

Reform of Islamic Family Law in The Arab Republic of Egypt

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Abstract

This paper discusses Islamic family law in Egypt. Type research used is studies literature and use approach qualitative .The Arab Republic of Egypt is commonly known as the State of Egypt. This country is one of the countries in the Islamic world that reforms family law in the form of codification of Islamic family law. Islamic family law in Islamic society in the Arab Republic of Egypt is very interesting to study, because in this Islamic family law, the spirit and soul of the revelation of Allah ta'ala and the sunnah of the Prophet Muhammad exist. The renewal of Islamic family law in the Arab Republic of Egypt is discussed regarding three scopes, namely typology, application, and his goal. This scientific work uses a literature study research method whose data is not obtained from the counting procedure.

Keywords: Islamic Family Law, Egypt

Abstrak

Tulisan ini membahas mengenai hukum keluarga Islam di Mesir, khususnya yang berkaitan dengan perceraian. Negara Republik Arab Mesir biasa dikenal dengan Negara Mesir. Negara ini merupakan salah satu negara di dunia Islam yang melakukan pembaharuan hukum keluarga dalam bentuk kodifikasi hukum keluarga Islam. Hukum keluarga Islam pada masyarakat Islam di Negara Republik Arab Mesir ini sangatlah menarik untuk dikaji, karena pada hukum Keluarga Islam ini, ruh dan jiwa dari wahyu Allah ta'ala serta sunnah Rasulullah ada. Pembaharuan hukum keluarga Islam di Negara Republik Arab Mesir dibahas mengenai tiga cakupan yakni pertama, tipologi pembaharuan hukum keluarga Islam. Kedua, penerapan hukum keluarga Islam dari segi pandang kodifikasi hukum. Dan ketiga, tujuan pembaharuan hukum keluarga Islam modern. Karya ilmiah ini menggunakan metode penelitian studi kepustakaan yang data-datanya tidak di dapatkan dari prosedur hitungan.

Kata Kunci: Hukum Keluarga Islam, Mesir

INTRODUCTION

The State of Egypt has the official name "Arab Republic of Egypt" which has a Basic Law on September 1, 1971. It is a democracy, or socialist state, based on an influential alliance of popular power. Regarding Egypt is a democratic country, it is stated in article 1 of the Egyptian Constitution. As for article 2 of the Constitution of this country, although Egypt is a democratic or socialist country, this article states unequivocally that Islam is the state religion in Egypt and Arabic is the official language.¹

In addition, this article also states that the main source in making laws remains based on the principles of Islamic law. Thus, according to Muhammad Tahir Azhary in his book stated that it seems that the Arab Republic of Egypt wants to declare that Egypt is a country that is both democratic and socialist, but still refers to Islam, precisely Islamic law itself.² Thus, implicitly the State of the Arab Republic of Egypt wants to say that itself as a State actually wants to apply democratic principles which of course come from Islamic teachings and laws.³

Egypt is part of the African continent. Based on data on the Composition of the Muslim Population in the World in 1999 states that the total population on the African continent is 750,000,000 people, while the total number of Muslims is 400,000,000 people, and if presented, then the number of Muslims in Africa is as much as 55%. When compared to the continents of Asia, Europe, America and Australia, the African continent

¹Muhammad Tahir Azhary, *Negara Hukum Suatu Studi Tentang Prinsip-Prinsipnya Dilihat dari Segi Hukum Islam, Implementasinya pada Periode Negara Madinah dan masa Kini*. Cet. 1 (Jakarta: Prenada Media, 2003), 225-226.

²Muhammad Tahir Azhary, *Negara Hukum Suatu Studi Tentang Prinsip-Prinsipnya Dilihat dari Segi Hukum Islam, Implementasinya pada Periode Negara Madinah dan masa Kini*. Cet. 1 (Jakarta: Prenada Media, 2003), 225-226.

³Muhammad Tahir Azhary, *Negara Hukum Suatu Studi Tentang Prinsip-Prinsipnya Dilihat dari Segi Hukum Islam, Implementasinya pada Periode Negara Madinah dan masa Kini*. Cet. 1 (Jakarta: Prenada Media, 2003), 225-226.

is the continent that has the highest percentage of the four continents.⁴ As for Egypt, its population includes 54,609,000 (1990) and its Muslim (Sunni) population is about 90%.⁵

Islamic family law in the Islamic community in the Arab Republic of Egypt is very interesting to study, because in this Islamic Family Law, the spirit and soul of the revelation of Allah the Exalted and the sunnah of the Prophet exist, while other laws such as mu'amalah law generally do not exist and have been lost, this is due to western colonization for centuries.⁶ Therefore, it is necessary to study the reform of Islamic family law in terms of an explanation of Islamic family law there and some scope of its reform.

RESEARCH METHODS

Egypt or the Arab Republic of Egypt is one of the countries that has a large Muslim population, it is part of the Islamic world. However, there is not much research that discusses Egypt in terms of legal reform. Therefore, research on Egypt is important so that people know how to reform Islamic family law and its application there and can be a reference for other Muslim countries.

The type of research used is library research or literature study. The materials are obtained from books and scientific journal articles. The approach used in this study is a qualitative approach. This approach is a research step or procedure where the findings are not obtained from statistical procedures or other forms of calculation.⁷

⁴Muhammad Amin Summa, *Hukum Keluarga Islam di Dunia Islam*, (Jakarta: Raja Grafindo Persada, 2005), 157

⁵Kurniati, "Hukum Keluarga Di Mesir", *Al-Daulah*. Vol. 3. No. 1. (Juni, 2014), 24-25.

⁶Kurniati, "Hukum Keluarga Di Mesir", *Al-Daulah*, 25.

⁷Ulva Hiliyatur Rosida, "Prosesi Ijab Dan Kabul Via Telepon Ditinjau Dari Kaca Mata Ushul Fiqh Dan Qowaid Fiqhiyyah", *Al-Bayan*, Vol. 2 No.1 (Juni, 2022), 26

RESULTS AND DISCUSSION

Overview of Islamic Family Law in Egypt

Islam has a law called Islamic law, this law includes 2 (two) understandings, namely shari'a and fiqh.⁸ Islamic law in western references is called Islamic Law,⁹ and Islamic family law is part of this Islamic law. The Islamic family law in Arabic is commonly known as Al-Ahwal As-Syakhshiyyah. Ahwal means situation, while Shakhshiyyah means individual, individual or individual. Thus, Al-Ahwal As-Shakhshiyyah is a family law or law that talks about or deals with family matters and matters such as marriage, inheritance, wills, divorce and others.¹⁰

Ijtihad or an exertion of thought can be used as a means and model in the renewal of Islamic law in this case Islamic family law.¹¹ Around 1920, the history of the renewal of Islamic family law in Egypt began, this year being the last of all stages in the series of national law reforms of the Arab Republic of Egypt. In the previous year Justice Qudri Pasha had prepared a draft personal status law based on the Hanafi madhhab as well as the Wakafan Law, but they were never promulgated, thus having no permanent binding legal force.¹²

Law No. 25 of 1920 contains basic issues related to family law, including articles on bread, both during marriage and iddah, negligence in fulfilling support, the right to sue for divorce because the husband is disabled or seriously ill that cannot be cured and various other provisions. The Egyptian Marriage Act was updated with the Personal Status (amended) Law 1985 and the Earlier Legislation 1985 and the more recent Act.¹³

⁸Ulva Hiliyatur Rosida, "Keadilan Dalam Hukum Islam dan Urgensinya Terhadap Perkara Poligami", *KHULUQIYYA: Kajian Hukum dan Studi Islam*, Vol. 5 No.1 (Januari, 2023), 111

⁹Ulva Hiliyatur Rosida, "Keadilan Dalam Hukum Islam dan Urgensinya Terhadap Perkara Poligami", *KHULUQIYYA: Kajian Hukum dan Studi Islam*, Vol. 5 No.1 (Januari, 2023), 111

¹⁰Ulva Hiliyatur Rosida, "Keadilan Dalam Hukum Islam dan Urgensinya Terhadap Perkara Poligami", *KHULUQIYYA: Kajian Hukum dan Studi Islam*, Vol. 5 No.1 (Januari, 2023), 111

¹¹Ulva Hiliyatur Rosida, "Telaah Ijtihad Masa Kini: Sebuah Kerangka Praktis Dalam Istimbath Hukum Keluarga Islam", *Al-Bayan*, Vol. 2 No.2 (Desember, 2022), 201

¹²Ulva Hiliyatur Rosida, "Telaah Ijtihad Masa Kini: Sebuah Kerangka Praktis Dalam Istimbath Hukum Keluarga Islam", *Al-Bayan*, Vol. 2 No.2 (Desember, 2022), 201

¹³Mardani, *Hukum Perkawinan Islam Di Dunia Islam Modern*. Ed. 1. 35-36.

In Egypt, Majma' al-Buhuuts al-Islamiyah has been formed as an effort to solve problems or problems of contemporary laws. This institution is chaired by Shaykh al-Azhar whose members not only consist of religious scholars, but these experts consist of various disciplines, such as anthropological, social, cultural, economic, legal, anthropological and others.¹⁴ This exists, because the background is because the problems in the current era of globalization are increasingly complex and can not only be solved using the basis of sharia, thus must involve other related disciplines. Every law that will be made, must pass through the Majma' al-Buhuuts al-Islamiyah commission, in the sense that it must first be discussed by this commission in depth and also carefully. In this case, the commission does not need to ask permission from the Egyptian court.¹⁵

Islamic family law in the Islamic world will not be separated from the madhhab it adheres to. Madzhab etymologically, is defined as an opinion, understanding, method or way of thinking of a great alim commonly referred to in Islam as Imam madzhab. Madhhab had an impact on the development of Islamic laws, in this case Islamic Family law.¹⁶ As for Egypt, during the Thulun Dynasty, the state madhhab which was originally the Maliki madhhab, was replaced with the Hanafi madhhab. In other literature, it is stated that the majority of the population is Shafi'i and a small part is Hanafi.¹⁷

In the book *Tarikh Tasyri'* by Rashad Hasan Khalil it is written that there are three madhhabs that have spread or exist in Egypt, including the first, the school of Imam Hanafi. Second, the school of Imam Maliki, spread across Egypt contemporaneously with

¹⁴Mardani, *Hukum Perkawinan Islam Di Dunia Islam Modern*. Ed. 1. 36.

¹⁵Mardani, *Hukum Perkawinan Islam Di Dunia Islam Modern*. Ed. 1. 36.

¹⁶Mardani, *Hukum Islam Pengantar Ilmu Hukum Islam di Indonesia*. Cet. 1 (Yogyakarta: Pustaka Pelajar, 2010), 82.

¹⁷Abdul Halim Barkatullah dan Teguh Prasetyo, *Hukum Islam Menjawab Tantangan Zaman Yang Terus Berkembang*. Cet. 1 (Yogyakarta: Pustaka Pelajar, 2006), 121.

when he was alive. And third, the madhhab of Imam Shafi'i, spread in Egypt because he had lived there until the end of his life.¹⁸

Reform of Islamic Family Law in Egypt

In the period 1915-1920, it is recorded that Turkey initiated the renewal of Islamic family law, then in 1920 Egypt followed. In the application or renewal of Islamic family law in the State of Egypt, we will discuss the typology of Islamic family law reform, the application of Islamic family law from the point of view of legal codification and the purpose of reforming modern Islamic family law. As for the explanation, as follows:

Typology of Islamic Family Law Reform

Before mentioning what part of the Egyptian state is located, we will first mention the various typologies of reforming Islamic family law in general. There are two typological opinions that will be put forward in this paper, namely the typology of Islamic law reform according to JND. Anderson and Taheer Mahmoud.¹⁹ Taheer Mahmoud stated in his book entitled Family Law Reform in the Muslim World that there are three types of groups of Muslim countries related to the application of family law, including the following:

1. Countries that apply or implement marriage law and family law of various madhhabs they profess and have not been amended.
2. Countries that have changed their marriage and family laws with modern laws totally, regardless of their religion.
3. Countries that implement or implement Islamic marriage law and family law have been reformed by various modern legislative processes.²⁰

The typology of Islamic legal reform according to JND. Anderson has 3 types as well, including the following:

¹⁸Rasyad Hasan Khalil, *Tarikh Tasyri' Sejarah Legislasi Hukum Islam*, terj. Nadirsyah Hawari. Cet. 1 (Jakarta: Amzah, 2009), 177-193.

¹⁹Sri Wahyuni, "Pembaharuan Hukum Keluarga Islam Di Negara-Negara Muslim", *Al-Ahwal*, Vol. 6. No. 2. (2013), 214.

²⁰Sri Wahyuni, "Pembaharuan Hukum Keluarga Islam Di Negara-Negara Muslim", 214.

1. The type of state that still recognizes and considers shari'ah as a basic law and can still be fully implemented in the country where it is enacted.
2. The type of state that replaces Sharia law with western (secular) law as a whole.
3. The type of country that combines the two, namely between Shari'ah and the West.²¹

From the typology of Islamic family law reform in Muslim countries mentioned above, the Arab Republic of Egypt or commonly known as the Egyptian state is included in the group typology mentioned in number 3. That is the type of state that implements shari'a law or Islamic teachings and enforces reforms with various kinds of modern legislative processes. Thus, we know that Egypt is a country that seeks to enact family law in accordance with Islamic Shari'a, and continues to reform here and there.²²

Codification of Islamic Family Law

The application of Islamic family law in the perspective of codifying its laws or regulations can be divided into two parts, including the following:

1. Uncodified Law

That is, there are countries that have Muslim populations, and apply Islamic family law but have not been regulated and have not been established in writing (in the form of laws), and these countries are known as countries with traditionalist Muslim populations. Like Saudi Arabia and others.²³

²¹Sri Wahyuni, "Pembaharuan Hukum Keluarga Islam Di Negara-Negara Muslim", 214.

²²Kurniati, "Hukum Keluarga Di Mesir", *Al-Daulah*, 26.

²³Muhammad Amin Summa, *Hukum Keluarga Islam di Dunia Islam*, (Jakarta: Raja Grafindo Persada, 2005), 165.

2. Codified Law

Namely Islamic countries with a majority Muslim population that use and apply Islamic family law in their country, in this case the laws or regulations related to the Islamic family in their country have been regulated and have been formed in writing in the form of laws.²⁴ And the Arab Republic of Egypt discussed in this study is a codified law, meaning that Egypt has recorded Islamic family laws in its country in writing, such as in laws such as Egypt: Personal Status (Amendment) Law 1985 and Earlier Legislation (Egypt: Personal Rights (Amendment) Law 1985 and Recent Law).²⁵

The Egyptian state instituted and marked the renewal of Family Law in 1920 with the birth of the Egyptian Family Law, namely Law No. 25 of 1920 and Law No. 20 of 1929. These two laws were then renewed in 1979 with the birth of the Law commonly known as the Jihan Sadat Law Law No. 44 of 1979. And this law was later updated again in the form of personal status (Amendment) Law No. 100 of 1985.²⁶

An Islamic jurist in Egypt named Muhammad Qudri Pasha was the first to make a special discussion of Islamic family law which was originally widely spread in various books of fiqh. It was he who first recorded or codified al-Ahwal as-Shakhshiyyah in a book entitled al-Ahkam al-Shar'iyah fi al-Ahwal al-Syakhshiyyah (Sharia Law in Family Law). This codification contains marriage, divorce, wills, ahliyyah, grants and inheritance.²⁷

Initially, the codification of family law that has been formed into this book has not been officially declared valid by the government, however, the judges made the codification a reference or guide in deciding various personal and family matters in

²⁴Muhammad Amin Summa, *Hukum Keluarga Islam di Dunia Islam*, 168.

²⁵Muhammad Amin Summa, *Hukum Keluarga Islam di Dunia Islam*, 170.

²⁶Ahmad Masfuful Fuad, "Pergolakan Politik Mesir Masa Kolonial Dan Dampaknya Terhadap Reformasi Hukum Keluarga Islam", *Mahkamah: Jurnal Kajian Hukum Islam*. Vol. 1. No. 2. (Desember, 2016), 204.

²⁷Ahmad Masfuful Fuad, "Pergolakan Politik Mesir Masa Kolonial Dan Dampaknya Terhadap Reformasi Hukum Keluarga Islam", 204.

Egyptian courts. Then, in subsequent developments, this codification was used as a reference or guideline which was also applied in the Egyptian Shar'iyya Court.²⁸

Article 13 of the Code of Judicial Procedure also states that the discussion of al-Ahwal as-Shakhshiyyah in Egypt includes discussions on matters relating to individuals, experts and families. The application of al-Ahwal as-Shakhshiyyah in different countries can differ according to the socio-cultural as well as the political turmoil surrounding the country.²⁹

Laws concerning Islamic family law in Egypt resulting from family law reform in Egypt include the following:

1. Law No. 48 of 1946 concerning waqf. (Qanun al-Ushul al Waqfi).
2. Law No. 71 of 1946 concerning wills. (Qanun al Washiyyah).
3. Law No. 77 of 1943 concerning inheritance. (Qanun al Mirats).
4. Law No. 20 of 1929 concerning marriage (including several updates to Law No. 25 of 1920).
5. Law no. 25 of 1920 concerning Marriage and Livelihood.³⁰

Purpose of Islamic Family Law

In general, the purpose of reforming Islamic family law in a country can be grouped into 3 groups,³¹ including the following:

²⁸Ahmad Masfuful Fuad, "Pergolakan Politik Mesir Masa Kolonial Dan Dampaknya Terhadap Reformasi Hukum Keluarga Islam", 204.

²⁹Ahmad Masfuful Fuad, "Pergolakan Politik Mesir Masa Kolonial.....", 204.

³⁰Ahmad Masfuful Fuad, "Pergolakan Politik Mesir Masa Kolonial.....", 205-206.

³¹Abdul Halim Barkatullah dan Teguh Prasetyo, *Hukum Islam Menjawab Tantangan Zaman Yang Terus Berkembang*. Cet. 1 (Yogyakarta: Pustaka Pelajar, 2006), 119.

1. Unification of Family Law

The reform of family law is carried out is aimed at the unification of family law itself, the reason is because in a place or country there are various kinds of madzhab. So that this can facilitate the application of the law itself.

2. Appointment of Women's Status

The purpose of the family law reform was to raise the status of women, which can be seen from the history of its emergence to respond to demands for an increase in women's cases.

3. Answering the Problems of Today's Islamic Family

The purpose of the latter is to respond or answer today's problems that are growing and increasingly demanding with the demands of the times. Moreover, concepts from traditional fiqh are considered less able to answer and respond to it. Thus, there is a need for the renewal of Islamic family law itself.³²

The purpose of the Arab Republic of Egypt in reforming Islamic family law in writing is to be included in the second group, which aims to elevate the status of women. In addition, the results of the reform of Islamic family law are for the restriction of unilateral talaq rights of husbands, the necessity of marriage registration, restrictions on the practice of polygamy, guarantees of rights to children whose parents divorce, guarantees of rights to wives and others.³³

³²Abdul Halim Barkatullah dan Teguh Prasetyo, *Hukum Islam Menjawab Tantangan Zaman Yang Terus Berkembang*, 120.

³³Abdul Halim Barkatullah dan Teguh Prasetyo, *Hukum Islam Menjawab Tantangan Zaman Yang Terus Berkembang*, 120.

CONCLUSION

The conclusions of this discussion are as follows:

The Arab Republic of Egypt is commonly known as the State of Egypt. This country is one of the countries in the Islamic world that has carried out family law reform in the form of codification of Islamic family law.

The renewal of Islamic family law in the Arab Republic of Egypt is discussed in three scopes, namely first, the typology of Islamic family law reform. Second, the application of Islamic family law from the point of view of legal codification. And third, the goal of reforming modern Islamic family law.

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