

Transformation Of Family Law In Algeria Analysis Of The Pre- And Post Independence Period

Andri Gustamar¹, Efrinaldi², Rahmat Hidayat³, Benazza Amal⁴

^{1,2,3}Universitas Islam Negeri Imam Bonjol Padang, Indonesia

⁴University of Ain Temouchent, Algeria

*Email: andrigustamar@gmail.com¹, efrinaldi@uinib.ac.id²,
rahmathidayat@uinib.ac.id³, amal.benazza@univ-temouchent.edu.dz⁴

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Abstract

This study aims to reveal the influence of family law reform in Algeria on the socio-cultural life patterns of its people. As one of the Muslim countries in the African continent, Algeria has gone through various stages of legal reform, especially in the field of family law. These efforts include modernizing regulations, increasing the protection of women's rights, and adapting to changing social and cultural developments. Cultural and social values play an important role in the formation of family law in this country. The findings of the study show that during the Ottoman Turkish rule, Islam was the main foundation in regulating people's lives. However, the arrival of French colonialism had a significant impact on the resilience of the Islamic legal system, as seen from France's efforts to integrate elements of European law into the existing Islamic legal system. On the other hand, French colonization also encouraged the development of family law in Algeria, as reflected in the ratification of the Marriage Law in 1959 known as the Ordinance. After gaining independence, Algeria experienced a major overhaul in its family law with the ratification of the Family Code 1984, which was later amended through Ordinance No. 2 of 2005.

Keywords: Transformation, Family Law, Aljazair, Pre and Post Independence.

Abstrak

Penelitian ini bertujuan untuk mengungkap pengaruh reformasi hukum keluarga di Aljazair terhadap pola kehidupan sosio-kultural masyarakatnya. Sebagai salah satu negara Muslim di Benua Afrika, Aljazair telah melalui berbagai tahap reformasi hukum, khususnya dalam bidang hukum keluarga. Upaya ini mencakup modernisasi peraturan, peningkatan perlindungan hak-hak perempuan, serta penyesuaian dengan perkembangan sosial dan budaya yang terus berubah. Nilai-nilai kultural dan sosial berperan penting dalam pembentukan hukum keluarga di negara ini. Temuan penelitian menunjukkan bahwa selama masa pemerintahan Turki Usmani, agama Islam menjadi fondasi utama dalam mengatur kehidupan masyarakat. Namun, kedatangan kolonial Prancis memberikan dampak signifikan terhadap ketahanan sistem hukum Islam, terlihat dari upaya Prancis untuk mengintegrasikan elemen-elemen hukum Eropa ke dalam sistem hukum Islam yang ada. Di sisi lain, kolonialisasi Prancis juga mendorong perkembangan hukum keluarga di Aljazair, yang tercermin dalam pengesahan Undang-Undang Perkawinan pada tahun 1959 yang dikenal sebagai Ordonansi. Setelah meraih kemerdekaan, Aljazair mengalami

perombakan besar dalam hukum keluarganya dengan pengesahan Family Code 1984, yang kemudian diamandemen melalui Ordonansi No. 2 tahun 2005.

Kata Kunci: Transformasi, Hukum Keluarga, Aljazair, Pra dan Pasca Kemerdekaan.

INTRODUCTION

The People's Democratic Republic of Algeria, or al-Jumhuriyah al-Jazairiyah ad-Damuqratiyah ash-Shabiyah, is the official name for the country of Algeria. With an area of 2,381,741 km², Algeria is the second largest country in Africa. Most of its territory is mountainous, with an average altitude of 800 m, and about 84% of the total area consists of the Sahara desert. The capital is Algiers, where Arabic and Berber are recognized as official languages. The system of government is a republic headed by a president, and the majority of the population adheres to the Maliki school of thought. Algeria has undergone significant legal changes, especially in the context of family law.¹ Various factors such as Islamic teachings, colonial influences, the process towards independence, as well as legal reforms have contributed to this dynamic. In recent decades, Islam has played an important role in the social and legal life of the country, especially in the regulation of marriage, divorce, inheritance and family rights. Islamic sharia is the main foundation, providing ethical and legal guidelines that govern family life and society as a whole.²

French colonization in Algeria, which lasted from 1830 to 1962, had a major influence on the development of family law in the country. Although Islamic law remains as the main foothold, some elements in family law may have their roots in the colonial laws introduced by the French government. Algeria's quest for independence had a significant impact on the family law system. After gaining independence in 1962, the country sought to create a national identity and legal system that aligned with the values of independence, including Islamic values.³

After independence, the Algerian government began efforts to formulate a law on family law, but nothing significant came of it until 1984. On June 9, 1984, the Algerian Family Law Act was finally

¹ "Legal and Judicial Problems for Divorce According to Algerian Law". 2024. Law and World 10 (31): 8-14. <https://doi.org/10.36475/10.3.1>.

² Miftahul Huda, Ragam Bangunan Perundang-Undangan Hukum Keluarga Di NegeraNegara Muslim Modern: *Kajian Tipologis*, Al-Manahij: Jurnal Kajian Hukum Islam 11, no. 1 (2017): 49–60.

³ Lilis Hidayati Yuli Astutik and Muhammad Ngizzul Muttaqin, *Positifkasi Hukum Keluarga Di Dunia Muslim Melalui Pembaharuan Hukum Keluarga: Hukum Keluarga Islam*, Islamika: Jurnal Ilmu-Ilmu Keislaman 20, no. 01 (2020): 55–65.

passed, consisting of 224 articles and divided into four chapters: Marriage and Dissolution of Marriage, Legal Representation, Inheritance, and Wills. On October 26, 2003, the President established a commission to revise this law, which lasted nine months. From 1984 to the early 2000s, this law was a major concern for women activists demanding changes to improve women's rights. On February 3, 2004, Algeria updated its family law law, and a year later, on February 27, 2005, it was updated again, continuing to include 224 articles in chapters covering Marriage, Legal Proceedings, Inheritance, Wills, Grants, and Waqf.⁴

RESEARCH METHOD

This research is a type of library research, which is conducted by utilizing various literatures, such as books, notes, and reports on previous research results. The author relies on sources that include books, journals, and notes from researchers and practitioners relevant to the topic under study. The data collected includes primary and secondary data, which is then analyzed using documentation techniques. This process involves reading, understanding, studying, and recording literature related to the issues discussed in this paper. Through this method, relevant sources are organized and discussed to reach a clear conclusion.

RESULTS AND DISCUSSION

Brief Country Profile of Algeria

Algeria is one of the countries located in the North Africa region. The country borders the Mediterranean Sea to the north, Tunisia and Libya to the east, Nigeria, Mali and Mauritania to the south and Morocco to the west. Thanks to its geographical location, Algeria has very abundant natural resources compared to other countries in North Africa. Algeria is also known as the Maghrib or Berber. The term Maghrib refers to the countries in the north of the African continent, and the term was introduced by traders. The Maghrib region covers the visible western part of the Arabian Peninsula, including Libya, Tunisia, Algeria, Morocco, Mauritania and Western Sahara.⁵ The history of Algeria itself is quite long, starting from 40 BC when this region was under the rule of the Phoenicians, then controlled by the Romans,

⁴ Nur Fadhilah Novianti, *Ketentuan Usia Pernikahan Di Afrika Utara (Mesir, Tunisia, Maroko, Aljazair, Libya)*, Bustanul Fuqaha: Jurnal Bidang Hukum Islam, Vol. 4 No. 3 2023, h. 370.

⁵ Samir Amin, *"The Maghreb In The Modern World-Algeria, Tunisia, Morocco"*, (Australia: Pinguins Book 1970), hal. 9-10.

Vandals, and Byzantines (Christians). During the time of Caliph Uthman bin Affan, the process of expanding into North Africa also began.⁶

Languages spoken in Algeria include Arabic, Berber, and French. The Algerian dinar serves as the country's official currency.⁷ Algerian society is divided into two main groups: the European group and the Muslim group. These two groups are closely intertwined, mainly due to mixed marriages between Algerians and French citizens during the colonial period. Any individual born in that context automatically acquired French citizenship. On the other hand, Muslims who embraced Islam were recognized as Algerians and continued to speak Arabic.

In the course of its history, Algeria has undergone various changes of power. First of all, in 1236, Algeria was under the rule of the Ziyamid Dynasty. Then, in 1516, power passed to the Ottoman Turks. Finally, in 1830, France took control of Algeria.⁸ In the 18th century, Ottoman Turkey declined in power, which made it easier for the French to occupy Algeria. When the French first arrived, Algerian society was still led by Sufi leaders and some tribes. The French occupation brought major changes to the government system in Algeria. They made reforms in various fields, including politics, economics and education. In the education sector, teaching methods shifted to the use of French language and culture, which resulted in many local schools being forced to close. On the government side, the French introduced a law that became the first step in the establishment of family law in Algeria.⁹

Family Law In Pre-Independence Algeria

Historically, Algeria has been ruled by various nations. In 1543 AD, the region was inhabited by Barbarians. Then, in 1152, the al-Muwahhidun Dynasty of Morocco, led by Abdul Mu'min bin Ali born in Tlemcen of the Zahata tribe took control of Algeria. In 1525, power passed to the Ottoman Turks through Khayruddin and Aruj, known as

⁶ Siti Maryam, "*Sejarah Peradaban Islam*", (Yogyakarta: LESFI, 2002), hal, 221.

⁷ Trevor Mostyn, "*The Crambridge Encyclopedia of The Middle East And North Africa*", (Camridge University Press, 1988), hal, 302.

⁸ Abdurrahman Wahid, *Pergulatan Negara, agama dan kebudayaan*. (Depok: Desentara, 2001)

⁹ Silpia Ul'hak, *Dampak Kebijakan Prancis Terhadap Masyarakat Aljazair 1830-1914*, (Uin Syarif Hidaytullah Jakarta, 2016), h, 6.

Barbarossa, two brothers who successfully liberated Algeria from Spanish colonization. This struggle integrated Algeria into Ottoman Turkish rule and made it the center of government.¹⁰

Algeria was the first region in the Maghrib to fall under Ottoman Turkish rule. In its development, Algeria transformed into one of the Ottoman Turkish provinces and experienced many changes, especially in architecture, especially in the era of Sultan Sulaiman Al-Qanuni, who was famous for his building innovations. These architectural developments went hand in hand with changes in the system of government, which was similar to the changes that occurred in other Ottoman Turkish provinces, such as Egypt, which developed a system of shared government with Palestine and Syria.¹¹ At this time Islamic law has been embedded in people's lives and made as the main source in regulating every aspect of community life.

In 1830, France began occupying Algeria, and in 1848, the region officially became part of France. Unlike Morocco and Tunisia, French colonization had a much greater impact in Algeria. The French implemented radical changes in the social, cultural and political structures that dated back to the Ottoman Turks. These changes led to the displacement of the Algerian people's cultural and political identity, which had previously been firmly established thanks to the role of Islamic scholars during the Ottoman Turks.¹²

The development of Islamic law in Algeria under French influence shows some similarities to the development of Islamic law in British-influenced India, but the outcomes were very different. In many areas of Algeria, qadhis dealt with matters for which they would normally have been responsible. In addition, the French government extended the application of Islamic law to custom, beyond what had happened under Turkish rule. Changes in positive law in Algeria are rare, and the country's positive law only covers issues related to child

¹⁰ Syaiful Anam, *Sejarah Perkembangan Islam di Aljazair*, At-Turots, Jurnal Pendidikan Islam, Vol. 1 No. 2 2019, h. 84

¹¹ Nurdiyanah, *Peranan di Aljazair dan Sekitar Abad Ke 16*, (Uin Syarif Hidayatullah, Jakarta, 2015), h.55.

¹² M Hamdan Basyar, Muhammad Fakhri Ghafar, *Sejarah dan Dinamika Kultural Politik*, Bandung: Pt Dunia Pustaka Jaya, 2016, hlm 43-44.

custody, marriage and divorce. French law has also played a significant role in shaping and influencing the prevailing Islamic law in Algeria.¹³

The French government implemented laws in Algeria gradually. At first, they introduced the principles of civil and criminal law and the system of administration of justice. Later, the French established the Franco-Algerian Agency which combined Islamic and Western law. This body influenced aspects of family and inheritance law in the Maliki and 'Ibadi schools, but its presence led the Algerian judicial system to develop Islamic law in a different way.¹⁴ In 1916, France drafted a legal text for the Muslim community called *Avant Projet de code du droit musulman algérien*, drafted by Marcel Morand. Although this draft was not adopted as official legislation, it had a significant impact on court decisions in family law matters. It later became the foundation for the development of the French family law drafted in 1984.¹⁵

In 1959, France passed a marriage law known as the Ordinance, but this law did not have a major impact in changing family law in Algeria. The Ordinance only applied to the Maliki school of thought, while followers of the 'Ibadi school were not affected. In addition, the content of the ordinance was similar to the law that the French implemented in Tunisia for the Hanafi school. To address this issue, on September 17, 1959, a Decree was issued that aimed to implement the ordinance by repealing several articles, including article 10 which exempted followers of the 'Ibadi Mazhab and raised the marriage age. As a result, the ordinance then applied to all Muslims, whether they were Maliki or 'Ibadi.

On June 9, 1984, after Algeria gained independence, a new law called the Family Code 1984 was promulgated. This law was based on three main elements: first, the Islamic laws of the various Mazhabs; second, the Muslim Law of 1916 (*Avant Projet de code du droit musulman algérien*); and third, the principle of equivalence with the laws of neighboring countries, especially Morocco, by adopting some

¹³ Engkos Kosasih, *Pemikiran Fikih Maliki Tentang Pernikahan dan Implementasinya dalam UU Perkawinan Aljazair*, Jurnal Bimas Islam Vol.9. No.II 2016, h. 243.

¹⁴ Tahir Mahmood, *Personal Law In Islamic Countries*, New Delhi: Academy of Law and Religion, 1987, hlm 15

¹⁵ Mahmud Widyo Nugroho, *Studi Komparatif Perkawinan Berdasarkan Hubungan Angket Dalam Perundang-Undangan Indonesia dan Aljazair, Sekolah Tinggi Islam Negeri Ponorogo*, Akhwal Syakhsyah, 2015, hlm, 49

provisions from Moroccan legislation. The Family Code 1984 consists of 224 articles divided into four books: Book I on marriage and its dissolution, Book II on legal representation, Book III on inheritance, and Book IV relating to the division of property. This law was later amended in 2005 through the passing of Ordinance No. 2 on February 27.¹⁶

Family Law in Algeria After Independence

Algeria is an Islamic republic with two official languages, Arabic and French. In 1959, the compact law was introduced as the beginning of the development of family law in Algeria, regulating aspects of marriage and divorce for Muslims. After much struggle, Algeria gained its independence in 1962 and formed a new government that upheld Islamic sharia as the primary law. Subsequently, in 1959, the government enacted the Marriage Law and repealed several articles related to the age of marriage, followed by the passage of a new law in 1963.

In 1976, a comprehensive family law code was drafted with reference to Islamic law. This law was passed in 1984 and later amended through Ordinance No. 2 of 2005. Overall, Islamic legislation in the country is based on Maliki fiqh, which is the most widely followed school. The following is the Islamic law legislation in force in Algeria:¹⁷

- a) Marriage Ordinance 1959. This Ordinance regulates family law relating to marriage in accordance with the concept of Islamic marriage law that applies by referring to the majority fiqh school adopted by Muslims in Al-Jazair, namely Maliki fiqh.
- b) Marriage Ordinance (Amendment) Law 1963. This is the first amendment to the existing Marriage Ordinance with various adjustments in accordance with the legal needs that have developed in the midst of society.
- c) Family Code 1984. The Family Code is broader than the Marriage Ordinance and covers inheritance and other family law matters.¹⁸

¹⁶ Tahir Mahmood, *Personal Law In Islamic Countries*, New Delhi: Academy of Law and Religion, 1987, hlm 17

¹⁷ Septi Wulan Sari, *Perbandingan Hukum Keluarga di Indonesia dan Aljazair Tentang Nafkah*, Al-Manhaji: Jurnal Hukum dan Pranata Sosial, Vol. 5 No. 1, 2023, h, 9.

¹⁸ Yusrina Nur Dianati Dan Tika Ifrida Takayasa, *The Politics Of Marriage Law In Al Jazair (Between Modernizing Family Law And Maintaining Conservative Values)*, Quru': Journal Of Family Law And Culture Vol. 1, No 3. 2023, h. 268.

a. Proficiency in Marriage

Algeria, The Family Law Code, 1984, article 7, sets the legal age of marriage at 21 years for men and 18 years for women. This age is higher than the age of marriage in other Islamic countries.¹⁹ After the amendment of article 7 of Ordinance No. 2/2005, it is stated that the capacity for legal marriage is 19 years old for both men and women. This represents a decrease in the minimum age for men and an increase in the minimum age for women.²⁰

The marriage of an adult woman is attended by her guardian, who can be her father, a relative, or another person of her choosing. Meanwhile, for a person who is not an adult or has not reached the age of 19, the marriage is performed by his or her guardian or relative. If a person does not have a father or close relative, a judge will act as the marriage guardian.²¹ Furthermore, a provision was added requiring the submission of a health certificate valid for 3 months, as well as proof of freedom from disease or other factors that could pose a risk. Although the Maliki school of thought is the official school of thought in Algeria, the age of marriage provisions are not drawn entirely from the views of this school.²²

b. Marriage Registration

Algeria only stipulates that the marriage contract must be legalized by an authorized official. However, there is no regulation or explanation of the status of marriage registration, so this status in Algerian law remains undefined. The provisions regarding marriage registration are set out in the Marriage Ordinance 1959, which is intended to regulate various aspects related to marriage and divorce among Muslims. To provide a more detailed explanation of the

¹⁹ Yusrina Nur Dianati Dan Tika Ifrida Takayasa, *The Politics Of Marriage Law In Al Jazair (Between Modernizing Family Law And Maintaining Conservative Values)*, Quru': Journal Of Family Law And Culture Vol. 1, No 3. 2023, h. 270.

²⁰ Basaruddin, Oyo Sunaryo Mukhlis, *Studi Perbandingan Hukum Perkawinan Di Maroko Dan Aljazair*, Al-Fakar: Journal For Islamic Studies, Vol 7 No 1. 2024, h. 638.

²¹ Mahmud Widyo Nugroho, *Studi Komparatif Perkawinan Berdasarkan Hubungan Angket Dalam Perundang-Undangan Indonesia dan Aljazair*, Sekolah Tinggi Islam Negeri Ponorogo, Akhwal Syakhsiyah, 2015, hlm, 53

²² Nur Fadhilah Novianti, *Ketentuan Usia Pernikahan Di Afrika Utara (Mesir, Tunisia, Maroko, Aljazair, Libya)*, Bustanul Fuqaha: Jurnal Bidang Hukum Islam, Vol. 4 No. 3 2023, h. 371.

application of this law, a 1982 Decree was issued.²³ The provisions of the marriage law can be practically applied by the courts under the applicable Decree. Although the Marriage Ordinance 1959 and the Decree set out the procedures for marriage registration in detail, such registration appears to serve only as an administrative requirement and has no bearing on the validity of a marriage.²⁴

In July 1963, when Algeria proclaimed its independence, the country amended the 1959 Marriage Law. After several constitutional amendments, the 1984 Marriage Law was finally established as the guideline for family law in Algeria. However, there are no new rules in this law that regulate marriage registration as part of family law. Thus, it can be concluded that despite the changes in the Marriage Law, the provisions regarding marriage registration remain unchanged.²⁵

c. Guardian of the Marriage

Prior to the amendment to article 11 of the Family Code 1984, it stated that a woman's marriage had to be performed by her guardian, which could be her father or a close relative. If there was no father or relative, the judge would be the marriage guardian. After the 2005 amendment to the 1984 Family Code, article 11 states that an adult woman can marry in the presence of her guardian, who can be her father, a relative, or a person of her choice. Meanwhile, for a minor individual, the marriage must still be performed by her guardian or relative, with a judge acting as guardian in the absence of a father or close relative.

Prior to the amendment, article 13 of the 1984 Family Code stated that marriage guardians, whether fathers or others, were not allowed to force a person under their guardianship to marry, and they could not marry the person without their consent. After the 2005 amendments to the 1984 Family Code, this statement remains in force, prohibiting guardians, whether fathers or others, from forcing a person

²³ Jumain Azizi, Muzawir, Reformasi Hukum Perkawinan: “ Pencatatan Perkawinan Berbagai Negara Muslim” Jurnal Darussalam: Pemikiran Hukum Tata Negara dan Perbandingan Hukum, Vol. 3. No.1 2023. h. 109.

²⁴ Rahamawati, *Perbandingan Hukum Keluarga Islam, Sulawesi Selatan*: IAIN Parepare Nusantara Press, 2020. h. 133.

²⁵ Dian Mustika, *Pencatatan Perkawinan Dalam Undang-Undang Hukum Keluarga Di Dunia Islam*, Marriage Registration, Family Law, Islamic World, t.t hlm, 58.

under their guardianship to marry, just as they cannot marry the person without his or her consent.²⁶

d. Breakup of Marriage

In the Algerian Marriage Law, divorce can occur for certain reasons. First, if the husband does not provide maintenance, unless the wife was aware of the husband's incapacity at the time of marriage. Secondly, there is a weakness in the husband that prevents the purpose of the marriage from being fulfilled. Third, if the husband refuses to live with the wife for more than four months. Fourthly, if the husband is deprived of civil rights for more than one year, for example due to behavior that brings shame to the family and his inability to lead in society and in conjugal relations. Fifth, if the husband is absent for more than one year without providing maintenance. Sixth, due to unacceptable immoral behavior.²⁷ Under Algerian law, divorce is only possible through a judge's decision in court after peace efforts have been made and failed. The divorce is counted from the time the court records it. If the husband divorces the wife without valid legal reasons, the wife is entitled to compensation. In addition, polygamy can also be a reason for the wife to file for divorce.²⁸

e. Polygamy

One is only allowed to be polygamous if there are acceptable conditions, motivations, and intentions to be fair. Husbands who wish to remarry must notify their wives and future wives, and then apply to the chairperson of the competent court for a marriage authorization. A new marriage can only be legalized by the chairperson of the court if the husband has obtained the consent of both wives and proven his reasons and ability to lead a household again. The wife has the right to file for divorce in the event of fraud by the husband. In addition, the marriage is considered void *Qabla dukhul* if the husband does not

²⁶ Basaruddin, Oyo Sunaryo Mukhlis, *Studi Perbandingan Hukum Perkawinan Di Maroko Dan Aljazair*, Al-Fakar: Journal For Islamic Studies, Vol 7 No 1. 2024, h. 638.

²⁷ Didimus Manulang, dkk, *Pembatalan Perkawinan Menurut Hukum Islam dan UU Hukum Keluarga di Negara Muslim: Studi Perbandingan Antara Negara Mesir, Aljazair, Yordan dan Maroko*, Vol 5 No 2, 2014, hlm, 661.

²⁸ Rahamawati, *Perbandingan Hukum Keluarga Islam, Sulawesi Selatan*: IAIN Parepare Nusantara Press, 2020. h. 181.

obtain permission from the judge, in accordance with the provisions previously explained.²⁹

f. Khuluk

A wife can separate from her husband without his consent by paying a sum of money through khulu'. If the husband refuses to pay the ransom, the judge must order a payment that does not exceed the reasonable value of the dowry at the time of receipt.³⁰

Prior to the amendment, article 54 of the 1984 Family Code stated that a wife could separate from her husband with the husband's consent. If the husband did not agree, the judge would issue a khulu' judgment in consideration of the ransom to be paid by the wife, which could not exceed the value of the dowry she received. After the amendment of the 1984 Family Code in 2005, article 54 states that the wife can divorce from her husband without the husband's consent by paying a sum of money through khulu'. If the husband refuses to pay the ransom, the judge will order a payment that must not exceed the reasonable value of the dowry at the time of receipt.³¹

g. Interfaith Marriage

Interfaith marriages in Algeria are governed by Civil Code Law No. 11 of 1984 (Civil Code). Article 31 states that "A Muslim woman cannot marry a non-Muslim man." This article confirms the prohibition for Muslim women to marry non-Muslim men. This is in line with the view of the majority of scholars who agree that men are allowed to marry People of the Book, while women are not allowed to marry non-Muslims. The Maliki school, to which most Algerians adhere, is of the opinion that it is makruh to marry a woman of the Book, a view also held by other schools of fiqh such as Hanafi and Shafi'i. This is what distinguishes the legal material on interfaith marriage in Algerian Family Law from the views of the Maliki school.³²

²⁹ Mahmud Widyo Nugroho, *Studi Komparatif Perkawinan Berdasarkan Hubungan Angket Dalam Perundang-Undangan Indonesia dan Aljazair, Sekolah Tinggi Islam Negeri Ponorogo*, Akhwal Syakhshiyah, 2015, hlm, 54

³⁰ Mahmud Widyo Nugroho, *Studi Komparatif Perkawinan Berdasarkan Hubungan Angket Dalam Perundang-Undangan Indonesia dan Aljazair, Sekolah Tinggi Islam Negeri Ponorogo*, Akhwal Syakhshiyah, 2015, hlm, 55

³¹ Basaruddin, Oyo Sunaryo Mukhlis, *Studi Perbandingan Hukum Perkawinan Di Maroko Dan Aljazair*, Al-Fakar: Journal For Islamic Studies, Vol 7 No 1. 2024, h. 640.

³² Yusrina Nur Dianati Dan Tika Ifrida Takayasa, *The Politics Of Marriage Law In Al Jazair (Between Modernizing Family Law And Maintaining Conservative Values)*, Quru': Journal Of Family Law And Culture Vol. 1, No 3. 2023, h. 274-275.

Algeria's interfaith marriage law includes only one article prohibiting Muslim women from marrying non-Muslim men, indicating that Muslim men are allowed to marry women of the Book. However, this provision does not clarify the status of a woman who has married a non-Muslim man, whether her marriage remains valid or not. This law reflects the debate between following the Qur'anic text (which allows Muslim men to marry women of the Book) and the interpretation that prohibits it. The country chose not to follow the opinions of the Imams of the Maliki, Hanafi, and Shafi'i schools, who consider such marriages *makruh*. Arguments such as *sadd al-dhar'ah* or *al-maslahah* that are usually used to reject these marriages are not taken into consideration, so that the law of interfaith marriage still follows the text of the Qur'an. This trend does not reflect Islamic liberalism in favor of such marriages, but neither does it fully represent conservative or radical views. Thus, interfaith marriage law in Algeria tends to stick to the Qur'anic text without being influenced by radicalism or liberalism.³³

h. Lift Relationship

In addition to the aforementioned, there is an interesting point in Algerian law regarding marriages involving adoptive relationships. Algeria is the only country that prohibits marriages based on adoptive relationships, where the bride and groom have such ties. In the Family Law 1984, article 24 states that there are three impediments to marriage: consanguinity, affinity and fosterage. In another article, the prohibition against marriage in an adoptive relationship is emphasized by stating that adoptive relationships are treated the same as blood relationships. Thus, adoptive relationships are one of the barriers to marriage in Algerian legislation, so marriages based on such relationships are prohibited.³⁴

One of the other reasons behind the prohibition of marriage based on adoptive relationships in Algeria is the form of child adoption adopted in the country, which is also in line with Tunisian legislation. Adoptive relationships stem from the process of child adoption, which in Algerian law is known as *kafalah*. Meanwhile, adoption is a form of child raising that is not permitted. Algeria is the only country where this prohibition applies. Once the *kafalah* process is completed, the

³³ Basaruddin, Oyo Sunaryo Mukhlis, *Studi Perbandingan Hukum Perkawinan Di Maroko Dan Aljazair*, Al-Fakar: Journal For Islamic Studies, Vol 7 No 1. 2024, h. 640.

³⁴ Miftahul Huda, *Ragam Bangunan Perundang-Undangan Hukum Keluarga di Negera-Negara Muslim Modern*, Al-Manhaji, Vol. XI No. 1, 2017, Hlm 58.

kafil has the right to give his family name to the makful, so that the makful's name will be recorded in the kafil's family documents. However, the makful also gets a separate document confirming his true identity, i.e. that he is not the kafil's biological son, but rather the son of his biological parents. This is different from a prohibited adoption, where the child's lineage transfers to the adoptive parents, making him or her their biological child.

With this explanation, it can be understood that the adopted child becomes the biological child of the adoptive parents because it is recorded in their family documents, even though the child still has documents that show his original lineage. Thus, the child's original lineage remains to his biological parents, not to the adoptive parents. It is clear, therefore, that the adoptive relationship is made one of the prohibitions in marriage, influenced by the manner and form of child adoption which causes the adopted child to be recorded in the family documents of the adoptive parents, even though his original lineage does not transfer to them.³⁵

Based on the above, it can be seen that the French colonization left a deep mark on the Algerian legal system. The secular laws introduced by the French replaced many aspects of traditional Islamic law in Algeria. However, most family law continued to be governed by Islamic law. This was due to France's attempt to avoid conflict with the Muslim population by maintaining the existing Islamic law. France also had a strong influence in the process of modernizing and secularizing public and administrative law. After independence, the country sought to balance its Islamic heritage with the demands of modernity in developing family law.

CONCLUSION

Overall, the development of family law in Algeria is the result of strong influences from both Islamic and French law. Historically, Algeria has been under the rule of various dynasties, ranging from the Usmanids to the al-Muwahhidun Dynasty in Morocco, before it was finally controlled by the Ottoman Turks in 1525. During this time, Islam became the main foundation of the judicial system. However, after Algeria fell to the French, efforts to integrate the country into the French empire were evident through the adoption of French civil and criminal law principles and judicial systems. After gaining

³⁵ Miftahul Huda, *Ragam Bangunan Perundang-Undangan Hukum Keluarga di Negera-Negara Muslim Modern*, Al-Manhaji, Vol. XI No. 1, 2017, Hlm 58.

independence, Algeria drafted a marriage law known as the Family Code, which was officially enacted in 1984, and later amended through Ordinance No. 2 of 2005. Thus, the journey of family law in Algeria is a reflection of its rich historical heritage, as well as an adaptation to a modern context that respects the traditions and values of its society.

BIBLIOGRAPHY

- Amin, Samir. (1970) *The Maghreb In The Modern World-Algeria, Tunisia, Morocco*, Australia: Pinguins Book.
- Anam, Syaiful, (2019) *Sejarah Perkembangan Islam di Aljazair*, At-Turots, Jurnal Pendidikan Islam, Vol. 1 No. 2.
- Basaruddin, Oyo Sunaryo Mukhlis. (2024). *Studi Perbandingan Hukum Perkawinan Di Maroko Dan Aljazair*, Al-Fakar: Journal For Islamic Studies, Vol 7 no 1.
- Engkos, Kosasih, (2016). *Pemikiran Fikih Maliki Tentang Pernikahan dan Implementasinya dalam UU Perkawinan Aljazair*, Jurnal Bimas Islam Vol.9. no. II.
- Esposito, Jhon L. (2001). *Ensiklopedi Oxford Dunia Islam Modern*, Bandung: Mizan.
- Ham, M dan Basyar, Muhammad Fakhri Ghafar. (2016). *Sejarah dan Dinamika Kultural Politik*, Bandung: Pt Dunia Pustaka Jaya.
- Hourani, Albert, *The Modern Middle East*, t.t
- Huda, Miftahul. (2017). “*Ragam Bangunan Perundang-Undangan Hukum Keluarga Di Negera-Negara Muslim Modern: Kajian Tipologis*”, Al-Manahij: Jurnal Kajian Hukum Islam 11, no. 1.
- Huda, Miftahul. (2017). *Ragam Bangunan Perundang-Undangan Hukum Keluarga di Negera-Negara Muslim Modern*, Al-Manhaji, Vol. XI no. 1.
- Jumain Azizi, Muzawir. (2023). *Reformasi Hukum Perkawinan: “Pencatatan Perkawinan Berbagai Negara Muslim”* Jurnal Darussalam: Pemikiran Hukum Tata Negara dan Perbandingan Hukum, Vol. 3. no.1.
- “Legal and Judicial Problems for Divorce According to Algerian Law”. 2024. Law and World 10 (31): 8-14. <https://doi.org/10.36475/10.3.1>.
- Mahmood, Tahir. (1987). *Personal Law In Islamic Countries*, New Delhi: Academy of Law and Religion.
- Manulang, Didimus, dkk. (2014). “*Pembatalan Perkawinan Menurut Hukum Islam dan UU Hukum Keluarga di Negara Muslim: Studi*

- Perbandingan Antara Negara Mesir, Aljazair, Yordan dan Maroko*”, Vol 5 no 2.
- Maryam, Siti. (2002). *Sejarah Peradaban Islam*, Yogyakarta: LESFI.
- Mostyn, Trevor, (1988). *The Crambidge Encyclopedia of The Middle East And North Africa*, Cambridge University Press.
- Mustika, Dian, *Pencatatan Perkawinan Dalam Undang-Undang Hukum Keluarga Di Dunia Islam*, Marriage Registration, Family Law, Islamic World, t.t.
- Novianti, Nur Fadhilah. (2023) *Ketentuan Usia Pernikahan Di Afrika Utara (Mesir, Tunisia, Maroko, Aljazair, Libya)*, Bustanul Fuqaha: Jurnal Bidang Hukum Islam, Vol. 4 No. 3.
- Nugroho, Widyo, Mahmud. (2015). *Studi Komparatif Perkawinan Berdasarkan Hubungan Angket Dalam Perundang-Undangan Indonesia dan Aljazair, Sekolah Tinggi Islam Negeri Ponorogo*, Akhwal Syakhsyah.
- Nur Dianati, Yusrina dan Takayasa, Tika Ifrida. (2023) *The Politics Of Marriage Law In Al Jazair (Between Modernizing Family Law And Maintaining Conservative Values)*, Quru’: Journal Of Family Law And Culture Vol. 1, no 3.
- Nurdiyanah. (2015). *Peranan di Aljazair dan Sekitar Abad Ke 16*, Uin Syarif Hidayatullah, Jakarta.
- Rahamawati,(2020). *Perbandingan Hukum Keluarga Islam, Sulawesi Selatan*: IAIN Parepare Nusantara Press.
- Sari, Septi Wulan, (2023) *Perbandingan Hukum Keluarga di Indonesia dan Aljazair Tentang Nafkah*, Al-Manhaji: Jurnal Hukum dan Pranata Sosial, Vol. 5 No. 1.
- Ul’hak, Silpia. (2016). *Dampak Kebijakan Prancis Terhadap Masyarakat Aljazair 1830-1914*, Uin Syarif Hidayatullah Jakarta.
- Wahid, Abdurrahman. (2001). *Pergulatan Negara, agama dan kebudayaan*. Depok: Desentara.
- Yuli, Lilis Hidayati. (2020) *Positifkasi Hukum Keluarga Di Dunia Muslim Melalui Pembaharuan Hukum Keluarga: Hukum Keluarga Islam*, Islamika: Jurnal Ilmu-Ilmu Keislaman 20, no. 1.



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