

# Analysis of the Transformation of Islamic Family Law in the Arab Republic of Egypt

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## ABSTRACT

Among the Muslim countries that codified Islamic family law in the early phases was Egypt. Egypt is the third Muslim country after Turkey and Lebanon to codify Islamic family law. As a country that was once colonized by Europeans and a country that has a beacon of Islamic scholarship called Al-Azhar, studying the reform of Islamic family law in Egypt is an interesting matter. This research is a literature study, and uses a descriptive-analytic approach that originates from books on Islamic family law reform in Muslim countries and Egyptian family law laws related to marriage and inheritance. From the above study, at least several conclusions can be drawn: *first*, the renewal of Egyptian family law began with the issuance of two Egyptian family laws, namely Law no. 25 of 1920 and Law no. 20 of 1929. The law was then updated in 1979, and updated again in the form of Civil Law no. 100 of 1985. *Second*, among the reforms in Egyptian family law are reforms in the age limit for marriage, registration of marriages, divorce before the court, polygamy, and obligatory wills. *Third*, the renewal models used are takhayyur, siyasah syar'iyah, and text reinterpretation.

## **INTRODUCTION**

Talking about the legal relationship of the Islamic family and the issue of renewal, at least it can be examined through two phases. *The first phase* is the reform of Islam in the field of family law, while the *second phase* is the reform of Islamic family law. These two terms look the same at first glance, but if we dig deeper there are significant differences. First, the renewal of Islam in the field of family law means new concepts in the family system taught by Islam that revise the pre-Islamic Arab family system (*jahiliyyah*). While the second is meant by the renewal of Islamic family law is the displacement from the concept of conventional fiqh to the concept of codification of Islamic law in the legal system.

The concept of Islamic reform in the family law system can be seen from the following description. The pre-Islamic Arabs had a corrupt marriage practice (*fasid*). Women in the practice of marriage are considered cheap. This practice is like perpetuating prostitution. So it is known as *nikah istibdha'*, *nikah sifah*, where a husband invites another man to marry his wife. Among the Arabs, *jahiliyyah* is also known as a marriage between a child and his mother or a fellow sibling (Muhammad bin Ismail Al-Muqaddam, 2007). In the practice of *jahiliyyah divorce*, women are very oppressed. One of the descriptions of divorce at that time is where a husband divorces his wife without the limits of *'iddah*. A husband can divorce his wife at any time, then when the wife is almost finished her *iddah* period, suddenly the husband declares *ruju'*, then divorces again and so on (Wahbah Al-Zuhayli, 2009).

In the *jahiliyyah inheritance system*, the character that is strongly attached to the legal system is the patriarchal system, where women receive extraordinary discrimination, so that in the *jahiliyyah legal system*



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women do not get inheritance rights at all, in fact they are made into the inheritance itself (Abd. Rahim Amin, 2012). Not only that, from the moment they were born, girls were considered a disgrace, so many were then buried alive as babies. Women are treated as goods or commodities rather than as human beings. This has been described in QS. An-Nahl (16): 58-59.

When the Islamic treatise came, what happened to the *jahiliyyah* society at that time was revised and replaced with a more noble and humane shari'a. In the case of marriage, for example, there is a divine rule that regulates the procedure for its implementation from pre-marriage to after marriage. Blood marriages or sibling marriages that preceded in the jahiliyyah community were abolished. So it is arranged which can be married and which cannot be (Khairudin Nasution, 2007). The same goes for divorce. Islam regulates all matters of divorce. As explained by QS. Al-Baqarah (2): 229 and several other verses. Men can no longer be arbitrary towards their partners. Talak, iddah, and everything related to it are explained in detail, both in the Qur'an and in the practices and words of the Prophet Muhammad PBUH (Khoiruddin Nasution, 2007). In the matter of inheritance, Islam gives inheritance rights to both men and women. We can see this in QS. An-Nisa (4): 11-12, 176.

Islam came with the vision of eliminating discrimination against women. Islam also guarantees equality in humanity, equality in the duties of worship of Allah, equality in human responsibilities and rights, equality in obtaining the goodness of the hereafter, and other equalities.

The concept of reform of Islamic family law or the shift from conventional fiqh to the codification of new legislation can be understood with the following examples. In the concept of conventional fiqh, polygamy is still permissible with certain conditions, nusyuz only applies to the wife, and talaq is the absolute right of the husband, although there is a *khulu'* right for the wife but it still depends on the husband's consent. Meanwhile, in the new concept of codification of legislation, it is possible that polygamy is only possible with certain reasons and conditions that are very urgent. In this case, the determinant of whether or not polygamy is an emergency is the government or a group of experts and community leaders. Then nusyuz applies to all parties (both wives and husbands) who behave unfaithfully. And in divorce, both husband and wife have the right of initiative to propose a divorce lawsuit. This means that a third party (the court) must be involved.

Of the two types of updates above, the second type that will be the focus of discussion in this study is the second type, namely the reform of Islamic family law which describes a shift from the concept of conventional fiqh to the codification of Islamic family law legislation. This renewal and displacement has been carried out by many Muslim-majority countries with different objectives from one country to another.

In general, these goals can be grouped into three. *First*, the state aims at the unification (unification) of family law. Unification efforts are carried out because there are a number of mahzabs that are followed in the country, making it difficult for the state to decide a case. *The second goal* is to improve the status of women. This is done in response to demands for improving the status of women. While the *third goal* is to respond to the development and demands of the times, because the concept of conventional fiqh is considered incapable of answering them. And this third goal is the main goal of the reform of the Islamic Family Law Law (Khoiruddin Nasution, 2002).

Among the Muslim countries that codified Islamic family law in the early phases was Egypt. Egypt is the third Muslim country after Turkey and Lebanon to codify Islamic family law. As a country that was once colonized by Europeans and a country that has an Islamic scientific lighthouse called Al-Azhar, it is interesting to study the reform of Islamic family law in Egypt. It is not without basis, as we know, that European colonialism has brought a new perspective that is rooted in the culture and intellect of their colonies. The modernism brought by the colonizers sparked reform movements in the understanding of Islam, such as the reform movement pioneered by Shaykh Muhammad Abduh and Muhammad Rashid Ridha. This reform movement more or less influenced the renewal of Islamic understanding around the world, including in the realm of Islamic family law.

As for Al-Azhar as the oldest and qualified educational institution in the teaching of mainstream Islamic sciences, it has produced many prominent 'Ulama. These scholars then took part in both legislation and state fatwa institutions, especially in Egypt. So by examining the renewal of Islamic family law in Egypt, the author intends to know what are the Egyptian marriage laws? What are the updates that have been made, and what types of updates have been made?

This research is a type of literature research or literature research, where books, journals, legal books, and written works related to the theme of Islamic family law reform in the Arab Republic of Egypt will be used as references. While the main references are books on the reform of Islamic family law in Muslim countries and the Egyptian family law law (*qanun al-ahwal as-syakshiyah al-mishriyyah*) related to marriage and inheritance.

The approach used is a *descriptive-analytical* approach sourced from books on the reform of Islamic family law in Muslim countries and Egyptian family law laws related to marriage and inheritance. The operational

technique is to collect data and reduce the data to, then analyze and interpret the data using descriptive-analytical methods.

## LITERATURE REVIEW

### A. Profile of Egyptian Arab Reprilic

Egypt is a country located in the northeastern corner of Africa. The heart of Egypt is the river valley and the Nile delta. This valley and river Nile were home to one of the major civilizations of the ancient Middle East, whose people had the earliest literacy in the world. This civilization developed for about 3,000 years through a series of dynasties. After Alexander the Great conquered the region in 323 BC, urban Egypt became an integral part of Greek civilization. Under the Ptolemaic dynasty, Egyptian society became a growing society and its center was in the city of Alexandria.

As for the region now referred to as modern Egypt, it was once a territory conquered by the Romans in 30 BC, and became part of the Byzantine Empire, until finally there was a conquest by the Arab Muslim army in 639-642 AD during the caliphate of Umar bin Al-Khattab.

After the conquest of Islam (*futuh*), urban and rural cultures began to adopt elements of Arabic culture, and Arabic eventually replaced Egyptian as a common means of oral discourse. What's more, since then, Egypt's history has become part of the broader Islamic world, and although Egyptians continue to be ruled by foreign elites—whether Arabs, Kurds, Circassians, or Turks—the country's cultural environment remains dominated by Arabs.

Egypt in modern times, is called the Arab Republic of Egypt (*Jumhuriyyatul Mishr Al-Arabiyyah*), an Arab country with a democratic system led by the President. Geographically, Egypt is located on the northeastern coast of the African continent. The north side is bordered by the Mediterranean Sea, the east by the Red Sea, the south by Sudan, and the west by Libya. Its area is about 997,739 km<sup>2</sup>. Nearly 90% of the approximately 61 million population of modern Egypt are Sunni Muslims. There are several religious minority populations, the largest of which is the Coptic Christian minority. In 1990, the estimated number of Copts was between 3 and 7 million, while other Christians included approximately 350,000 followers of the Greek Orthodox Church, 175,000 Latin and Eastern Rite Catholics, and 200,000 Protestants. In addition, it is estimated that in 1990 about a thousand Jews were still living in Egypt. This Jewish population gives a picture of a fragment of a community of 80,000 Jews living before 1948 in Egypt. The Egyptian people have high religious tolerance, where freedom of religion is guaranteed by the Egyptian Constitution of 1971 (Nurinayah, (2020).

### B. Constitution and the Judicial System

The constitution of Egypt is a democratic and socialist state. Sovereignty is in the hands of the people and the people are the source of the country's power. All citizens get equal status before the law. Islam is declared as the state religion with its main legal source in the form of Islamic legal principles in making and formulating laws. However, in practice, Islamic law is not the main reference, but only one of the sources of law of the Arab Republic of Egypt.

The judicial system that applies in Egypt has historically been divided into two phases. *First*, the judicial reform phase. This phase resulted in legal institutions that worked on several legal cases, namely: (1) the *Mukhalat* Court (mixed) for foreigners who have privileges according to the Egyptian judiciary, (2) the *Ahliyyah* Court for Egyptians and foreigners who do not have privileges, and (3) the *Syar'iyah* Court, for civil law matters (*ahwal syakhshiyyah*) which only applied to Egyptians who were Muslims, while for non-Muslims it was taken over by the *Milly* assembly. *Second*, the phase of the elimination of privileges.

## METHOD

The determination of the data collection method depends on the type and source of data required. In general, data collection can be done by several methods, both alternative and cumulative that complement each other (Cik Hasan Bisri, 2001). The data collection technique used in the preparation of this journal is through literature research, namely by tracing and finding data that is appropriate and closely related to the problems in this journal, the data sources in this study are obtained from books that are closely related to the problems discussed by the author.



## RESULTS AND DISCUSSION

### 1. Egyptian Family Law Update

Family law reform in Egypt began in 1920. This was marked by the promulgation of Law No. 25 of 1920 concerning family law and custody (*Law of Maintenance and Personal Status / Qanun al-Ahwal al-Syakshhiyyah wa al-Siyanah*). This family law reform continued to occur continuously until the early 1950s. Legal institutions in Egypt gradually carried out legal reforms that had an important effect on family law (marriage and inheritance). Law no. 25 of 1920 was then followed by other laws such as Law No. 56/1923 concerning the age limit of marriage, Law no. 25/1929 concerning the rules of divorce and quarrels in the household, followed by the civil code of 1931, Law no. 77/1943 concerning inheritance law, and Law no. 71/1946 concerning the law of wills.

In the period from the 1960s to the 1970s, various political events also determined the implementation of family law reform. Family law reform in the 1970s was marked by the issuance of a law in 1976 that gave the judiciary the authority to force husbands to pay maintenance to wives, widows, children, or parents. In 1979, after failing to obtain approval to issue a family law law, Anwar Sadat unilaterally issued an emergency decree which was promulgated into Law no. 44/1979. This law is known as the Jehan law (*Jehan's Law* or *Jiji's Law*), because it was proposed by Jehan Sadat or Jiji Sadat, Anwar Sadat's wife. This law largely revised the Egyptian family law laws produced in 1920 and 1929, especially regarding the role and rights of women in the family. However, in May 1985, a *judicial review* of Law no. 44/1979 was filed at the *High Constitutional Court*. As a result, the Mahkamah of the Egyptian Constitution stated that the law was contrary (*ultra vires*) to the Egyptian Constitution. The court rejected the emergency status of this law on the grounds that the emergency decree issued by President Anwar Sadat to enact Law no. 44 of 1979 was actually issued in a non-emergency situation. Therefore, the decree is considered invalid.

A few months after the repeal of the Jehan law, the Egyptian government enacted Law no. 100/1985 to revise the family law of 1920 and 1929. A number of changes that had previously been promulgated in the 1979 law were re-enacted in the 1985 law and added with several new rules. In 2005, Egypt issued Law No. 4/2005 which amended Law Decree No. 25 of 1920 (which changed the age of guardianship). In terms of legal substance, the 2005 amendment represents Egypt's return to conventional law. One of them is the automatic revocation of the wife's right to divorce her husband if her husband commits polygamy. Articles that state that illness or injury experienced by the wife is caused by a polygamous husband as a condition for the wife to file for divorce are eliminated from the law. Instead, the terms of divorce require the wife to declare that she feels tormented because her husband is polygamous (back to the classic opinion). This rule is a consensus of the Egyptian government with traditionalist religious leaders and liberal Muslims (Ahmad Bunyan Wahib, 2014).

The articles that are manifestations of the reform of family law in Egypt are: the issue of the age limit of marriage, the registration of marriages, divorce before the courts, polygamy, and inheritance issues. These updates will be discussed in the sections below:

#### a. The Problem of the Marriage Age Limit

The effort to limit the age of marriage is an effort by the state to suppress the rate of underage marriage, which still occurs in Muslim countries. This kind of marriage practice is quite a complicated problem. On the one hand, the practice of early marriage is a way out for parents to release responsibility, especially for parents who do not have access to send their children to a higher level of education. However, on the other hand, this practice is often a social burden, because early marriage gives birth to a weak generation, especially in terms of economy and education. In turn, they will become a weak generation in almost all areas of life (Nasution, 2019).

Egypt stipulates a law on the minimum age of marriage in Article 99 Paragraph 5 of 1931. That the minimum age of marriage for men is 18 years and for women is 16 years. In paragraph 5 of Article 99 of the Law on the Composition of Religious Courts of 1931, it is stated: "A family lawsuit shall not be heard if the age of the wife is less than sixteen years old or the age of the husband is less than eighteen years old. This is intended to maintain household harmony", (Kurniati, 2004).

#### b. Marriage Registration Issues

Marriage Registration is an *ijtihad* effort by contemporary thinkers to practice Islamic teachings in the framework of modern times. Marriage registration is a contextualization of the purpose and function of witnesses in a marriage contract, namely as a means of announcement and authentic evidence of the occurrence of a contract. This aims to guarantee the rights and responsibilities of the parties in



marriage. Because the marriage contract certainly gives birth to legal consequences and consequences between the parties and the descendants born from the marriage in the future. This function and purpose is contextualized by contemporary thinkers in the form of recordings, not just oral witnesses, such as the demands of the past when the society was still communal, but must be in written form.

In addition, the marriage registration rules can be used as: 1) a vehicle to check whether all the conditions of marriage have been met, and 2) it can be used as authentic evidence to guarantee the rights of the rights of the rights involved and the consequences of the marriage.

In Egypt, the Ordinance of 1880 regulates marriage registrars, their appointments and their implementation procedures. Then followed by the 1897 ordinance in Article 31 which states that a marriage lawsuit or recognition of a marital relationship will not be served by the court after the death of one of the parties, if it is not proven by a valid marriage certificate from the government. This was followed by an ordinance of 1921 containing the provision that the marriage certificate must be official and made by an authorized employee. From this it is clear that the Egyptian lawmakers adopted the principle of "not hearing a lawsuit" in marriage cases and the legal consequences if the marriage is not proven on the basis of an official document issued by the authorities.

#### 1) Divorce Issues in Court

In this case, Egypt enforces the Maliki madhhab. This is marked by the existence of the 1920 Law and the 1929 Law, where a wife is allowed to apply for the termination of marriage (divorce lawsuit). These two laws recognize the right of women to sue for divorce from their husbands because the husband does not provide proper maintenance, disappears for one year, is imprisoned for 3 years with permanent legal force and can no longer provide mental support to his wife. In this case, Egypt deliberately took the Maliki school so that the social interests of the community could be resolved properly.

#### 2) The Problem of Polygamy

In Egypt, proposals on restrictions on polygamy and the right to unilateral divorce of husbands have always met with an impasse. The first proposal is the draft of Law No. 25 of 1920 which includes two articles related to the issue of polygamy, namely: permission from the court and permission of spouses along with the ability to provide for themselves. However, the draft proposal must be thrown out because there is strong opposition in parliament. Then the same draft was proposed again to be included in Law No. 20 of 1929, but it was again canceled due to veto by King Fu'ad. It was then proposed for a third time in 1943 and 1945, also not accepted.

It was only in 1985 that Egypt with the Amendment Law No. 100 of 1985, established the rules of polygamy. In this amendment, it is determined that polygamy can be a reason for divorce for wives on the grounds that polygamy causes economic hardship, whether it is included in ta'lik talaq or not. In addition, the Court must inform his former wife of the plan. Those who violate this rule can be punished with imprisonment, or a fine, or both. To decide whether polygamy causes economic problems in the household, one year is given. If one year has passed, then the old wife should not file a divorce lawsuit for this reason.

#### 3) The Problem of Inheritance

In its reforms, Egypt has produced two pieces of legislation, namely; Law No. 77 of 1943 concerning intestate inheritance (based on the position of the heirs), and Law No. 71 of 1946, concerning testamentary inheritance (based on wills and grants). These two laws are prepared based on the legal principles of inheritance and wills that have been established in the book of fiqh. In addition, these two laws have also introduced several new provisions for the benefit of certain heirs who in the book of fiqh only get a small share or no part at all (Fatum Abubakar, 2011).

The subject matter of family law reform in the field of inheritance is the stipulation on compulsory inheritance/mandatory will for descendants of heirs who die before their heirs. The provision is contained in Law No. 100 of 1985 (amendment), specifically contained in articles 76-77: Article 76: If an heir (al-mayyit) does not make a will for the descendants of a child who has died before him (the heir), or dies together with him, in the amount of the shares that the child should have obtained from the inheritance, then the descendant will receive the shares through a will (mandatory) within the limit of one-third of the property provided that (a) the descendant does not inherit (b) The deceased (heir) has never given property in any way other than his share. If it has been given but less than the shares it should have received, then the deficiency is considered a mandatory will. This will is the right of first-degree

descendants of boys and girls and descendants thereafter according to the male line, each degree hijab its own descendants but cannot hijab the descendants of the others. Each degree divides the will as if it were an inheritance from their parents.

Article 77: If a person gives a will more than the shares that should be received, then the excess is considered as a will of will. If it is lacking, the deficiency is made up through a mandatory will. If a will is made to some descendants and leaves some others, then the will must be enforced to all descendants and the existing will is considered valid as long as it is in accordance with the provisions in article 76 above.

## 2. Analysis of Egyptian Family Law Reform

There are at least five models of reform used in codifying contemporary Islamic family law, namely: 1) *superstition*, 2) *talfiq*, 3) *takhshish al-qadha*, 4) *siyasah syar'iyah*, and 5) *reinterpretation of nash*. The meaning of *superstition* is to choose the views of one of the fiqh scholars, including scholars outside the madzhab. Substantially, *superstition* can also be called *tarjih*, because it chooses the view of one of the fiqh scholars on the basis of a stronger opinion (*rajih*). *Talfiq* is a combination of a number of scholarly opinions (two or more) in determining the law of one issue.

*Takhshish al-qadha'* is the right of the state to limit the authority of the judiciary in terms of people, territory, jurisdiction, and applied procedural law. So that the state can take policies to limit the interpretation so as not to apply legal provisions in certain situations. *Siyasah syar'iyah* is the policy of the ruler to implement regulations that are beneficial to the people and do not contradict the shari'a. There are also those who call *siyasah syar'iyah* and *takhshish al-qadha* as the determination of laws using administration, because in general these laws are in the realm of public administration. Meanwhile, the right of the ruler to limit/implement regulations that are beneficial to the people, in addition to being in line with the shari'a, it must also be in line with what is formulated by *the ulama ushul al-fiqh* in *qaidah fihiyyah*.

Then, the purpose of *reinterpretation of nash* (reinterpretation of nash) is to reinterpret the nash of the Qur'an and the sunnah of the Prophet Muhammad ﷺ. The five update models above, when grouped using the Tahir Mahmood approach, are divided into two, namely:

- a) *Intra-doctrinal reform*, which is renewal by still referring to the concept of conventional fiqh, by means of *superstition* and *talfiq*.
- b) *Extra-doctrinal reform*, which is a renewal that does not refer to the concept of conventional fiqh, but refers to the nash of the Qur'an and the sunnah of the Prophet Muhammad ﷺ, by reinterpreting. So that *takhshish al-qadha'*, *siyasah syar'iyah*, and *reinterpretation of nash* fall into this category (Khoiruddin Nasution, 2015).

Using the approach of the five IPR reform models above, at least the issue of marriage age limit, marriage registration, divorce in court, and inheritance issues in Egyptian family law, can be categorized into three typologies.

*First*, the rules on the age limit for marriage, marriage registration, and compulsory wills constitute an IPR renewal that uses *the siyasah syar'iyah* method, where the state uses its right to restrict/implement regulations that are beneficial to the people. This means that the intention of the state to limit the age of marriage, to require marriage registration and to guarantee inheritance rights with a mandatory will, is a benefit that can provide broad goodness and benefits to the general public. In addition, it also intends to avoid various kinds of evils that may arise due to negligence in this matter.

*Second*, regarding the right of women to sue for divorce because their husbands do not provide support, disappear for one year, are imprisoned for 3 years with permanent legal force and can no longer provide mental support, is a renewal with a *superstitious model*, where in the promulgation of the above article, the legislators choose one opinion from various existing opinions, namely the opinion of the Maliki madzhab.

*Third*, regarding the restriction of polygamy, it is a renewal of family law that uses *the nash reinterpretation model*. That is, QS. Al-Nisa (4): 3 which is generally understood as a verse that supports the ability of polygamy, is reinterpreted with an interpretation that is not like *the mainstream*. *This verse is not enough to understand just by understanding the text of the verse purely, but more than that, to understand it more comprehensively this verse must be understood complete with the context that prevails when this verse descends and the context of modern times today. In addition, this verse must also be linked to other verses related to*

marriage, for example QS. Al-Rum (30): 21 and other verses. With a contextual study like this, it can be concluded that the permissibility of polygamy aims to help weak groups, not a tool to satisfy lust. Meanwhile, based on observations, which have existed in society so far, the practice of polygamy is more aimed at as a means of satisfying mere lust.

Meanwhile, if using Taha Mahmood's approach, the issue of age restrictions, marriage registration, mandatory wills, and restrictions on polygamy is categorized as *extra-doctrinal reform*, namely reforms that do not refer to the concept of conventional fiqh. Meanwhile, divorce in front of the court is categorized as *intra-doctrinal reform*, which is a renewal that still refers to the concept of conventional fiqh.

## CONCLUSION

From the above study, at least several things can be concluded: first, the renewal of Egyptian family law began with the birth of two Egyptian family laws, namely Law No. 25 of 1920 and Law No. 20 of 1929. These two laws were then updated in 1979, and renewed again in the form of Civil Law No. 100 of 1985. Second, among the forms of renewal of Egyptian family law were updates in the age limit of marriage, marriage registration, divorce before the courts, polygamy, and compulsory wills. Third, the renewal models used are superstition, *siyasah syar'iyah*, and text reinterpretation.

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