

Legal Protection for Women and Children in the Marriage Tradition of Muslim Communities

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Abstract: The Muslim community in East Java has a tradition of marriage that is believed to be a virtue. The tradition of marriage must provide legal protection for women and children. This study aims to (1) analyze the legal culture in the marriage tradition of the Muslim community in East Java and (2) find a model of preventive legal protection for women and children in the marriage tradition of the Muslim community in East Java. This research method is sociological research, which is expressed in quantitative data. Based on the research results, it is known that preventive legal protection for the Muslim community in East Java can be done by making the dowry an economic guarantee, providing monthly money, and the need for a prenuptial agreement. The Muslim marriage tradition in East Java typically sees wives joining their husbands' homes or establishing a shared residence, leading to a customary practice where wives may return to their own families upon divorce despite contributing to jointly owned homes. To address the economic vulnerabilities women and children face post-divorce, legal provisions should include stipulations on marriage dowry amounts, monthly financial obligations for wives, and requirements for prenuptial agreements to safeguard their interests. Implementing such protections would mitigate the financial repercussions experienced by wives and children following divorce.

Keywords: legal protection; marriage tradition, muslim community, women and children

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A. Introduction

The concept of legal culture was first put forward by Lawrence M. Friedman, who published the results of research on legal culture in 1969 (Friedman, 1969; Toharia, 2011). Friedman's notion of legal culture begins with the idea that the effectiveness of laws, both existing and proposed, depends on the response of the interested public. However, the public's response is a cultural factor. Relevant public values and attitudes are not easy to come by. Italy and the United States are both modern industrialized countries, but the public response to the tax collection law is different; it is tough to collect income tax in Italy, but not in the United States (Friedman, 1969). is what Friedman calls legal culture.

Every community has cultural variations. Likewise, the legal awareness of each community can vary, both between countries, between cities, and even between villages. Therefore, the application of the law must look at the cultural awareness of the people who will be the subject of the law. Any laws that are applied should not be assumed to work as planned. Applying the law will rub against the culture that develops in society. Friedman says that no law is printed on living paper without cultural input. Culture is a source of legal effectiveness. Modern law will relate to culture in a complex way. Modern law will relate to culture in a complex way. Significant changes in the law will not be possible unless cultural changes precede them, and there may be no effective law that does not take advantage of the culture of its people. However, legal experts still debate this issue (Nelken, 2014).

Legal culture is the ideas, values, attitudes, and opinions of people in some societies relating to law and the legal system (Friedman, 1994). According to Febbrajo (2018), Legal culture is about how society views the law and how the law views society. Ideas, expectations, and attitudes toward law and legal institutions can be placed at various levels of abstraction, from more abstract concepts and values to concrete individual attitudes and expectations (Febbrajo, 2018). Toharia (2011) conveyed The same thing applies to legal culture: it consists of values, attitudes, and opinions related to the legal system. Legal culture is a significant variable in understanding how the legal system operates. Legal culture is the fuel that keeps the legal machine moving and working. This determines the pattern of prosecution in the legal system. Without a legal culture, the law becomes dead, sluggish, just a series of words on paper. Without a legal culture, the law becomes dead, sluggish, just a series of words on paper. Legal culture is a source of law that determines the impact of legal norms on society (Friedman, 1994).

Friedman distinguishes legal culture into the external legal culture and internal legal culture. The external legal culture includes social factors that "constantly operate under the law" and "parts of the general culture (customs, opinions, ways of doing, and thinking) that bend social forces toward or away from the law." Internal legal culture includes cultural differences between legal professionals and actors working in the legal system (Feeley & Miyazawa, 2011).

Legal culture is related to habits, opinions, ways of thinking, and people's beliefs in viewing and implementing the law (Raharjo, 2009). Because legal culture is related to belief, a legal culture is also a tradition. In a tradition, a set of values is believed to be a form of goodness and truth. Likewise, in the marriage tradition, there is a set of values that are shared and maintained together in the marriage because it is believed to be a virtue and truth (Aziz, 2017; Damsuki, 2019; Kurniawati et al., 2012; Mardhatillah, 2014; Wagianto, 2017). Tradition is binding on its followers, so it will be challenging to relinquish a tradition. It will be problematic if the community believes in a tradition, but there is an aspect of harm in that tradition. So, the tradition will be a barrier to providing legal protection for the followers of the tradition. It can happen in the tradition of marriage. Muslim communities in East Java have developed and maintained their respective traditions. The Muslim community in East Java believes this tradition must be carried out for the good of marriage and the good of the household.

The belief in the tradition of marriage will save the legal culture, namely public awareness that the tradition contains aspects of law, order, goodness, and justice. Therefore, a more in-depth scientific study must examine the legal culture of marriage traditions in the traditional East Java community so that aspects of protecting women and children can be studied scientifically.

Based on previous research that has a similar theme to this research, research related to the marriage traditions of the Muslim community, including that conducted by Fatkhur 2015 regarding "The meaning of the philosophy of the traditional Javanese wedding ceremony at the Kraton Surakarta and Yogyakarta" it is known that the Javanese Muslim community still maintains the tradition. Marriage believes every tradition contains a philosophy of truth and goodness that can guide the bride and groom in navigating domestic life (Rohman, 2015). Likewise, in the research conducted by Listyana and Hartono in 2013 regarding "Community Perceptions and Attitudes towards the Javanese Calendar in Determining the Time of Marriage Research," it is known that the Javanese still maintain the tradition of determining the time of marriage because time also holds values that are believed to contain goodness (Listyana & Hartono, 2015).

Rahmadani and Farhany's 2019 research on the "Communication Process in Madurese Ethnic Weddings" also revealed that the traditional Madurese community also maintains traditions in their weddings and believes that these traditions contain good teachings for the bride and groom (Rahmadani & Farhany, 2019). Rofikoh's 2018 research on "The Osing Tribe Community's Strategy In Preserving Wedding Customs Amid Modernization: A Case Study In Kemiren Village, Glagah District, Banyuwang Regency" also shows that the Osing Muslim community still maintains the tradition of marriage and believes that the tradition contains the value of goodness and truth (Rofikoh, 2018). Wakhyuningsih's 2009 research on "Moral Values At The Traditional Marriage Ceremony Of The Tengger Tribal Community In Jetak Village, Sukapura District, Probolinggo Regency" also found that the Tengger Muslim community also has values in the marriage tradition that they maintain and carry out (Wakhyuningsih, 2009). Sulistyawati's 2008 research on "Marriage Tradition of the Samin Community in Kemantren Village, Kedungtuban District, Blora Regency" found that the Samin Muslim community has a marriage tradition and values in that tradition. Several previous studies only examined the marriage tradition and the values contained in the tradition. There has been no prior research examining the legal culture of protection for women and children in the marriage tradition of the Muslim community in East Java.

Marriage in Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 is termed marriage. Based on Article 1 of Law No. 1 of 1974 concerning Marriage, Marriage is defined as an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family or household based on the One Godhead. Based on this definition, it is known that Marriage or Marriage has a very noble goal: to form a happy and eternal family or household based on God Almighty.

Marriage in Indonesia is carried out based on religious teachings or beliefs held by the prospective bride and groom. Every religion or belief has a minimum requirement for a valid marriage. If the conditions for a valid marriage are met, the marriage between the bride and groom is also valid. However, in addition to religious teachings, some traditions must be carried out in marriage. Muslim communities in East Java, Javanese, Madurese, Osing, Tengger, and Samin have their marriage traditions. The wedding tradition of the Muslim community in East Java regulates marriage procedures from the initial introduction to the core wedding procession. Also, it regulates the procedures for navigating the household dinner.

From the legal paradigm, tradition is a community agreement that must be carried out, and if it is not carried out, it will contain social sanctions. So, tradition is a community law created and maintained by the community and is believed to be

good and proper. Therefore, every tradition must contain a legal culture, namely public beliefs and awareness about the law inherent in the tradition. Likewise, in the marriage tradition, a legal culture must be believed and maintained by the people inherent in the marriage tradition. Because the community believes the marriage tradition is a virtue, the tradition must provide goodness and benefits to the people who marry, Including legal protection for women and children (Muntamah et al., 2019; Nugraha et al., 2019). women and children are still the object of violence and the aggrieved party in a marriage (Galistya, 2020). Based on data from Dinas Pemberdayaan Perempuan, Perlindungan Anak dan Kependudukan (DP3AK) of East Java Province, as of July 16, 2020, there were almost 700 cases of violence against women and children. Meanwhile, in 2019, there were more than 900 cases of violence against women and children in East Java (Kominfo Jatim, 2020). The Governor of East Java said that 59 percent of cases of sexual, physical, and psychological violence occurred in households (Kominfo Jatim, 2020).

In the marriage tradition of the Muslim community in East Java, such as the Javanese tradition, some regulations can be a potential lack of protection for women and children. One of them is the tradition of the wife following the husband. The wife must follow her husband. The tradition of the wife joining her husband has a vulnerability in the neglect of women and children in the event of a divorce because the returnee is the wife, not the husband. If the family still has parents and sufficient wealth, there will be a division of wealth, and it will not be a problem. However, if the family comes from a lower-middle-class family and the wife's family is no longer there or has died, and no wrest property can be divided, where will the wife go home in the event of a divorce? If the wife brings children, where will the two of them go? Both will be harmed because they do not get guarantees in the event of a divorce. The importance of this research lies in examining the legal culture of marriage traditions in Muslim communities in East Java, namely the Javanese, Madurese, Osing, Tengger, and Samin Muslim communities. This research will likely become a scientific study and become study material for the government, society, and families who are going to marry so that there is protection for women and children. Based on the description of the background above, the objectives of this study are as follows: (1) To analyze the legal culture in the marriage tradition of the Muslim community in East Java; (2) to Produce a model of legal protection for women and children in the marriage tradition of the Muslim community in East Java.

Academically, this research studies legal awareness for the community, primarily to protect women and children who still have the potential to become objects of loss in the tradition of marriage in traditional societies in East Java. The

community must be given understanding, knowledge, and awareness in living in the household so that the purpose of marriage can be realized, and there is no potential for neglect and potential for violence against women in the marriage tradition. This research offers a comprehensive and holistic study in exploring the root of the problem so that it can be revealed.

B. Methods

The object of this research is the phenomenon of the marriage tradition of the Muslim community in East Java. The focus of the research that will be explored in depth is the legal culture of protection for women and children contained in the marriage tradition of the Muslim community in East Java. Every tradition must contain the values of goodness and truth that are maintained and upheld by the people who adhere to them so that the values of these traditions will also be stored in their own legal culture, including in terms of protection for women and children in the marriage tradition of the Muslim community in East Java. Therefore, in this study, the conception of legal culture contained in the marriage tradition of the Muslim community in East Java will be found so that it can be revealed and understood and can be a preventive step in protecting women and children in every marriage.

This research method is sociological research, which is expressed in quantitative data. Data was collected by distributing questionnaires containing basic questions about wedding traditions in traditional communities in East Java. Data was collected for two months, from June to July 2023. The research locations were all districts in East Java province, totaling 38 districts. Data was collected by sending a permission letter first to the district head. After obtaining permission, questionnaires were distributed to married individuals. Six hundred questionnaires were distributed, and they were collected again. Simple random samples were used to determine respondents. Sample determination was carried out using the Slovin formula. Data analysis was done using quantitative descriptive techniques, namely describing quantitative data from distributing questionnaires.

C. Results and Discussion

Legal Culture in the Marriage Tradition of People in East Java

Based on the theory of legal culture, every community has a cultural variation whose legal meaning follows the cultural awareness of the community concerned. Culture is a source of legal effectiveness. Significant changes in the law would not be

possible without being preceded by cultural changes. There is no effective law that does not take advantage of the culture of its people. Legal culture is related to the habits, opinions, ways of thinking, and people's beliefs in viewing and implementing the law. Because legal culture is related to belief, there is also a legal culture in a tradition because, in a tradition, there is a set of values that are believed to be a form of goodness and truth. Likewise, in the marriage tradition, a set of values is shared and maintained together with the marriage tradition because they are believed to be virtues and truths. Tradition is binding on its followers, so it will be challenging to relinquish a tradition. If there is a tradition that is believed by the community, but in that tradition, there is an aspect of harm. The tradition will be a barrier to providing legal protection for the followers of the tradition. Muslim communities in East Java have developed and maintained their traditions. The Muslim community in East Java believes this tradition must be carried out for the good of marriage and the good of the household.

The legal culture of protection for women and children in the marriage tradition in East Java society is focused on the potential for no protection for women and children in the event of a divorce in the marriage tradition in East Java. The absence of protection is the protection of a decent life guarantee or protection for survival for women and children in the event of a divorce. The description of the wedding traditions of the East Javanese Muslim community in the data is as follows:

Table 1
Data of Marriage Tradition of People in East Java

| Variable | Frequency | Percent |
|---|-----------|---------|
| Maintain the Tradition of Marriage | | |
| Still maintains the wedding tradition | 532 | 88.7 |
| No longer maintains the tradition of Marriage | 68 | 11.3 |
| Parties to The Wedding Traditions | | |
| Wife goes to husband's house | 254 | 42.3 |
| Husband goes to wife's house | 85 | 14.2 |
| Make your own house | 261 | 43.5 |
| Returning or Leaving the House | | |
| Wife | 431 | 71.8 |
| Husband | 169 | 28.2 |
| Child Custody When Divorce Happens | | |
| Wife | 552 | 92.0 |
| Husband | 48 | 8.0 |
| Child Custody When Divorce Happens | | |
| Wife and Children | 546 | 91.0 |
| Husband and Children | 54 | 9.0 |

The first step to finding out the legal culture of the community in terms of protection for women and children begins with an analysis of the existence of the marriage tradition in society. Based on the results of the study, it is known that 88.7% of the Muslim community in East Java still maintains the marriage tradition. The remaining 11.3% have not kept the marriage tradition in their famil, as shown in Table 1. This data shows that most of the people of East Java still preserve and carry out their wedding traditions, following their respective community and ethnic backgrounds.

Whereas what is meant by protection for women and children is protection from the potential absence of a proper life and survival guarantee after a divorce. This potential can occur if it is associated with the traditions of the parties involved in a marriage. In a marriage, the husband and wife must have a place of residence. The provisions regarding the place of residence are regulated in Pasal 32 Undang-Undang Nomor 1 Tahun 1974 concerning marriage, which stipulates that the husband and wife must have a permanent residence which is determined jointly. In reality, the residence in question is in the form of the husband's house, so that the wife joins the husband, or a joint house, and the wife's house where the husband joins the wife. The place of residence will determine who will participate.

Most of the residences occupied are the husband's house and the house they built themselves. This residence gave birth to 3 (three) traditional concepts of parties participating in marriage that developed in East Java society: the wife went to her husband's house, the husband went to his wife's house, or made their own house. Based on the data obtained, it is known that the wife who goes to her husband's house is 42.3%, the husband goes to the wife's house at 14.2% and makes their own house at 43.5% (see table). Based on this data, it is known that most of the traditions that developed are that husband and wife make their own house and the wife goes to her husband's house.

Parties who participate in the marriage tradition will be related to those who return home or leave the house in the event of a divorce. The party who participates will automatically be the party who returns in the event of a divorce. Likewise, for people who build their own houses, there will also be parties who leave the house (go home) in the event of a divorce because it is impossible to stay alive in one house. Based on the data in Table 1, it is known that the party who returns home in the event of a divorce is the wife 71.8% and the husband 28.2%. This data shows that most of those who leave the house are wives. Therefore, the party who has the potential to be harmed by divorce in the marriage tradition in East Java is the woman (wife). The returning party will start a new life. If there are shared assets/assets that

are shared, it will not be a problem. However, if the divorce occurs in a lower-middle family, and there is no common property that can be shared, then the wife will be harmed because she has to fight alone to survive without her husband. The woman will start everything from scratch because the old life with her husband is abandoned. The husband's house or the house built together is left behind. There is a need for legal protection for women and children so that there is no potential loss for women and children in the event of a divorce.

The provisions concerning marriage, such as returning or leaving the house in the event of a divorce, are not regulated in Undang-Undang Nomor 1 Tahun 1974. Post-divorce provisions are only regulated in Article 41, which regulates the obligations of both mothers and fathers to maintain and educate their children. All maintenance and education costs needed by the child are the father's responsibility. However, the Court may oblige the ex-husband or father to provide living expenses and determine an obligation for the ex-wife. Based on this rule, there is an opportunity to protect the wife, which states that the Court can oblige the ex-husband to provide living expenses and determine an obligation for the ex-wife. However, this provision requires a court decision, meaning it can not be done. In addition to being potentially harmed by being the one who leaves the house, in the marriage tradition of the Muslim community in East Java, in the event of a divorce, child custody will fall to the wife, which is 92%. In comparison, child custody goes to the husband by 8%. Shows that the burden of the wife who returns home due to divorce will increase, namely bearing the burden of her life as well as bearing the lives of her children.

The potential loss for women and children is also realized by the community, which states that the most disadvantaged parties in a divorce are women and children. Based on Table 1, the most underprivileged parties in a divorce in East Java society are the wife and children 91% and the husband 9%. It is known that the parties who have the potential to be harmed in the event of a divorce are the wife or women and children. Judging from the legal culture, the community already knows and understands that the potential for no protection for women and children can occur if there is a divorce in the marriage tradition of the people in East Java. Therefore, there is a need for a model of legal protection for women and children in the marriage tradition.

Based on the description above, it can be concluded that the legal culture of Muslim marriage traditions in East Java, namely: (1) after marriage, the wife joins her husband or builds her own house; (2) in the event of a divorce from the wife who returns/leaves the house; (3) custody of the child falls to the wife; (4) the parties

who are most disadvantaged in divorce from the economic aspect are the wife and children.

Model of Preventive Legal Protection for Women and Children in the Marriage Tradition of Muslim Society

Based on exposure to the legal culture of Muslim Marriage in East Java, it is known that the wife and children are the most disadvantaged parties in a divorce. Therefore, it is necessary to have preventive legal protection for women and children. There must be juridical rules that prevent potential harm to women and children in the divorce tradition. It means that there must first be a model of legal protection for women and children in the marriage tradition of the Muslim community, especially after a divorce occurs. Based on the model of legal protection, juridical rules can be formulated in the form of articles of legal protection that can be stated in the legislation.

Table 2
Data of Preventive Legal Protection for Women and Children

| Variable | Frequency | Percent |
|---|-----------|---------|
| Nominal Dowry | | |
| Must be big | 13 | 2.2 |
| You do not have to | 233 | 38.8 |
| As much as possible | 354 | 59.0 |
| Dowry as Wife's Rights and Treasure | | |
| Owned by the wife and becomes the wife's treasure | 476 | 79.3 |
| After marriage, they can be used together | 97 | 16.2 |
| It is not straightforward how to use it | 27 | 4.5 |
| Dowry as collateral | | |
| It can be used as collateral | 294 | 49.0 |
| Cannot be used as collateral | 305 | 50.8 |
| Monthly Money | | |
| Mandatory and necessary | 496 | 82.7 |
| Not mandatory and not necessary | 104 | 17.3 |
| Monthly Money for Wives as Collateral | | |
| It can be used as collateral | 316 | 52.7 |
| Cannot be used as collateral | 284 | 47.3 |
| Prenuptial Agreement | | |
| There needs to be a prenuptial agreement | 439 | 73.2 |
| No need for a prenuptial agreement | 161 | 26.8 |
| Prenuptial Agreement as Security for Wife | | |
| It can be used as collateral | 462 | 77.0 |
| It cannot be used as a guarantee | 138 | 23.0 |

The formulation of a model of preventive legal protection for women and children after a divorce can be started with the obligation to give a dowry by the husband to the wife. Based on the marriage tradition that occurred in East Java, the amount of dowry to the wife is not determined by the nominal amount, and the wife also does not ask the husband for a certain nominal amount as a wedding dowry. It means that the dowry is adjusted to the husband's ability to give it, and the wife tends to accept whatever dowry is given. The nominal dowry data in a marriage is corroborated, where 59% of respondents said they could afford it, 38.8% did not have to be significant, and only 2.2% stated that the nominal dowry must be significant, as shown in Table 2.

In the tradition of the Muslim community in East Java, the nominal amount of the dowry is not determined. People view the dowry as a mere requirement for a valid marriage. The people do not believe that a dowry can be a treasure for the wife that the wife can use if something unwanted happens in her marriage. Juxtaposed with the data in Table 2, the community understands that the dowry is a property owned by the wife and becomes the wife's treasure which is 79.3%, and respondents who state that it can be used together after Marriage 16.2% and those who state that it is not clear its use is only 4, 5%. Based on this data, the community already knows that the dowry is the wife's property, but they are unaware of giving it in large quantities to function as a wife's treasure.

If the dowry is understood as the wife's property and becomes the wife's treasure, the dowry should have a sizeable nominal value, and the wife, if she wants to get married, should ask her husband for a large dowry. If the dowry is understood as the wife's savings and has a large nominal, then it can be used as a means of protection for the wife and children in the event of a divorce in their marriage. Based on the legal culture of marriage, in the event of a divorce, the party who returns home or leaves the house is the wife, and in general, the wife also holds custody of the children; it will have economic guarantees to live life after the divorce from the dowry property it has. If the dowry is understood as the wife's property and the wife's treasure, the dowry should have a sizeable nominal value, and the wife, if she wants to get married, should ask her husband for a large dowry. If the dowry is understood as the wife's savings and has a large nominal, then it can be used as a means of protection for the wife and children in the event of a divorce in their marriage. Based on the legal culture of marriage, in the event of a divorce, the party who returns or leaves the house is the wife, and in general, the wife also holds custody of the children, so she will have an economic guarantee to live life after the divorce from her dowry property.

However, the people in East Java do not understand that the dowry can be used as an economic guarantee for the wife. Based on the data in Table 2, it is known that the respondents who have an understanding that the dowry can be used as economic security for the wife are 49.1%, still below the respondents who state that it cannot be used as collateral for the wife in the event of a divorce. This data shows that the Muslim community in East Java does not yet understand the protection aspects that exist in the concept of dowry in marriage.

From the explanation above, it can be concluded that the Muslim community in East Java does not yet have an understanding that the dowry in the marriage tradition can be used as a wife's treasure so that it can be used as collateral in the event of a divorce. At the same time, dowry with a certain nominal amount can be used as collateral for women and children in the event of a divorce. Thus, there needs to be an increase in public understanding of the importance of a dowry in a marriage because it contains aspects of protection for women and children. Therefore, a legal protection model for women and children can be formulated by determining the dowry's nominal amount and the provision that the dowry is the wife's property and can be used as collateral. Law Number 1 of 1974 does not explicitly explain the dowry provisions concerning marriage.

Besides the dowry, in a marriage, there is also a tradition of giving monthly money to the wife instead of spending money. The husband is obliged to give money to the wife as a form of providing the husband to the wife. This gift in the marriage tradition of the Muslim community in East Java is an obligation to the husband as a form of the husband's responsibility to provide for his wife. This gift is purely a wife's property outside of the monthly money so that the wife can use it for her needs and be kept as a wife's treasure. The husband has no right to request and take back this gift. The majority of people in East Java understand this tradition. Based on the data in Table 2, it is known that the community states that monthly money for wives other than daily expenses is mandatory and necessary, which is 82.7%. Respondents stated that it is not compulsory or needed, only 17.3%.

The public's understanding of the obligation of the husband to give monthly money to his wife outside of spending money must be followed by an understanding that the gift can be used as the wife's property so that it can be used as collateral for the wife in the event of a divorce. The wife who comes home or leaves the house will get economic security because she has savings from the monthly money given by her husband. Based on data from Table 2, it is known that 52.7% of people in East Java understand that monthly money for the wife is a guarantee in the event of a

divorce. At the same time, the remaining 47.3 still think that monthly money cannot be used as collateral for the wife in the event of a divorce.

It can be seen that the monthly payment from the husband to the wife can be used as collateral for the wife in the event of a divorce. The wife must understand her weak position in a divorce, so she must be able to make monthly money as economic security for herself in the event of a divorce. Thus, monthly money can also be a protection model for wives and children after divorce. There must be special regulations governing daily money in the laws and regulations governing marriage issues. Marriage, termed marriage, is regulated in the marriage law, namely Undang-Undang Nomor 1 Tahun 1974 concerning marriage. However, the monthly payment can be related to the provisions of Pasal 34 ayat (1) Undang-Undang Nomor 1 Tahun 1974 concerning marriage, which explains that the husband is obliged to protect his wife and provide all the necessities of household life according to his ability. This provision reinforces the husband's obligation to provide monthly money to his wife in marriage.

The marriage tradition of the people in East Java, in addition to acknowledging the existence of a dowry and monthly money for the wife, also recognizes the validity of the prenuptial agreement. A prenuptial agreement is an agreement that regulates the rights and obligations of husband and wife during the household and regulates the rights and obligations of husband and wife in the event of a divorce. The existence of a prenuptial agreement can be used as a preventive effort for husband and wife if something unwanted happens in their marriage so that their respective rights and obligations are clear. Prenuptial agreements are not mandatory, so some couples make marriage agreements, but some couples do not do prenuptial agreements. Regardless of whether it is done or not, people in East Java view the need for a prenuptial agreement before the marriage takes place, as shown in Table 2, which is 73.2% and only 26.8% say that there is no need for a prenuptial agreement.

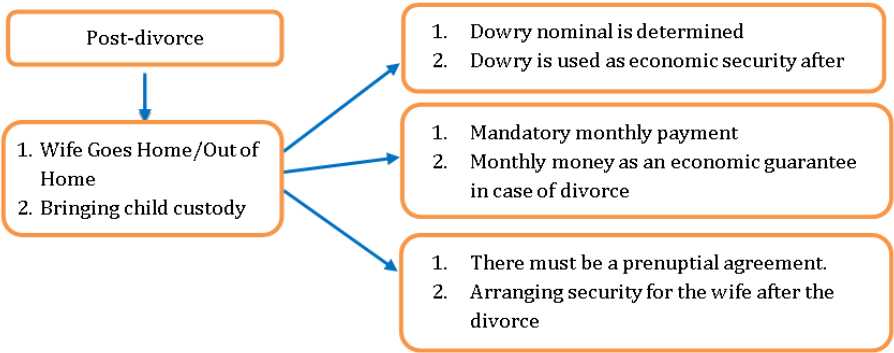
The provisions of a juridical prenuptial agreement concerning marriage are explicitly regulated in Pasal 29 Undang-Undang Nomor 1 Tahun 1974. In Pasal 29 UU No. 1 Tahun 1974, it is stipulated that before the marriage takes place, both parties can enter into a written agreement, which is legalized by the marriage registrar, as long as it does not violate the boundaries of law, religion, and morality. The word in the regulation of Pasal 29 is "can," meaning the agreement can be made. The rule is not mandatory, and most couples do not do it, even though the prenuptial agreement is significant in providing protection. The prenuptial agreement not only protects the wife but also protects the husband because the prenuptial agreement

regulates the rights and obligations of husband and wife in a balanced way. To provide more protection, the prenuptial agreement must include the rights of the husband to his wife during the waiting period (iddah) and also to children if they have children so that after the divorce, the wife who returns or leaves the house is not economically threatened to continue her post-divorce life. Thus, the prenuptial agreement becomes a means of protection for the wife and child in the event of a divorce. People in East Java understand that a prenuptial agreement can guarantee the wife in the event of a divorce, which is 77%, and those who state that it cannot be used as collateral only 23%, as shown in Table 2. A prenuptial agreement must be made in every marriage, which regulates the wife's rights in the event of a divorce. The wife is still economically secure in the event of a divorce and is not harmed if the wife has to go home or leave the house she occupied during her marriage.

Based on the description above, it can be concluded that the marriage traditions of the Muslim community in East Java (1) recognize the dowry but do not determine the nominal dowry; (2) do not understand that the dowry can be used as an economic guarantee for the wife in the event of a divorce with a certain nominal dowry; (3) it is necessary to provide understanding to the community to provide a nominal dowry that can be used as post-divorce economic security for the wife; (4) giving monthly money to the wife outside of spending money is a form of husband's obligation in marriage; (5) the monthly money given to the wife becomes the property of the wife and can be used as a security deposit in the event of a divorce; (6) it is necessary to make a prenuptial agreement in every marriage; (7) the prenuptial agreement must provide economic protection for the wife after the divorce.

From this conclusion, a model of preventive protection for women and children after divorce can be formulated as follows:

Figure 1.
Model of Preventive Protection for Women and Children After Divorce



This protection model is a preventive measure that can be taken to provide legal protection for women and children so that they do not become aggrieved parties in a divorce.

D. Conclusion

The legal culture in the marriage tradition of the Muslim community in East Java tends to occupy the husband's residence or a residence built together, thus giving birth to a tradition after marriage where the wife joins her husband or creates her own house. This tradition is related to divorce due to the tendency of the wife to follow her husband; in the event of a divorce, the wife will return/leave the house. Even though the couple occupies a house that was built together, there is a tendency for the wife to return home in the event of a divorce. In addition, the growing tradition of child custody falls to the wife, so that the wife, in addition to bearing her life, will also be burdened with children in the event of a divorce so that the parties who are most disadvantaged in divorce from the economic aspect are the wife and children.

Therefore, there must be a model that can be used to protect women and children in the event of a divorce. The model is in the form of juridical provisions regarding the nominal marriage dowry, requirements for the wife's monthly money obligations, and provisions for the obligation to have a pre-marital agreement that stipulates protection for women and children in the event of a divorce. If this protection model is implemented, it will cover the potential losses the wife and children obtain after the divorce.

References

- Aziz, S. (2017). Tradisi Pernikahan Adat Jawa Keraton Membentuk Keluarga Sakinah. *IBDA: Jurnal Kajian Islam dan Budaya*, 15(1), 22–41.
- Damsuki, A. (2019). Konsep Pernikahan Masyarakat Samin dan Pendekatan Dakwah Kultural. *Islamic Communication Journal*, 4(1), 102–118.
- Febbrajo, A. (2018). *Law, Legal Culture and Society: Mirrored Identities of the Legal Order*. Taylor & Francis.
- Feeley, M. M., & Miyazawa, S. (2011). Legal Culture and the State in Modern Japan. Dalam R. W. Gordon & M. J. Horwitz (Ed.), *Law, Society, and History* (hlm. 169–188). Cambridge University Press. <https://doi.org/10.1017/CBO9780511921629.012>
- Friedman, L. M. (1969). Legal Culture and Social Development. *Law & Society*

- Review*, 4(1), 29–44. JSTOR. <https://doi.org/10.2307/3052760>
- Friedman, L. M. (1994). Is There a Modern Legal Culture? *Ratio Juris*, 7(2), 117–131. <https://doi.org/10.1111/j.1467-9337.1994.tb00172.x>
- Galistya, T. M. (2020). Kekerasan terhadap Perempuan dan Perceraian dalam Perspektif Pemberdayaan Perempuan. *Jurnal Dinamika Sosial Budaya*, 21(1), Article 1. <https://doi.org/10.26623/jdsb.v21i1.1500>
- Kominfo Jatim. (2020). *Kasus Kekerasan Perempuan dan Anak di Jatim Masih Tinggi | Dinas Komunikasi dan Informatika Provinsi Jawa Timur*. <http://kominfo.jatimprov.go.id/read/umum/kasus-kekerasan-perempuan-dan-anak-di-jatim-masih-tinggi>
- Kurniawati, P. I., Dinastiti, C., Ningtias, Y. K., Khoiriyah, S., & Putri, N. A. (2012). Potret Sistem Perkawinan Masyarakat Tengger di Tengah Modernitas Industri Pariwisata. *Solidarity: Journal of Education, Society and Culture*, 1(1), Article 1. <https://journal.unnes.ac.id/sju/index.php/solidarity/article/view/215>
- Listyana, R., & Hartono, Y. (2015). Persepsi dan Sikap Masyarakat terhadap Penanggalan Jawa dalam Penentuan Waktu Pernikahan (Studi Kasus Desa Jonggrang Kecamatan Barat Kabupaten Magetan Tahun 2013). *AGASTYA: JURNAL SEJARAH DAN PEMBELAJARANNYA*, 5(01), Article 01. <https://doi.org/10.25273/ajsp.v5i01.898>
- Mardhatillah, M. (2014). Perempuan Madura sebagai Simbol Prestise dan Pelaku Tradisi Perjudian. *Musāwa Jurnal Studi Gender Dan Islam*, 13(2), Article 2. <https://doi.org/10.14421/musawa.2014.132.167-178>
- Muntamah, A. L., Latifiani, D., & Arifin, R. (2019). Pernikahan Dini di Indonesia: Faktor dan Peran Pemerintah (Perspektif Penegakan dan Perlindungan Hukum Bagi Anak). *Widya Yuridika: Jurnal Hukum*, 2(1), Article 1. <https://doi.org/10.31328/wy.v2i1.823>
- Nelken, D. (2014). Thinking About Legal Culture. *Asian Journal of Law and Society*, 1(02), 255–274. <https://doi.org/10.1017/als.2014.15>
- Nugraha, X., Izzaty, R., & Putri, A. A. (2019). Rekonstruksi Batas Usia Minimal Perkawinan Sebagai Bentuk Perlindungan Hukum terhadap Perempuan (Analisa Putusan MK No. 22/Puu-Xv/2017). *Lex Scientia Law Review*, 3(1), Article 1. <https://doi.org/10.15294/lesrev.v3i1.30727>
- Rahmadani, N. F., & Farhany, G. (2019). Proses Komunikasi dalam Pernikahan Etnis Madura. *Jurnal Interaksi: Jurnal Ilmu Komunikasi*, 3(2), Article 2. <https://doi.org/10.30596/interaksi.v3i2.3353>

- Rofikoh, S. (2018). *Strategi Masyarakat Suku Osing dalam Melestarikan Adat Istiadat Pernikahan di Tengah Modernisasi: Studi Kasus di Desa Kemiren Kecamatan Glagah Kabupaten Banyuwangi* [Undergraduate, UIN Sunan Ampel Surabaya]. <http://digilib.uinsby.ac.id/24655/>
- Rohman, F. (2015). *Makna Filosofi Tradisi Upacara Perkawinan Adat Jawa Kraton Surakarta dan Yogyakarta (Studi Komparasi)* [Undergraduate, UIN Walisongo]. <http://eprints.walisongo.ac.id/4537/>
- Toharia, J. J. (2011). Exploring Legal Culture. Dalam R. W. Gordon & M. J. Horwitz (Ed.), *Law, Society, and History* (hlm. 90–100). Cambridge University Press. <https://doi.org/10.1017/CBO9780511921629.007>
- Wagianto, R. (2017). Tradisi Kawin Colong pada Masyarakat Osing Banyuwangi Perspektif Sosiologi Hukum Islam. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 10(1), Article 1. <https://doi.org/10.14421/ahwal.2017.10106>
- Wakhyuningsih, S. (2009). *Nilai-Nilai Moral pada Upacara Perkawinan Adat Walagara Masyarakat Suku Tengger di Desa Jetak Kecamatan Sukapura Kabupaten Probolinggo* [Diploma, Universitas Negeri Malang]. <http://repository.um.ac.id/51381/>

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