

## **DYNAMICS OF ISLAMIC FAMILY LAW REFORM IN MUSLIM COUNTRIES** **(Analytical Study of Family Law Reform in Tunisia and Morocco)**

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### **Abstract**

*This research is motivated by efforts to reform Islamic family law in a number of Muslim countries in the world that are very progressive and seem controversial and "considered to violate the establishment of classical fiqh law" as in Tunisia and Morocco. This research or article will examine how the formulation of Islamic family law in Tunisia and Morocco, how it is applied and what the legal and sociological impacts are on the context of local community life. The purpose of this study is to examine Islamic family law in Tunisia and Morocco, which is considered unique because of Tunisia's radicalism. This study is directed at library research and data collection is carried out using documentation methods sourced from documents relevant to the problem being studied. The analysis used is content analysis. The conclusion of this study is that the process of formulating and structuring Islamic family law in Tunisia is not only an effort to codify (book) Maliki school of jurisprudence, but also takes progressive and revolutionary steps in an effort to legalize and regulate administration in the field of law, especially Family Law. This is evidenced by the birth of the Tunisian Code of Personal Status (Majallah Ahwal al-Syakshiyah) and the Moroccan Code of Personal Status (Muvadanah Majallah Ahwal al-Syakshiyah). Viewed from the history of the formation of Tunisian and Moroccan family law, it was greatly influenced by European law and thinkers who had a secular educational background. The legal reforms carried out by the Tunisian and Moroccan governments, in existing issues, were not intended to deviate from and abandon the principles of Islamic law, but rather were more due to the government's desire to guarantee the welfare, peace, and welfare of the Tunisian nation and people.*

**Keywords:** *Islamic Family Law, Tunisian Family Law, Moroccan Family Law.*



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## A. INTRODUCTION

Islamic law as a religious law comes from the revelation of Allah SWT which is guided by Muslims. However, currently there is a phenomenon of "assimilation" between Islamic law and positive law in Muslim countries. Such as the legislation of Islamic law as national law, this phenomenon occurs a lot in Muslim countries, which have long implemented the western legal system. In countries where the majority of the population is Muslim, the aspiration to implement Islamic law as national law is very strong, so that with the strategy of legislating Islamic legal material in the form of legal drafting into a bill to be stipulated as statutory law, it also occurs. The renewal of Islamic family law in Muslim countries has continued to develop since the beginning of the 20th century, especially regarding marriage, divorce and inheritance. This effort was started by Turkey (1917), then Lebanon (1919), Egypt (1920 and 1929), Jordan (1951), Syria (1953) and Tunisia (1956) are among the Muslim countries that have progressed in reforming family law, until Morocco (1957) also did a lot of assimilation and contextualization of family law in their legislation. Until 1996, in the Middle East there were only five countries that had not reformed marriage law, namely the United Arab Emirates, Saudi Arabia, Qatar, Bahrain and Oman.<sup>1</sup>

This effort to reform Islamic family law has several objectives (maqosid), including, first: unification of marriage law, second: increasing the status and dignity of women (emancipation), third: responding to developments in the era because the concept of classical fiqh is considered incapable of answering the challenges faced by modern Muslim society today.<sup>2</sup> Post-colonial, Tunisia implemented law reform, by creating Islamic law with a modern bureaucracy. This Islamic law reform mainly began in the area of personal law and family law. As a country with a Muslim majority population, Tunisia is the most radical in reforming Islamic family law. This can be seen in the laws enacted in the country which were later called the Tunisian Code of Personal Status (CPST). The legal reform that occurred in Tunisia cannot be separated from the historical aspects that underlie it. In addition, the role of education and nationalist fighters as actors of reform also played a role.<sup>3</sup>

The presence of the Tunisian Code of Personal Status did not go smoothly. However, it triggered quite fierce pros and cons in Tunisia and the Arab world at that time, because some circles considered a number of its articles to be contrary to established traditional Islamic law. This can be seen, for example, in the articles prohibiting polygamy, the wife's authority in divorce, the elimination of the right of *ijbar* and the permissibility of adoption, which is why the Tunisian Code of Personal Status is considered the most progressive family law in the Islamic world.<sup>4</sup>

Likewise with the renewal of Islamic family law in Morocco.<sup>5</sup> In 1957, Morocco carried out a renewal of family law called "Mudawwanah al-Aḥwal as-

Syakhṣiyah" or "Mudawanah Al-Usroh". Most of the legal provisions are based on the Maliki school of thought which is widespread in Morocco and has existed for a long time. The new family law (Mudawwanah al-Aḥwal as-Syakhshiyah) contains several very important and progressive legal reforms, especially related to the balance of men's and women's rights in terms of marriage and divorce, such as the age of marriage, guardians and women's freedom, marriage registration, polygamy, divorce in court and others.<sup>7</sup>

#### **A. Formulation of the problem**

The problem formulation that can be formulated in writing this article is as follows:

1. What are the materials for the renewal of Islamic family law in Tunisia and how are they implemented in society?
2. What are the materials for the renewal of Islamic family law in Morocco and how are they implemented in society?
3. What is the contribution of the reform of Islamic family law in Tunisia and Morocco to the development of Islamic family law in the world?

#### **B. Objective**

The objectives to be achieved in writing this article are as follows:

1. To explain and explore in depth the material related to the renewal of Islamic family law in Tunisia and its application in society.
2. To explain and explore in depth the material related to the renewal of Islamic family law in Morocco and its application in society.
3. To determine the contribution of Islamic family law reform in Tunisia and Morocco to the development of Islamic family law in the world.

#### **C. Research methods**

The research method used in writing this article is library research with a normative legal approach, while the data collection technique used is the documentation method sourced from documents relevant to the problem being studied. The data analysis used is content analysis of a number of data taken from various references, both in the form of books and scientific journals. The conclusion of this study is that the process of formulating and arranging Islamic family law in Tunisia and Morocco is not only an effort to codify (book) the Maliki school of jurisprudence, but also takes progressive and revolutionary steps in an effort to legalize and regulate administration in the field of law, especially Family Law. This is evidenced by the birth of the Tunisian Code of Personal Status *Mahajjlat Ahawal al Syakhshiyah* in Tunisia and *Mudawanah Ahawal al Syakhshiyah* in Morocco.

#### **D. Discussion**

##### **1. History of the formation of Tunisian Family Law**

The Republic of Tunisia is a country located in North Africa, bordered by Algeria to the West, the Mediterranean to the North and East and Libya to the South. Tunisia includes the Karkunna Islands to the East, while in the Southeast including the Djerba Islands. Tunisia has a population of 7,424,000, and almost 97% are Muslim. The country with an area of 163,610 km<sup>2</sup> gained independence in 1956, with the first president Habib Bourguiba, who oversees 23 provinces. Previously, Tunisia was an autonomous region of the Ottoman Turkish government and in 1883 became a French Commonwealth based on the La Marsa agreement, and on March 20, 1956, the French government officially recognized Tunisia's independence. In the same year President Habib Bourguiba, a French law graduate, was appointed as the first president and issued controversial regulations called the Code Personal Status to replace the law of the Qur'an in the fields of marriage, divorce and hadhanah (child maintenance). This rule not only goes against some traditional Muslim practices but even declares confrontation with them.

The process of drafting Tunisian family law began with the formation of a committee chaired by Shaikh Muhammad Aziz Ju'ait, a prominent cleric and former Minister of Justice during the pre-independence era. Previously, in 1948, Shaikh Ju'ait compiled the law book *La'ikhat al-Ahkam Ash- Shar'iyah*, a kind of compilation of Islamic law, consisting of 2,464 articles, around 800 of which relate to family law. Although it was never officially enacted, due to opposition from the French colonial government, the *La'ikhat* book is considered the embryo of the birth of family law in Tunisia.

There are three main sources referred to by the drafting team, namely, first: *La'ikhat Al-Ahkam Ash-Shar'iyah* itself. Second, Family Law in several Muslim countries, such as Egypt, Syria and Iran. Third, the French Family Law. When adopting *fiqh* laws, the drafting team referred not only to Maliki *fiqh* which is adhered to by the majority of Tunisian Muslims, but also other schools of thought including the Ja'fari school.

The draft law was then submitted to the government and officially enacted on August 13, 1956 under the name Code of Personal Status or *Majallah al-Akhwal Ash-Shakhshiyah*. The law consists of 170 articles divided into 12 chapters, namely regarding marriage, talaq, iddah, nafqah, hadanah, lineage, found children, missing persons, inheritance, guardianship (*al-khijr*), wills and grants.

During the ratification of the regulation, it was discovered that there were a number of new articles outside the contents of the draft prepared by the drafting team, such as the prohibition of polygamy,

the elimination of the right of *ijbar* for guardians, and the *talaq* procedure. In several additional articles, Habib Borguiba adopted modernist ideas about the total equality of rights between women and men. In the Tunisian context, this modern thinking was promoted by Tahir Haddad, a contemporary progressive thinker from Tunisia through his controversial book entitled "*Imroatuna Fi Shari'ah Wa Al-Mujtama'*" which became an inspiration and greatly influenced the *Majallah al-Akhwal Ash-Shakhshiyah* law.

## **2. Materials of the Tunisian Family Law Act**

Tunisia has succeeded in reforming Islamic family law to be more progressive and contemporary, this was done because of adaptation to the changing times by paying attention to the demands of society regarding women's emancipation and feminist issues that are loudly voiced in the Islamic country. The contents of the Tunisian Family Law contained in the Tunisian Code of Personal Status or *Majallah al-Ahwal Al-Syakhshiyah* regulate the following matters:

### **a. Marriage**

#### **1. Age of Marriage**

In the *Majallah al-Ahwal Al-Syakhshiyah* law, it is stipulated that men and women can get married if they are 20 years old. This is due to considerations of maturity and economic independence of the prospective bride and groom. This is a provision that changes the contents of article 5 of the previous Law, which before being changed, the provisions for the age of marriage were 17 years for women and 20 years for men. With the provision that both men and women must be 20 years old to be allowed to get married, for women who are 17 years old must have permission from their guardian. If the guardian does not give permission, the case can be decided in court.<sup>8</sup>

However, in 1981, the provisions of the article contained in *Majallah al-Ahwal Al-Syakhshiyah* were changed, namely that in order to be able to carry out a marriage, a man must have reached the age of 20 years and a woman must have reached the age of 17 years. So for those who have not reached the age limit, they must get special permission from the court. Permission cannot be given if there are no strong reasons and clear desires from each party.

#### **2. Marriage Agreement**

A marriage agreement is important and must be done before the marriage takes place. The marriage agreement is an effort to guarantee the rights of both husband and wife, especially

women's rights. The marriage agreement in Tunisia is contained in the 1956 Tunisian Law Majjallah al-Ahwal Al-Syakhshiyah which provides the opportunity for khiyar al-syart in marriage. If any of the contents of the agreement is violated by one of the two parties, then the party who is aggrieved by the violation of the agreement can file a lawsuit for dissolution of the marriage to the court. In general, the agreement cannot give rise to a right to compensation if this occurs before the marriage is completed perfectly.

### 3. Prohibition of Polygamy

Article 18 of the Tunisian Family Law (Majjallah al-Ahwal Al-Syakhshiyah) states that having more than one wife is a prohibited act and is a criminal act. Likewise, this Law explicitly states that a man who has been married, and whose marriage has not been legally dissolved, marries again, can be threatened with a prison sentence of one (1) year or a maximum fine of 240,000 Malim.<sup>9</sup>

The basis for the ban on polygamy used by the Tunisian government is: *First*, that polygamy, like slavery, is an institution that will never be acceptable to the majority of humanity anywhere. Second, the Absolute Condition for a husband to be allowed to practice polygamy is to be fair to his wives. While historical facts prove that only the prophet can be fair to his wives. This prohibition has a legal basis in the verse of the Qur'an, which states that a man is obliged to marry one wife if he is sure that he is unable to be fair to his wives, namely in the letter an-Nisa verse 3.

The polygamy referred to in this article includes both registered and unregistered marriages. This means that even if a marriage with a second wife is carried out without registration, aka underhand (zawaj urfi), it is still categorized as prohibited polygamy. This article was inspired by the thoughts of modernist scholars, such as Tahir Haddad and Muhammad Abduh. According to Haddad, polygamy is not an Islamic teaching, but rather a form of evil that existed in the Arab nation of Jahiliyah in the past. Islam intends to eradicate this behavior gradually by limiting the maximum number of wives to four, and eventually to one wife.

The permissibility of polygamy mentioned in the Qur'an, continued Haddad, is a relief (rukhsah) from Allah SWT, not an obligation or command. In fact, this rukhsah is actually impossible to do because it must be based on a sense of justice,

something that cannot be realized by ordinary humans except the Prophet. Thus, in Hadad's view, polygamy has no basis in Islam, and is not in line with the purpose (maqasid) of marriage itself. The Al-Qur'an verse about polygamy, namely Surah An-Nisa' verse 3, must be understood in the context of the Islamic transition period, namely when slavery and polygamy were still common. According to Tahir Haddad, in today's cultural society, the practices of slavery and polygamy are no longer relevant.

Thus, ideally the principle of the Qur'an related to marriage is monogamy. The condition put forward for a husband to be fair to his wives is a very difficult condition, even impossible to be fully realized in married life.

#### **4. Elimination of the Right of Ijbar**

Tunisian Family Law gives girls the authority to choose their own spouses. The biological father is not allowed to impose his will (ijbar) regarding the spouse and marriage of his daughter, unless there is clear consent from the girl first. Article 3 of Majjallah al-Ahwal Al-Syakhshiyah states: "Marriage cannot take place except with the consent of both bride and groom". Based on this article, the continuation of the marriage contract is entirely determined by the consent of both prospective bride and groom, not by the parents. This consent must be stated clearly, sincerely, and wholeheartedly by both bride and groom.

Among the arguments of this article is Tahir Haddad's opinion that a girl should be given the freedom to choose her own partner, without coercion from her biological father. This is because marriage is based on love and affection built between individuals prospective bride and groom. Therefore, marriage must be free from the intervention of other humans including biological parents. It is true that a girl has the possibility of choosing the wrong partner, but the possibility of choosing the wrong one can also happen to a biological father.

#### **5. Right to Livelihood**

The spirit carried by Majjallah al-Ahwal Al-Syakhshiyah is the concept of partnership and equality between women and men. One concrete application is the determination that sustenance is not only the obligation of the husband as head of the household, but also the duty of the wife. Article 23 of Majjallah al-Ahwal Al-Syakhshiyah states "The wife must participate in providing for the family, if she has property".

Some explanatory rules *Majjallah al-Ahwal al-Syakhshiyah* states that the wife's obligation to earn a living as referred to in this article is not a total obligation that eliminates the husband's role altogether. The main obligation remains with the husband, while the wife must only participate in helping her husband, not as the main breadwinner.

## 6. Illegal marriage

Marriages that are considered invalid according to the Tunisian Family Law Act are as follows:

- (Article 21)
- a. Marriage that is contrary to the principles of marriage
  - b. Marriage without the consent of either husband or wife (article 3)
  - c. Marriage that occurs before the age of puberty or there are other legal obstacles (Article 5)
  - d. Marriages in which there is an impediment to the marriage (articles 15-17), and
  - e. Marrying a woman who is still in the iddah period (article 20).

An invalid marriage as above can be immediately annulled.<sup>10</sup>

As a result of the law, if the marriage is complete (*ba'da ad-dukhl*) the wife is entitled to a dowry and is obliged to undergo the iddah period. Meanwhile, if the divorce occurs before *dukhl*, the wife is entitled to *musamma* dowry or *mitsil* dowry. Children who are born can be based on their lineage to the husband, but are not related in terms of inheritance between the two parties.

## b. Divorce

### 1. Divorce

Tunisian Family Law seeks to tighten and complicate divorce (*talaq*). According to *Majjallah al-Ahwal Al-Syakhshiyah*, *talaq* cannot be imposed unilaterally by the husband, but can only occur in court. In Tunisia, divorce can only be valid and recognized with certainty and effect, only if it is decided by the court. Therefore, divorce carried out outside the court is not legally valid. Likewise, the court can decide a marriage filed by the wife on the grounds that the husband has failed to provide maintenance (disputed divorce), or because both parties have agreed to end the marriage.<sup>11</sup>

### 2. Triple Divorce

Article 19 of the Tunisian *Majjallah al-Ahwal Al-Syakhshiyah* Law states that a man is prohibited from referring



his ex-wife who has been divorced three times (talaq bain kubra). Previously, Article 14 stated that triple talaq is a permanent obstacle to marriage.<sup>12</sup> Another breakthrough made in the Majjallah al-Ahwal Al-Syakhshiyah is related to the law of triple talaq (bain kubra). The law stipulates that triple talaq is a cause for a permanent prohibition on marriage (mani' az zawaj al muabbad). Therefore, a husband and wife who have divorced by triple talaq, both cannot reconcile forever. Article 19 states: "The husband may not remarry (reconcile) with the woman he divorced by triple talaq." This article is clearly different from the concept of Islamic jurisprudence which states that a husband and wife who have divorced by triple divorce (bain kubra) can reconcile on the condition that the ex-wife has married another man and has had intimate relations, then divorced and the iddah period has ended. This is based on the verse of the Qur'an which means "Then if the husband divorces her (after the second divorce), then the woman is no longer halal to him until she marries another husband".

The article was strongly opposed by a number of groups in Tunisia because it was considered to be at odds with the verse above. However, supporters of Majjallah al-Ahwal Al-Syakhshiyah argued that the purpose of this article was to eradicate the practice of fake marriages (muhallil) that were common in Tunisian society at that time, which were considered to violate the dignity of women and were a form of discrimination against women.

### **3. Talaq Fine (Al-Jirayah Al-Umriyah)**

A husband who divorces his wife must pay a fine (al-jirayah al-umriyah) to his ex-wife. The fine is paid every month throughout the life of the ex-wife, unless the ex-wife has remarried another man or dies. Al-jirayah al-umriyah is intended as compensation (iawad) that must be paid by the husband to his ex-wife, as a consequence of his decision to divorce his wife. This al-jirayah al-umriyah must be determined through a court in order to have a strong binding force, so that the wife's rights are still fulfilled. With this Jirayah al-umriyah, the ex-wife while she is a widow still gets a living and can live with the same financial standard as when she was still married to her ex-husband. So it can be said that the concept of al-jirayah al-umriyah is purely an ijtihad of the formulators of Majjallah al-Ahwal Al-Syakhshiyah which is based on the fulfillment of special rights for women in Tunisia.

#### **4. Support for Wife**

The Tunisian Family Law Act applies the principles of the Maliki school of thought regarding the wife's right to receive maintenance from her husband during the marriage. This is regulated in detail in articles 37-42. Furthermore, article 41 states that the wife is allowed to spend her personal property used as living expenses to be reimbursed by her husband. The amount of maintenance depends on the husband's ability and the wife's status, as well as the reasonable cost of living at that time (article 52).<sup>13</sup>

#### **5. Child Care**

Articles 54-57 of the Tunisian family law law regulate in detail the rights and obligations of parents and guardians regarding child care. The provisions regarding child maintenance generally originate from the principles of the Maliki school of thought, in the Maliki school of fiqh it is stated that if a man is mentally ill with his wife, child maintenance is the mother's right on the grounds that a mother has the right to care for and breastfeed, considering that the mother is the one who understands and is more capable. educate children. The mother's patience in this case is greater than the father's, therefore, the mother is given priority in order to safeguard the welfare of the child. <sup>14</sup> In fiqh it is also stated that the right to hadhanah is terminated if the mother enters into a marriage with someone else. Because there are predictions that mothers will be negligent in caring for their children, which will result in the children not being able to live peacefully and prosperously. Meanwhile, if the mother dies, custody of the child passes to the maternal grandmother as long as the grandmother is the child's direct grandmother.

#### **c. Inheritance Law**

In relation to inheritance issues, Tunisia generally only codifies the legal provisions of the Maliki school. However, there are several things that differ from the provisions of the Malik school, namely by basing it on the opinions of legal experts from other schools. An example is article 143 (a) that daughters and their children can receive inheritance, even though there are other heirs from the male side such as brothers and uncles. This provision shows that the position of daughters and their children is better than the provisions of the Maliki school.<sup>15</sup>

### 3. Codification and Reform of Islamic Family Law in Morocco

#### a. Islamic Family Law Reform in Morocco

The history of family law reform in Morocco began after Morocco proclaimed independence on August 19, 1957, which resulted in a Law called *Mudawwanah al Ahwal al Syakhshiyah*. The history of the birth of Moroccan law began on December 6, 1957 (13 Jumadil Awal 1377 H) with a Royal Decree dated November 22, 1957 (28 Rabiul Thani 1377 H) which announced the birth of the first marriage and divorce. On January 1, 1958, the Divorce Law came into effect throughout the kingdom, covering marriage and divorce. These two books are the result of the work of a committee formed on August 19, 1957 (22 Muharram 1377 H) and consist of 8 chapters.<sup>15</sup>

As a result, the regulation of family law in Morocco was influenced by countries that had long dominated the law politically, namely Spain and France. Among these influences was the codification of family law known as the Code of Personal Status or *Mudawwanah Al Ahwal Al Shakhshiyah* which occurred in 1957-1958. Family law in Morocco established the new legal codification on February 3, 2004, which was later known as *Mudawwanah al-Ahwal al-Syakhshiyah al-Jadidah* or *Mudawwanah al-Usrah*. This law consists of 400 articles, there are 100 additional articles of the law formed in 1957.<sup>16</sup>

Moroccan family law laws are contained in *Code of Personal Status* or *Mudawwanah al-ahwal Shakhshiyah* which was passed in 1957, is a collection of Moroccan family law laws containing more than 300 chapters, arranged into 6 books, namely Book I on Marriage, Book II: On the annulment of marriage, Book III on the Birth of Children and its Legal Consequences, Book IV on Legal Control and Guardianship, Book V on Wills, Book VI on Inheritance.

In general, the main content of the reform of Islamic family law in Morocco contains several important matters concerning the following aspects:

1. The equal position of husband and wife in family responsibilities
2. Requirements for property rights for wives after divorce
3. The freedom of a child to choose a father or mother who will have custody of him/her.
4. Giving the wife the right to ask for a divorce
5. The requirement for permission from the first wife for polygamy
6. Provision of housing guarantees for children in cases of parental divorce
7. Increasing the marriage age for women, from 15 to 18 years
8. Abolishing guardianship in marriage and guaranteeing the right to autonomy for women.

As for the contents of *Code of Personal Status* or *Mudawanah al-ahwal Shakhshiyah* or “*Mudawwanah al-Usroh*” is as follows:

### 1. Marriage Law

The marriage law in force in Morocco is not much different from the marriage law in other Islamic countries, including Indonesia. Regulations and laws related to marriage are almost the same as in Indonesia. The school of thought that is the guideline in Morocco is the Maliki School, while in Indonesia it is the Syafi'i School.<sup>17</sup> The following are the regulations in Moroccan marriage law:

#### a. Marriage Age Limit

Limit The minimum legal age of marriage in Morocco for men is 18 years, while for women it is 15 years. This is the age limit for prospective brides and grooms applied in Morocco. Such age restrictions are not found in regulations or the Qur'an, hadith or fiqh. However, scholars of the madzhab agree that baligh is one of the requirements for a valid marriage,<sup>18</sup> which is marked by menstruation for women and wet dreams for men. The age of menstruation for women and wet dreams for men is never the same depending on conditions influenced by genetics and hormones of each.

#### b. Guardians and Women's Freedom

Morocco requires a guardian and the consent of both parties to enter into a marriage, and in principle prohibits forced marriage, not recognizing the right of *ijbar*. The consent of the parties is mandatory and prohibits forced marriage on the grounds that it is feared that the child will be unhappy with the marriage.<sup>19</sup>

Then regarding the marriage guardian in family law in Morocco and as explained above will also be discussed in several articles. Specifically, Article 13 regulates that in marriage, men and women can marry, the dowry cannot be canceled, there must be a guardian at a certain time, and a reliable witness. The discussion of guardianship is also stated in Article 17 which requires a power of attorney for marriage using a guardian.

The explanation of the position of the guardian in marriage is also mentioned in Article 24. Guardianship in marriage is a woman's right (not the right of parents, grandparents, etc.). A woman who has understood can marry another man or she can hand it over to her guardian. This provision has eliminated the position of the guardian in marriage, because the marriage contract belongs to the bride, even though the one who marries is her guardian, legally must confirm the transfer of guardianship rights to the parents (guardians). This provision also eliminates the position of the wali adhal (guardian

judge) because in essence the wali adhal arises because the parents have the right of *ijbar* over their daughter.

**c. Marriage Dowry**

In Morocco, in the law *Code of Personal Status* or *Mudawanah al-ahwal Shakhshiyah* which regulates the dowry is specifically discussed in a separate chapter, namely in chapter 4 articles 16-24. Where the discussion begins with the definition of what can be a dowry and general provisions about the dowry. Regarding the definition of dowry, it is stated that the dowry is money given by the husband to show his desire to carry out the marriage contract to build a family and strengthen the foundation of affection between husband and wife.<sup>20</sup> As for what can be a dowry is anything that is legally the object of the contract and there is no minimum and maximum limit for the dowry.<sup>21</sup> Then it is stated that the dowry may be paid in cash or by debt, in whole or in part, at the time of the marriage contract. The obligation to pay the dowry in whole or in part is after sexual intercourse has occurred. Then the wife is also entitled to a full dowry for two reasons, namely death or having had sexual intercourse (*dukhul*).

Constitution It also regulates the status of the dowry, the dowry is the absolute property of a woman and the woman has the right to use it as she wishes. A husband has no right to demand a dowry for household goods, furniture or clothing. It is also explained that a guardian, be it a father or someone else, may not accept anything for himself that is related to his daughter's marriage or to anyone who makes him a guardian.

**d. Marriage Registration**

During the marriage, Morocco also requires marriage registration. In addition to requiring marriage registration, Morocco also requires a signature from a notary in order for the marriage registration to be valid. In addition, the original marriage certificate must be submitted to the court. Likewise, it is mandatory for the wife to be given the original record and a copy from the husband, within a maximum of 15 days from the date of signing the marriage contract.

Then Morocco banned *Urfi* marriage or *sirri* marriage. Marriage must be registered at the relevant Religious Office as stipulated in the Code of Personal Status Law or *Mudawanah al-ahwal Shakhshiyah*. It is also explained that there are collective marriages or mass marriages in Morocco. So marriage registration becomes an obligation. The reason is, the Moroccan kingdom has given the poor the opportunity to attend mass weddings that are usually held by the Moroccan government once a year.<sup>22</sup>

**e. Polygamy**

In terms of polygamy, Morocco differs from Tunisia in terms of the prohibition of regulations related to polygamy, which basically aims to limit polygamy with the aim of providing justice for the wife. In the Code of Personal Status Law or Mudawanah al-ahwal Shakhshiyah it is stated that if there is a fear of injustice for women, polygamy should not be implemented. However, there is no part of the law that explicitly regulates the husband's ability to act fairly in matters of polygamy.

As for the contents of the law *Code of Personal Status* or Mudawanah al-ahwal Shakhshiyah which regulates polygamy, is as follows:

1. If a man wants to practice polygamy, he must inform the prospective bride that he already has the status of husband.
2. There is a prohibition on ta'lik talak by women to prospective husbands not to practice polygamy. If it turns out that the husband violates this, then the wife has the right to file a divorce suit in court.
3. If the second marriage results in the first wife being sick and injured due to being taken or neglected, then the first wife has the right to dissolve their marriage.<sup>23</sup>

In addition, Moroccan family law also stipulates that a wife has the right to seek divorce from the court on the grounds that the husband has treated his wife unfairly.

**f. Divorce and Court**

Based on the law written in *Code of Personal Status* or Mudawanah al-ahwal Shakhshiyah, the wife has the right to file a divorce suit in court if:

1. Husband left wife for a year without any clear explanation.
2. The husband has a chronic illness that makes his wife hurt and suffer.
3. The husband cannot keep his promise to his wife to do the things they have agreed upon.
4. The existence of violence or domestic violence from husband to wife makes the household disharmonious and makes it impossible to continue the marriage.
5. Husband is unable to provide for or provide living expenses for wife

The majority of scholars of the school of thought, both Shafi'i, Hambali and Maliki, agree on the above matters as reasons for a wife to sue a judge for divorce, while the Hanafi school of thought is of the

view that a judge does not have the authority to issue a divorce, unless the husband suffers from a sexually transmitted disease.

**g. Inheritance Law**

The principle of *wajibah* will in Morocco adopted by Tunisia from Egyptian will law in 1946 is also applied in Morocco with some changes. Where Morocco is the fourth and last country after Egypt, Syria, and Tunisia to adopt this rule. According to the Code of Personal Status or *Mudawanah al-ahwal Shakhshiyah*, the right to receive *wajibah* will is available to the children and so on down from the male children of the deceased testator. This rule is not found in any school of thought in traditional *fiqh*, because inheritance is only intended for living heirs.

**4. Contribution of Islamic Family Law Reform in Tunisia and Morocco to the Development of Islamic Family Law in the World**

The reform of family law in Tunisia and Morocco is part of a major product for building a modern state. A few months after their independence, the Tunisian and Moroccan governments immediately enacted family laws, which many observers considered quite advanced in interpreting Islamic law, especially in defending women's rights. However, for certain groups, the family laws were considered to violate and even oppose Islamic law. The new rules not only opposed traditional Muslim practices but also declared a confrontation with them, something that the French nation had never done. The legal reforms in Tunisia and Morocco were also inspired by legal reforms in Egypt, Sudan, and Syria. This reality motivated Tunisian legal experts to draft the law.

In its development, in addition to Islamic law, the Tunisian state also adopted the principles of French law, so that the output of the legal system produced is a synergistic blend of the principles of Islamic law (Maliki and Hanafi schools of thought) and the principles of French civil law.<sup>24</sup> The draft law received a response from the government, where the government then formed a committee to draft the laws officially. The draft was finally enacted shortly after Tunisia officially became independent (March 20, 1956). The Tunisian government enacted family law laws that were adjusted to the social changes that occurred in Tunisia.

The renewal of Islamic family law in Muslim countries continued to develop starting from the beginning of the 20th century, especially regarding marriage, divorce and inheritance. This effort was started by Turkey (1917), then Lebanon (1919), Egypt (1920 and 1929), Jordan (1951), Syria (1953) and Tunisia is one of the Muslim countries that experienced this phenomenon in 1956. This renewal effort has several goals, including (1) unification of family law, (2) improving the status of

women, and (3) responding to developments in the era because the classical fiqh concept is considered unable to answer it.

As for the contribution to the renewal of family law, Islam influences and impacts the flexibility of understanding of Islamic family law in Muslim countries that apply Islamic law as a basis and reference in deciding family cases for Muslims. Accommodation of contemporary issues such as gender issues and children's rights is the main focus in renewing Islamic family law, so that the face of Islam in the eyes of the world community becomes friendlier and more concerned with various social changes that occur in global society.

## E. CONCLUSION

From the explanation regarding the renewal of Islamic family law in Muslim countries such as Tunisia and Morocco, the following conclusions can be drawn:

The reform of Islamic family law in Tunisia was carried out progressively and seemed controversial with the formation of the Tunisian Code of Personal Status or *Majjallah ahwal al Syakhshisyah*. The family law contains rules related to marriage, such as the age of marriage, marriage agreements, the prohibition of polygamy, the elimination of the right of *ijbar* for guardians, the right to maintenance, invalid marriages. In addition to regulating marriage issues, Tunisian family law also regulates divorce issues such as triple divorce, divorce fines (*al-Jirayah al-Umriyah*), maintenance for the wife, child maintenance and inheritance law.

In addition to Tunisia, Islamic family law reforms were also carried out in Morocco. Morocco also carried out progressive family law reforms, although not as controversial as Tunisia. The Moroccan family law is called *Mudawwnah ahwal al Syakhshisyah*. The family law contains legal regulations related to marriage law, including the age limit for marriage, guardians and women's freedom, marriage dowry, marriage registration, polygamy, divorce and courts and those related to inheritance law.

The contribution of Islamic family law reform has an influence and impact on the flexibility of understanding of Islamic family law in Muslim countries that apply Islamic law as a basis and reference in deciding family cases for Muslims. Accommodation of contemporary issues such as gender issues and children's rights is the main focus in carrying out Islamic family law reform, so that the face of Islam in the eyes of the world community becomes friendlier and more concerned with various social changes that occur in global society.



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