

THE IMPLEMENTATION OF ISLAMIC FAMILY LAW AND DIVORCE CASES IN EGYPT

Ulva Hiliyatur Rosida

STAI Nahdlatul Wathan Samawa

Keywords:

Islamic Family Law, Divorce

Correspondence Address:

ulva.hiliyaturrosida@stainwsamawa.ac.id

Abstract: This paper discusses Islamic family law in Egypt. The Implementation of Islamic family law in the Islamic world is codified law and uncoded law. Codified law means countries with Muslim residents whose laws or regulations relating to the Islamic family in their country have been regulated and established in writing in the form of laws. Uncoded law means countries with Muslim populations that apply Islamic family law but have not been regulated or established in writing or in the form of laws. Divorce cases in Egypt must be recorded in court. This country uses the theory of *maslahah al-mursalah* from the school of Imam Malik in discussing divorce before the Court, or it must be written in the court's administration and must be known by both parties. This is motivated by the benefits in it. In addition, a wife also has the right to apply for *khulu'* before a court hearing on the grounds specified in the regulations. This paper uses a literature study research method where research materials are not obtained from calculations or statistical procedures. This research is necessary to discuss because it significantly contributes to scientific treasures and still needs to be written by researchers.

INTRODUCTION

This scientific paper is critical to be known by everyone, whether an academic or practitioner, because this paper is in the form of knowledge related to how the application of Islamic family law in the Islamic world, in this case in Egypt or the Arab Republic of Egypt. A little writing discusses this matter, both in books and in journals, even though this is necessary to add to the wealth of scholarship and insight as to what precisely the implementation of Islamic family law is there. As well as how divorce cases in Egypt are handled.

Among the discussions in Islamic family law are marriage and divorce. Marriage is a *sunnatullah* that applies to all creatures of Allah *subhanahu wa ta'ala*. All that Allah creates for the Exalted is in pairs and matches. Without marriage, man cannot continue his life history. Marriage unites two human partners and binds the covenant in the name of Allah, both of which aim to build a home that is *sakinah*, *mawaddah* and full of affection.

Various forms of marriage problems and the problem of marriage are part of the problem of study in Al-Ahwal As-Syakhshiyah (Islamic Family Law). Divorce is the final effort in breaking the bonds of marriage or marriage. Divorce would not exist without marriage first. It is well known that in the teachings of Islam, divorce is an act that Satan and Satan are very pleased with because they are natural enemies of humanity.

However, family cases in the form of divorce continue to exist in every place and State, not only in the Unitary State of the Republic of Indonesia but also in the State of Egypt, which is discussed in this scientific article. For this reason, this paper will be concerned about the application of Islamic family law in terms of its nature and the application of it to divorce cases in the Arab Republic of Egypt.

RESEARCH METHODS

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

RESULTS AND DISCUSSION

a. Application of Islamic Family Law

Islam has a law commonly called Islamic law; this law has 2 (two) understandings, namely shari'a and fiqh. Islamic law is called Islamic Law in Western references, and part of Islamic law is al-ahwal al-syakshiyah or Islamic family law. An exertion of thought or *ijtihad* can be used to reform and apply Islamic law. The application of Islamic family law, in this case, the perspective of codification of laws or regulations, can be divided into two forms of nature, including the following:

1. *Codified Law*

Codified law means that Islamic countries with a majority Muslim population 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 rules. 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, as in Egypt: Personal Status (Amendment) Law 1985 and Earlier Legislation (Egypt: Personal Rights (Amendment) Law 1985 and Recent Law).

The Egyptian state instituted and marked the renewal of Islamic 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 No. 44 of 1979. This law was later updated as personal status (Amendment) Law No. 100 of 1985.

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

Initially, the application of Islamic family law in the form of codifying family law formed into this book has yet to be officially declared valid by the government. However, the judges made the codification a reference or guide in deciding various personal and family matters in 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.

Article 13 of the Code of Judicial Procedure also states that discussing al-Ahwal as-Shakhshiyyah in Egypt includes discussions on individuals, experts and families. The application of al-Ahwal as-Shakhshiyyah or Islamic Family Law in different countries can differ according to the country's socio-cultural and political turmoil.

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

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

2. *Uncodified Law*

Uncodified law means that there are countries that have Muslim populations and apply Islamic family law but have not been regulated and have not been formed in

writing or the form of laws, and this country is known and known as a country with traditionalist Muslim populations, like Saudi Arabia and others.

b. Divorce Cases in Egypt

As discussed in the introduction, marriage and divorce are among the discussions in Islamic family law. Marriage is a *sunnatullah* that applies to all creatures of Allah *subhanu wa ta'ala*. All that Allah creates for the Exalted is in pairs and matches. Without marriage, man cannot continue his life history. Marriage unites two human partners and binds the covenant in the name of Allah, both of which aim to build a home that is *sakinah*, *mawaddah* and full of affection.

According to Islamic Sharia, marriage's purpose is to fulfil religious teachings and instructions to create a harmonious, happy and prosperous family. Prosperous in creating inner and outer tranquillity, balanced by carrying out rights and obligations as husband and wife. With this arises comes happiness, which is affection between family members.

Various forms and forms of marriage problems. The problem of marriage is part of the problem of study in the field of *Al-Ahwal As-Syakhshiyah* (Islamic Family Law). Divorce is the final effort in breaking the bonds of marriage or marriage. Divorce would not exist without marriage first. It is well known that in the teachings of Islam, divorce is an act that Satan and Satan are very pleased with because they are natural enemies of humanity. This can be known as what the Prophet said in his words, which read:

حدثنا أبو كُرَيْبٍ محمد بن العَلَاءِ وإِسْحَاقُ بن إبراهيم واللفظ لأبي كُرَيْبٍ قَالَا أَخْبَرَنَا أَبُو مُعَاوِيَةَ حَدَّثَنَا الْأَعْمَشُ عَنْ أَبِي سُفْيَانَ عَنْ جَابِرٍ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِنَّ إِبْلِيسَ يَضَعُ عَرْشَهُ عَلَى الْمَاءِ ثُمَّ يَبْعَثُ سَرَايَاهُ فَأَذْنَاهُمْ مِنْهُ مَنْزِلَةً أَعْظَمُهُمْ فِتْنَةً يَجِيءُ أَحَدُهُمْ فَيَقُولُ فَعَلْتُ كَذَا وَكَذَا فَيَقُولُ مَا صَنَعْتَ شَيْئًا قَالَ ثُمَّ يَجِيءُ أَحَدُهُمْ فَيَقُولُ مَا تَرَكْتُهُ حَتَّى فَرَّقْتُ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ قَالَ فَيُذَنِّبُهُ مِنْهُ وَيَقُولُ نَعَمْ أَنْتَ

Divorce in Arabic is called *Talak* or *at-talaq*; the husband determines the right to *talaq* in Islamic law. *Khulu'* is commonly referred to as *talaq tebus*, and this can usually be done by wives who want to sue for divorce from their husbands or break the marriage ties, which is done by suing for divorce in Court. Law No. 44 of 1979, issued by Presidential decree amending the 1920 Law and the 1929 Law, states that the husband's declaration of *talaq* must be recorded, and notification of this matter

must be notified to the wife. Divorce will never occur if the divorce notice has not reached the wife.

The discussion of divorce before the court must be written in the court administration. The Arab Republic of Egypt or Egypt does not impose or implement the Hanafi madhhab, but it does apply or apply the Maliki madhhab in this case. This is evidenced by the 1920 Act and the 1929 Act, which states that the wife may request the termination of marriage. For the reason or reason that the husband disappeared for one year and did not provide a living, the husband was imprisoned for three years with permanent legal force and could no longer provide for his mind. The reason or reason the Egyptian State uses the Maliki madhhab in this case is that it aims for society's benefit and social interests to be adequately resolved. In addition, Law No. 25 of 1920 also contains fundamental issues related to family law, including articles on the right to sue for divorce because the husband is disabled or seriously ill and cannot be cured.

Egypt uses the theory of *maslahah al-mursalah* from the school of Imam Malik in discussing divorce before the court or should be written in the administration of the court. This is motivated by the benefits in it, including the following:

1. Have legal certainty

Talaq that the husband has imposed on the wife can have permanent legal certainty. When both parties want to remarry with someone else, it can facilitate marriage registration.

2. There is certainty about the wife's livelihood.

The certainty of income for the wife, who is masked here, is the income of 'iddah. When the divorce is carried out in Court, the wife gets legal certainty regarding the 'iddah bread.

3. There is certainty about child support and protection

When a husband and wife have divorced, they must still support and nurture their children. In another case, when divorce is not carried out in a court hearing, there will be no guarantee that the child will get his rights in the form of bread, protection and maintenance.

In 1897, rules and procedures for Shari'ah courts were issued, stating that written documentation was required regarding marriage, divorce and polygamy. As

for Law No. 25 of 1920 and 1929, it has been said that several reasons can allow the termination of marital relations or (divorce), including the following:

1. Sexual incompetence of the husband.
2. Shiqaq between husband and wife.
3. Sentenced to imprisonment for three years with a decree that has a fixed law.
4. Disappeared for a whole year.
5. The husband does not provide for him.

Wives abandoned by their husbands can now sue by filing for divorce legally with the Religious Court (Shar'iyyah Court) in Egypt, one of the results of the reform of family law in Egypt, which is considered rapid progress. About Khulu', if the wife requests a divorce from the Court, which the arbitrator handles, the Court has the authority to terminate the marriage, although the wife must pay compensation. Then, the reform of personal status law was confirmed by Presidential Decree Anwar Sadat in 1979, which is as follows:

- The demand is that the husband register talaq and inform his wife that she is divorced.
- Allow the first wife to file a divorce lawsuit or request a divorce on the grounds or reasons for the husband taking the second wife.
- Uphold the rights of wives in the care and maintenance of children (hadhanah) and the division of property after divorce.
- The law has deprived a husband of the right to force his disobedient wife to return to her parent's home.

There is a problem in this regard, which is related to the reforms mentioned above: The reform of the personal status law confirmed by the Presidential Decree of Anwar Sadat in 1979 provoked a backlash from conservatives. In 1985, Egypt's High Court ruled that the law was unconstitutional. As a result, this led to great disappointment with the growing Egyptian feminist movement. After the 1979 Act, in an attempt to reconcile the two sides, a compromise law was enacted, which, in this case, could dilute the reforms of 1979 by the People's Assembly.

The procedure or mechanism of divorce cases in Egyptian courts is mentioned in the 1929 Law, which has been amended or added to the Law of 1985, which states that when a husband divorces his wife, he will get a record in the form of a divorce record from the Court within 30 days from the period decided by the Court where the divorce application is filed. Then, if the wife was present when the divorce

record was made, the wife was deemed to have known the validity of the divorce. Conversely, if the wife is not current, the court clerk will forward the divorce letter or record by assigning the bailiff to send a notice in the form of a copy of the note or letter to the wife. Thus, a divorce must be legally known by both parties, the husband and wife, and must be registered in court.

CONCLUSIONS AND RECOMMENDATIONS

The conclusion of this discussion is as follows:

1. The application of Islamic family law in the Islamic world is codified and uncoded. Codified law means countries with Muslim residents whose laws or regulations relating to the Islamic family in their country have been regulated and established in writing in the form of laws. Uncoded law means countries with Muslim populations that apply Islamic family law but have not been regulated or established in writing or in the form of laws.
2. Divorce cases in Egypt must be recorded in court. This country uses the theory of *maslahah al-mursalah* from the school of Imam Malik in discussing divorce before the Court, or it must be written in the court's administration and must be known by both parties. This is motivated by the benefits in it. In addition, a wife also has the right to apply for *khulu'* before a court hearing on the grounds specified in the regulations.

REFERENCES

- Abdullah, Boedi dan Beni Ahmad Saebani. *Perkawinan dan Perceraian Keluarga Muslim*. Cet. 1. Bandung: Pustaka Setia, 2013.
- Al Naisaburi, Muslim bin al Hajjaj Abul Husain Al-Qusyairi. *Shahih Muslim*. Beirut: Daar Ihya' at-Turots al-'Aroby.
- Asmara, Musda. *Urgensi Talak Di Depan Sidang Pengadilan Perspektif Masalah Mursalah*. Al Istimbath: Jurnal Hukum Islam, Vol. 3. No. 2. 2018.
- Barkatullah, Abdul Halim dan Teguh Prasetyo, *Hukum Islam Menjawab Tantangan Zaman Yang Terus Berkembang*. Cet. 1. Yogyakarta: Pustaka Pelajar, 2006.
- Fuad, Ahmad Masfuful. *Pergolakan Politik Mesir Masa Kolonial Dan Dampaknya Terhadap Reformasi Hukum Keluarga Islam*. Mahkamah: Jurnal Kajian Hukum Islam. Vol. 1. No. 2. Desember, 2016.
- Ghazaly, Abd. Rahman. *Fiqh Munakahat*. Ed. 1. Cet. 2. Jakarta: Kencana, 2006.

- Kurniati. *Hukum Keluarga Di Mesir*. Al-Daulah. Vol. 3. No. 1. Juni, 2014.
- Mardani, *Hukum Perkawinan Islam Di Dunia Islam Modern*. Ed. 1. Cet. 1. Yogyakarta: Graha Ilmu, 2011.
- Rosida, Ulva Hiliyatur dkk. *Pengantar Hukum Islam di Indonesia*. Cet. 1. Tasikmalaya: Edu Publisher, 2021.
- Rosida, Ulva Hiliyatur. *Keadilan Dalam Hukum Islam dan Urgensinya Terhadap Perkara Poligami*. KHULUQIYYA: Kajian Hukum dan Studi Islam, Vol. 5 No.1. Januari, 2023.
- Rosida, Ulva Hiliyatur. *Prosesi Ijab Dan Kabul Via Telepon Ditinjau Dari Kaca Mata Ushul Fiqh Dan Qowaid Fiqhiyyah*. Al-Bayan: Jurnal Hukum dan Ekonomi Islam, Vol. 2 No.1. Juni, 2022.
- Rosida, Ulva Hiliyatur. *Telaah Ijtihad Masa Kini: Sebuah Kerangka Praktis Dalam Istimbath Hukum Keluarga Islam*. Al-Bayan: Jurnal Hukum dan Ekonomi Islam, Vol. 2 No.2. Desember, 2022.
- Sadari, *Hak Perempuan Pasca Perceraian: Analisis Perbandingan Hukum Keluarga Di Indonesia Dan Dunia*. Istimbath Jurnal Hukum, Vol. 12. No. 2. November, 2015.
- Sanusi, Nur Taufiq. *Perceraian Dalam Perundang-Undangan Negara Muslim. Studi Perbandingan Hukum Keluarga Islam Pakistan, Mesir dan Indonesia*. Al-Qadau, Vol. 4. No. 2. Desember, 2017.
- Soemiyati, *Hukum Perkawinan Islam Dan Undang-Undang Perkawinan (Undang-Undang No. 1 Tahun 1974, tentang Perkawinan)*. Yogyakarta: Liberty.
- Summa, Muhammad Amin. *Hukum Keluarga Islam di Dunia Islam*. Jakarta: Raja Grafindo Persada, 2005.