must be conducted by the Tolaki community as a whole (An interview with RSM, 70 years old, conducted on March 15, 2024).

Indicators of Social Conflict and Gender Bias in Deferred *Mahar* Tradition

Based on statistical data quoted from The Central Statistics Agency (BPS), the majority of divorces in Tolaki households are caused by three main factors: one of the parties (husband/wife) leaving their partner, constant fighting, and domestic violence.²⁸ The majority of these three factors occurred during the 2018-2020 period, with a total of 4,765 cases, as shown in Table 3.

Table 3. Factors of divorce cases in Southeast Sulawesi

Year	Cause of divorce			Total
	Leaving another party	Domestic violence	Disputes and continuing quarrel	
2018-2020	438	250	1439	2.127
	516	129	1903	2548
Total	954	379	3342	4765

Source: The Central Statistics Agency (BPS) of Southeast Sulawesi Province, 2022

The findings of this study indicate that a significant proportion (30%) of the three primary causes contributing to divorce within households can be attributed to the consequences of delayed marriage. These consequences are particularly influenced by internal social conflicts that arise between the families of husbands. Indeed, the conflict concluded with the advent of a criminal investigation. An illustrative instance pertaining to this matter is illustrated by the testimony provided by one of the individuals involved in the deferred *mahar* (husband's party). The person concerned expressed that they were compelled to liquidate the ancestral assets to settle the outstanding financial obligations. The observed cases indicate that the practice of deferring the *mahar* was initially implemented as a customary measure to alleviate the financial strain on males who were expected to fulfil the substantial *mahar* requirements set by the female members of their families. Nevertheless, it is the specific policy that significantly influences the broader issue of sustaining the familial bonds among elderly wrongdoers inside the Tolaki community. Furthermore, it is imperative to critically reassess the fundamental problems associated with such instances while also taking into account the gender dimension inherent in the protracted *mahar* tradition.

The practice of deferred *mahar*, at its inception, can be understood as a manifestation of *Tolaki* customary law strategically designed to facilitate the payment of *mahar* by males to women. This strategy is implemented by traditional authorities through the resolution of customary institutions to facilitate the provision of credit or deferred payment. The phenomenon above has emerged as a notable measure of the adaptability inherent in the traditional legal system prevalent within the *Tolaki*

²⁸ Badan Pusat Statistik (BPS) Provinsi Sulawesi Tenggara, "Jumlah Perceraian Di Provinsi Sulawesi Tenggara Berdasarkan Faktor Penyebabnya," Website Version, 2022. <https://sultra.bps.go.id/id/publication/2022/02/25/b5383ab2887274d3ee7f0034/provinsi-sulawesi-tenggara-dalam-angka-2022.html> Accessed on September 9, 2024



community. The Tolaki community demonstrated adaptability by employing flexible strategies to uphold the traditional symbols and so maintain their cultural heritage. (Refer to Table 2). This perspective aligns with the viewpoint expressed by Diala, which posits that individuals' lives undergo continuous transformation as a result of their regulations and behaviours.²⁹ This is particularly relevant in societies that necessitate adaptation due to globalisation to uphold customary law within their diverse communities. The absence of legal transformation results in social conflict arising from the intersection between customary law and the surrounding legal framework. Religious law and positive law are distinct branches within the realm of legal studies, characterised by divergent and convergent attributes. Moreover, Fombad explains that the ongoing contradiction between customary law and human rights law, particularly with matters pertaining to gender equality, continues to pose a significant obstacle in contemporary times.³⁰

The concept of *mahar* significantly contributes to the occurrence of domestic violence.³¹ Consistent with the research findings, the statistical data shown in Table 3 further corroborate the assertion. In examining the facts about social conflicts arising from the implementation of the *mahar* policy in the development of *Tolaki* customary law, one can discern the presence of gender bias ideology within this context. The gender elements under consideration encompass both protective (P) and marginalising (M) practices that are observed concurrently towards women and men. Presented below is a comprehensive matrix delineating the constituent parts of gender disparity as well as the contributing variables within the context of the deferred *mahar* tradition;

Table 4. Elements and gender factors in the deferred *mahar* tradition

Ideological element gender bias	Man		Woman		Factor
	M	P	M	P	
The high nominal dowry standard triggers the birth of a deferred <i>mahar</i> policy.	√	-	-	√	Men are required to be able to prepare several dowry offerings for the sake of symbolising customs and weddings. The economic needs of the household after marriage are also the responsibility of the man. At the same time, the high nominal value of the dowry is beneficial for women because it can guarantee the protection of their dignity.

²⁹ Anthony C. Diala, “The Concept of Living Customary Law: A Critique,” *The Journal of Legal Pluralism and Unofficial Law* 49, no. 2 (May 4, 2017): 143–65, <https://doi.org/10.1080/07329113.2017.1331301>.

³⁰ Charles Manga Fombad, “Gender Equality in African Customary Law: Has the Male Ultimogeniture Rule Any Future in Botswana?,” *The Journal of Modern African Studies* 52, no. 3 (September 2014): 475–94, <https://doi.org/10.1017/S0022278X14000391>.

³¹ Laili Shofiya Kurniawati and Sugimin, “Exploitation of Dowry Against Muslim Women In Papua,” *Yinyang: Jurnal Studi Islam Gender Dan Anak* 19, no. 1 (July 31, 2024): 47–62, <https://doi.org/10.24090/yinyang.v19i1.9503>.

The cost of the wedding ceremony (<i>onggoso ndekonggo</i>) is borne unilaterally by the male family.	√	-	-	-	The responsibility for the cost of the wedding party is only borne by the male family. The bride and groom held a wedding party, so the man had to bear the costs of two parties at once.
The amount of dowry is determined by the status of the woman (virgin, widow 1x, widow 2x, widow 3x and widow 4x or more).	-	-	√	-	There is a similarity with trade in goods, where the status of a woman determines the nominal amount of dowry ("price") that the male family hands over to the female family.
The insistence on paying off the dowry was delayed by the female family against the male family.	√	-	√	-	Harmonious marital relations often face polemics over pending dowry bills, which can trigger the breakdown of husband-wife relations in the household.

Source: Anderson³² and Maruf³³

The four elements pertaining to gender ideology and their corresponding factors, as presented in Table 4, exhibit a notable degree of intricacy and paradox. On one side, there are instances where a gender component may be advantageous in protecting either women or men. However, it is essential to note that the same gender feature might also be subject to marginalisation within this context. The strategy implemented by the *Tolaki* customary authorities in addressing the issue of deferred *mahar* demonstrates their commitment to alleviating the load on men and providing protection for women. However, the implementation of the policy has resulted in contradictory decisions. On the one hand, the issue of pre-marriage procession payments has been effectively addressed through the implementation of a policy that promotes delayed marriage. On the other hand, the implementation of the strategy gives rise to exacerbated social issues. This phenomenon is characterised by conflicts of interest arising from the familial affiliations of the husband and wife, leading to consequential social problems over an extended period. The troubles they encountered seldom extended to the realm of criminal law, thereby leading to the dissolution of their connection due to financial indebtedness. Hence, the *Tolaki* customary institutions' policy of employing deferred *mahar* methods to alleviate the load on men results in the postponement of transitory social issues, albeit with the potential to give rise to more significant social problems in the future.

Previous scholars have already identified the issue of gender ideological bias in the implementation of customary law in Indonesia. According to Hull, the

³² Siwan Anderson, "The Economics of Dowry and Brideprice," *Journal of Economic Perspectives* 21, no. 4 (December 2007): 151–74, <https://doi.org/10.1257/jep.21.4.151>.

³³ Laode Mazal Amri Maruf, "Membedah Pelaksanaan Perkawinan Adat Tolaki di Kabupaten Konawe Selatan Sulawesi Tenggara (Perspektif Hukum Islam)" (Master Thesis, Universitas Islam Negeri Alauddin Makassar, 2013), <https://repository.uin-alauddin.ac.id/2876/>; Zaimuariffudin Shukri Nordin et al., "Integrating Islamic Law and Customary Law: Codification and Religious Identity in the Malay Buyan Community of Kapuas Hulu," *Journal of Islamic Law* 6, no. 1 (February 28, 2025): 89–111, <https://doi.org/10.24260/jil.v6i1.3410>.

Indonesian government faces a challenge in establishing national standards or legal norms, as they must contend with local customary law regarding the stipulations of nominal amounts and methods of payment for marriages.³⁴ According to Lukito it is relatively uncommon for customary rules in Indonesia to exhibit conflicts between different tribes, resulting in legal ambiguity at the national level.³⁵ Hence, the utilisation of customary law frequently serves as the foundation for the disapproval of the validity of religious law and national law among the Indonesian populace. Buttenheim & Nobles made significant contributions in their study of the traditional judicial system in Indonesia. The author posits that the customary legal system is founded upon a patriarchal framework, wherein women continue to occupy subordinate positions within family, social, political, and economic spheres. The focus of this issue narrows when considering the topic of marriage, wherein both women and men have equal opportunity to experience gender discrimination.³⁶

In their study, Hashemi & Esmaeili examined the significance of a philosophical comprehension of the fundamental nature of *mahar* for society.³⁷ They proposed that streamlining the cash payment of *mahar* could serve as a potential solution to the many challenges associated with the *mahar* dilemma. Likewise, the endeavour to uphold and safeguard the honour and respect of women should not impose undue challenges on males in fulfilling the substantial monetary obligation known as the *mahar*. Consequently, when the male members of a family face difficulties in fulfilling the expectations placed upon them by the female members, it increases the likelihood of criminal incidents, such as instances of spousal abandonment, despair, and even suicide.³⁸ The *mahar* payment system is frequently inconsistent with the principles of gender equality due to strategic decision-making that fails to address the underlying causes of the issue.³⁹ Hence, drawing upon the insights gleaned from prior research, this study posits that a more radical legal transformation is the necessary course of action to effectively tackle the issue of *mahar* among indigenous communities. The objective of the transition is to mitigate the burden or streamline nominal payments while continuing to utilise cash payment mechanisms.

Conclusion

The application of the deferred *mahar* tradition within the Tolaki tribal community in Indonesia has led to a perplexing situation. The initiation of the

³⁴ Terence H. Hull, "Demographic Perspectives on the Future of the Indonesian Family," *Journal of Population Research* 20, no. 1 (March 1, 2003): 51–66, <https://doi.org/10.1007/BF03031795>.

³⁵ Ratno Lukito, "The Enigma of National Law in Indonesia: The Supreme Court's Decisions on Gender-Neutral Inheritance," *The Journal of Legal Pluralism and Unofficial Law* 38, no. 52 (January 1, 2006): 147–67, <https://doi.org/10.1080/07329113.2006.10756594>.

³⁶ Alison M. Buttenheim and Jenna Nobles, "Ethnic Diversity, Traditional Norms, and Marriage Behaviour in Indonesia," *Population Studies* 63, no. 3 (November 2009): 277–94, <https://doi.org/10.1080/00324720903137224>.

³⁷ Esmat Hashemi and Mohsen Esmaeili, "The Revival of Dowry Tradition," *Specialty Journal of Politics and Law* 3, no. 3–2018 (2018): 48–55.

³⁸ Huda, "Dowry in Bangladesh"; Waheed, "Dowry among Indian Muslims."

³⁹ Alston et al., "Are Climate Challenges Reinforcing Child and Forced Marriage and Dowry as Adaptation Strategies in the Context of Bangladesh?"; Makino, "Female Labour Force Participation and Dowries in Pakistan."

process can be traced back to the deliberation of customary institutions to implement modifications in customary law regulations, which facilitated the utilisation of credit for the payment of *mahar*. Initially, it was posited that the policy might assist the male party who lacked the financial means to fulfil the *mahar* payment in monetary form. However, it is essential to recognise that the policy poses a range of social, economic, and legal challenges. The societal issues being discussed pertain to the protection and preservation of women's dignity. Nevertheless, concurrently, it also impacts the phenomenon of male discrimination. The phenomenon of gender-based discrimination against males is seen in the prevalence of excessive nominalisation by women, which in turn poses economic challenges since men face difficulties in meeting these expectations. Consequently, the male demographic exhibits a preference for utilising credit or employing deferred *mahar* strategies as a means to get temporary convenience. The question at hand, as discovered, was prone to enduring social conflict. The rise of family disagreements between men and women over debt difficulties represents a highly significant manifestation of societal conflict. The issue seldom persists beyond the occurrence of domestic divorce between the two wives. This inquiry inherently highlights the presence of a legal issue inside its formulation.

The findings of this study have the potential to enhance our understanding of the sociological and political dimensions of law, particularly in relation to the occurrence of legal plurality within a specific localised community. The significance of this contribution has grown due to the perception held by many individuals that the legal studies conducted thus far have predominantly concentrated on normative matters. The examination of legal construction is intricately intertwined with social dimensions, encompassing the presence of gender bias ideology within specific societies and its manifestation in legal practice. Furthermore, this analysis has also demonstrated that gender bias encompasses not just misogyny or feminism but also misandry or masculinism. Indeed, it is noteworthy that the concerns above might manifest concurrently within the context of the deferred *mahar* custom, which is currently observed by the *Tolaki* indigenous population residing in Indonesia. However, it is imperative to conduct further investigation using a conflict resolution strategy to address the issue of deferred *mahar*. This will enable subsequent studies to provide potential answers for effectively managing this problem.

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