

Contestation Between Islamic Authority and Local Culture in Marriage Law in Jordan

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ABSTRACT

The treasure of *Mazhab Fiqh* (the school of thoughts in Islamic jurisprudence) is somewhat difficult to accommodate the legal conditions of modern Islamic marriage. The new law must accommodate the benefit of life, which is the aim of Islamic law reconciliation, in the present time. Marriage law in Jordan also does not fully adhere to the majority of mazhab fiqh in the country. However, many *maslahat* (public common welfare) have accommodated their values. The focus of this study is to study the marriage law in Jordan and the dynamics of Islam and local culture in marriage law in Jordan. This study concludes the following. In the renewal of marriage law in Jordan, it still maintains the *maqāsid al-syarī'ah* (the goal of Islamic law) for the achievement of the benefit of the law and rejects harm. Jordanian family law is inseparable from the local wisdom that is owned and institutionalized in the community. Renewing marriage law in Jordan is done with the principle of preserving an existing law or regulation that is considered good, and developing it with a better law or better regulation. The law of modern Islamic marriage is suitable for every era and place. **Keywords:** *Jordanian marriage law, maslahat, marriage law*

1. INTRODUCTION

Khoiruddin Nasution states that the enforcement of family law in Jordan is based on the formation of law No. 26 of 1947, from which then enacted the Law No. 92 of 1951. In 1976 a revision was made with the enactment of Law No. 61 of 1976. This law is more specifically to discuss marital issues known as Jordan: The Code Of Personal Status And Supplementary Laws 1976 (Jordan: Law on Personal Status and Additional Laws 1976).[1] Family Law Reforms carried out in Jordan include issues related to the age of marriage, guardian in marriage, marriage vows, interfaith marriages, post-divorce marriage arrangements, mut'ah marriage problems, marriage registration, polygamy arrangements, and divorce. This study further discusses the Maslahat Review of the Renewal of the Marriage Law of Jordan. Discussion of the Jordanian Marriage Law is limited to the issue of renewing Jordanian marriage laws regarding the minimum age of marriage, guardian in marriage, marriage vows, marriage registration, and divorce before the Court.

2. RESULTS AND DISCUSSION

2.1. Overview of the State of Jordan

The modern state of Jordan first emerged in 1921 as the emirate (emirate or emirate) of Trans-Jordan. Until the end

of World War I, this region was part of greater Syria under Ottoman rule. After the defeat of the Ottoman Empire in 1918, the allies divided the Middle East into regions under their influence, with Trans-Jordan and Palestine in the British mandate and guardianship. In 1946, Trans-Jordan experienced their independence to later become the kingdom of Jordan's Hashimiyah with Prince Abdullah Ibnu al-Husein as its First King. The name Hashimiyah refers to Hashim, who was the ancestor of the Prophet Muhammad .[1] Islam is the dominant religion in Jordan, and 93 percent of the population is Sunni Muslim. The other of the population consists of Druze and Baha'is, while the remaining four percent are Christians.[1]

2.2. Marriage Law in Jordan

In 1917, Jordan imposed the Ottoman Law of Family Rights before the birth of Law No. 92 of 1951. Before the birth of the law, Jordan had enacted the Qanun al-Huquq al-'A'ilah al-Urduniah No. 26 of 1947. Therefore, with the birth of law No. 92 of 1951, then all previous laws have been abolished.[2] Law No. 92 of 1951 includes 132 chapters, which divided into 16 chapters.[3] This law is very similar to the Turkish law of 1917, both in terms of its structure and detailed rules.[4] Then this law was updated with a complete law with the birth of the Law of Personal Status or better known as Qanun al-Ahwal al-Syakhshiyah No. 61 In 1976 before the birth of kodii, and the Hanafi concept became a reference in Jordan.[5]

The family law reforms carried out in the State of Jordan, among others, are related to the problem; 1) Minimum age limit for marriage for men and women, 2) marriage registration and registration 3) Trustee in marriage, 4) divorce and divorce before the Court. 5) Wedding vows.

2.2.1. Minimum Age Limits of Marriage for Men and Women

According to the laws of the country of Jordan, the age requirement for marriage is 16 years for men and 15 years for women. If a woman has reached the age of 15 years and has the desire to get married while her guardian does not allow it without a valid reason, then the woman does not violate the principles of kafa'ah, and the court can allow permit marriage.[1]

2.2.2. Registration and Marriage Registration

Jordan Law No. 61 of 1976 requires the registration of marriage, for those who punished, both the bride and the employee. Because Jordan is one of the countries that stipulate registration as a necessity so that the violating party can be punished or his marriage has no legal force.

According to Law No. 61 of 1976 article 17, it is explained that the bridegroom is obliged to bring the qadi or its representative in the marriage ceremony. The authorized officer, as appointed by the qadi, records the marriage and issues the marriage certificate. If the marriage takes place without registration, then the person who holds the marriage ceremony, the bride and groom, and witnesses can be subject to punishment and fines of more than 100 dinars.[6]

2.2.3. Guardians in Marriage

From several articles regarding whether or not there must be a guardian in marriage, Jordan distinguishes between women who are still girls and who are widows. A guardian's consent is not required in a widow's marriage, as stated in article Jordan No. 61 of 1976 article 13, that "guardian's consent is not required in the marriage of a widow who has common sense, and is over 18 years old". The provisions of guardians are explained in Article 9 to Article 13, Trustees in marriage are the order of asabahbinafsihi in the order of inheritance according to the Hanafi school of thought.[7]

2.2.4. Divorce before the Court

In the provisions of article 101 and 134 of law no. 25 of 1977, the husband must record divorce to the judge. If the husband has mentally divorced his wife outside the court, he must come to the court Shari'ah to record the divorce within 15 days. Violations of this provision can be

threatened with criminal penalties under the provisions of the Jordan Criminal Law. Whenever the husband has his wife's mentality unilaterally without any justifiable reasons, then the wife can submit a request for compensation to the court. The compensation given cannot be more than a year of living in addition to 'iddah. For payment, the husband can apply for installments.

2.2.5. Promises in Marriage

In Islamic law in Jordan, in articles two and three of the law of 1951, it was explained that marriage promises would not affect on marriage. Nevertheless, after the agreement, then one of them died, or cancel the agreement, then some gifts before giving can be taken back by the man.[8]

2.3. Maslahat in the Study of Usul Fiqh

Maslahat etymologically comes from Arabic, which is formed from the letters sad, lam, and ha ', then becomes the root word al-Salah, which means good or benefit, a job that contains benefits,[9] both in terms of lafaz and meaning. The word maslahat is the form of *mufrad* (singular), while the plural form is al-masalih.[10]

Maslahat is taken from al-Salah (goodness, usefulness, validity, and truth), which means that something is in perfect form according to the intended purpose or goal.[11] As the pen is in the most appropriate shape when used for writing. Maslahat can mean to attract benefits and reject consciousness. The definition of benefits, according to accepted habits, is a causal factor that leads to goodness and usefulness.[12]

Al-Ghazali (d. 505 H.) defines of maslahat in al-Mustasyfa, as follows:

مُعَيَّنٌ نَصٌّ وَلَا يُبَاغِتَبَارُ بِالْبَطْلَانِ الشَّرْعَ مِنْ لَهُ يَشْهَدُ لَمْ مَا

"Anything (maslahat) for which there is no evidence for him from the syara 'in the form of a certain text that nullifies it, and no one is paying attention." [12]

Causative factors that lead to the intention of lawmakers in matters of worship and customs. Beneficiaries, legislator described, such as worship, intended by the lawmakers for the benefit of creatures and setting their affairs such as customs.[13]

Abdul Karim Zaidan states that what is meant by maslahat is trying to realize goodness or benefits and rejecting harm or damage.[14] Meanwhile, Husen Hamid Hassan mentioned that what is meant by maslahat is an act that contains goodness, which is beneficial to humans. For example, trading activities and studying are things that contain benefits that are beneficial and appreciated by humans.[15] Then Jalaluddin Abd. Rahman explains that maslahat means maintaining the meaning of syarā ', that is good, which brings benefits that are laid out on clear

frameworks and boundaries, not based on mere human desires.[16]

Furthermore, Imam al-Gazali said that what is meant by *maslahat* is maintaining the intentions or objectives of *syarā'*, namely achieving benefit and rejecting the declaration of: "جلب منفعة ودفع مضرة".[12] According to al-Syatibi, what is meant by *al-maslahat* is something understood to preserve it as the right of a servant in the form of achieving benefit and rejecting the interpretation, which is not based on certain conditions on the discovery of reason independently. If Sharia gives recognition to him that he rejects it, then Muslims agree to reject it as an agreement.[17]

According to Said Agil Husin al-Munawwar, what al-Syātībī said seemed to be in tune with what al-Ghazali understood that every benefit should be based on sharia, not on human reason, also, to benefit as servant rights that must be affirmed.[18] From the above understanding, there are several things that need attention. In terms of the existence of *maslahat* and its relationship with the text, this aspect, then, gave birth to a very fundamental principle in seeing the existence of the *maslahat* and its relationship with the text. Fundamental principle is whether something called *maslahat* is recognized or rejected by the texts and or something that is kept quiet, substantive in line with the objectives of the prescription of law.

Furthermore, with the rapid development of the times, a change cannot be dammed again. However, escorting changes by law needs to be done. This is done so that the changes that occur do not come out of the tracks that have been determined by Islam. *Jumhur ulama* (majority of Muslim scholars) argues that the benefits of *hujjah syara'* (legal justification) are used as the basis for determining the law. If an event has no law in the passages, *hadith*, *ijma'* and *qiyas*, then with this benefit is determined as a law that is demanded for public benefit.

More than two and a half centuries, the spirit of *ijtihad* took place and gave birth to several scholars of law that were represented by the existence of these schools and finally came to a vacuum. This vacuum occurs because most *ulama* limit the right of *ijtihad* and make the inner thought of Islamic law that can be followed only limited to four streams of law.[19] *Ijtihad's* lack of enthusiasm this continued until the rise of the Muslims at the end of the 18th century AD After the expansion of France in Egypt, which brought the motto of freedom, equality, and brotherhood.

Abu Ishak Ibrahim ibn Musa ibn Muhammad al-Lakhmi al-Gharnāṭī who is better known as al-Syaliti (790 H) made a new formulation in the science of *ushul fiqh* as set out in his work *al-Muwāfaqāt*. Al-Syaliti saw something missing and forgotten in the methodology used by the ancients or rather the form of *ushulfiqh* which at that time lacked an answer to the problems faced by the people, therefore it was deemed necessary to reformat the *ushulfiqh* framework.

This great al-Syaliti project needs to get high appreciation not only because it has bridged and sought a meeting point of two different theories; *Malikiyah* and *Hanafiyah*, but more than that al-Shatibih has given the spirit of *fiqhushul*

which has always seemed dry and arid. The spirit of *shariah* which has not received concern great from its predecessor, namely the problem of *maqasid al-syari'ah*.

2.4. *Maslahat Perspectives on Marriage Law in Jordan*

In the application and amendment of Islamic family law in the Islamic World, there are three features in its application. Namely; 1) a conservative form, that country still applies a system of adhering to one scholar and no changes at all, for example, Saudi Arabia and Yemen, 2) a secular form, namely a country that implements a family law system by means of contextual reforms, such as Turkey and Bahrain 3) forms of transformation, namely: countries that change the form of legislation according to need, but do not come out of specific rules and methods, such as Egypt, Morocco, Jordan, Indonesia, Pakistan, Malaysia, and Sudan.

Of the three definitions above, Jordan is part of an Islamic state that changes the law using reform, namely a state that changes the shape of its laws according to the needs and socio-anthropological changes, and local wisdom, in line with a rule about changing the law that uttered Ibn Qayyim al-Jauziyyah reads:

وَالْعَوَائِدُ وَالنِّيَّاتُ وَالْأَحْوَالُ وَالْأَزْمِنَةُ الْأَمْكِنَةُ بِتَغْيِيرٍ وَاجْتِلَافِهَا الْأَحْكَامُ تَغْيِيرٌ

"Changes and legal differences are due to differences in place, time, conditions, motivation, and culture."¹ So far, the form of Jordanian marriage legislation has carried out a form of marital law reform using intra-doctrinal reform. This characteristic is evident by the Islamic family law reforms, which have been carried out by combining the opinions of some Imams of the scholar or taking the opinion of Imams outside the school embraced.

2.4.1. *Minimum Age Limits of Marriage for Men and Women*

When viewed from the primary element (*al-kulliyat al-khamsah*) in the *maqasidasy-shari'ah*, preserving offspring (*hifz al-nasl*) is an essential thing in religion. Naturally, marriage is formed by the natural elements of human life itself, which include biological needs and functions, giving

¹ *Ibnu Qayyim al-Jauziyyah (691-751H) adalah seorang Imam Sunni, cendikiawan, dan ahli fikih yang hidup pada abad ke-13. Ia adalah ahli fikih madzhab Hanbali, disamping itu juga beliau ahli tafsir, ahli hadits, menghafal al-Qur'an, ahli ilmu Nahwu, ahli Usul, ahli ilmu Kalam, sekaligus seorang Mujtahid. Murid Syaikh al-Islam Ibnu Taimiyyah dalam bidang Ilmu Fikih. Beberapa karya besarnya antara lain: Tahzib Sunan Abi Dawud, I'lam al-Muwaqqi'in an Rabbil 'Alamin, IghasatulLahfan fi Hukmi Talaqi al-Ghadlbsn, IghasatulLahfan fi Masa'id al-syaithan, Bada'i ulFawa'id, Amsalul Qur'an dan Butlanul Kimiya" min Arba'inaWajhān.*

birth to offspring, the need for affection and brotherhood, caring for these children to become perfect members of society (volwaardig).[21]

Apart from that, underage marriage indirectly inhibits or even closes the development of the mindset to become a qualified human being (hifz al-'aql). Because they have been forced to mature immediately and eliminate instinctive traits as a child and then creates a new family building that is not much different from the previous situation.

Thus, if the marriage is carried out by minors, then whether the biological function to carry out efforts to continue the descent can undoubtedly be made. For this reason, indirectly, Islam itself has banned the practice of early marriage if we want to re-examine it in depth, and the marriage of the Prophet is a characteristic special that cannot be followed by others.

So if a Jordanian country sets a marriage age limit is a natural thing, because the level of maturity in a particular place or condition may be different, and this indeed does not violate the concept of benefit, despite differences in application and relevance to the needs in each country, as the principle of *maslahat* according to al-Syatibi, First does not violate *syara'*, and marital boundaries a benefit which certainly does not violate *syara'*, because Islamic law does not provide certainty in marital age limits only gives limits to someone considered to be an adult and has been able to carry out obligations in building a household. Second, logical and digestible, this age limit is still in the realm of logic because the age limit of marriage is aimed at maturity and readiness in fostering households, of course, each country is different in applying the principle of determining the age limit of marriage. Third, the concept of facilitating and not complicating, as we all know that marriage is obligatory for someone able and fulfilled the requirements, even religion advocates to hasten marriage and forbid singleness. Likewise, the Prophet pushed to make it accessible in marriage and instead made it difficult and avoid divorce. Indeed, it becomes an undeniable fact that the purpose of holding marital age restrictions is for the benefit of both parties and convenience.

2.4.2. Marriage Registration

The principle of marriage registration in marriage legislation in Jordan is a benefit, although marriage registration is not a prerequisite and harmonious in marriage, but it is inevitable that administrative requirements in state order must be upheld, this is in line with the principle of benefit applied. By al-Syatibi, who provided the condition that first benefit should be applied and not violate the law *Syariah'*, and in the public interest. The Principle Second is that benefit should be reasonable and logical, if digested by people of high logic Principle Third, the Shariah principle should facilitate and not complicate, in reality, marriage registration will bring a benefit, and for the realization of these benefits, of course, the principle becomes more natural and not vice versa, that is difficult.

Jordanian marriage law No. 61 of 1976 requires the registration of marriages, and violators can be sentenced to both the bride and the marriage registrar with criminal penalties. Among them in the 1976 Act article 17 states that men are required to bring *qadhi* or representatives in a marriage ceremony, to record and issue a marriage certificate, if not bring *qadhi* then all parties involved (two brides, guardians, and 2 witnesses) are subject to punishment based on Jordanian penal code or pay a fine of more than one hundred dinars.

2.4.3. True Marriage Guardian

The purpose of a trust is for the benefit. Because a trustee is part of the person responsible for the occurrence of a marriage. The one directly involved in a marriage, so that there is a guardian must be in a marriage. Moreover, of course, this is in tune with the concept of *maslahat* initiated by al-Syatibi, that trust is not something that violates *syara'*, trust is reasonable and is very logical to be held in marriage because, with the guardian, it becomes evident in accountability in marriage. A guardian will undoubtedly facilitate the running of a marriage because it has automatically provided the correct information about the *nasab*, the origin of people to be advised.

2.4.4. Divorce

In principle, both the Jordanian marriage law allows divorce, but not the purpose of marriage. However, divorce is only for an emergency exit and must be following the principles of benefit and avoid harm.

2.4.5. Marriage Promise

Taklik talak is a form of breakthrough that is responsive and progressive to the reality felt by each country, both Indonesia and Jordan, to recognize and protect women's rights and avoid the carelessness of men.

3. CONCLUSION

From the previous explanation, we can conclude as follows:

First, in the renewal of Marriage law in Jordan, while maintaining *maqasid al-syari'ah* (the aim of Islamic law observance) for the achievement of a legal benefit and rejecting harm, the Jordanian family law is inseparable from the local wisdom that is owned and institutionalized in the community.

Second, renewing marriage law in Jordan is done with the principle of preserving an existing law or regulation that is considered good, and developing it with a better law or regulation. This is relevant in the law of modern Islamic marriage that is suitable for every era and place.

REFERENCES

- [1] K. Nasution, *Hukum Perkawinan dan Warisan di Dunia Muslim Modern*. Yogyakarta: Academia, 2012.
- [2] A. H. Barkatullah dan T. Prasetyo, *Hukum Islam Menjawab Tantangan Zaman yang Terus Berkembang*. Yogyakarta: Pustaka Pelajar, 2006.
- [3] *Bab yang dimaksud adalah : (I) Peminangan, (II) Syarat-syarat Mempelai, (III) Akad Nikah, (IV) Kafa'ah, (V) Pembatalan Perkawinan, (VI) Hakam, (VII) Mahar, (VIII) Nafkah, (IX) Aturan Tentang Perceraian, (X) Pilihan untuk Cerai, (XI) 'Iddah, (XII) Nafkah Keluarga, (XIII dan XIV) Pemeliharaan Anak, (XV) Orang Hilang / mafqud, (XVI) Aturan Umum. .*
- [4] Anderson, "Recent Development in Shari'a Law VIII: The Jordanian Law of Family Rights 1951," *The Muslim World*, no. 42, 1952.
- [5] T. Mahmood, *Family Law Reform in the Muslim Marriage*. New Delhi: tp, 1972.
- [6] M. Uqlah, *Nizam al-'Usrahfi al-Islam, juz Ke-I*. Amman: Maktabah al-Risalah al-Hadisah, 1989.
- [7] T. Mahmood, *Family law Reform in Islamic Countries History, Text and Comparative Analysis*. New Delhi: Academy of Law and Religion, 1987.
- [8] *Pembaharuan Hukum Keluarga Jordania*. [Daring]. Tersedia pada: <http://syariahalaudin.wordpress.com>. [Diakses: 25-Mei-2016].
- [9] I. Manzur, *Lisan al-Arab*. Bairut: Dar Sader, 1997.
- [10] A. Syarifuddin, *Ushul Fikih*. Jakarta: Kencana, 2008.
- [11] Muhammad, *Murtada al-Zubaidi, Taj al-'Arus, Juz II*. Mesir: al-Matba'ah al-Munasya'ah Bijamaliyyaht, Cet.I, 1306.
- [12] A. H. M. bin M. al-Ghazali, *al-Mustasyfa min 'Ilm al-Usul*. Bairut: al-Risalah, 1997.
- [13] Al-Syauqani dan Irsyad, *al-FuhulilaTahqiq al-Haq min Ilmu Usul*. Bairut: Dar al-Fikr, tt.
- [14] A. K. Zaidan, *al-Wajiz Fi Usul al-Fiqh*. Baghdad: Dar al-Arabiyah Lit-Tiba'ah, 1977.
- [15] H. H. Hasan, *Nazariyat al-Maslahat Fi al-Fqih al-Islami*. Kairo: Dar al-Nahdah al-Arabiyah, 1971.
- [16] J. Abd. Rahman, *Al-Masalih al-Mursalat Wa Makanatuha Fi Tasyri'*. Mesir: Matba'ah al-Sa'adah, Cet. I, 1983.
- [17] A. I. al-Syatibi, *al-Muwafaqatfi Usul al-Syari'ah, jilid Ke-II*. Bairut: al-Maktabah al-Asriyah, 2002.
- [18] S. A. H. al-Munawar, *Dimensi-Dimensi Kehidupan dalam Perspektif Islam*. Malang: Unisma, 2001.
- [19] A. Zaki, *Falsafah al-Tasyri al-Islami*. Beirut: Dar al-Kitab al-Lubnany, 1979.
- [20] [21] T. Triwulan, *Poligami Perspektif Perikatan Nikah*. Jakarta: Prestasi Pustaka, 2007.