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RESEARCH ARTICLE

Islamic Law in Morocco: Study on The Government System and The Development of Islamic Law

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Abstract: This study discusses Islamic law in Morocco. The author focuses on the study of the government system and the development of Islamic law there. This study used descriptive qualitative method or so-called literature study /library research. Literature study examines data by exploring, observing, examining, and identifying existing knowledge in the literature to get a conclusion of truth, both philosophical and empirical. This study concludes that Morocco is a Muslim country, the population is more than 98% embraced Islam, the system of government is a democratic, social and constitutional monarchy that is based on governed by the 1972 constitution which was amended in 1980, 1992, and in September 1996. It has Mudawwana al-Usrah (2004) which is a contemporary family law in Morocco, family law which was originally still contained in fiqh books has become an implementing law. The legal system in Morocco is divided into two types of judiciary; Shari'a Court and Madaniyah Court (General Court). The existence of the renewal of private law (akhwal syakhsyah) is guided by three principles, first, the principles and foundations of family law that are applied are the Maliki Mazhhab, second, paying attention to aspects of masalah mursalah, third, the laws imposed in other Muslim countries The Moroccan government allows abortion for cases of rape and incest or incest or serious defects and incurable diseases of the fetus. last, Morocco is a country that allows polygamy. The issue of polygamy is regulated in the 1958 family law law Article 30 paragraph (1).

Keywords: Islamic law, Morocco, system of government.

1. Introduction

Morocco is one of the Arab countries that are members of the Arab League organization headquartered in Cairo, Egypt. This country is located at the northern tip of the African continent. To the north it is bordered by the Mediterranean Sea, to the east by Algeria, to the south by Mauritania and to the west by the Atlantic Ocean. Morocco's very strategic location in the waters of the Atlantic Ocean and the Mediterranean Sea has made this country the target of the western imperialists.

Even though Morocco is located on the African continent, its nature is not much different from that of Asia, which is fertile, green and has water everywhere. So it is not uncommon for tourists from abroad to be amazed at the fertility of Moroccan soil which is filled with trees and greenery in all regions. The Moroccan government also pays considerable attention to efforts to reforest the region. It might even be said. Among Arab and African countries, Morocco is one of the leading and superior agricultural countries. So do not be



surprised, if the price of fruit in this country is very cheap. Even grapes can be purchased at a very cheap price, around 6 DH or Rp. 8,200 per kilogram.

Important cities in Morocco are generally located in coastal areas, such as Tanger, Tetouan (read: *Tetwan*), Nador, Oujda (read: *Wujda*), Casablanca, Rabat, Essoiura and Agadir. Some are located around the atlas mountains, such as Fes, Marrakech, Meknes and Ifran. The geographical location of each city greatly affects the local temperature and weather conditions. For example, at the peak of winter, coastal areas are generally at a maximum temperature of 5°C. Meanwhile, mountainous and inland areas pass 0°C to -10°C which is marked by snowfall in several cities such as ifran. Likewise, at the peak of summer, the temperature in coastal areas ranges from 25°C - 20°C, while inland and mountainous areas, sometimes exceeds 5°C. inland and mountainous areas generally have clean and healthy air compared to coastal areas. Morocco has four seasons, namely winter, spring, summer and autumn.

According to historical records, before the Arabs entered and brought Islam under the leadership of Uqbah bin Nafi' in the middle of the first century Hijriyah, the barbarian tribes were already in Morocco which was then divided into three tribes, namely: amazigh, sylha and rifi. These three tribes have their own languages and dialects and are recognized by the Moroccan government.

Judging from the historical sequence above, it can be concluded that the Moroccan people are a combination of various tribes which essentially have two, namely the barbarian tribe and the Arab tribe. Barbarian tribes mostly inhabit the southern region (Marrakech, agadir, ouarzazate and surrounding areas), and some in the north (tetouan, Nador and surrounding areas).

The word "Morocco" comes from "Marrakech" which is the name of a city in southern Morocco. In Arabic, Morocco is called al-maghrib which means "the western region or the place of sunset, while al-maghrib al-'arabi is the caucus of northern African countries consisting of Algeria, Tunisia, Libya, Mauritania and Morocco. The five countries have formed a maghrib arabi union known as the Union du Magebeinne Arabe (UMA).

Morocco has four capitals: Rabat, the administrative capital, Casablanca, the commercial and industrial capital, Marrakech, the tourism capital and Fes, the cultural and scientific capital. The majority of Moroccans (98.7%) embraced Islam, 1.1% of Christians and the rest embraced Judaism. Its total population in 2021 will be 37.271 million. The official language of Morocco is Arabic, and French as its second language. Meanwhile, Spanish and English are also taught in secondary schools and colleges. Although French is a second language, its use, both in the field of state administration and as a language of instruction for education, sometimes exceeds the official language, namely Arabic.

The Moroccan government adheres to a democratic, social and constitutional monarchy system. governed by the 1972 constitution which was amended in 1980, 1992, and in September 1996. The ruling king now named Muhammad VI (Arabic: محمد السادس ملك). Born in the city of Rabat, Morocco. on August 21, 1963, the second child of Raja Hasan II and Lalla Latifa Hammou from a well-known Barbarian family. He received the royal crown on 23 July 1999 after his father's death. So he is also the 23rd king of the Alawiyah dynasty (this dynasty has been in power since the 17th century AD). They are said to still have a lineage with the Prophet and are adherents of the Maliki school of Islam.

He was sworn in as befits the caliphate system and was given the title *Amirul Mukeminin* which implies being the leader of Muslims in Morocco. The wheels of government are run by a cabinet headed by a prime minister who is appointed by the king. Morocco has a parliament consisting of a lower house which is elected by direct election and an upper house. Advisory Council are selected indirectly.

The government, which consists of the Prime Minister and the Minister, is responsible to the King and the DPR. After the appointment of members of the government by the King, the Prime Minister conveys the program to be carried out.

Morocco is one of the developing third world countries. The Spanish and French colonialism had paralyzed the local economy, so the Moroccan government, after being freed from colonialism, had to struggle and develop a development strategy to improve the living standards of the people who were relatively low at that time. So a plan is made that focuses on the agricultural sector. This is because Morocco has fertile soil, besides this system is most appropriate for the economy of the people who live in the traditional way. This strategy has proven to be effective in improving the Moroccan economy, as can be seen clearly by the high level of Moroccan agricultural exports to various European and Middle Eastern countries. In addition, the role of the fisheries sector cannot be set aside in increasing the country's foreign exchange.

In the tourism sector, Morocco can be said to be superior. This is evidenced by the many attractions that attract travelers from Europe, Asia and other continents. Among these attractions are beautiful beaches located on the outskirts of coastal cities such as: Baladi beach in Tanger, Mehdiya beach in Kenitra and Agadir beach which make a lot of impression on the minds of travelers with cafes and restaurants on the beach and other facilities. In addition, there are also waterfalls in Sopro, Fes and ainullah hot springs, Fes. Another tourist attraction found in the city of Fes or even at Djemaa el-FNA in Marrakech. Likewise places of historical value such as the cave of Hercules in Tanger, the Portuguese prison in Safi, Jami Qaraouine (read: qarawiyyin) in Fes and the strong red-painted forts that can be seen in every city in Morocco. Likewise, the unique village that keeps the song of the Sahara desert in Ouarzazate (read: *Warzazat*), south of the city of Marrakech.

Of a number of tourist attractions in Morocco, one cannot forget the most proud heritage built during the time of King Hasan II, namely the Hasan II mosque located in the city of Casablanca. This mosque has a magnificent building and can accommodate approximately 100,000 worshippers and is always used for royal religious events, such as the commemoration of the Prophet's Birthday.

In the industrial sector, Morocco is also known as the largest phosphate producing country in the world. The phosphate factory in the city of Safi is the most important pillar of the country's economy after agriculture. It also cannot be forgotten, the existence of international sea ports located in several coastal cities such as Safi, Tanger, Mohammedia and Casablanca which have contributed a lot of foreign exchange for Morocco. In fact, it may even be said that Casablanca's ship port is the largest in North Africa. According to Moroccan economic statistics in 1999, Morocco has a per capita income of US \$ 1300.

Moroccan society is known as a familiar or friendly society. This is clear, we can see with the warm welcome received by foreign immigrants in this country, especially those who come from Islamic countries. Even towards the Indonesian state, they regard him as *Akhu Syaqiq* (sibling). Perhaps, the family atmosphere that the Moroccan community pays attention to is the influence of values that have existed for a long time among the Moroccan population.

Moroccan society strongly adheres to the customs and values of the association and life instilled by their ancestors. Thus, although the influence of globalization has affected various aspects of life, things that smell of tradition and custom are maintained. For example, making sacrifices on Eid al-Adha, going out of the house in beautiful traditional clothes on the 27th night of the month of Ramadan, fasting on the day of the Prophet's Birthday and *Isra Mi'raj*, pouring water on *Ashura'* and *tadaros al-Qur'an* after the Fajr and Maghrib prayers mosques in Morocco.

Morocco is part of the territory of the Islamic World, since the conquest of the *Amaniya* dynasty, al-Malik bin Abdul al-Malik had a major role in the process of Islamization and

expansion of the territory to North Africa until finally reaching the Atlantic in Morocco (Watt, 2002).

Thus the introduction as an introduction to the discussion in this paper, for the next the author will describe the existing and developing Islamic legal and legal system in Morocco, including the Position of Islamic Law in the Moroccan Legal System and studies of the application of Islamic law in Morocco such as cases of abortion and polygamy in Morocco. the previous Moroccan law begins with a brief discussion of the Moroccan state.

2. Research Methods

In this study, the author uses a qualitative descriptive method. The type of research is library research, which is collecting data or writings related to the Compilation of Islamic Law which is library in nature. Qualitative descriptive research is a combination of descriptive and qualitative research. Qualitative descriptive research displays data results according to the original without any manipulation process or other treatment (Ridwan & Azed, n.d.).

As Sukmadinata's statement, that qualitative descriptive method is more directed to describe various kinds of natural phenomena or human engineering, more about the characteristics, quality and interrelationships between activities. On the other hand, descriptive research does not provide treatment, manipulation, or changes to the variables studied, but describes a condition as it is. The only treatment given was the research itself which was carried out through observation, interviews, and documentation (Sukmadinata, 2011).

Meanwhile, Satori argues that qualitative research is carried out because researchers want to explore phenomena that cannot be quantified that are descriptive in nature such as the process of a work step, the formula of a recipe, the notions of a variety of concepts, the characteristics of a product and service, various images and style, manner of a culture, physical model of an artifact and so on (Satori & Komariah, 2011). Sugiyono in his explanation said descriptive qualitative research as a research method based on post-positivism philosophy which is usually used to examine natural objective conditions where the researcher acts as a key instrument (Sugiyono, 2012).

This study aims so that readers can find out Islamic law in Morocco and its development comprehensively from various sides, in this case from the social and political side of the law which is studied by understanding the government system in Morocco, so it is hoped that readers in their daily activities can be motivated to carry out the law. Islam is according to its rules and finds Islam as a dynamic, humanist, elastic, and egalitarian religion or what is commonly referred to as *shalibun likullis zaman wal makan*.

3. Discussion

3.1. Morocco at a Glance

1) Moroccan History

Morocco has a major role in the history of Islam, especially in the spread of Islam in North Africa, and as a gateway for the entry of Islam into Spain, Europe. This conquest of territory in North Africa took 53 years. Tariq bin Ziyad who was appointed by Musa bin Nusair, during the time of Walid I bin Abdul Malik, 705-715 the sixth Caliph of the *Umayyah* II dynasty, to command Morocco after it was conquered. Then crossed the strait between Morocco and Europe and landed in a place (mountain) which became known as Jabal Tariq. Morocco became a buffer zone for the Spanish conquest. All preparations for expansion into Europe were made through this region (Dasuki, 1994).

After the *Umayyah* dynasty in Damascus collapsed and passed into the hands of the *Abbasiyah* dynasty, Morocco became the Abbasid empire. Then in this country appeared small dynasties that ruled one after another. Among these dynasties the most influential on

the development of the Islamic community in Morocco was the *al-Murabithun* dynasty, and has been instrumental in spreading Islam to Spain. At the time of Yusuf Ibn Tashfin, 453-500H./1061-1107M., the Muslims succeeded in beating the Spanish troops who wanted to eliminate Islam there at the request of Mu'tamid bin Ibad, King of Seville, Spain. This victory is very decisive in the history of Muslims in Spain for four centuries (Dasuki, 1994).

Then the successor of *al-Murabithun*, after this dynasty collapse, is *al-Muwahhidun*, 1121-1269 AD. This name is attributed to their recognition as people who are true monotheists. His service in Islam was sending troops to help Saladin Yusuf al-Ayubi against the Christian crusaders. And at this time the city of Marrakech, the capital of *al-Muwahhidun*, became the center of Islamic civilization in the fields of science, literature, as well as being a protector from Spanish Christian attacks.

In 1894-1908 AD, Morocco passed to AbdulAziz Hasan, then at his request, France infiltrated in 1901-1904, also carried out by his successor, Abdul Hafidz, because at that time Morocco was experiencing a people's rebellion. On March 30, 1912, through the Treaty of Fez, between Morocco and France, an agreement was signed that Morocco became a French protectorate state, even though the traditional elite wanted independence on the basis of Islamic Nationalism (Dasuki, 1994).

The French presence in Morocco gave rise to reaction, especially from the group that did not want the French presence there. On May 16, 1930 by a Barbarian decree, the Nationalist Front Party was formed in May 1934. And at that time the Moroccan action committee was born as the first Nationalist Party, but three years later France was dissolved. Then in 1943 the Istiqlal Islamic Party led by Alal al-Fasi emerged which demanded full independence for Morocco with a constitutional form of government. At that time the leader of Morocco was King Muhammad V. After World War II, the Islamic Istiqlal party turned into the Democratic Independence Party which tended to be left-left (communist) (Dasuki, 1994).

In late 1946, the Istiqlal party changed its direction to the mass Party but its leader, Muhammad V, was exiled by the French. And in 1955, Sultan Muhammad V returned from exile which unexpectedly ended the French protectorate government on March 2, 1956, Morocco became independent with Barakah as King (Dasuki, 1994).

2) *Morocco Post-Independence*

Al-Mamlakah al-Magbribiyah al-Asbriyah, Moroccan kingdom Modern is an Islamic State which is heavily influenced by Alal al-Fasi's thoughts with his Neo-Salafi concept. Moroccan Islam is characterized by a large number of *Marabbut* and *Sufis*. The Moroccan system of government is democratic constitutional monarchy. Where sovereignty is in the hands of the nation which is channeled through existing constitutional institutions. The complete Moroccan government system is as follows: The king is the *Amirul mukeminin* and even the Caliph of Allah SWT., the king's power is limited by the constitution. The highest state institution is the Majlis Representative Majlis an-Nuwab, which is elected through general elections; The advisory council, Majlis al-Mushtashar. The country's constitution, adopted on 2 June 1961, contains the "Basic Laws of the Kingdom of Morocco". The constitution of this country is strongly colored by Islam even though it is not explicitly stated. Some of the articles of its Constitution relating to the Moroccan system of government are as follows:

Article 1, Morocco is a constitutional, democratic and social Kingdom State;

Article 2, Sovereignty belongs to the nation and is implemented in the form of a referendum, indirectly through constitutional channels;

Article 3, Political Parties must participate in the organization and management of the State, there is no single party system;

Article 4, the law (*Qanun*) is based on the will of the people;



Article 5 All Moroccans are equal inbefore the law;

Article 6, Islam is the state religion and the State guarantees freedom of worship;

Article 7, Morocco as a royal state with the motto of God, State and King;

Article 8, men have the right of a royal state with the motto "God, Country and king;

Article 8, men have the same political rights;

Article 9 states that *Amirul mukminin*, a symbol of national unity, guarantees immortality and continuityState and pay attention to Islam and legislation.

3.2. *Legal Position Islam in the Moroccan Legal System*

It is well known that between 1912 and 1956, the entire territory of Morocco was under the political domination of France and Spain. In general (including in the legal system) the area is heavily influenced by the legal system applied by the two countries. However, private law (*akbwal shakhsiyah*) which is based on Islamic law, is still upheld by Moroccan Muslims. Private law applied by the Moroccan government adheres to the style and legal system of the Maliki School of law (Mahmood, 1987). In subsequent developments, even this law was finally enacted in a formal form (law) and enforced in the *Sharia* Court institution.

In general, the legal system in Morocco is divided into two types of judicial bodies, the *Shari'ah* Court and the *Madaniyah* Court (General Courts), *Kanonik* Law and French Civil Law. Simultaneously with the enactment of Islamic law in *Shari'a* judicial institutions are also established in some Moroccan states, customary law governed by local courts. In certain aspects, the application of customary law can bring conflict to Islamic law. This is recognized by Moroccan Islamic jurists who do not like the contents of French law and local customs into private law in Morocco

The renewal and enactment of private law (*akbwal syakhsiyah*) in Morocco two years after the country's independence, in 1958, was actually much influenced by the family law implemented by Tunisia. The hard work of Moroccan jurists and other instruments resulted in several drafts of the codification of Islamic law. Among the drafts made include:

- 1) The principle and basis of the applied family law is the Maliki Mazhhab.
- 2) Pay attention to the aspect of the mursalah masalah

From the family law drafts approved by the commissions in the Moroccan House of Representatives, a collection of family law laws was compiled, entitled "*Mudawanah al-abwal al-Shakhsiyah*", or The Code of Personal Status 1957 1958. A collection of laws, It contains more than 300 chapters, arranged in 6 books. The full description is as follows:

Book I: on marriage legalized on 21-11-1957.

Book II: Concerning the annulment of marriage legalized in21-11-1957;

Book III: Birth of a child and its legal consequenceson 18-12-1957;

Book IV: About legal competence and guardianship validatedon 25-1-1958;

Book V: Concerning wills passed on 20-2-1958; Book VI: On inheritance legalized on 3-4-1958.

Broadly speaking, the main contents of the law on family law enacted by Morocco consists of 13 main issues, namely:

- 1) The problem of limiting the minimum age for marriage for men and women;
- 2) The problem of the role of the guardian in marriage;
- 3) Marriage financial problems, dowry and expensesmarriage;
- 4) Problems with registration and registration of marriages;
- 5) The issue of polygamy and the rights of wives and families and housing;
- 6) Wife and family livelihood problems as well as housing;

- 7) The issue of divorce and divorce before the court;
- 8) Problem the rights of women who have been divorced by their husbands;
- 9) Problems during pregnancy and its legal consequences;
- 10) Child care rights and responsibilities after a divorce;
- 11) Issues of inheritance rights, including for children of children who first died;
- 12) The issue of wills for heirs;
- 13) And the issue of the validity and management of family waqf (Atho, 1994).

Relates to 13 issues regarding family law in Morocco, which the authors get from existing references include: (1) Minimum age limit for marriage. In the law drawn up on 21-11-1957, it is stated that the marriage age limit for men is 18 years and the marriage age limit for women is 15 years. (2) The matter of divorce before the court according to the law drawn up on 21-11-1957 it is explained that it does not have to be pronounced before a court session. And the concept of three divorces dropped at once does not exist. Therefore, the pronouncement of three divorces only falls one divorce. (3) The problem of polygyny. In Morocco under the family law law made on 25-1-1958 that polygamy is allowed with the condition of making a contract. The wife is given the right to ask her husband to make an agreement when getting married. If it turns out that he later remarries another woman, then his first marriage is automatically declared dissolved. (4) inheritance problems. In Morocco, the issue of inheritance, in particular the question of the ratio of the share between men and women, the question of obligatory wills for orphaned grandchildren and the issue of the share of adopted children, based on the law made on 3-4-1958 is, the problem of the ratio of the share of men and women. women in a 2:1 inheritance, while the mandatory will only applies to the grandchildren of sons, while the grandchildren of daughters do not apply mandatory wills (Atho, 1994).

Based on the content of the law As mentioned above, it is illustrated that family law in Morocco, which was originally only contained in the books of fiqh based on the Maliki school of thought, later underwent reforms.

If observed in terms of its nature, legal reform family (*ahwal syakhsbiyah*) carried out by the Moroccan government is included in the category of intra-doctrinal-reform. Namely, the reform of Islamic family law which is carried out by combining the opinions of the *mazhab* or taking opinions other than the main *mazhab* adopted. The method used in carrying out legal reform in Morocco emphasizes the principle of *maslahah mursalah*.

3.3. Study on the Application of Islamic Law in Morocco

1) Morocco legalizes abortion for rape and incest

The Moroccan government allows abortion for cases of rape and incest. The royal announcement came after the issue of abortion sparked heated debate in the North African country. "It will be permitted in cases of pregnancy resulting from rape and incest or serious defects and incurable diseases of the fetus," read a royal statement.

The decision came after ministers and Islamic institution authorities as well as the President of the National Human Rights Council (CNDH) gave their opinion. The decision stated that legalization of abortion only applies in some cases. In March 2015, the Moroccan Minister of Health, El Hossein Louardi, urged a revision of the law on abortion for rape and incest.

Before the decision to legalize abortion in certain cases, the country of 37 million declared abortion illegal. Those involved in abortion are punishable by one to five years in prison. According to AFP, Saturday (16/5/2015), although there are no official figures, it is estimated that between 600 and 800 abortions occur in Morocco every day. The average abortionist is in a poor condition.

2) Abortion According to Islamic Law



Abdurrahman Al Baghdadi (1998) in his book "*Emancipation Is In Islam*" pages 127-128 state that abortion can be performed before or after the spirit (life) is breathed. If it is done after the spirit has been blown, i.e. after 4 (four) months of pregnancy, then all scholars of jurisprudence (*fuqoha*) agree on the prohibition. But the scholars of *fiqh* have different opinions if the abortion is carried out before the soul is breathed. Some allow it and some forbid it (Zuhdi, 1993).

Those who allow abortion before the blowing of the soul, among others, Muhammad Ramli (d. 1596 AD) in his book *An-Nihayah* on the grounds that there is no living creature. There are also those who view it as *makruh*, on the grounds that the fetus is growing (M. Ali Hasan, 1995: 57). Those who forbid abortion before the blowing of the soul include Ibn Hajar (d. 1567 AD) in his book *At Tuhfat* and Al-Ghazali in his book *Ihya` Ulumuddin*. Even Mahmud Shaltut, former Chancellor of Al Azhar University, Egypt, argues that since the meeting of a sperm cell with an ovum (egg cell) then abortion is *haram*, because there is already life in the womb that is undergoing growth and preparation to become a new, animate creature called a human who must be respected and protected existence. It will be even more evil and sinful if the abortion is performed after the fetus is alive, and it will be even more sinful if a newborn baby is discarded or killed (Hasan, 1998) and (Uman, 1994).

The opinion agreed upon by the fuqoha, namely that it is unlawful to have an abortion after the breath of the soul (four months), is based on the fact that the inhalation of the spirit occurs after 4 (four) months of pregnancy. Therefore, abortion after 4 months of pregnancy is *haram*, because it means killing a creature that is already alive. And this is included in the category of murder whose prohibition is, among others, based on the following *shari`i* arguments. The Word of Allah SWT:

لَا تُلُوْا اَوْلَادَكُمْ مِنْ اِمْلَاقٍ نَحْنُ نَرْزُقُكُمْ اِيَّاهُمْ

"And do not kill your children because of poverty. We will provide sustenance to them and to you." (Surah al-An'am: 151)

"And do not kill your children for fear of poverty. We will provide sustenance to them and to you." (Surat al-Isra` : 31)

"And do not kill the soul that Allah has forbidden (killing) except with the right (according to the *Shari'ah*)." (Surat al-Isra` : 33)

"And when the babies who are buried alive are asked for what sin they were killed." (Surat At-Takwir: 8-9)

Based on these arguments, abortion is *haram* in a womb that is alive or has reached the age of 4 months, because in such circumstances it means that abortion is a crime of murder which is forbidden by Islam.

As for abortion before the womb is 4 months old, as described above, the fuqoha differ on this issue. However, according to the opinion of Zallum (1998) and Al Baghdadi (1998), the more *rajih* (strong) *shari`i* law is as follows. If the abortion is carried out after 40 (forty) days, or 42 (forty two) days from the gestational age and at the time of the beginning of the formation of the fetus, then the law is *haram*. In this case, the law is the same as the law forbidding abortion after the spirit has been blown into the fetus. While the abortion has not reached the age of 40 days, then the law is allowed (*jai`z*) and that's okay.

3) Law on Polygamy in Morocco

In Morocco polygamy is still allowed. In contrast to Turkey and Tunisia, both have similarities in terms of the prohibition of polygamy which is explicitly regulated in the law (Marzuki, 2019). The issue of polygamy is regulated in the 1958 family law Article 30 paragraph (1) which states that "If it is feared that there will be injustice between the wives, having more than one wife is not permitted" (Mahmood, 1972). However, the 1958 law does

not provide for granting the authority to investigate a husband's capacity to practice polygamy, this capacity is completely dependent on the husband, if the husband feels that he will not be able to act fairly then he can only do monogamy. This is of course very different from other countries such as Indonesia and Iran whose laws give the court the authority to examine the capacity of a husband and give a decision in the form of permission whether he is allowed to have polygamy or not.

In addition to the above provisions, the law in Morocco also regulates several other matters regarding polygamy, namely: 39 First, if someone wants to be polygamous, then he must inform his prospective wife that he already has a wife. Second, a woman is allowed to include *ta'liq talāq* which prohibits her future husband from polygamous. If this is violated, then the wife has the right to file a lawsuit in court. Third, although there is no *ta'liq talāq*, the court can dissolve their marriage if the second marriage causes injury to the first wife (Muzdhar & Nasution, 2003).

4) *Legal Politics of Polygamy in Morocco*

The prohibition and punishment for polygamy is clearly not in the opinion of the scholars of the schools, both the *Hanbali* and the *Maliki* schools. The opinions of all madhhab scholars allow polygamy and only provide mandatory conditions for being fair to polygamous actors, and if prospective polygamous actors are worried that they will not be able to do justice, according to the majority of scholars, they are recommended to be monogamous.

In Moroccan society the Maliki school has a very strong influence. In reforming its family law, Morocco uses codification and intra-doctrinal reform methods. Family law reform in Morocco is rooted in; First, the principles of various schools of Islamic law, especially the dominant opinion in the Maliki school. Second, the teachings of *maṣāliḥ al-mursalah* Maliki school. Third, the laws enforced in other Muslim countries (Mahmood, 1972).

In the matter of permitting polygamy, family law reform in Morocco does not depart from the teachings of the classical school of jurisprudence (Maliki) that it adheres to, because polygamy is still allowed. Family law in Morocco requires the husband's ability to act fairly if he wants to be polygamous. However, unlike other countries, the law in Morocco does not give authority to certain institutions such as courts to conduct an assessment of the husband's ability to act fairly. And indeed in the classical school of fiqh it is not regulated in detail which institution is given the authority to assess a person's capacity to do justice in polygamy.

In the Hanafi, Maliki and also Syafi'i schools, *ta'liq thalaq* which prohibits husbands from practicing polygamy is not considered valid, because husbands are not allowed to bind themselves not to do something that is permitted by religion (Mahmood, 1972). Thus, *ta'liq thalaq* which contains the prohibition of (prospective) husbands from polygamous, indicates that the reform of family law in Morocco regarding the regulation of *ta'liq qalāq* has entered the category of having moved from the Maliki school that he adheres to.

Regarding the issue of regulating polygamy, the law in Morocco is closer to Egypt. In Morocco, the courts are not given the authority to give permission for people to be polygamous, and the assessment of the ability to do justice is also not based on the results of court examinations, but is given entirely on the conscience of the husband. The law in Morocco is also the same as in Egypt which only stipulates that people who are going to be polygamous must notify their marital status to their prospective wives.

However, Morocco is a little more advanced, because the law stipulates that if in the pre-nuptial agreement there is a prohibition on the husband to be polygamous, then the wife can file a lawsuit in court. If the first wife feels hurt by polygamy, then she has the right to file a divorce suit in court. And the wife's right is not limited by the expiration time limit to file a divorce suit.

4. Conclusion

Morocco is a Muslim country, the population is more than 98% embraced Islam, the system of government is a democratic, social and constitutional monarchy that is based on governed by the 1972 constitution which was amended in 1980, 1992, and in September 1996. It has *Mudawwana al-Ushrah* (2004) which is a contemporary family law in Morocco, family law which was originally still contained in *fiqh* books has become an implementing law.

The legal system in Morocco is divided into two types of judiciary; *Shari'a* Court and *Madaniya* Court (General Court). The existence of the renewal of private law (*akbwal syakhsiyah*) is guided by three principles, first, the principles and foundations of family law that are applied are the *Maliki* MaZhab, second, paying attention to aspects of *maslahah mursalah*, third, the laws imposed in other Muslim countries.

The Moroccan government allows abortion for cases of rape and incest or incest or serious defects and incurable diseases of the fetus. Morocco is a country that allows polygamy. The issue of polygamy is regulated in the 1958 family law law Article 30 paragraph (1).

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