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Reclaiming Engagement Gifts after Broken Engagements: Integrating Shafi'i Jurisprudence, Indonesian Civil Law, and Local Practices

***Dodi Ferdiansyah[a], Jayusman[a], Anggita Vela[b], Husam Abdulridha Bahiya[c], Mohammad Amimul Ahsan[d]**
[a] Universitas Islam Negeri Raden Intan Lampung, Indonesia
[b] Sekolah Tinggi Ilmu Syari'ah Darusy Syafa'ah Lampung Tengah, Indonesia
[c] University of Baghdad, Iraq
[d] International Islamic University Chittagong, Bangladesh
[*]Correspondence authors: dodiferdiansyah2452@gmail.com

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Abstract

Khitbah (engagement) is a preliminary stage towards marriage which in practice in the Indonesian Muslim community is often accompanied by the giving of valuables as a symbol of the seriousness of the relationship. Legal issues arise when the marriage is not carried out, especially related to the legal status and the right to take back the gift. This study aims to analyze the mechanism of returning the gift of khitbah after the annulment of marriage and examine its suitability with the perspective of the Shafi'i School and positive Indonesian law. This study uses an empirical legal method with a qualitative approach through in-depth interviews, observations, and documentation in Pesawaran Village, Kedondong District, Pesawaran Regency, Lampung. The results of the study show that the settlement of disputes over the giving of khitbah is carried out through family deliberation by considering the initial purpose of giving and the agreement of the parties. In the perspective of the Shafi'i School, the giving of khitbah can be requested again if the marriage is not carried out, because the gift is related to the purpose of the marriage that has not been realized. Meanwhile, Indonesia's positive law provides a regulatory framework through Article 13 of the Compilation of Islamic Law and the provisions of the Civil Code regarding giving and engagement, although both do not specifically regulate the mechanism for returning all forms of khitbah. This study finds that the resumption of khitbah requires consideration of the purpose of the gift, ownership status, and agreement of the parties. Therefore, there is a need for clearer regulation regarding the legal consequences of canceling khitbah and strengthening the deliberation-based settlement mechanism to ensure legal certainty and justice for both parties.

Keywords: *Khitbah; Engagement Gifts; Shafi'i School of Islamic Jurisprudence.*

Abstrak

Khitbah (engagement) merupakan tahap pendahuluan menuju perkawinan yang dalam praktik masyarakat Muslim Indonesia sering disertai pemberian barang berharga sebagai simbol keseriusan hubungan. Persoalan hukum muncul ketika perkawinan tidak terlaksana, khususnya terkait status hukum dan hak untuk mengambil kembali pemberian tersebut. Penelitian ini bertujuan menganalisis mekanisme pengembalian pemberian khitbah setelah pembatalan perkawinan serta mengkaji kesesuaiannya dengan perspektif

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Mazhab Syafi'i dan hukum positif Indonesia. Penelitian ini menggunakan metode hukum empiris dengan pendekatan kualitatif melalui wawancara mendalam, observasi, dan dokumentasi di Desa Pesawaran, Kecamatan Kedondong, Kabupaten Pesawaran, Lampung. Hasil penelitian menunjukkan bahwa penyelesaian sengketa pemberian khitbah dilakukan melalui musyawarah kekeluargaan dengan mempertimbangkan tujuan awal pemberian dan kesepakatan para pihak. Dalam perspektif Mazhab Syafi'i, pemberian khitbah dapat diminta kembali apabila perkawinan tidak terlaksana, karena pemberian tersebut berkaitan dengan tujuan perkawinan yang belum terwujud. Sementara itu, hukum positif Indonesia memberikan kerangka pengaturan melalui Pasal 13 Kompilasi Hukum Islam dan ketentuan KUHPerdata mengenai pemberian serta perikatan, meskipun keduanya tidak secara khusus mengatur mekanisme pengembalian seluruh bentuk pemberian khitbah. Penelitian ini menemukan bahwa pengambilan kembali pemberian khitbah memerlukan pertimbangan terhadap maksud pemberian, status kepemilikan, dan kesepakatan para pihak. Oleh karena itu, diperlukan pengaturan yang lebih jelas mengenai konsekuensi hukum pembatalan khitbah serta penguatan mekanisme penyelesaian berbasis musyawarah untuk menjamin kepastian hukum dan keadilan bagi kedua belah pihak.
Kata Kunci: Khitbah; Hadiah Pertunangan; Sekolah Hukum Islam Shafi'i.

INTRODUCTION

Marriage in Islam is a legal and social institution that not only forms a relationship between a man and a woman, but also gives birth to a family bond based on responsibility, commitment, and the principle of welfare. Before the marriage contract takes place, the marriage process (khitbah) is an important stage in building understanding between the prospective spouse and their respective families. In the context of Indonesian Muslim society, khitbah not only functions as a statement of the will to carry out marriage, but also develops into a social practice that involves relationships between families, symbolic exchanges, and the giving of certain goods as a representation of the seriousness of the man.[1] These items can be in the form of rings, bracelets, necklaces, clothes, or other forms of gifts that in community practice are often understood as a sign of binding relationships towards marriage. However, juridically, marriage cannot be equated with a marriage contract because it has not given birth to a legal relationship between husband and wife or the obligation to carry out marriage. In this case, Articles 11–13 of the Compilation of Islamic Law (KHI) stipulate that marriage can be carried out directly or through intermediaries, and marriage has not caused binding legal consequences. In fact, Article 13 of the KHI emphasizes that marriage has not caused legal consequences and the parties are free to terminate the marriage relationship. This provision shows that there is a

[1] Asrul Hamid et al., "PERGESERAN MAKNA MAHAR DALAM TRADISI PERKAWINAN ADAT MANDAILING: PERSPEKTIF HUKUM ISLAM DAN NILAI SOSIAL," *Familia: Jurnal Hukum Keluarga* 6, no. 1 (February 4, 2026): 22–41, https://doi.org/10.24239/familia.v6i1.298; Khafifah Anjar Riani, Raisa Mahfuzhia Aufa, and Anwar Hafidzi, "Implikasi Hukum Teknologi Digital Terhadap Institusi Perkawinan: Pernikahan Virtual, Aset Digital Dalam Harta Bersama, Dan Cyber Divorce," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (June 16, 2025): 1680–94, https://doi.org/10.62976/ijijel.v3i2.1158; Maimun Maimun, "Pernikahan Dalam Kompilasi Hukum Islam Dan Perdata," *Jurnal Al-Mizan* 9, no. 1 (June 29, 2022): 12–21, https://doi.org/10.54621/jiam.v9i1.263; Khairuddin Khairuddin, "Pernikahan Dalam Islam Dan Relevansinya Dengan Regulasi Hukum Keluarga Kontemporer," *Insight: Indonesian Journal of Social, Humanity, and Education* 1, no. 2 (September 26, 2025): 72–82, https://doi.org/10.70742/insight.v1i2.363.

fundamental difference between social commitment in the proposal process and legal consequences arising from a marriage.[2]

Legal problems arise when the marriage relationship does not continue to the marital stage, while the goods that have been given previously are still in the possession of the woman or her family. In such a condition, the giver may consider that the goods must be returned because the original purpose of the gift was not achieved. On the other hand, the recipient may view that the goods have become his property because they were given voluntarily as gifts without a written agreement regarding the obligation to return. These differences in understanding have the potential to cause disputes regarding the ownership status, the basis of possession of the object, and the limits of the giver's authority to withdraw the goods that have been handed over. The complexity of the problem increases when the goods given have been used, sold, transferred, damaged, or no longer in their original form.[3] Thus, the issue of the return of the gift of khitbah is not sufficiently analyzed based on the fact that the marriage is not carried out, but must consider the legal character of the gift, the intention of the parties, the form of handover, the accompanying agreement, and the party that caused the cancellation of the marriage. This issue is relevant to be studied because it brings together two legal interests that both need to be protected, namely the certainty of the ownership rights of the recipient and the interest of the giver to recover the goods that were handed over from the beginning in order to achieve the purpose of marriage.

In the perspective of Islamic law, giving during the khitbah process requires a conceptual distinction between gifts, grants, dowries, and gifts that are associated with the achievement of a certain goal. This distinction is important because each has different legal characteristics and consequences. Dowry is an obligation related to a marriage

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[2] Muhammad Haikal Tunisi, "Constitutional Legal Pluralism in Woe Balee Marriage: Between Custom, Shafi'i Jurisprudence, and State Law," *As-Siyasi: Journal of Constitutional Law* 6, no. 1 (June 25, 2026): 317–34, https://doi.org/10.24042/as-siyasi.v61.32002; Supani Supani et al., "From Classical Shafi'i Jurisprudence to Diverse Madhhab Perspectives: Shifting Literatures and Practices of Sharia Economic Law in Islamic Pesantren," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (March 30, 2025): 63–72, https://doi.org/10.31958/juris.v24i1.13419; Ali Imron et al., "The Perspective of Shafi'i Fiqh on the Legal Ruling of Giving a Ring in the Engagement Process," *Journal of Mujaddid Nusantara* 1, no. 3 (September 30, 2024): 100–110, https://doi.org/10.62568/jomn.v1i3.186; M. Ridoi, Siti Masruchah, and Shofiatul Jannah, "Early Engagement in the View of the Shafi'i Madhhab and Positive Law in Bangkalan Community, Indonesia," *Bulletin of Indonesian Islamic Studies* 4, no. 2 (August 19, 2025): 370–79, https://doi.org/10.51214/biis.v4i2.1577; Nurkholis Ulwi, Masnun Masnun, and Muhammad Harfin Zuhdi, "Inheritance Rights of Children Born Out of Wedlock: Analysis from the Perspective of Shafi'i School of Jurisprudence and the Civil Law Code (Children of Zina) with an Educational Approach," *Jurnal Ilmiah Profesi Pendidikan* 9, no. 2 (May 21, 2024): 1263–69, https://doi.org/10.29303/jipp.v9i2.2253; Al-Dimyati, Abu Bakr Uthman ibn Muhammad Shatta. *I'anat al-Talibin 'ala Hall Alfaz Fath al-Mu'in*. Vol. 3. Beirut: Dar al-Fikr, 1997.

[3] Della Kristina, "Eksistensi Penerapan Hukum Adat Dalam Perkawinan Adat Talang Mamak," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 09 (September 29, 2023), https://doi.org/10.58812/jhhws.v2i09.619; Winda Dwi Lianningsih and Muhammad Fathinnuddin, "PERNIKAHAN DINI DITINJAU DALAM HUKUM PERKAWINAN DI INDONESIA," *IBLAM LAW REVIEW* 4, no. 3 (September 13, 2024): 120–34, https://doi.org/10.52249/ilr.v4i3.439; Mukmin Mukri, "PENCEGAHAN DAN PEMBATALAN PERKAWINAN," *Jurnal Perspektif* 13, no. 2 (February 26, 2021): 101–10, https://doi.org/10.53746/perspektif.v13i2.29; Muhammad Fa'iq Abiyu and Imam Ibnu Hajar, "Peminangan Sebagai Tradisi Kultural Dalam Proses Perkawinan Masyarakat Desa Weru Kecamatan Paciran Kabupaten Lamongan," *Prosiding Konferensi Nasional Mahasiswa Sejarah Peradaban Islam (KONMASPI)* 1 (2024); Meyrara Widya Putri, Fitriani Ulfah, and Maulia Indah, "PEMINANGAN/KHITBAH DAN PROBLEMATIKA YANG SERING TERJADI," *Jurnal Ilmu Syariah Dan Hukum (JISYAKU)* 3, no. 1 (July 1, 2024): 103–12, https://doi.org/10.23971/jisyaku.v3i1.6753.

contract, while gifts or grants given during the marriage period cannot be treated as dowry if there is no basis to show that the gift is indeed intended as a dowry.[4] The Shafi'i school provides an important basis in explaining the issue of the gift of marriage through the discussion of gifts made with the purpose of marriage. In Shafi'iyah literature, as explained in I'anat al-Talibin by Abu Bakr al-Dimyati, gifts related to the purpose of marriage can be requested again when the purpose is not realized, either in the form of goods that are still available or replaced if the goods have been damaged or exhausted. This provision shows that the assessment of giving is not solely based on the occurrence of the handover of the object, but also considers the purpose and relationship between the gift and the expected marriage.[5] Therefore, the Shafi'i School approach provides a framework for assessing whether the gift in khitbah is an unconditional gift that has been fully owned or a gift that is substantially associated with the achievement of marriage. This distinction is important so that the cancellation of the marriage is not automatically understood as a reason that always justifies or always negates the right to return the gift.

On the other hand, Indonesia's positive law shows normative issues that are not entirely identical to the fiqh construction of the Shafi'i School. Article 1666 of the Civil Code defines a grant as an agreement when the giver hands over an item free of charge for the benefit of the recipient and in principle cannot be withdrawn. Furthermore, Article 1688 of the Civil Code limits the withdrawal of grants to certain circumstances, namely if the conditions of the grant are not met, the recipient commits a certain crime against the giver, or the recipient refuses to provide maintenance when the giver falls into poverty. This provision shows that the failure of the purpose of marriage is not explicitly mentioned as a reason to cancel the grant. However, the application of the grant provisions in the case of giving khitbah must first be based on the classification of the legal relationship of the parties, including whether the grant is really an unconditional grant or contains certain requirements and purposes that can be proved.[6] In the context of Islamic family law, the KHI has also not provided specific provisions regarding the mechanism for returning the bridal gift after the relationship is canceled. Although Articles 12–13 regulate the proposal and its legal consequences, it does not provide detailed answers to the status of the goods that have been handed over during the proposal process. Meanwhile, Article 171 letter g and Article 210–212 of the KHI regulate grants as voluntary gifts without consideration and in principle cannot be withdrawn, except for grants from parents to their children. Thus, there is a problem of legal interpretation

[4] Karmila Karmila et al., "A Comprehensive Analysis of Ariyah, Hibah, Hadiah, and Samsarah: Theoretical and Practical Perspectives," *Maslahah : Jurnal Manajemen Dan Ekonomi Syariah* 2, no. 3 (June 7, 2024): 01–15, https://doi.org/10.59059/maslahah.v2i3.1289; Mik Imbah Arbaina, "A COMPREHENSIVE STUDY OF SHODAQOH, HIBAH, AND HADIYYAH IN FIQH MUAMALAH," *Tadayun: Jurnal Hukum Ekonomi Syariah* 5, no. 2 (December 31, 2024): 211–32, https://doi.org/10.24239/tadayun.v5i2.273.

[5] Al-Zuhayli, Wahbah. *Al-Fiqh al-Islami wa Adillatuhu*. Vol. 9. Damascus: Dar al-Fikr, 1997.

[6] Alyatama Budify, Jelitamon Ayu Lestari Manurung, and Satria Braja Hariandja, "Cancellation of Grant Deeds at the Pematangsiantar District Court: A Study of Decision Number 33/Pdt.G/2019/PN.Pms," *SIGn Legal Journal* 2, no. 1 (September 2, 2020): 72–85, https://doi.org/10.37276/sjh.v2i1.77; Meylita Stansya Rosalina Oping, "Cancellation of Grants According to Article 1688 of the Civil Code," *Lex Privatum* 5, no. 7 (2017); Rizqi Saniyyah Putri and Ahmad Sholikhin Ruslie, "Withdrawal of Grant Property as Inheritance According to KHI and Civil Code," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 2 (2023); Wiena Charmita Dewi, Felicitas Sri Marniati, and Tofik Yanuar Chandra, "Legal Certainty of Cancellation of Land Rights Grants by Grantors to Grants Made Under Hands and Their Legal Consequences," *Journal of Innovation Research and Knowledge* 4, no. 9 (2025).

regarding the limits of the application of grant provisions to gifts that have a special connection with the purpose of marriage. The difference in character between the fiqh of the Shafi'i School, the provisions of the KHI, and the Civil Code shows the importance of legal analysis that does not only rely on the formal categorization of the grant, but also pays attention to the substance of the legal relationship and the purpose of the grant.[7]

The empirical context of this research departs from the practice of giving and retrieving proposed goods that occurred in Pesawaran Village, Kedondong District, Pesawaran Regency, Lampung Province. This practice is interesting to study because the khitbah process in people's lives is not only understood as a personal affair of the prospective spouse, but also involves the extended family and social norms that develop in the community. The giving of goods at the time of application can have a broader meaning than just the transfer of property ownership, because it is related to family honor, trust, seriousness of the relationship, and expectations for the marriage to take place. When the relationship is canceled, questions arise about how the community understands the rights and obligations of each party, how the process of taking back goods is carried out, and how dispute resolution is influenced by religious considerations, local customs, and a sense of justice. The publication of Kedondong District in Figures 2024 published by the Central Statistics Agency of Pesawaran Regency provides information on the geographical, demographic, social, and economic conditions of the region based on 2023 data. The publication can be used as a source to provide the context of the research area, but it does not present the number of incidents of khitbah cancellation or disputes over the return of proposals.[8] Therefore, the empirical urgency of this research needs to be built through the results of observation and direct interviews with parties who have experienced application cancellation, families involved, and religious leaders or community leaders who know the practice of resolving these problems. This approach allows the research to reveal the difference between the applicable legal norms and the legal understanding that is actually used by the community in resolving the problem of refunding proposals.

A number of previous studies have contributed to the discussion of the law of dowry and the status of giving during the khitbah process. Faiz Ridlo Himamul Wafa's research (2021), entitled Binding Status in Khitbah: A Comparative Study of the Opinions of Madzhab Shafi'i and Madzhab Hanafi, discusses the position of binding goods in dowry through a literature research approach and a comparison of the opinions of the two sects. The study concludes that in the perspective of the Shafi'i School, binding goods can be requested again when the dowry does not continue, while damaged goods can be replaced with goods of equal value. This research makes an important contribution in explaining the differences in the legal construction of dowry, but has not integrated the analysis with the provisions of positive Indonesian law and the practice of returning goods in society through field research. [9] Furthermore, research on the cancellation of khitbah from the perspective of fiqh munakahat generally discusses the moral and legal consequences of the termination of the marriage, including the different views of the school regarding the

[7] Republic of Indonesia. Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law Articles 11–13: Solicitation; Article 171 letter g: Definition of grants; Articles 210–212: Provisions for grants and their withdrawal.

[8] Republic of Indonesia. Civil Code, Article 1666: Definition of grants; Article 1667: Objects of grants; Articles 1686–1687: Delivery of grants; Articles 1688–1689: Withdrawal of grants.

[9] Himamul Wafa , Faiz Ridlo. 2021. "The Status of Binders in Khitbah: A Comparative Study of the Opinions of Madzhab Shafi'i and Madzhab Hanafi." *Al-Wasith Journal : Journal of Islamic Law Studies* 6 (1), 52-68. https://doi.org/10.52802/wst.v6i1.197.

status of the gift. However, the discussion has not fully elaborated on the relationship between the purpose of the gift, the proof of the agreement of the parties, and the change in the condition of the goods after handover. On the other hand, the study of grants in Indonesian civil law, including research on the cancellation of grant deeds by heirs after a religious court decision, focuses more on the legal relationship of the grant that has been formed and its cancellation mechanism, rather than on the special character of the gift made during the pre-marital stage.[10] Based on this mapping, previous research has discussed khitbah, gifts, grants, and gift cancellations from different perspectives, but there is still a need for studies that specifically link the construction of the fiqh of the Shafi'i School, the provisions of positive Indonesian law, and the social reality of returning gifts after the cancellation of khitbah.

The gap in this study does not lie in the absence of a study on the return of khitbah gifts, because discussions on this issue have been found in previous research. A more specific gap lies in the lack of integration of three dimensions of analysis, namely the construction of the law of giving in the Shafi'i School, the limits of the application of grant provisions in positive Indonesian law, and the empirical practice of reclaiming the granting of proposals in local communities. First, from the normative aspect, there is still a need for an analysis that distinguishes khitbah gifts as voluntary gifts, perfect grants, and gifts associated with the purpose of marriage. Second, from a positive legal aspect, there is no special regulation in the KHI that determines in detail the status and mechanism of returning the bridal gift, so it is necessary to analyze the relevance of grant provisions in the KHI and the Civil Code without ignoring the characteristics of each legal regime. Third, from an empirical aspect, research is needed that explains how these norms are understood and applied by the community when faced with the cancellation of proposals, including how the factors causing the cancellation, the condition of the goods, and local customs affect the resolution of disputes. Based on these three gaps, the novelty of this research lies in the development of a socio-juridical analysis that connects the doctrine of giving in the Shafi'i School with the construction of positive Indonesian law and the practice of returning the application in Pesawaran Village. This research not only identifies whether or not an item can be requested back, but also analyzes the basis of the legitimacy of its return based on the purpose of the gift, the legal character of the object, the condition of the object of gifting, and the context of the cancellation of the marriage. Thus, this research is expected to contribute to expanding the study of Islamic family law,

[10] Anton et al., "Khitbah as a Form of Initial Commitment in the Bond of Islamic Marriage," *JICN: Journal of Intellectuals and Scholars of Nusantara* 1, no. 6 (2025); Itsnaya Qonita Itsnaya Qonita, Lukluk Ilmaknun Lukluk Ilmaknun, and Widodo Hami Widodo Hami, "Unilateral Cancellation of Khitbah in the Perspective of Islamic Law and Sociological Law in Wonorejo Village, Wonopringgo District, Pekalongan Regency," *Al-Qawaid : Journal of Islamic Family Law*, July 15, 2023, 57–65, https://doi.org/10.52491/qowaid.v1i2.90; Samsinar Hasibuan, Jumni Nelli, and Zulfahmi Zulfahmi, "The Concept of Khitbah (Seeing Pinangan) in the Hadith of the Prophet Saw," *Journal of Islamic Law El Madani* 1, no. 2 (June 28, 2022): 61–68, https://doi.org/10.55438/jile.v1i2.21; Muhimmatul Mukaromah et al., "A Study of the Khitbah Tradition by Women to Men in Kranggan, Jurug, Sooko, Ponorogo Hamlets," *Journal of Social Sciences and Humanities* 3, no. 1 (January 30, 2025): 15–22, https://doi.org/10.58540/isihumor.v3i1.812; Anton et al., "Khitbah as a Form of Early Commitment in Islamic Marriage Bonds," *JICN: Journal of Intellectual and Scholars Nusantara* 1, no. 6 (2025); Aufi Imaduddin, Mir'atul Firdausi, and Tiyan Iswahyuni, "Ghosting Post-Marriage/Khitbah According to Indonesian Civil Law and Islamic Law," *The Indonesian Journal of Islamic Law and Civil Law* 2, no. 2 (December 28, 2021): 170–84, https://doi.org/10.51675/jaksya.v2i2.167; Dedi Sumanto, "The Law of Khitbah in the Life of the Persiktif Community Tafsir Ayat Ahkam," *Al Himayah* Journal 7, no. 2 (2023).

especially regarding the relationship between fiqh norms, positive law, and social practices in resolving property problems at the pre-marriage stage.

Based on this description, this study aims to analyze the practice of retaking the granting of applications after the annulment of marriage in Pesawaran Village, Kedondong District, Pesawaran Regency, and to examine its suitability with the perspective of the Shafi'i School and positive law of Indonesia. This study is directed to answer two main questions: (1) How is the practice of retaking the granting of applications after the cancellation of khitbah taking place in Pesawaran Village, including the process, reasons, parties involved, and the mechanism of its settlement? (2) How do the provisions of the Shafi'i School and the positive law of Indonesia govern and assess the practice of retaking the granting of the proposal? This research departs from the argument that the legal status of the granting of the proposal cannot be determined only based on the fact that the marriage is not carried out, but must be analyzed based on the intention of the grant, the form of the agreement, the legal character of the grant, and the condition of the object submitted. In the perspective of the Shafi'i School, the purpose of giving related to marriage can be the basis for assessing the right of return when the goal is not achieved. Meanwhile, in Indonesian positive law, returns must be analyzed based on the character of the legal relationship of the gift and the provisions regarding the grant, not through the assumption that the cancellation of khitbah by itself removes the recipient's property rights. By linking these two perspectives with empirical facts of society, this research is expected to result in a more comprehensive understanding of legal certainty, protection of property rights, and fairness for the parties in resolving disputes over the granting of proposals.

RESEARCH METHODS

This study uses an empirical legal research method with a descriptive qualitative design and field research strategy. This method was chosen to examine in depth the practice of taking back the application after the cancellation of khitbah and to understand the relationship between legal norms and the social reality of society.[11] The research uses three approaches, namely the conceptual approach to analyze the concept of gifts, grants, and gifts associated with the purpose of marriage; the statute approach to examine the provisions of the Compilation of Islamic Law (KHI), the Civil Code (KUHPerdata), and Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019; and the socio-legal approach to identify how the Islamic legal norms of the Shafi'i School of Islam and positive law are understood, applied, and negotiated in community practice. The research was carried out in Pesawaran Village, Kedondong District, Pesawaran Regency, Lampung Province, with the consideration that the location has a phenomenon of application cancellation accompanied by the problem of returning gifted goods.[12]

The source of research data consists of primary data and secondary data. Primary data was obtained through *in-depth interviews* with purposively selected informants (*purposive sampling*), including men and women who have experienced application cancellation, family members involved in the process of giving and returning goods, religious leaders, and community leaders who understand the practice of solving the problem.[13] The selection of informants is based on their direct involvement, experience,

[11] S Suryabrata, *Research Methodology* (Jakarta: Raja Grafindo Persada, 2008).

[12] Suteki and G Taufani, *Legal Research Methodology (Philosophy, Theory and Practice)* (Depok: Rajawali Press, 2020).

[13] Muh. Khusnul Himam, Saeful Anam, and Nashrullah, "Informant Selection Techniques in Qualitative Research: Strategy and Implementation," *Pediaqu : Journal of Social Education and*

and relevance of their knowledge to the focus of the research, with the number of informants adjusted based on the adequacy and saturation of data (*data saturation*). Primary data is also obtained through observation of social practices and mechanisms for resolving the problem of returning applications and relevant documentation. Meanwhile, secondary data is collected through literature studies which include primary legal sources in the form of a Compilation of Islamic Law, Civil Code, and laws and regulations on marriage; secondary legal sources in the form of fiqh books of the Shafi'i School, especially I'anat al-Talibin by Abu Bakr al-Dimyati, Al-Fatawa al-Kubra al-Fiqhiyyah by Ibn Hajar al-Haytami, and Al-Fiqh al-Islami wa Adillatuhu by Wahbah al-Zuhayli; and supporting literature in the form of research methodology books, scientific journal articles, and relevant previous research results. Data collection was carried out through semi-structured interviews, observations, and documentation, while literature studies were used to obtain a conceptual and normative basis in analyzing the legal status of giving khitbah.

The data was analyzed using descriptive-analytical analysis techniques by integrating empirical and normative analysis. The analysis process was carried out through the stages of data *condensation*, data presentation (*data display*), and *conclusion drawing and verification*. In the first stage, the data from interviews, observations, and documentation were selected, grouped, and classified based on the research theme, including the purpose of the award, the form and status of the goods, the reason for canceling the khitbah, the retrieval process, and the dispute resolution mechanism. In the second stage, empirical findings were presented systematically to identify the practice patterns and legal understanding of the community. Furthermore, the data was analyzed normatively by linking it to the legal construction of the Shafi'i School and the provisions of positive Indonesian law, especially regarding the character of the gift, the consequences of not achieving the goal of marriage, and the principle of protection of property rights. The validity of the data was maintained through triangulation of sources and techniques, namely comparing information from various categories of informants and confirming the results of interviews with observations, documentation, and relevant legal sources. This process was carried out to produce a consistent and scientifically accountable interpretation regarding the legitimacy of the resumption of the application after the cancellation of khitbah.[14]

RESULTS AND DISCUSSION

Practice of Reclaiming Applications after Khitbah Cancellation

The practice of giving goods in the process of begging (khitbah) in Pesawaran Village, Kedondong District, Pesawaran Regency, Lampung Province, shows the relationship between religious norms, community customs, and social expectations for the marriage to take place. Based on administrative data from the Central Statistics Agency of Pesawaran Regency, Kedondong District consists of 12 villages, one of which is Pesawaran Village, which in 2023 is recorded to have 8 pillars of residents and 21 pillars of neighbors. The data shows that Pesawaran Village is part of the governance structure and social life of Kedondong District which has the characteristics of a local community. Although the statistical data does not specifically record the practice of giving proposals, this regional information provides a geographical context for the research. Based on the results of observations and interviews, the practice of marriage in

Humanities 5, no. 2 (2026): 104–16, Https://Www.Preventionweb.Net/News/Preliminary-Report-February-6-2023-Earthquakes-Turkiye.

[14] Suteki and Taufani, *Legal Research Methodology (Philosophy, Theory and Practice).*

the local community is not only understood as the conveyance of the will to marry, but also as a social event involving the families of the two prospective couples. The giving of goods, especially rings, is one of the symbols that is commonly used to show the seriousness of the relationship and commitment to marriage. Thus, the giving in khitbah has symbolic and social dimensions that need to be taken into account when determining the legal status of the goods after the marriage is canceled.

Based on the results of an interview with a local religious leader, Ustaz Miftahul Hilal, the caretaker of the Al-Miftah Madarijul Ulum Islamic Boarding School, the proposal process in Pesawaran Village is understood as a stage to recognize the seriousness and readiness of the prospective couple in building a household. He explained that, "The proposal is the same as ta'aruf where the purpose is to get to know each other's personalities and also to prove their seriousness in establishing a household." The statement shows that people place khitbah as the process of forming commitments before marriage, although conceptually khitbah is not completely synonymous with ta'aruf. Ta'aruf refers more to the process of getting to know each other as a prospective spouse, while khitbah is a statement of willingness to propose to someone as a prospective marriage partner. From the perspective of Islamic law, the two can be related in the process of marriage, but have different functions and consequences. Khitbah has not given birth to a legally binding marriage bond and does not eliminate the freedom of each party to continue or cancel the marriage plan. Therefore, the meaning of the seriousness that the community attaches to the proposal needs to be distinguished from the legal consequences that are formally born from the marriage contract.[15]

Further field findings show that the giving of rings is a relatively dominant form of giving in the practice of proposal in Pesawaran Village. The ring is given by the man to the woman during the proposal procession as a symbol of relationship binding. Socially, the act not only represents the transfer of an object from one party to another, but also contains a message about the expectation that the relationship between the two prospective partners will continue to the level of marriage. The character of this kind of gift raises problems in determining whether the goods handed over should be categorized as ordinary gifts, grants, or gifts that are related to a specific purpose. This distinction is important because the physical handover of an object is not always enough to explain the entire purpose and legal consequences of the gift. In this case, the assessment must consider the intention of the giver, the understanding of the recipient, the agreement formed, and the prevailing customs in society. Thus, the fact that the ring was given at the time of the application does not in itself prove that the gift is a pure grant or conditional gift. Its legal character needs to be determined based on the overall context of the transaction and the relationship of the parties.

In terms of the cancellation process, the results of the interview showed that the failure to continue the relationship towards marriage in Pesawaran Village was influenced by several factors, including internal conflicts between prospective spouses, differences of opinion that could not be resolved, and incompatibility between the families of the two parties. These factors show that the cancellation of khitbah is not always caused by one party, but can arise due to the dynamics of interpersonal and family relationships. This condition is important because the cause of cancellation can affect the assessment of the propriety of returning the goods that have been given. If the cancellation occurs due to mutual agreement, for example, the settlement of the return of goods can be based on a

[15] Al-Zuhaily, *Al-Fiqh Al-Islam Wa Adillatuh*.

new agreement between the parties. On the other hand, if the cancellation is carried out unilaterally, it is necessary to analyze whether there is a previous agreement or understanding that connects the gift with the continuity of the marriage. Therefore, the cancellation of the khitbah should not be treated as a legal event that automatically removes or maintains the recipient's ownership rights. The assessment of the return of the gift must take into account the reason for cancellation, the original intention of the gift, and the legal position of each party.

One of the experiences that illustrates this practice was conveyed by a female informant with the initials Via (pseudonym), who had experienced a rejection of the proposal. She stated, "Because our proposal failed to proceed and did not reach the marriage process, my ex's family then asked for the return of the binding ring that had been given properly and was done in a family manner." The information shows that the return of the ring is carried out through communication and settlement in a family manner, not through a litigation process. Sociologically, the mechanism shows that the family is still an important institution in resolving problems arising from premarital relationships. The return of goods is not solely understood as a demand for individual ownership, but also as an effort to resolve social relations so that they do not develop into conflicts between families. However, a peaceful settlement does not necessarily prove that the demand for return has a legal basis that can always be justified. The recipient's consent to return the goods, for example, needs to be distinguished from the circumstances when the return is made due to social pressure or unilateral demands. Thus, these findings indicate a difference between social acceptance of the practice of returning goods and the juridical legitimacy of the action.

Another aspect found in the study is the absence of a written agreement that specifically regulates the legal consequences if the proposal is canceled. Mrs. Sri Dahlina Sari, one of the community leaders of Pesawaran Village, explained that, "There is no prior agreement regarding the withdrawal of the ring given during the proposal, but it is common here if the relationship does not reach marriage, then the ring is returned by the woman or taken back by the man." This statement shows the existence of social habits that have developed and are accepted by some people as a guideline for resolving the problem of giving proposals. From the perspective of legal sociology, these habits can be understood as a form of social norms that affect people's behavior and expectations, although they are not entirely stated in a written agreement. However, habits that are carried out repeatedly do not automatically have the status of customary law that binds or overrides positive legal provisions. To determine the legal position, it is necessary to prove the consistency of the practice, public acceptance, and the belief that the practice is an obligation that should be obeyed. Therefore, the statement of the community leader is more appropriately understood as an indication of the existence of local customary norms that can be considered in interpreting the intention of giving, not as a single proof that the male always has the right to withdraw the ring that has been handed over.

From the perspective of the Shafi'i School, these empirical findings need to be analyzed by distinguishing between voluntary giving and gifts associated with the purpose of the marriage. Gifts given during the khitbah process cannot be directly equated with dowry because dowry is a legal consequence of the marriage contract, whereas khitbah gifts are given before the contract takes place. Shafi'iyah jurisprudence literature, including the discussion in I'anat al-Talibin by Abu Bakr al-Dimyati and Al-Fatawa al-Kubra al-Fiqhiyyah by Ibn Hajar al-Haytami, can be used to examine the consequences of giving related to the purpose of marriage. In this construction, the non-achievement of

the purpose behind the giving can be the basis for considering its return. However, the application of the doctrine still requires an examination of the intention of the giver and the character of the gift made. If the gift from the beginning is understood as a gift related to the implementation of the marriage, the failure of the purpose has relevance in determining the right of return.[16] On the other hand, if the gift has been given as a gift without conditions and without a legal connection that can be proven by the taking place of the marriage, the assessment cannot be simply equalized. Thus, the perspective of the Shafi'i School provides a basis for substantive analysis that the relationship between the purpose of giving and the non-implementation of marriage is an important aspect in determining the legal consequences of khitbah gifts.

When linked to Indonesia's positive law, the practice of taking back the engagement ring also shows the problem of the boundary between the freedom to give something and the protection of the recipient's property rights. Articles 11–13 of the Compilation of Islamic Law (KHI) regulate the marriage and affirm that the marriage has not caused legal consequences and that the parties are free to break the relationship of the marriage. However, the provision does not explicitly regulate the mechanism for the return of goods that have been given during the marriage process. Meanwhile, Article 171 letter g of the KHI defines a grant as the giving of an object voluntarily and without any consideration for possession, while Article 212 stipulates that the grant cannot be withdrawn, except for the grant of the parent to his child. This provision indicates that if a gift proves to be a perfect grant, the cancellation of the khitbah does not in itself be a reason to withdraw the gift.[17] The legal issue lies in determining whether the giving of a ring in the case under review fulfills the character of the grant as referred to in the KHI or is a gift with a specific purpose and agreement that needs to be analyzed differently. Thus, the KHI provides a normative framework regarding the proposal and the grant, but has not provided a specific arrangement that directly resolves the issue of the khitbah gift after cancellation.

The provisions in the Civil Code also show the principle of protection against the certainty of ownership of the object that has been donated. Article 1666 of the Civil Code explains that a grant is an agreement when the giver hands over an item free of charge to the recipient and in principle cannot be withdrawn. Furthermore, Article 1688 of the Civil

[16] Fauzi Rahmat Pamula, Syafuri, and Ahmad Hidayat, "KHITBAH DALAM PERSPEKTIF KAIDAH FIKIH DAN APLIKASINYA," *Jurnal Ilmiah Ahwal Syakhshiyyah (JAS)* 7, no. 2 (October 30, 2025): 358–73, https://doi.org/10.33474/jas.v7i2.24615; Iskandar Iskandar, Muhammad Tamrin, and Dini I. Laebo, "Tinjauan Hukum Islam Terhadap Sanksi Adat Tentang Pembatalan Khitbah Di Desa Oelua Kecamatan Loaholu Kabupaten Rote Ndao," *Jurnal Al-Mizan* 9, no. 2 (September 3, 2022): 121–34, https://doi.org/10.54621/jiam.v9i2.445; Fathonah K. Daud and M. Ridlwan Hambali, "LIVING LAW DALAM KHIṬBAH DAN LAMARAN PERSPEKTIF SOSIOLOGI HUKUM," *LISAN AL-HAL: Jurnal Pengembangan Pemikiran Dan Kebudayaan* 16, no. 1 (June 6, 2022): 92–107, https://doi.org/10.35316/lisanalhal.v16i1.92-107; Anton et al., "Khitbah Sebagai Wujud Komitmen Awal Dalam Ikatan Pernikahan Islami Khitbah as an Initial Commitment in the Bond of Islamic Marriage"; Imaduddin, Firdausi, and Iswahyuni, "Ghosting Pasca Peminangan/Khitbah Menurut Hukum Perdata Indonesia Dan Hukum Islam"; Sumanto, "Hukum Khitbah Dalam Kehidupan Masyarakat Persektif Tafsir Ayat Ahkam"; Muhimmatul Mukaromah et al., "Telaah Tradisi Khitbah Oleh Wanita Kepada Pria Di Dukuh Kranggan, Jurug, Sooko, Ponorogo"; Anton et al., "Khitbah Sebagai Wujud Komitmen Awal Dalam Ikatan Pernikahan Islami."

[17] Rizky Muhammad and Syaddan dintara Lubis, "PRACTICE OF GRANTS AS A SUBSTITUTE FOR STUDY HERITAGE IN PEMATANG PANJANG VILLAGE, FIFTY COASTAL DISTRICTS OF BATU BARA REGENCY," *Lex Generalis Law Journal* 5, no. 6 (October 31, 2024), https://doi.org/10.56370/jhlg.v5i6.556; Jariyatur Rohmah, "The Concept of Ijbar Madhhab Shafi'i in KHI Article 71 Letter F," *Isti'dal: Journal of Islamic Law* Studies 7, no. 2 (November 3, 2020): 210–31, https://doi.org/10.34001/istidal.v7i2.2615.

Code limits the withdrawal of grants to certain circumstances, namely the conditions of the grant are not met, the recipient commits a certain crime against the giver, or the recipient refuses to provide sustenance when the giver falls into poverty. The cancellation of the engagement relationship is not explicitly mentioned as a reason for the withdrawal of the grant. Therefore, if the gift of the ring is qualified as an unconditional grant that has been perfected, the demand for its return must be confronted with the principle of irrevocable grant return. However, if there is evidence that the gift is made under certain conditions or agreements that are part of the legal relationship of the parties, the issue must be analyzed based on the character and validity of the terms. This analysis is important so that positive law is not applied mechanically by treating all goods given at the time of application as ordinary grants. At the same time, the fiqh doctrine regarding gifts associated with the purpose of marriage cannot be automatically used to override the applicable positive legal provisions.

Based on the overall empirical findings and normative analysis, the practice of reclaiming the giving of proposals in Pesawaran Village shows that there is a complex relationship between local customary norms, the purpose of the grant, and the certainty of ownership rights. The community tends to solve the problem through family deliberation by returning the ring to the male party when the marriage is not carried out. This practice shows that the giving of proposals is still socially understood to be related to the hope of the marriage. However, social acceptance of the return of goods cannot be directly used as a basis for concluding that all khitbah must be returned. The determination of the right of return still requires an assessment of the purpose of the gift, the existence or absence of an agreement, the party who initiated the cancellation, the condition of the goods, and the consent of the parties. In this context, deliberation can function as a settlement mechanism that accommodates the interests of both families, as long as it is carried out voluntarily and does not ignore the rights of each party.

More broadly, this study shows that the problem of returning the gift of khitbah is not enough to be solved through a normative approach that only asks whether the gift can be withdrawn or not. This problem requires an analysis that connects the *purpose of gift*, property *rights*, and justice in *broken engagements*. The Shafi'i school provides a basis for assessing the relevance of the purpose of giving to the consequences of its return, while KHI and the Civil Code provide normative boundaries regarding filing, grants, and property protection. The findings in Pesawaran Village show that the community develops a settlement mechanism through deliberation, but this practice still requires a clearer understanding of the law so as not to cause uncertainty and injustice for the giver and receiver. Therefore, the granting of an application should ideally be accompanied by a mutual understanding of the status of the goods and the consequences if the marriage is not carried out. This approach not only provides protection for the interests of the parties, but also encourages a more proportionate, transparent, and in accordance with the principles of legal justice.

Retaking of Applications in the Perspective of the Shafi'i School and Indonesian Positive Law

In Islamic law, khitbah is a preliminary stage that provides an opportunity for prospective spouses to get to know and consider the continuation of the relationship towards marriage, but does not give birth to a marriage bond or an absolute obligation to carry out a contract.[18] Consequently, the giving of goods during the marriage process

[18] Khairuddin, "Stepping into the Future Current: Exploring the Limits of Post-Khitbah Associations from the Perspective of Islamic Law," *Journal of Dual Legal Systems* 1, no. 1 (2024); Ismail, "KHITBAH

cannot be automatically equated with dowry because dowry is an obligation related to the marriage contract. Gifts in the form of rings, bracelets, necklaces, clothes, or other valuables must be classified based on the intention of the gift, the form of agreement between the parties, and the context of the handover. This distinction is important because the ownership status of the goods that have been handed over is not always identical to the right to withdraw them. From the perspective of Islamic family law, the main issue is not solely whether the marriage has been carried out, but whether the gift is an absolute grant or a gift that has been associated with the achievement of the purpose of marriage since the beginning.[19] Therefore, the cancellation of khitbah needs to be analyzed through the relationship between the will of the giver, the receipt of the gift, and the legal purpose behind the delivery of the goods.

In the construction of the Shafi'i School, the issue of giving during the marriage receives a special explanation through the discussion of the gifts given for the purpose of taking place in marriage. Ibn Hajar al-Haytami in Al-Fatawa al-Kubra al-Fiqhiyyah explains the problem of giving to a woman who is proposed when the marriage is not carried out. This view shows that the goods given in the context of marriage are not always positioned as pure grants that cannot be revoked. The legal assessment depends on the purpose of the gift and the circumstances that caused the marriage to not take place.[20] If the gift was intended for marriage from the beginning and was not intended as an unconditional gift, there is a fiqh basis to demand its return. On the other hand, if the gift is indeed made as a voluntary grant without any connection with certain conditions or purposes, then its status must be assessed based on the provisions of the grant.[21] Thus, the doctrine of the Shafi'i School cannot be simplified into a statement that all proposal gifts must be returned when the marriage is annulled. The analysis must first ascertain the character of the gift and the accompanying legal intent. This distinction also shows that the will of the giver is an important element, but it cannot be separated from the evidence of the handover, acceptance, and understanding of both parties to the purpose of the gift.

A more operational explanation of this problem can be found in I'anat al-Talibin by Abu Bakr al-Dimyati, especially the discussion of giving to a woman who is married. In the construction of Shafi'i fiqh, if the man gives something for the purpose of marriage, then the marriage is not carried out, there is a basis to ask for the gift back. Returns can

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ACCORDING TO THE PERSPECTIVE OF ISLAMIC LAW," *Al-Hurriyah* 10, no. 2 (2009); Uswatun Hasanah, "COMPENSATION DUE TO CANCELLATION OF KHITBAH FROM THE PERSPECTIVE OF ISLAMIC LAW; A CASE STUDY OF KHITBAH CANCELLATION IN THE CITY OF MEDAN," *El-Qanuniy Journal: Journal of Sharia Sciences and Social Institutions* 8, no. 1 (September 13, 2022): 119–34, https://doi.org/10.24952/el-qanuniy.v8i1.5954; Hafidhul Umami, "THE LAW OF EXCHANGING RINGS AT THE TIME OF KHITBAH ACCORDING TO THE VIEW OF ISLAMIC LAW," *USRATUNA: Journal of Islamic Family Law* 8, no. 1 (December 27, 2024): 1–13, https://doi.org/10.65356/usratuna.v8i1.704; Viky Surya Mardany, "The Behavior of Prospective Spouses After Khitbah from the Perspective of Islamic Law in Losari Village, Tulakan District, Pacitan Regency," *Ponorogo State Islamic Institute* (2024); Roberto Maldonado Abarca, "The Concept of Marriage (Khitbah) in Islamic Law," *Nuevos Sistemas de Comunicación e Información*, 2021.

[19] Fa'iq Abiyu and Ibnu Hajar, "Marriage as a Cultural Tradition in the Marriage Process of the People of Weru Village, Paciran District, Lamongan Regency"; Muhimmatul Mukaromah et al., "A Study of the Khitbah Tradition by Women to Men in the Hamlets of Kranggan, Jurug, Sooko, Ponorogo"; Anton et al., "Khitbah as an Initial Commitment in the Bond of Islamic Marriage."

[20] Putri, Ulfah, and Indah, "MARRIAGE/KHITBAH AND PROBLEMS THAT OFTEN OCCUR."

[21] Ismail, "KHITBAH ACCORDING TO THE PERSPECTIVE OF ISLAMIC LAW"; Oping, "Cancellation of Grants According to Article 1688 of the Civil Code"; Putri and Ruslie, "Withdrawal of Grant Property as Inheritance According to KHI and Civil Code"; Anton et al., "Khitbah as a Form of Initial Commitment in the Bond of Islamic Marriage."

be made in the form of goods that are still available, while if the goods have been damaged or can no longer be returned in their original form, the settlement can be directed to reimbursement or other forms of reimbursement according to the relevant fiqh provisions.[22] This provision shows that the legal consequences of giving do not always stop at the transfer of physical control of the goods, but also consider the purpose underlying the delivery. However, the application of this view requires caution in distinguishing goods that are actually given for the purpose of marriage from goods that are given as personal gifts without conditions. In addition, it should be noted that the return of goods and their replacement are two different forms of consequence, so they cannot be applied simultaneously without considering the circumstances of the object of the gift.[23] Thus, the doctrine of Shafi'iyah provides a basis for assessing the right of return proportionately based on the character of the gift and the condition of the goods, not solely based on the unilateral demands of the giver.

Another aspect that needs to be considered is the influence of the party who caused the cancellation of the khitbah on the right to return the gift. In the discussion of Shafi'i fiqh regarding the gift of marriage, there is a view that gives the right of return to the giver when the purpose of the marriage is not achieved, without making the identity of the canceling party the only determinant.[24] This means that the issue of return is not always resolved on the principle that the canceling party must bear all the consequences in the form of loss or return of goods. However, this provision does not mean that the behavior of the parties, special agreements, or the reason for cancellation is completely irrelevant. In social practice, cancellation can occur due to incompatibility, change of decision, family conflict, discovery of certain facts, or other circumstances that affect the continuation of the relationship. [25] Therefore, legal analysis needs to separate two issues, namely the right to return goods based on the nature of the gift and responsibility for losses that may arise due to the actions of one party. This distinction is important to

[22] Rinaldi Rinaldi et al., "Panai Money as Pride of Bugis Bone Women (Between Tradition and Prestige)," *Equilibrium: Journal of Education* 10, no. 3 (September 6, 2022): 361–73, https://doi.org/10.26618/equilibrium.v10i3.8411; I Wayan Budiarta, "Women's Leadership in the Purusa Kinship System: Historical Legitimacy of Women's Political Leadership," *Scientific Journal of Social Sciences* 8, no. 1 (June 1, 2022): 23–33, https://doi.org/10.23887/jiis.v8i1.40982; Hasanah, "COMPENSATION DUE TO CANCELLATION OF KHITBAH IN THE PERSPECTIVE OF ISLAMIC LAW; A CASE STUDY OF CANCELLATION OF KHITBAH IN THE CITY OF MEDAN."

[23] Budify, Manurung, and Hariandja, "Cancellation of Grant Deeds at the Pematangsiantar District Court: A Study of Decision Number 33/Pdt.G/2019/PN.Pms."

[24] Itsnaya Qonita, Lukluk Ilmaknun, and Widodo Hami, "Unilateral Cancellation of Khitbah in the Perspective of Islamic Law and Sociological Law in Wonorejo Village, Wonopringgo District, Pekalongan Regency"; Fauzi Rahmat Pamula, Syafuri, and Ahmad Hidayat, "KHITBAH IN THE PERSPECTIVE OF FIQH RULES AND THEIR APPLICATION"; Putri, Ulfah, and Indah, "PETITIONING/KHITBAH AND FREQUENT PROBLEMS"; Iskandar, Tamrin, and I. Laebo, "A Review of Islamic Law on Customary Sanctions on the Cancellation of Khitbah in Oelua Village, Loaholu District, Rote Ndao Regency."

[25] Itsnaya Qonita, Lukluk Ilmaknun, and Widodo Hami, "Unilateral Cancellation of Khitbah in the Perspective of Islamic Law and Sociological Law in Wonorejo Village, Wonopringgo District, Pekalongan Regency"; Fauzi Rahmat Pamula, Syafuri, and Ahmad Hidayat, "KHITBAH IN THE PERSPECTIVE OF FIQH RULES AND THEIR APPLICATION"; Putri, Ulfah, and Indah, "BEGGING / KHITBAH AND PROBLEMS THAT OFTEN OCCUR"; Iskandar, Tamrin, and I. Laebo, "A Review of Islamic Law on Customary Sanctions on the Cancellation of Khitbah in Oelua Village, Loaholu District, Rote Ndao Regency"; Imaduddin, Firdausi, and Iswahyuni, "Ghosting Post-Marriage/Khitbah According to Indonesian Civil Law and Islamic Law"; Hasanah, "COMPENSATION DUE TO CANCELLATION OF KHITBAH IN THE PERSPECTIVE OF ISLAMIC LAW; A CASE STUDY OF KHITBAH CANCELLATION IN THE CITY OF MEDAN."

prevent mixing between the return of property rights and the claim for compensation. Academically, this approach also provides space to test whether community practices are in accordance with the principles of fiqh or have actually developed based on moral considerations and local customs that are not necessarily identical to the legal provisions of the Shafi'i School.

Another relevant normative foundation is the hadith of the Prophet Muhammad PBUH regarding the prohibition of withdrawing gifts. In the hadith narrated by Ibn 'Abbas as stated in Sahih al-Bukhari Number 2589, the Prophet PBUH likened a person who takes back his gift to a dog that eats his vomit again. The hadith is also narrated in Sunan Abi Dawud and Sunan Ibn Majah. In principle, this hadith shows the strength of the prohibition on withdrawing grants that have been given voluntarily.[26] However, the application of the hadith to giving in the context of khitbah must consider the legal classification of the gift. If an item is a pure grant that has been handed over and accepted unconditionally, the prohibition of withdrawing the grant becomes relevant. On the other hand, if the gift from the beginning has a special purpose on which it is submitted, the legal issue needs to be analyzed through the doctrine of fiqh regarding gifts that are associated with the purpose of marriage. Thus, it is inappropriate if the hadith prohibits the withdrawal of grants directly because the gift is made only because the gift is made at the time of the proposal, just as it is also inappropriate if all the granting of the application is treated as a pure grant. The determination of the law must be based on the substance of the legal relationship formed between the giver and the recipient.

In the context of positive Indonesian law, the Compilation of Islamic Law (KHI) provides a normative basis through Articles 11 to 13 regarding betrothed. Article 13 paragraph (1) emphasizes that betrothy has not caused legal consequences and the parties are free to terminate the marriage relationship. This provision emphasizes that betrothy is not a contract that gives rise to the obligation to marry.[27] However, this provision cannot be interpreted to mean that all gifts during betrothy automatically lose their ownership basis when the relationship is canceled. Article 13 regulates the freedom to terminate the betrothed relationship, not specifically regulating the transfer or return of ownership of the goods that have been handed over. Therefore, it is necessary to distinguish between the freedom to decide on the betrothy and the legal consequences for the property that has been given. Furthermore, Article 171 letter g of the KHI defines a grant as the voluntary and unremunerated gift of an object from a person to another living person to be owned. The provisions of Articles 210–212 of the KHI further regulate the requirements of grants and restrictions on their withdrawal. Article 212 specifically states that grants cannot be withdrawn, except for grants from parents to their children. Based on these provisions, the granting of an application that meets the elements of the grant must obtain legal protection as the right of the recipient, unless there is another legal basis that can be proven to determine the character and consequences of the grant.

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[26] Marito Hasibuan and Bilfahmi Putra, "TAKHRIJ AL-HADITH ON THE PROHIBITION OF ASKING FOR BACK GIFTS," *Al FAWATIH: Journal of Quran and Hadith* Studies 4, no. 1 (July 5, 2023): 64–88, https://doi.org/10.24952/alfawatih.v4i1.7799; Khairuddin Khairuddin, "A Compilation Perspective of Islamic Law and the Civil Code on the Withdrawal of Grant Land," *Journal of Judicial Review* 24, no. 1 (June 6, 2022): 91–104, https://doi.org/10.37253/jjr.v24i1.6310.

[27] Imaduddin, Firdausi, and Iswahyuni, "Ghosting Post-Marriage/Khitbah According to Indonesian Civil Law and Islamic Law"; Kristina, "The Existence of the Application of Customary Law in Talang Mamak Customary Marriage"; Abarca, "The Concept of Marriage (Khitbah) in Islamic Law"; Anton et al., "Khitbah as a Form of Initial Commitment in Islamic Marriage Bonds."

The provisions of the Civil Code also provide an important perspective in determining the legal status of the grant during the marriage process. Article 1666 of the Civil Code defines a grant as an agreement when the giver freely and irrevocably hands over an object for the benefit of the recipient. Meanwhile, Article 1688 of the Civil Code specifies three circumstances that allow the withdrawal or revocation of the grant, namely if the conditions of the grant are not met by the recipient, if the recipient commits or assists in committing a crime aimed at killing the giver, and if the recipient refuses to provide support to the giver when the giver falls into poverty.[28] Based on this construction, the annulment of marriage or marriage cannot be automatically included in the reason for the withdrawal of the grant as stipulated in Article 1688. The interpretation that the failure of the marriage itself constitutes non-fulfillment of the conditions of the grant also requires proof of the existence of such conditions in the legal relationship of the parties. If there is an agreement from the outset that the goods are only given if the marriage is consummated, then the legal nature and consequences of the agreement need to be analyzed in the light of the relevant terms of the agreement and the grant. On the other hand, if no evidence is found regarding the terms and the gift has been made voluntarily without compensation, the application of the principle of irrevocable grant is the main consideration. Thus, Indonesia's positive law requires more concrete proof of the relationship between the intention of the grant and the agreed terms, not just based on a unilateral statement after the cancellation of the application.

In addition to the KHI and the Civil Code, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 does not specifically regulate the mechanism for returning bridal gifts. The law mainly regulates the requirements, implementation, and consequences of marriage law, so it cannot be used as a direct basis for stating that the goods given to the proposal must be returned when the marriage is not carried out.[29] Therefore, the resolution of this problem needs to pay attention to the relevant legal system, especially the provisions of grants, treaty law, and the principle of property protection. In the event of a dispute, proof of the intention of the gift can be done by paying attention to the information of the parties, communication before and during the application process, witnesses to the delivery of goods, documentation, and habits that are consistently understood and accepted by both families. This evidentiary approach is important because the granting of proposals is generally carried out in a family relationship that is not always stated in a written agreement. Thus, the absence of a written document does not necessarily negate the possibility of an agreement, but its existence and substance must still be proven based on valid evidence. Such an analysis also avoids an overly broad interpretation of the freedom to cancel a marriage, because such freedom does not automatically eliminate the civil rights and obligations that have been formed before.

Internal differences in the opinions of Shafi'iyah scholars also need to be taken into account so that the legal construction is not presented in a single way. Fiqh literature shows that there are two opinions regarding the return of the bridal gift. The first opinion,

[28] Hasanah, "COMPENSATION DUE TO CANCELLATION OF KHITBAH IN THE PERSPECTIVE OF ISLAMIC LAW; CASE STUDY OF CANCELLATION OF KHITBAH IN THE CITY OF MEDAN"; Ismail, "KHITBAH ACCORDING TO THE PERSPECTIVE OF ISLAMIC LAW"; Muhammad and Lubis, "PRACTICE OF GRANTS AS A SUBSTITUTE FOR STUDY HERITAGE IN PEMATANG PANJANG VILLAGE, FIFTY COASTAL DISTRICT, BATU BARA REGENCY"; Rohmah, "The Concept of Ijbar of the Shafi'i School in KHI Article 71 Letter F."

[29] Putri, Ulfah, and Indah, "MARRIAGE/KHITBAH AND PROBLEMS THAT OFTEN OCCUR."

attributed to Imam al-Ramli, gives the right to the male party to request back the gift that was handed over for the purpose of marriage, whether the item is still available or damaged, without making the canceling party the main determining factor. The second opinion, attributed to Ibn Hajar al-Haytami, distinguishes the legal consequences according to the party that caused the cancellation. If the cancellation comes from the woman or her family, the giver has a basis to request back the handed over because the purpose of the gift was not achieved due to the refusal of the recipient. On the other hand, if the cancellation comes from the male side, the right to request back the gift is not given because the failure of the marital purpose is caused by the giver himself. This distinction is important because it shows that the Shafi'i school does not completely have a uniform construction regarding the consequences of canceling khitbah.[30] Therefore, this study needs to explicitly determine the opinions that are used as the basis for the analysis and explain its relevance to the empirical facts found.

Based on the overall construction, the resumption of the giving of the proposal in the perspective of the Shafi'i School needs to be analyzed through at least four elements, namely the intention of the gift, the relationship of the gift with the purpose of marriage, the party that caused the cancellation, and the condition of the goods given. These four elements form a more comprehensive assessment framework than simply using the principle that every gift must be returned when the marriage is not carried out. In this context, goods that are still available can in principle be returned in their original form, while goods that have been damaged, lost, or exhausted require an assessment of the obligation to replace according to the opinion of the fiqh used. However, if from the beginning the gift is carried out as a pure grant without any connection with marriage, the rights of the recipient must still be considered. The framework shows that justice in the settlement of the giving of khitbah is not only determined by the interests of the giver, but also by the protection of the recipient so that he is not burdened with obligations that were never agreed upon from the beginning. Thus, the Shafi'i Madhhab approach provides space for legal assessments that consider the purpose of giving as well as the responsibilities of each party.

In relation to the practice of taking back the application in Pesawaran Village, the normative framework can be used to test the suitability between the understanding of community law and the fiqh doctrine of the Shafi'i School. If the return practice is carried out because the woman or her family cancels the application, for example, it is necessary to check whether the goods given are indeed intended as part of a commitment to marriage or are only voluntary gifts. Similarly, if the cancellation is carried out by the male party, it is necessary to analyze whether the return demand has a basis according to the fiqh opinion used or is contrary to the principle of responsibility of the giver. The assessment also needs to pay attention to whether the goods are returned in their entirety, replaced with an equal value, or resolved through family deliberation. Thus, interview data with parties who have experienced the cancellation of the proposal, families, and religious leaders not only serves as an illustration of social phenomena, but also serves as a basis

[30] Firda Noor Safitri, Isma Fury Rachmawati, and Nurul Azizah, "COMMON POINTS OF A DIFFERENCE: AN ANALYSIS OF THE DIFFERENCES BETWEEN THE SCHOOLS OF FIQH,*" 2023 Journal of Islamic Education* 1, no. 1 (2023); Muhammad Huzaifi Muslim, "The Position of Maslahah Mursalah According to Imam Al-Ghazali," *Journal of Al-Nadhair* 2, no. 1 (June 23, 2023): 31–47, https://doi.org/10.61433/alnadhair.v2i1.24; Fahrur Rozi, "THOUGHTS OF MADHHAB FIQH IMAM SYAFI'I," *HAKAM: Journal of the Study of Islamic Law and Islamic Economic Law* 5, no. 2 (March 28, 2022), https://doi.org/10.33650/jhi.v5i2.3502.

for testing the application of legal doctrine in people's lives. The empirical findings must be presented based on informant information and research documentation that is actually obtained, so that there is no generalization of the entire Pesawaran Village community based on only one or two cases.

Overall, the relationship between the Shafi'i School and the positive law of Indonesia shows that there is a common ground as well as differences in determining the status of the granting of the application after the cancellation of the khitbah. Both recognize the importance of distinguishing the marriage from marriage, but have different legal constructions in assessing the consequences of the goods that have been handed over. The Shafi'i School pays attention to the purpose of the gift and, in some opinions, the party that caused the cancellation, while the KHI and the Civil Code place the nature of the grant, the voluntary nature, and the provisions of withdrawal as important elements in determining the status of ownership. Therefore, it is incorrect to state that the cancellation of the marriage automatically gives the male party the right to take back all the goods that have been given. This right must be tested based on the nature of the gift, the agreement of the parties, the relevant legal basis, and the concrete circumstances that accompany the cancellation. The main contribution of this analysis lies in the affirmation that the settlement of the proposal dispute requires an approach that integrates the purpose of giving, the protection of property rights, and the responsibility for the cancellation of the pre-marital relationship. This approach is expected to result in a settlement that not only has normative legitimacy according to Islamic law and positive law, but also reflects legal certainty, proportionality, and justice for both parties.

A Comparative Analysis of Islamic Law and Positive Law on Takeback Applications: Legal Certainty, Property Rights, and Social Justice

The issue of reclaiming the granting of applications after the annulment of marriage shows that there is a complex relationship between Islamic legal norms, positive Indonesian law, and social practices of the community. This problem cannot be solved simply by determining whether the male or female party has the right to cancel the proposal, but must be further analyzed based on the legal status of the goods that have been handed over, the intention of the gift, and the legal consequences when the purpose of marriage is not realized.[31] From the perspective of Islamic law, giving during the khitbah process is a legal action that must be assessed based on the character and purpose of the gift. Meanwhile, Indonesian positive law places the certainty of the transfer of rights and the protection of ownership as important principles in civil relations. The difference in pressure points shows that the issue of returning the application is at the meeting between the freedom of the parties in determining the continuation of the marital relationship and the protection of civil rights over the property that has been given.[32]

In the perspective of the Shafi'i School, khitbah is a preliminary stage towards marriage that does not result in a legal bond like a marriage contract. Therefore, each

[31] Mukri, "PREVENTION AND ANNULMENT OF MARRIAGE"; Imaduddin, Firdausi, and Iswahyuni, "Ghosting Post-Marriage/Khitbah According to Indonesian Civil Law and Islamic Law"; Rohmah, "The Concept of Ijbar of the Shafi'i School in KHI Article 71 Letter F."

[32] Muhimmatul Mukaromah et al., "A Study of the Tradition of Khitbah by Women to Men in Kranggan, Jurug, Sooko, Ponorogo Hamlets"; Hasibuan, Nelli, and Zulfahmi, "The Concept of Khitbah (Looking at Pinangan) in the Hadith of the Prophet Saw"; Itsnaya Qonita, Lukluk Ilmaknun, and Widodo Hami, "Unilateral Cancellation of Khitbah in the Perspective of Islamic Law and Sociological Law in Wonorejo Village, Wonopringgo District, Pekalongan Regency"; Putri, Ulfah, and Indah, "KINANGAN/KHITBAH AND PROBLEMS THAT OFTEN OCCUR"; Anton et al., "Khitbah as a Form of Initial Commitment in Islamic Marriage Bonds."

party basically has the freedom to continue or cancel the marriage. However, this freedom does not necessarily solve the problem of the goods that have been given during the marriage process. The Shafi'iyah jurisprudence literature discusses the issue of the bridal gift by considering the relationship between the gift and the purpose of the marriage. In this discussion, a gift that is clearly associated with the implementation of the marriage can be the basis for demanding a return if the marriage does not materialize. If the goods are still available, the return can be made in the same form of goods, while if the goods have been damaged or exhausted, the issue of replacement needs to be assessed based on the relevant fiqh provisions. Thus, the construction of the Shafi'i School is not sufficiently understood through the general principle that the gift is a voluntary act, but must also pay attention to whether there is a legal connection between the delivery of the goods and the purpose of the marriage on which the gift is based.[33]

This foundation shows the importance of distinguishing between an absolute gift and a gift that has a special purpose. An absolute gift that has been voluntarily given without conditions cannot in principle be treated the same as a gift that has been associated with the marriage since the beginning. In this context, the fiqh rule of al-umūru bi maqāṣidihā (everything depends on its purpose) can be used as an interpretive principle to understand the purpose of the gift, but it should not be used as the only basis for nullifying the recipient's possession. The giver's intention needs to be proven through the context of the handover, the statements of the parties, family agreements, community customs, and the nature and function of the goods given.[34] Therefore, the legal assessment of the granting of the application must be carried out in a contextual manner so as not to lead to the conclusion that all khitbah gifts can be withdrawn just because the marriage is not carried out. This approach also provides protection for the recipient so that they do not lose ownership rights unilaterally based on changes in the will of the giver.

From the perspective of positive Indonesian law, Article 13 of the Compilation of Islamic Law (KHI) affirms that the marriage has not caused legal consequences and that the parties are free to terminate the relationship of the marriage. This provision provides certainty regarding the non-binding nature of the marriage, but does not explicitly determine the status of the goods that have been given during the process. Thus, there is a difference between the legal consequences of annulling the marriage and the legal consequences for the object that has been handed over. The freedom to cancel the marriage cannot be interpreted as the freedom to take back the entire gift without considering the status of ownership.[35] On the other hand, the recipient is also not always able to keep all the goods if it is proven that the gift is accompanied by conditions that legally link it to the marriage proceedings. The KHI through Article 171 letter g defines a grant as a voluntary and unremunerated gift to another person who is still alive to possess, while Article 212 in principle prohibits the withdrawal of a grant, except for a

[33] Rohmah, "The Concept of Ijbar of Madhhab Shafi'i in KHI Article 71 Letter F"; Muslim, "The Position of Maslahah Mursalah According to Imam Al-Ghazali"; Rozi, "THOUGHTS OF MADHHAB FIQH IMAM SYAFI'I."

[34] Juni Arnisa Napitupulu, Amar Adly, and Heri Firmansyah, "Kaidah Yang Berkaitan Dengan Al-Umūru Bi Maqāṣidihā," *Fatih: Journal of Contemporary Research* 2, no. 1 (July 5, 2025): 507–19, https://doi.org/10.61253/t5nehx27; Juni Arnisa Napitupulu, Amar Adly, and Heri Firmansyah; Maysheila Gustin et al., "Penerapan Kaidah Al-Umuru Bi Maqasidiha Dalam Penentuan Hak Kepemilikan Di Muamalah Kontemporer Perspektif Imam Ghazali Dan Yusuf Al-Qaradawi," *Mutlqah: Jurnal Kajian Ekonomi Syariah* 6, no. 1 (2025).

[35] Robist Hidayat, "Hibah in the Perspective of Islamic Civil Law," *Law & Justice Review Journal* 1, no. 1 (June 21, 2021): 1–6, https://doi.org/10.11594/lrjj.01.01.01.

parent's grant to his child. The provision reinforces the importance of identifying whether the proposed item is really a perfect grant or is a gift with different special characters and requirements.[36] Thus, Article 13 and the grant provisions in the KHI must be read systematically, not used separately to justify the return or maintain the grant.

The provisions of the Civil Code also show a legal construction that needs to be carefully analyzed. Article 1666 of the Civil Code stipulates that a grant is an agreement when the giver hands over an item free of charge to the recipient and in principle cannot be withdrawn. Furthermore, Article 1686 stipulates that the transfer of ownership of the donated object must be carried out through a delivery mechanism in accordance with the provisions of applicable law, while Article 1687 provides special arrangements regarding the giving of tangible movable objects through direct delivery.[37] Article 1688 limits the withdrawal of grants to three circumstances, namely non-fulfillment of the conditions of the grant, the recipient commits or participates in committing a crime against the giver, and the recipient refuses to provide alimony when the giver falls into poverty. This provision shows that the failure of the marriage is not automatically a reason for the withdrawal of the grant. However, if there are provable grant requirements from the beginning and the recipient does not meet them, Article 1688 number 1 can be the basis for further analysis of the possibility of withdrawal. Consequently, proof of the existence and content of the requirements is very important in determining dispute resolution.[38] Thus, positive law emphasizes more on the certainty of legal relationships, the validity of the requirements, and proof of submission rather than solely relying on a subjective assessment of the giver's intention.

Table 1. Comparison of the Shafi'i School of Views and Indonesian Positive Law

Aspects	Madhhab Shafi'i	Indonesia's Positive Law
Application Ranking	Marriage promise, not a binding contract; does not cause legal consequences	The lawsuit has not yet caused legal consequences (KHI Article 13)
Right to Cancel	Rights of both parties; no material sanctions	The parties are free to terminate the marriage relationship (KHI Article 13)
The Fate of Giving	Depending on the intention: if for the purpose of marriage, it can be withdrawn	Can be categorized as a conditional grant; can be reclaimed if the conditions (marriage) are not met

[36] Hisea.

[37] Putri and Ruslie, "Withdrawal of Grant Property as Inheritance According to KHI and Civil Code"; El Sobirin Hasibuan, Abdur Rokhim Hasan, and Kholilurrohman Kholilurrohman, "Hibah in Tafsir Ahkam (Study of Grant Verses in the Qur'an)," *Global Journal of Scientific* 2, no. 12 (September 23, 2025): 1164–72, https://doi.org/10.55324/jgi.v2i12.281; Dewi, Marniati, and Chandra, "Legal Certainty of Cancellation of Land Rights Grants by Grantors on Grants Made Under the Hands and Its Legal Consequences"; Oping, "Cancellation of Grants According to Article 1688 of the Civil Code."

[38] Putri and Ruslie, "Withdrawal of Grant Property as Inheritance According to KHI and Civil Code"; Hasibuan, Hasan, and Kholilurrohman, "Grant in Tafsir Ahkam (Study of Grant Verses in the Qur'an)"; Dewi, Marniati, and Chandra, "Legal Certainty of Cancellation of Grant of Land Rights by Grantors on Grants Made Under the Hand and Its Legal Consequences"; Oping, "Cancellation of Grants According to Article 1688 of the Civil Code."

Aspects	Madhhab Shafi'i	Indonesia's Positive Law
Legal Basis	Al-Fatawa al-Kubra, I'anah Tholibin, Hasyiah Bujairomi	KHI Article 13, Civil Code Article 1688, Law No. 1/1974
Mechanism	Family deliberations; no need for a court	Deliberation or court (Religious Court)

From the above comparison, it appears that both the Shafi'i School and the positive law of Indonesia lead to the same conclusion: the retaking of the application after the annulment of marriage is something that is allowed, as long as the process is carried out in a good way, does not harm any party arbitrarily, and in accordance with the applicable provisions. The field findings in Pesawaran Village are also in line with this principle, where the retaking of the gift is carried out in a family manner without causing protracted legal conflicts.

These differences in construction show that the relationship between the Shafi'i School and Indonesian positive law is not properly concluded as a similarity of norms that provide the right of automatic return. The meeting point lies in the recognition that the character of the gift and the circumstances behind it are important elements in determining legal consequences. Both also provide space for the assessment of the purpose and requirements of the gift, even though the legal basis and mechanism are different. The Shafi'i school provides a doctrinal framework for assessing gifts associated with the purpose of marriage, while Indonesian positive law provides limits through the principle of non-withdrawal of grants and exceptions determined by laws and regulations. This difference actually shows the importance of a comparative approach that does not impose the equivalence of concepts between fiqh and civil law. Gifts that in the perspective of fiqh are understood as gifts with a specific purpose do not necessarily automatically meet the qualifications of conditional grants according to the Civil Code. Therefore, each return issue must be analyzed based on the legal character of the grant, the agreement of the parties, and the relevant provisions in each legal system.

In the empirical context of Pesawaran Village, Kedondong District, Pesawaran Regency, the practice of resolving the issue of reclaiming the application shows the importance of family deliberation as a mechanism for resolving conflicts. Based on the field findings reported in this study, the return of goods is carried out through family settlement and does not develop into prolonged legal conflicts. These findings show that social relations between families have an important role in determining how to resolve problems that legally have the potential to cause disputes regarding the ownership of goods. In the context of local communities, the goods that are proposed for do not only have economic value, but also contain symbolic meanings related to marital honor, seriousness, and commitment. Therefore, the return process is not always based on legal-formal considerations, but is also influenced by considerations of propriety, family relations, and efforts to maintain social harmony. However, family settlement does not by itself prove that the practice is in accordance with all legal provisions. Its suitability must still be assessed based on the consent of the parties, the status of ownership of the goods, and the absence of any element of coercion in the return process.

The findings also show that deliberation has a broader function than just resolving disputes. From the perspective of Islamic law, deliberation is a settlement mechanism that reflects the principle of al-sulh or peace, which is the settlement of disputes through

agreements that do not conflict with sharia principles and the rights of the parties. This principle is relevant to be applied in the issue of granting khitbah because disputes that arise are not only related to the value of property, but also to the social relationship that has been formed between two families. Settlement through deliberation can provide space for the parties to consider the condition of the goods, the reason for cancellation, the form of gift, and the ability of each party to reach an agreement. However, the effectiveness of the mechanism must still be accompanied by protection of free will. The return of goods carried out due to family pressure, social threats, or an imbalance in bargaining positions cannot necessarily be seen as a fair settlement. Thus, the legitimacy of the settlement of the family is determined not only by the reach of an agreement, but also by the process of its formation which is based on voluntariness, proportionality, and respect for property rights.

From the aspect of legal justice, the issue of return of the application needs to be placed within the framework of protecting the interests of both parties. The giver has an interest in reacquiring the goods if it can be proven that the gift is substantially linked to the purpose of the marriage and there is a legal basis for demanding its return. On the other hand, the recipient has an interest in retaining the goods that have been lawfully received as a voluntary gift without the requirement of return. Both interests cannot be resolved by granting absolute rights to either party. A fair assessment must consider at least four aspects, namely the purpose and requirements of the grant, the legal status and mechanism of delivery of the goods, the condition of the goods when the return is requested, and the cause of the non-execution of the marriage. The latter factor is important to understand the context of the dispute and the propriety of the settlement, but it should not automatically be used as the sole basis for determining ownership. This framework allows for the application of substantive justice principles without neglecting legal certainty and protection of civil rights.

The normative implication of this study is the need for a more systematic interpretation of the provisions of the marriage and grants in Indonesian Islamic family law. Article 13 of the KHI has provided certainty that the marriage does not give rise to binding legal consequences, but has not provided detailed arrangements regarding the consequences of gifts that have been handed over before marriage. These conditions indicate that there is room for regulation that needs to be considered, especially regarding the classification of gifts, return requirements, condition of goods, and settlement mechanisms in the event of disputes. However, the absence of special provisions regarding khitbah gifts cannot necessarily be called an absolute legal void, because general provisions regarding grants and civil relations can still be used as long as they are in accordance with the character of the legal relationship formed. Therefore, a more operational normative guideline is needed so that the resolution of the issue of granting an application does not only depend on the habits of the community or the interpretation of each family, but also has a legal basis that can be accounted for.

Academically, this research contributes to the development of the study of Islamic family law through the integration of doctrinal analysis and empirical research. Studies on khitbah so far often place the annulment of marriage as an issue related to ethics, freedom of choice of partner, and social consequences before marriage. Meanwhile, this study expands the discussion by placing the gift as the object of legal relations that have consequences for the ownership and protection of civil rights. The integration of the perspectives of the Shafi'i School, KHI, and the Civil Code allows the identification of conceptual differences between voluntary gifts and gifts associated with a specific

purpose. At the same time, the empirical findings of Pesawaran Village show that the application of law cannot be separated from the social context, customs, and conflict resolution mechanisms that develop in society. Thus, the contribution of this research lies not only in the comparison of legal provisions, but also in the explanation of how legal norms and social practices interact in determining the resolution of the problem of granting proposals.

Based on the overall analysis, it can be emphasized that the resumption of the application after the cancellation of the khitbah cannot be justified or rejected absolutely. In the perspective of the Shafi'i School, the return can gain legitimacy if the gift is proven to be related to the purpose of marriage and meets the relevant legal construction. Meanwhile, in positive Indonesian law, returns must take into account the status of the grant, the existence of grant requirements, the delivery mechanism, and the provisions regarding the withdrawal of the gift. The findings in Pesawaran Village show that family deliberation can be an effective settlement mechanism in maintaining social relations, as long as it is carried out voluntarily and does not ignore the rights of each party. Therefore, this study offers an analytical framework that places the purpose of the gift, certainty of ownership, proof of requirements, and substantive justice as interrelated elements in resolving the problem of returning the gift of khitbah.

CONCLUSION

This study found that the practice of reclaiming the giving of proposals after the annulment of marriage in Pesawaran Village, Kedondong District, Pesawaran Regency, Lampung Province, was carried out through a family deliberation mechanism involving both prospective spouses and their respective families. The gift of gifts, especially the proposal ring, are generally returned to the male party when the marriage is not carried out, although there is no written agreement that specifically regulates the consequences of the annulment of the marriage. These findings show that the community has a social understanding of the relationship between the gift and the purpose of marriage, so the return of goods is seen as part of the settlement of the marriage relationship. The kinship mechanism plays a role in maintaining social relations and preventing disputes from developing into prolonged conflicts. However, the practice also shows that settlements that are based only on social customs and understandings do not provide complete certainty regarding the status of ownership of goods, especially if there is a difference in will between the giver and the receiver.

From the perspective of Islamic law, this study shows that the construction of the Shafi'i School provides room for the return of the gift of khitbah if it can be proven that the gift is related to the purpose of the marriage and meets the relevant provisions of fiqh. The thoughts of Ibn Hajar al-Haitami in Al-Fatawa al-Kubra al-Fiqhiyyah and Abu Bakr al-Dimyati in I'anat al-Talibin are important foundations for distinguishing gifts associated with the purpose of marriage from grants that are given absolutely. Meanwhile, Indonesia's positive law through Article 13 of the Compilation of Islamic Law affirms the freedom of the parties to terminate the marriage relationship, but does not explicitly regulate the return of goods that have been given. The provisions of grants in the KHI and Article 1666 and Article 1688 of the Civil Code also show that the withdrawal of gifts must take into account the legal character of the gift and the accompanying requirements. Thus, the main findings of this study do not show the absolute similarity between Islamic law and positive law, but rather the difference in normative construction in determining the right of return for the gift of khitbah. The Shafi'i school pays attention to the relationship between giving and the purpose of marriage, while positive law emphasizes

the status of grants, grant requirements, and protection of property rights. Therefore, the cancellation of the marriage cannot automatically be used as a basis for taking back all the gifts of gifts.

Based on these findings, this study recommends that arrangements regarding dowry in the Compilation of Islamic Law be developed by providing clarity on the legal status of dowry during the khitbah process, including the criteria for giving that can be returned, return requirements, the condition of goods that have been damaged or transferred, and dispute settlement mechanisms. The community also needs to build an understanding from the beginning about the position of the dowry so as not to cause uncertainty when the dowry is canceled. Settlement through deliberation needs to be prioritized as long as it is based on voluntariness, balance of rights, and does not contain elements of coercion. Academically, this research contributes through the integration of the perspective of the fiqh of the Shafi'i School, Indonesian positive law, and local social practices in analyzing the relationship between the purpose of giving, certainty of ownership, and substantive justice in the pre-marital stage. The next research is suggested to expand the scope of comparison to regions with different marriage traditions and to examine more deeply the application of grant provisions in resolving khitbah prize disputes through judicial practice. Thus, the results of this research can be the basis for the development of Islamic family law that is more responsive to social dynamics while ensuring certainty and protection of the civil rights of the parties.

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