

ANNULMENT OF MARRIAGE AND KHULUK IN FAMILY LAW IN MUSLIM COUNTRIES: A COMPARATIVE STUDY OF FAMILY LAW IN SYRIA, SUDAN, TURKEY AND INDONESIA

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Abstract

This research discusses the renewal of family law which regulates marriage, child-rearing, inheritance, and so on in several Muslim countries. In line with the times, countries, where the majority of the population is Muslim, have begun to reform their respective country's legal systems, both criminal law, and civil law. The research in this article aims to determine the comparison of one country to another according to the level of secular, liberal, or viewed from another side in efforts to reform family law. The research in this article is qualitative research using the literature study method. The research in this article uses a comparative and historical approach. Sources of data in this study are legal products of Islamic countries, scientific journals, and other supporting documents. The research in this article finds that Syria and Sudan are examples of Islamic countries that still maintain Islamic law and its values in their laws and regulations. Meanwhile, Turkey has gone far beyond Islamic law and adopted Western legal standards. Indonesia did not adopt Islamic law as a whole and also did not adopt Western law as a whole.

Keywords : Annulment of Marriage, Khuluk, Family Law, Muslim Countries.

Abstrak

Penelitian ini membahas tentang pembaharuan hukum keluarga yang mengatur tentang perkawinan, pengasuhan anak, warisan, dan lain sebagainya di beberapa negara Muslim. Sejalan dengan perkembangan zaman, Negara - negara yang mayoritas penduduknya beragama Islam mulai memperbaharui system hukum negaranya masing-masing, baik hukum pidana, maupun hukum perdata. Penelitian dalam artikel ini bertujuan untuk mengetahui perbandingan satu negara dengan negara lain menurut tingkatan sekuler, liberal atau ditinjau dari sisi lainnya dalam upaya pembaharuan hukum keluarga. Penelitian dalam artikel ini adalah penelitian kualitatif dengan metode studi kepustakaan. Penelitian dalam artikel ini menggunakan pendekatan komparatif dan pendekatan historis. Sumber data dalam penelitian ini adalah produk hukum negara-negara Islam, jurnal ilmiah, dan dokumen pendukung lainnya. Penelitian dalam artikel ini menemukan bahwa Suriah dan Sudan adalah contoh negara Islam yang masih mempertahankan hukum Islam dan nilai-nilainya dalam peraturan perundang-undangannya. Sementara itu, Turki telah jauh melampaui hukum Islam dan mengadopsi standar hukum Barat. Indonesia tidak mengadopsi hukum Islam secara keseluruhan dan juga tidak mengadopsi hukum Barat secara keseluruhan.

Kata Kunci : Pembatalan Pernikahan, Khuluk, Hukum Keluarga, Negara Muslim.

INTRODUCTION

Muslim countries have long since made changes in the laws of their countries. Among the laws that have been changed and updated are the laws governing family life. Basically the

family law that is being developed in Islamic countries or semi-Islamic countries is a law that fights for women's rights. The reformers of family law considered that the positions of men and women should no longer be discriminated against. In the book *Imra'atunā*

fi as-Syari'ah wa al-Mujtama', Thahir Haddad explains that Islamic law has the characteristic of changing gradually. These changes are proceeding slowly according to the readiness of humans who are still unstable and unprepared. When they are already in a state of awareness and maturity of the high moral importance, sharia will lead to the true degree and purpose of sharia, among which the equal rights of men and women.¹

According to Islamic jurisprudence, theology and historiography, sharia rules are based on revelations handed down by God about his plans for man to the Prophet Muhammad SAW until his death in 632 AD. In order to interpret God's will from available sources, religious scholars developed Islamic jurisprudence (fiqh) from the eighth century onwards. Scholars place God's revelation as the central source, scientifically compiled, official law for human practice, especially in the first two centuries many books of jurisprudence were filled with case studies and regulations. From the beginning, many disagreements were raised, for example, disagreements regarding the sources of sharia, its unchanging character, its scope and its validity as a law.²

Islamic Sharia does not only regulate people's personal lives, but covers the entirety of life on earth, including in regulating a country. Prophet Muhammad SAW besides having a duty as a messenger who delivers Divine treatises to humans, He is also the leader of the state that implements and enforces Islamic sharia in the country he leads.³ In line with the times, countries with

Muslim populations as the majority have begun to update the legal system of their respective countries, both criminal and civil law. Inseparable from the highlight of this change is the family law that regulates marriage, child management, inheritance and others. There are at least two reasons that serve as the basis for legal change and renewal. First, sociological reasons, that is, societies that need and want change. Second, the reasons for the efficiency of the legal bureaucracy in the state.⁴

The theme of family law in Islamic countries has been written in several previous articles, one of which was written by Ahmad Rajafi. In his article, Rajafi mentioned that the establishment and renewal of family law in Indonesia went through several phases of evaluation and evolutionary phases. The renewal of family law in Indonesia was marked by the emergence of Law No. 1 of 1974 on marriage. Then followed by the birth of the Compilation of Islamic Law in 1991.⁵

Other articles were written by Asrizal, Hasbi Umar and Hermanto Harun. The article explains that Sudan and Egypt had a large role to play in fighting for the formalization of Islamic law through taqnin (lawmaking), despite having to overcome the challenges of Western imperialism and secularism.⁶

In an article written in the journal Humanika, Vita Fitria explained that the renewal of family law in Turkey was much earlier than in other Muslim countries.

(8)," Youtube.com, 2018, <https://www.youtube.com/watch?v=SNDD7nvmsAw>.

⁴ Ahmad Bunyan Wahib, "Reformasi Hukum Keluarga Di Dunia Muslim," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 1 (2014): 2-3, <https://doi.org/10.18326/ijtihad.v14i1.1-19>.

⁵ Ahmad Rajafi, "Sejarah Pembentukan Dan Pembaruan Hukum Keluarga Islam Di Nusantara," *Aqlam: Journal of Islam and Plurality* 2, no. 1 (2018): 1-20, <https://doi.org/10.30984/ajip.v2i1.507>.

⁶ Asrizal, Hasbi Umar, and Hermanto Harun, "Pembaharuan Hukum Islam Di Mesir Dan Sudan: Studi Komparasi," *Jurnal Integrasi Ilmu Syari'ah* 2, no. 3 (2021): 1-13.

¹ Thahir Haddad, *Imra'atuna Fi as-Syari'ah Wa Al-Mujtama'* (Kairo: Darul Kitab al-Mishri, 2011), 15.

² Jan Michiel Otto, *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 23.

³ Said Ramadhan Al-Buthi, "Hal Al-Islam Din Wa Daulah - Ta'allam Thumma Takallam | Al-alaqah

basically, the law in Turkey puts more emphasis on elevating the position of women such as the prohibition of pologami, equality in inheritance and the freedom of wives to file for divorce on certain grounds.⁷

Existing studies tend to discuss changes in Islamic law that occur in one or two countries only. Existing studies tend to discuss changes in Islamic law that occur in one or two countries only. Meanwhile, studies that discuss legal reform in some Muslim countries and compare legal products in one country with others have not been discussed properly and comprehensively.

This article focuses on the dynamics of family law reform that occurs in four countries, namely: Syria, Sudan, Turkey and Indonesia. The case studied is the issue of annulment of marriage (fasakh) and khuluk. The purpose of the research in this article is to explain the comparison of one country from another according to the secular, liberal level or in terms of other sides in an effort to reform family law. So that it can be known which Muslim countries still use Islamic law as state law and which countries have abandoned Islamic law and used secular law as a substitute?

The research in this article is qualitative research using the literature study method. The approaches used in this study are comparative approaches and historical approaches. The source of data in this study is the laws of Muslim countries governing family law, scientific journals and other documents that support.

DISCUSSION

Annulment of Marriage and Khuluk in Islamic Jurisprudence

In classical jurisprudence it is explained that there are some differences between the annulment of marriage (fasakh) and khuluk. It is mentioned in the kitab al-Fiqh al-Islāmi wa Adillatūhu that khuluk is specifically related to untying the marriage bond, while fasakh is more common because it is not only related to the marriage contract, but all the contracts that are released (cancelled) are called fasakh be it in the form of buying and selling contracts, marriage contracts and others. Khuluk is created on the basis of voluntary, while fasakh can occur because of voluntary or because of court decisions.⁸

Annulment of Marriage

The annulment of marriage in Islamic jurisprudence terms is known as fasakh. Unlike talak (divorce) which is the separation of a husband and wife through the words of divorce from the husband or through the court, fasakh is more about separation caused by one of the bride and groom having a certain disease, missing or other causes.

Wahbah az-Zuhaili explains the difference between talak and fasakh in the Hanafi school that talak is to end marriage and establish past rights in the form of dowry and others, counting from the three talaks that men have against women. Talak cannot occur except in a valid marriage contract. Whereas fasakh is to cancel the marriage contract from the root or not to pass it on, not counting the number of talaks, usually found in broken or unusual contracts.⁹

In the Shafi'i school, it is explained the reasons that give authority for the husband or wife to choose to continue the marriage or cancel it. Among these causes are: the presence of certain diseases, the presence of deception, the loss of slave status and impotence. The diseases that give the husband or wife the authority to choose between

⁷Vita Fitria, "Hukum Keluarga Di Turki Sebagai Upaya Perdana Pembaharuan Hukum Islam," *HUMANIKA* 12, no. 1 (March 4, 2015): 1–15, <https://doi.org/10.21831/hum.v12i1.3648>.

⁸ Wahbah Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa Adillatub*, 4th ed. (Damascus: Dār al-Fikr, n.d.), 3152.

⁹Az-Zuhaili, 3152–1353.

continuing or annulling the marriage are of several kinds. First, diseases that can affect both men and women, namely: bara disease (vaginal discharge), leprosy and mental illness. Secondly, diseases that affect only men, namely: jabb (vital tools are not intact) and impotence. Third: diseases that only affect women, namely rataq (blockage of female farji with meat), qarn (bones in female farji that block jima').¹⁰

An-Nawawi explains in his book *al-Majmū' Syar al-Muhaddhab* that if a man finds his wife insane, or has a whitish disease, or leprosy, or rataq disease (the farji is closed), or qarn (in his farji there is meat that blocks the jima'), then the man may choose between continuing or annulling the marriage. Likewise, if a woman finds that her husband has a mental illness, or vaginal discharge, or leprosy, or her husband's fital apparatus is severed, or the husband suffers from impotence, then the woman has the right to choose to continue or annul the marriage.¹¹

Khuluk

Khuluk is allowed by most scholars' because of the human need for it in the event of a division in the household and the absence of a common ground between the bride and groom. The wife sometimes hates her husband and does not like to live with him because of her husband's physique or because of his religion or because of his old or weak health and so on. Meanwhile, the wife is afraid that she will not be able to carry out the command of Allah Almighty to obey her husband if the marriage bond is still there. So Islam gave him rights commensurate with talak (which is devoted to men) as a way to escape the bonds

of marriage. Then the wife gives the husband a ransom as the husband spends to marry her.¹²

The khuluk in the Hanafi school is to eliminate the ownership of marriage that is carried out on the acceptance of the wife with lafadz khuluk or similar meaning. What includes the meaning of khuluk is mubāra'ah (liberation), and lafadz. Meanwhile, according to the Maliki school, khuluk is a talak accompanied by ransom (money or otherwise), either from the wife or from other than the wife who is his guardian or others, using lafadz khuluk. According to the Maliki school, khuluk still occurs and is legal even without ransom, this is different from the Shafi'i school which requires iwa (ransom). Khuluk according to the Hambali school is the separation of a husband and wife with a ransom taken from a woman or from another person with a special lafadz. The function of khuluk is the liberation of the wife from marriage without reference' except for the willingness of the ex-wife. According to some scholars' Hambali school, khuluk remains valid even without iwa (ransom) as Maliki school.. But the rājih (strong) opinion in the Hambali school states that iwa is harmonious in khuluk, so it cannot be abandoned as thaman (price) in buying and selling. So if a man is holding his wife without iwa, then it is not valid for his khuluk nor is it valid for his talak unless he uses lafadz talak or talak, then falls talak raj'i.¹³

Comparison of Muslim Countries' Laws on the Annulment of Marriage and Khuluk

One of the phenomena that emerged in the Islamic world in the 20th century was the attempted renewal of family law by Muslim-majority countries. This is done in response to the dynamics that occur in the community. There are at least three things that are the

¹⁰ Muhyiddin An-Nawawi, *Rau ah A - alibin* (Beirut: al-Maktabah al-Islāmiyyah, 1991), 176.

¹¹ Muhyiddin An-Nawawi, *Al-Majmū' Syarh Al-Muhaddhab* (Beirut: Dār al-Fikr, n.d.), 265.

¹² Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa Adillatub*, 7010.

¹³ Az-Zuhaili, *Al-Fiqh Al-Islāmi Wa Adillatub*, 7007–7008.

purpose of updating family law in the Islamic world, namely as an effort to unify the law, raise the status of women, and respond to the developments and demands of the times because the traditional concept of jurisprudence is considered unable to provide solutions to existing problems.¹⁴

The formalization of family law in Turkey was carried out in the tanzimat era with the holding of taqnīn (lawmaking) which sociologically had the support of the Turkish people at the time. The legal reforms that took place in Turkey tended to apply secular European law. Turkey was the first secular state in the Islamic world.¹⁵

Broadly speaking, there are three forms of legal application in Muslim countries. First, countries that still enforce school jurisprudence and are not codified in the form of legislation such as Yemen, Saudi Arabia, Afghanistan, Kuwait, Mali, Nigeria, Mauritania, Somalia, Senegal and others. Second, countries that completely abandoned Sharia law and instead enacted secular laws and modern laws in the form of laws such as Turkey, Tasmania, Albania, the Muslim minority of the Philippines and the Soviet Union. Third, countries that carry out substantive updates in Islamic law and regulatory updates such as Sudan, Egypt, Syria, Jordan, Tunisia, Algeria, Morocco, Iran, Iraq and Pakistan.¹⁶

Comparison of Muslim Country Laws on Annulment of Marriages

In the family law in Syria, there are several articles describing marital separation. Chapters 105 – 108 describe marriage

separation due to illness. Article 109 on marital separation because the husband is missing. Articles 110 and 111 on marital separation because the husband does not want to provide. Chapters 112 – 115 on marital separation due to division in the household.¹⁷

Syrian family law is broadly based on the Hanafi school. So that the resulting chapters are not far from the provisions in the jurisprudence books of the Hanafi school. Among the articles are:

Article 105: The wife may request to be separated from her husband in two circumstances:

- (1) If the husband suffers from one of the diseases that hinder bodily relations on condition that the wife does not suffer the same as what the husband suffers.
- (2) If the husband suffers from mental illness after the contract.

Article 106: the wife's right to request separation from her husband because of the illness described in the previous article becomes void if she knows the disease suffered by the husband after the contract, or knows it and then she is willing to deal with the husband's situation after the contract.

Article 107: if the disease mentioned in article 105 cannot be cured, the trial judge separates the two of them directly. If it is possible to recover, then it is given a suitable leisure time and not exceeding a year. If the disease does not go away, then they are separated.

Article 108: divorced caused by illness is punished talak bain.

Although the above articles are based on the Hanafi school, in general, the above articles are also not much different from the provisions of the Shafi'i school which explains the reasons that give the husband or wife the

¹⁴Mudzhar and Nasution, *Hukum Keluarga Di Dunia Islam Modern, Studi Perbandingan UU Modern Dari Kitab-Kitab Fikih*, 10–11.

¹⁵Ahmad Zayyadi, "Reformasi Hukum Di Turki Dan Mesir (Tinjauan Historis-Sosiologis)," *Al-Mazahib: Jurnal Pemikiran Hukum* 2, no. 1 (2014): 150–72, <http://ejournal.uin-suka.ac.id/syariah/almazahib/article/view/1402>.

¹⁶Asrizal, Umar, and Harun, "Pembaharuan Hukum Islam Di Mesir Dan Sudan: Studi Komparasi," 11.

¹⁷"Al-Qānūn 59 Li Ām 1953 Qānūn Al-A wāl Al-Syakh iyyah," Parliament.gov.sy § (1953), <http://parliament.gov.sy/arabic/index.php?node=201&nid=11333&ref=tree&>.

authority to choose to continue the marriage or cancel it. Among the causes are: the presence of certain diseases, the presence of deception, the loss of slave status and impotent.¹⁸

Not much different from Syria, Sudan also takes its legal products from the Hanafi school. However, there are some provisions that are inconsistent with the jurisprudence of the Hanafi school that create differences in essence with the product of family law in Syria.

Otto explained that the relevant Muslim Personal Law Act (MPLA) in Sudan from 1991 was predominantly based on the Hanafi school. Christians and Jews can use their respective laws with reference to personal status, marriage and divorce if both spouses belong to the same religious community. Members of the South Sudanese tribe are subject to customary law. The customary law with respect to marriage has been codified only for Dinkas, Luos and Fertit in the Passage of the Customary Law Act. However, customary law remains unrecognized and unpublished. If both partners belong to a small community of Hindus, then Hindu law applies.¹⁹

In Sudan, the annulment of marriage (*fasakh*) is regulated in article 204 and article 205. Article 204 explains that a marriage is annulled if one of its pillars is defective or there is a barrier contrary to the terms of marriage. Article 205 explains that a marriage contract is cancelled (*fasakh*) if a marriage contract is performed with one of the women who has a mahram relationship with the groom or there is something that prevents sharia from continuing the marriage. Then in article 206 it is explained that the judge must order that the plaintiffs leave each other until a judgment is issued in the suit of annulment.²⁰

¹⁸An-Nawawi, *Ran ab A - alibin*, 176.

¹⁹Otto, *Sharia Incorporated; A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, 205.

²⁰“Qānūn Al-A wāl Al-Syakh iyyah Li Al-Muslimīn Li Sanah 1991 as-Sūdān” (2019), <http://www.lawsofsudan.net/dmdocuments/ahwal.pdf>.

Sudan's law also regulates the problem of husbands who are found to be disabled or have incurable diseases based on expert testimony. This is stated in articles 151 and 152 as follows:

Article 151:

(1) It is permissible for the wife to ask for a talak decision from the husband because of the disability or severe illness she suffered before the contract which the wife did not know about, or to be exposed after the contract and the wife was unwilling, be it a disease of reason or a disease that attacked an incurable limb, or it could be cured but after a year, while the wife could not live with him because of harm.

(2) If a defect or disease can be cured before a year, then the court grants a year of relief before giving the talak decision.

Article 152: to find out the defects and diseases need the help of an expert.

If the husband is impotent, the wife has the right to seek a decree against her husband as described in sections 153-161. The following is a description of some of the articles explaining the provisions against impotent husbands:

Article 153: the wife is allowed to seek a decision because the husband is suffering from impotence. Whether the impotent exists before the contract or after the contract and *jima'*.

Article 154: the right to request talak status because impotent does not fall only by mutual willingness.

Family law in Syria and Sudan has many similarities, especially both are shaded by the same school, the Hanafi school. On the other hand, Turkey differs considerably from the two countries. Turkey is already far from the provisions of jurisprudence and closer to the legal system in the secular West.

A married woman in Turkey can choose to live separately from her husband. Meanwhile, the affairs of children's rights and property are regulated in accordance with the

provisions of article 197 of the Turkish Civil Law which reads: "One of the spouses has the right to live separately if their personality, economic security or family peace are in serious danger due to living together. If the suspension of cohabitation has a valid basis, the judge must take the necessary measures on the amount of money that one party will donate to the other, the enjoyment of the dwelling and household items and the regime of the spouse's property at the request of one of the spouses. One of the spouses may make the aforementioned request if the other spouse refrains from living together without a valid basis or living cohabitation is impossible for any other reason. If the spouse has a child who is not old enough, the judge must take the necessary measures in accordance with the provisions governing the relationship between the parent and the child".²¹

Article 179 of the Turkish Civil Code makes it very clear that husbands and wives are at one degree in determining the choice of continuing the marriage or canceling it. The application for annulment of the marriage will be accepted on justifiable grounds in court. All the things that have the effect of annulment of a marriage are regulated in different rules.²⁴

Indonesia's position is in the middle between Turkey, Syria and Sudan. Indonesia is not as secular as Turkey nor is it dependent on one sect such as Syria and Sudan, although the majority of the population is Shafi'i. In Indonesia, matters related to marriage are regulated in Law Number 1 of 1974 concerning Marriage. In 2019 there were several articles that were changed, namely: article 7 and articles 65 to 66 inserted 1 (one) article, namely Article 65A.²⁵

The annulment of marriage in the Marriage Act is regulated in articles 22 to 28. Article 22 on the permissibility of annulment

of marriages. Article 23 parties who can annul a marriage. Articles 24, 25 and 26 on the procedure for filing an annulment of marriage. Article 27 on the cause of the annulment of marriage. Article 28 describes the decision of the court and the rights of the two persons who annul their marriage.²⁶

The following articles on the annulment of marriage in Indonesia according to the Marriage Law:

Article 22: A marriage may be annulled if the parties do not meet the conditions for entering into a marriage.

Article 23: Those who can apply for annulment of marriage are:

- (1) Families in a straight line of descent from husband or wife.
- (2) Husband or wife.
- (3) The authorized officer only during the marriage has not been decided.
- (4) The appointed officer subsection (2) of Section 16 of this Act and any person has a direct legal interest in the marriage, but only after the marriage has broken up.

Article 24: Whoever because the marriage is still bound by himself with one of the two parties and on the basis of the existence of the marriage may apply for the annulment of the new marriage, without prejudice to the provisions of Article 3 paragraph (2) and article 4 of this law.

Article 25: An application for annulment of marriage is filed with the Court in the jurisdiction where the marriage takes place at the place of residence of both husbands and wives, husbands or wives.

Article 26: A marriage performed in advance of an unauthorized registrar of marriages, an invalid marriage guardian or which is performed without being attended by 2 (two) witnesses may be requested for annulment by the family in a straight line of descent from the husband or wife, the prosecutor and the husband or wife.

²¹"Turkish Civil Code," Pub. L. No. 4721 (2018), <https://rm.coe.int/turkish-civil-code-family-law-book/1680a3bcd4>.

- (1) The right to annul by husband or wife on the grounds of subsection (1) of this article is void if they have lived together as husband and wife and may present an unauthorized marriage certificate and the marriage must be renewed to be valid.

Article 27: A husband or wife may apply for annulment of marriage if the marriage is performed under unlawful threat.

(1) A husband or wife may apply for annulment of marriage if at the time of the marriage there is a misconception about the husband or wife.

(2) If the threat has ceased, or the guilty person has become aware of the circumstances, and within 6 (six) months thereafter remains alive as a husband and wife, and does not exercise his right to apply for annulment, then his right is severed.

Article 28:

(1) The annulment of a marriage shall commence after the decision of the Court has the force of law which remains and is valid from the time of the marriage.

(2) The decision shall not apply retroactively to:

- a. children born from such marriages.
- b. a husband or wife acting in good faith, except against common property if the annulment of a marriage is based on the existence of another prior marriage;
- c. The other third persons included in A and B to the extent that they acquire rights in good faith before a decision on annulment has permanent legal force.²⁷

An example of a court ruling in the issue of annulment of marriage is the case of marriage annulment case filed by Emilyani binti Drs. H. Arfan Rouf, age 32 years (as Plaintiff), over Helmut Rivaman Abdurrahman bin Durry

Abdurrahman, age 31 years (As Defendant I), who remarried to Wahyuni Wulan binti Abdul Wahab, age 20 years (As Defendant II). Because the marriage held by defendant I with Defendant II is considered to violate the provisions of article 4 (1) and article 5 (1) of Law Number 1 of 1974 concerning marriage, because Defendant I committed polygamy without obtaining permission from the Religious Court and or without the permission of the plaintiff. Judgment handed down by the East Jakarta Religious Court Number: 1121/Pdt.G/PA. JT on March 29, 2011 AD, was:

1. Grant the plaintiff's suit.
2. Annuling the marriage between defendant I and defendant II which was carried out on February 16, 2010 at the Religious Affairs Office of Pademangan District, North Jakarta.
3. Stating that the quotation of marriage certificate number: 52/23/II/2010 dated February 16, 2010 issued by KUA Pademangan District, North Jakarta City has no legal force.
4. Charge the Plaintiff to pay the costs of this case in the amount of Rp. 1,706,000,-.²⁸

Comparison of Laws of Muslim Countries on Khuluk

As with the family law on the annulment of marriages that has been discussed, the law governing khuluk in Syria and Sudan is almost the same in essence, because both are under the auspices of one school, the Hanafi school. Here is an example of an article describing khuluk in Syria:

Article 95:

- a. Khuluk is punished legally on the condition that the husband has the authority to impose the talak, and the woman is the legal wife.
- b. Women who have not reached adulthood when they are imposed by

Khuluk are not required to pay the ransom except with the permission of the guardian who takes care of the money.

Article 96: Each of the husbands or wives has the right to withdraw the khuluk before it is agreed upon by the other party.

Article 97: everything that can be handed over by shari'a, can be used as a ransom in khuluk.

Article 98: if the khuluk is performed on property that is not a dowry, it must be done, and the two parties who do the khuluk are free from the burden they bear from the dowry, the living of the family.²⁹

The articles governing khuluk in the country of Sudan are almost the same as the articles of khuluk in the state of Syria. Khuluk in Sudanese law is regulated in articles 142 to 147 as follows:

Article 142: Khuluk is the release of a marriage contract on the basis of mutual willingness between the two married couples for a ransom using lafadz khuluk or which has the same meaning.

Pasal 143:

- (1) It is permissible for both married couples to willingly give up each other's marriage contract in a khuluk manner.
- (2) Khuluk is an oath for men and a ransom exchange for women.
- (3) Khuluk occurs by the surrender of a ransom given by the wife.
- (4) Khuluk belongs to the law of talak bain (non-referencing).

Article 144: Khuluk becomes valid on condition that the wife is allowed to manage her property and the husband is able to impose the talak.

Article 145: The ransom in khuluk shall not be a waiver of childcare responsibility or any of the rights of the child.

Article 146: Khuluk is valid in the so-called ransom state with an incorrect designation, and the ransom is void.

Article 147:

(1) If the ransom is mentioned in the khuluk then the ransom must be given.

(2) If there is no mention of ransom in the khuluk then the provisions in the talak shall be imposed.

(3) It is mentioned that ransom but does not use lafadz khuluk or the same meaning, then talak is punished for money.³⁰

In stark contrast to Syria and Sudan which adhere to the Hanafi sect, Turkey adheres to a secular understanding. In Turkey, the term khuluk is not known because basically women there do not need it because their position is equal to that of men in deciding to continue or cancel a marriage by filing it with the court, without the need to issue a ransom handed over to the husband in the form of a dowry or a sum of money. On the other hand jurisprudence gives the specificity of talak for men, and khuluk for women who want to be separated from their husbands using ransom either in the form of returning dowry or giving a sum of money.

The equality of husband and wife in filing a divorce lawsuit with the court is described in article 166 of the Turkish Civil Law as follows:

"If there is severe damage in family life, it is the continuation of the common life can not be expected, one of the spouses can sue for divorce. In the aforementioned cases, if the plaintiff is more guilty, the defendant is entitled to object. However, if this objection constitutes an abuse of rights and if there is no good in the continuation of the marriage for the defendant and the children, the court may decide to divorce."³¹

In the Turkish Civil Law, there is no difference between the reasons for divorce for men and women. Husbands and wives are allowed to demand that the court issue a divorce decree, provided that even if the

divorce decree has been issued, the court may grant judicial sorting if reconciliation between spouses allows. If sorting is granted and no reconciliation occurs between the two until the end of the given period, either party may seek divorce.³²

Therefore, if one falsehoods the other and wants a divorce, while the other party does not want a divorce, the case can be dismissed, provided that it can be proven guilty or innocent in connection with the marriage. However, if the spouses are not reconciled and have not begun to live together in years of torment, then the marital union is considered to have failed to be broken and the court rules support divorce at the request of one of the parties as stipulated in article 166 of the Turki civil law.³³

Not much different from Turkey, the Indonesian Marriage Law also does not explain khuluk, because the breakup of the marriage is realized after being decided by the court. Both husband and wife have the same right in court to sue for divorce on justifiable grounds.

Although in the Marriage Law of 1974 the information of khuluk is not explained, but khuluk can be found in the KHI in the discussion of divorce lawsuits,³⁴ namely article 148:

- (1) A wife who files a divorce suit by way of khuluk, submits her application to the Religious Court which covers her residence along with her reasons.
- (2) The Religious Court shall not later than one month summon the wife and her husband for their respective testimony.
- (3) In the said proceedings the Religious Court gave an explanation of the consequences of the khuluk, and gave its advice.
- (4) After both parties have agreed on the amount of iwadl or ransom, the Religious Court grants an injunction on permission for the husband to pledge his talak before the Religious Court hearing. Against that

determination there can be no appeal and cassation efforts.

- (5) A further settlement shall be taken as provided in article 131 subsection (5).
- (6) In the event that no agreement is reached on the amount of the ransom or iwadl the Religious Court examines and decides as an ordinary matter.³⁵

An example of a court ruling in the khuluk matter is the case of Armelia Gustinawati binti A. Johan P (20 years old) who sued for divorce from her husband Asril Bachtiar bin Bachtiar (28) because She never wanted to and loved her husband from the beginning, once kowtow in front of her parents so as not to take place the marriage. Judgment handed down by the Sungguminasa Religious Court Number: 437/Rev.G/2010/PA. Sgm on April 28, 2011 AD, is :

1. Grant the plaintiff's suit in part.
2. Stipulate to impose the talak khul'i of the defendant, with an iwadh (ransom) in the form of three gold rings, each weighing sati grams and one gold necklace weighing three point five grams and cash in the amount of Rs. 25,000,000,-.
3. Denying plaintiff's arguments other than.³⁶

From the above explanation, it can be seen the level of a Muslim country in determining family law in their respective countries. In this case Turkey is the most secular country because it is far from the provisions of Islamic jurisprudence and law. Next in line is Indonesia because the articles in the Indonesian Marriage Law apply to all religions and are not focused on one particular religious law or school of jurisprudence, in article 2 paragraphs (1) *it is explained that "Marriage is valid if it is carried out according to the laws of each religion and belief"*.³⁷ Sudan and Syria are almost the same, both still use the provisions of jurisprudence, in this case adhering to the Hanafi sect.

Changes and renewals of family law in Muslim countries have had a huge impact on society. Among those impacts are the differences in scholars in responding to the changes. So there is often a heated debate between the group of scholars who reject the renewal of family law and the group that supports it, because the former wants to keep the old law while the other wants a change in family law according to the needs of the times.³⁸

The differences in the attitudes of these scholars create barriers in society, some of them follow the clerics who reject the renewal of the law and some together with the scholars who support the renewal of the law.

CONCLUSION

The study found that some Muslim countries still maintain Islamic values and use them in governing the country and others abandon Islamic law and adopt Western law instead. Unlike the previous research which only discussed the renewal of family law in certain countries. This study discusses the renewal of family law in several Muslim countries and compares them so that it is found that Turkey applies secular law, Syria and Sudan apply Islamic law. Meanwhile, Indonesia is in the midst of not being completely secular and also not applying Islamic law completely.

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