

The Influence of Western Feminism on Islamic Family Law Renewal in Iran: Studies of Pre and Post Reform of Iran

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Abstract:

This paper tries to examine the dynamics of family law in Iran, where changes in Islamic family law in Iran occurred during the 1979 revolution after the collapse of the pahlavi regime. Which in that year Ayatollah Khomeini formulated Islamic family law and raised the status of women. However, until 1980 Iranian women had not felt the change, which gave rise to a women's movement that protested against it. The method of writing this article uses library research by digging up information related to the theme of the study. The findings of this paper explain that the emergence of feminism thought in Iran was propounded by europeans who in 1980 were mostly europeans and they judged some of the habits of the Iranian family and society which for them were against women. So this is what pioneered the movement against feminism in Iran in finding out about gender. The feminist movement against Islamic family law in Iran is motivated by many laws that are detrimental to women, because these laws are the result of male scholars, so many of them voice their dissatisfaction with these laws.

Tulisan ini mencoba mengkaji dinamika pembaharuan hukum keluarga di Iran, yang dimana perubahan hukum keluarga islam di Iran terjadi pada masa reformasi tahun 1979 setelah runtuhnya rezim pahlavi. Yang dimana pada tahun itu Ayatollah Khomeini merumuskan pembaharuan terhadap hukum keluarga islam dan lebih mengangkat derajat wanita. Namun hingga tahun 1980 wanita Iran belum merasakan perubahan tersebut sehingga menimbulkan pergerakan wanita yang memprotes hal tersebut. Adapun metode penulisan artikel ini menggunakan

library research dengan menggali informasi yang berkaitan dengan tema kajian. Hasil temuan dari tulisan ini menjelaskan bahwa unculnya pemikiran feminisme di Iran dipelopori oleh para pelancong dari eropa yang dimana pada tahun 1980 banyak pelancong dari eropa ke iran dan mereka menilai beberapa dari hukum keluarga dan kebiasaan masyarakat Iran yang bagi mereka hal tersebut merupakan perbudakan terhadap kaum perempuan. Sehingga hal inilah yang memelopori pergerakan terhadap feminisme di Iran dalam memperjuangkan kesetaraan gender. Gerakan feminisme terhadap pembaharuan hukum keluarga Islam di Iran dilatar belakangi oleh banyaknya hukum-hukum keluarga yang dipandang merugikan perempuan, dikarenakan hukum-hukum tersebut merupakan hasil dari penafsiran para ulama dari kalangan laki-laki, sehingga banyak dari mereka yang menyuarkan ketidakpuasan mereka terhadap hukum-hukum tersebut.

Key words: *Feminism, Islamic Law, Family Islamic Law*

Introduction

The State of the Islamic Republic of Iran (Islamic Republic of Iran) is part of the Muslim countries in the Middle East whose laws have undergone many changes. Since Iran became the territory of the Umayyad dynasty, it immediately followed Islamic law, then it changed to become modern, if not called secular. Since the post-revolutionary Iran has returned to sharia law. Historically, changes in Islamic law in Iran have been quite dynamic. It is recorded that since the beginning of 1906, the first constitution was promulgated, then successively enacted trade law, jinayah, civil rights and family law. However, after the Iranian Revolution in 1979 there were changes again to the current regime era. Iran's Islamic Family Law was originally codified as part of the Iranian Civil Code from 1928 to 1935. This Civil Qanun was in the form of the Iranian Civil Code, which was the result of a combination of Islamic law and French civil jurisprudence.¹

Jumhuri ye Islami ye Iran or the Islamic Republic of Iran is a country located in the Middle East region. The country with the nickname of the land of mullahs or scholars. It is called that because it is true that the clergy play an important role in social and state life. The strength of the clergy in Iran can be created because the Velayat el-Faqeh system is used as an ideological foundation in social and state affairs. This system is a system that emphasizes leadership under the hands of the clergy, it is considered so because this system is a system that was born from the synthesis of the teachings of the Twelfth Imam Shia, a teaching that

¹Tahir Mahmood. *Family Law Reform In The Muslim World*, (Bombay: N. M. Tripathi PVT. Ltd., 1972), p. 15.

considers the form of the imamate as a successor form of government. From here the presence of the scholars equals the presence of God's representatives, therefore everything that comes from the scholars seems to be absolute. As a result, scholars can play a role in various fields.²

However, the government of the clergy in fact does not guarantee the fulfillment of rights and justice for the people. The existing scholars are scholars who are not open to renewal. This can be seen from the role of the ulema who actually carry out unilateral interpretations of religious texts, including regarding the presence and role of women. This is where the inequality of women and patriarchal culture in society begins to grow and take shape. Then it is also strengthened by the position of the ulema as an actor formulating policies and determining the birth of policies, where in fact male clerics dominate the process.³

In Muslim belief, sharia is the revealed one, literally meaning "the way" is the totality of Allah's will revealed to the Prophet Muhammad. Whereas Fiqh is the science of jurisprudence, fiqh literally means "understanding" of the process of studying the rules of law from the sacred sources of Islam, namely, the Koran and Sunnah (practices of the Prophet, contained in hadiths, Traditions). In other words, sharia is holy, universal, and eternal, while fiqh is the same as humans and like other jurisprudential systems, which can change at any time. Zibamir-Hosseini argues that shari'ah patriarchy must be challenged at the level of fiqh, which is nothing more than human understanding of divine will, that is, what can be used to understand shari'ah in this world on a legal level. In other words, sharia is a transcendental ideal embodied in the body of Islamic justice and the spirit of Qur'anic revelation Transendental ini ideal, yang mengutuk semua hubungan eksploitasi dan dominasi, without Muslim women and criticism of the patriarchal construction of gender relations, which is found not only in a vast body of jurisprudential texts but also in positive law which is claimed to be rooted in sacred texts.⁴

The work of Islamic feminists must be studied in this light, both revealing hidden history and re-reading textual sources, both of which prove that the inequality embedded in fiqh is not a manifestation of divine will or the cornerstone of a social system that cannot be redeemed backwards, but rather that it is the result of social construction. man. They also show how such constructions contradict the

²Usman. *Ulama Dalam Konstitusi Negara Imamah*. Jurnal Islamuna, Vol.4, No.1, (2017), p. 209-231.

³Cipto, *Dinamika Politik Iran: Puritanisme Ulama, Proses Demokratisasi, dan Fenomena Khatami*. (Yogyakarta: Pustaka Pelajar, 2004), p. 254.

⁴Ziba Mir-Hosseini, *Muslim Women's Quest for Equality: Between Islamic Law and Feminism*. The University of Chicago Press. Vol. 32, No. 4 (2006), p. 632.

essence of divine justice expressed in the Koran and how Islamic holy texts have been tainted by the ideology of their interpreters. For example, they show how men's unilateral rights to divorce (talak) and polygamy were not given to them by God but were asserted by male Muslim jurists. It is a legal construct that follows from the way that early Muslim jurists conceptualized and defined marriage.⁵

Feminist activists argue that the interpretation of shari'ah laws against patriarchy must be challenged at the level of fiqh, which is nothing more than human understanding of divine will, namely what can be used to understand shari'a in this world legally. In other words, sharia is a transcendental ideal embodied in the body of Islamic justice and the spirit of Qur'anic revelation. This transcendental ideal, which condemns all relations of exploitation and domination, is devoid of the pursuit of Muslim women and criticism of the patriarchal construction of gender relations, which is not only found within the vast body of jurisprudential texts but also in positive laws which are claimed to be rooted in sacred texts.

On February 26, 1979, Ayatollah Khomeini announced the restoration of Islamic family law by dismantling the family protection law which discussed fiqh provisions concerning marriage and divorce. (codified in 1935) as part of the Iranian Civil Code.⁶ The Family Protection Act of 1967 (and amendments to it in 1975) abolished men's right to arbitrary divorce, reinstated their right to polygamy, and placed men and women more equally in the eyes of the law in terms of access to divorce as well as guardianship rights. Khomeini in 1979 restored sharia to "protect the family" and realize the "high status" of women in Islam. However, in October 1980, Iranian women had not felt the change in the law. Many family courts in Taheeran led by Islamic judges granted the husband's request to divorce his wife without the wife's consent, so many feminist activists insist on voicing this injustice.

Since the beginning of the 20th century the issue of women's rights has been at the center of struggles that reflect modern realities and change the status of Muslim women. The emergence of new feminist voices in Islam began to appear in the late 1980s with the start of the latest stage in the struggle for feminism which took Islam as its source of legitimacy, these feminist voices effectively challenged the hegemony of the patriarchal interpretation of sharia and the legitimacy of their views which were hitherto under the name Islam. This paper tries to examine the influence of western feminism in the development and change of Islamic family law in Iran. Starting from the beginning of 1928 until the modern era, this discussion

⁵Ziba Mir-Hosseini, *Muslim Women's Quest for Equality: Between Islamic Law and Feminism*. The University of Chicago Press. Vol. 32, No. 4 (2006), p. 642.

⁶Azar Tabari and Nahid Yeganeh, *In the Shadow of Islam: The Women's Movement in Iran*, (London, 1982), p. 232.

will cover the birth of the feminist movement, the main reviews of family law reform in Iran. Including how the impact of Iran's modernization both before and after the reformation for the protection of women's rights and the development of reform of Islamic family law in Iran.

Method

This type of research uses normative research, so that in this study library materials are the main data which in research science is classified as primary data. This paper uses a librarian approach to a number of data sources (writings) that discuss the influence of western feminism on the renewal of Islamic family law in Iran. The systematic discussion begins with an explanation of the legalization and development of family law in Iran, pre- and post-Iranian family law, the birth of Islamic feminism in Iran and finally the dynamics of feminism towards family law reform in Iran. The nature of the research used is descriptive analysis which aims to describe how the struggles of feminism and how western feminism influences the renewal of Islamic family law in Iran, both during pre-reform and post-reformation Iran.

Discussion

Legalization of Marriage Law and Development of Family Law in Iran

Islam is the official religion in the country of Iran, especially the twelve-Imam Shiites. However, other schools of thought are also fully recognized, including in the field of marriage law. The majority school is the Ja'fari, while the minority school is the Hanafi, there are also minorities of the Zoroastrian (Majusi), Jewish, Christian, and Bahai religions. As for all civil, criminal, financial, economic, administrative, cultural, military, political legislation and all other legislation must be in line with Islamic law. All sources of law recognized by Iran are Islamic law, constitution, customs, and the principles of Iran's Islamic revolution. Meanwhile, the judicial system at the central level, the Supreme Court and the Attorney General must be a mujtahid. From this it is very clear that Iran does not arbitrarily place the authorities by placing Islamic law experts in strategic posts. However, that does not mean that regulations in Iran have been established and have reached the final, regulations in Iran have experienced ups and downs, as evidenced by the existence of several changes. For example, the Indonesian Civil Code (KUHP 1928-1935) which was amended in 1982, the cancellation of the Family Protection

Law after the 1979 Iranian revolution, the 1979 Special Civil Courts Act and the 1992 Law which amended the rules regarding divorce.⁷

The issue of marriage and divorce in Iran has been regulated in the Iranian Civil Code and came into force in 1930. The Marriage Law was then enacted in 1931. After three decades had passed, in 1967 the Marriage Law was replaced by the FTA, and then in 1975 it was replaced with the Protection of Family. In addition, what needs attention is that the material is from Islamic law, but has come into contact with European law. Of course it gives a new nuance, especially in terms of gender. Even more liberal impression. Throughout the era of Reza Shah Pahlevi (1941-1979), Iranian culture has changed and changed like the lives of Western people. Traditional old practices were abolished and a new lifestyle imported from outside was implanted. For example, in 1930, the Shah of Iran banned women from wearing the chador (Iranian women's clothing that completely covers the body), if they were still worn, the police forcibly released them. Education began to apply a secular system. Together with that, the University of Tehran was founded in 1935 by opening a faculty of European education. This includes sending students abroad to absorb Western ideas.⁸

In 1936, legislation established secular education as a requirement for becoming a judge. The main change introduced was in the area of family law during the reign of Reza Shah with the acceptance of The Family Protection act (Qanun Himayat Kaneiwada/Law on family protection) which was ratified on 24 June 1967. judicial, the thirst for court permission for the implementation of polygyny which is limited only because of certain conditions and the development of a special Religious Court for the application of the new personal status law.⁹

However, after the 1979 revolution, reforms took place in Iran, everything that had been initiated during the Pahlavi dynasty was abolished, because it was considered to have exceeded the provisions of established Islamic law. Since the success of the Iranian Revolution, the new leader announced that Islamic law has become the main source of law in the Islamic State of Iran. The family law that was used was returned to the Shia school of Istna Asyari (majority school) and the Sunni Hanafi school. Iranian civil law covers various aspects of the law. Those relating to inheritance law are regulated in articles 861-949, while the entire book VII regulates family law matters. All inheritance and family law materials are based

⁷Muhammad Fauzinudin, *Kontribusi Iran Terhadap Sejarah Pembaharuan Hukum Keluarga Islam: Potret Sistem Kewarisan Islam dan Wasiat Wajibah di Iran*, Ulul Albab Vol. 18, No. 2 (2017), p. 209.

⁸Esposito, Jhon, *Ensiklopedi Oxford Dunia Islam Modern*, (Bandung: Mizan, 2001), p. 69.

⁹Abdullahi A. an-Na'im, *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Book, 2003), p. 108.

on the syi'ah Isnan 'Asyariyah (ja'fari) family law. Inheritance law material as stipulated in civil law applies to date, without any changes, while laws governing marriage and divorce are inevitable from legal reform.

From 1928 to 1935 Iranian family law was codified as part of civil law. It all started when in 1927, Iran's minister of justice formed a commission tasked with preparing the draft family law. Provisions other than family law and inheritance law are taken from Napoleon's provisions as long as they do not conflict with shari'ah principles. Meanwhile, family law and inheritance law reflect more as the unification and codification of shari'ah law. The draft prepared by the commission is referred to as Qanun Madani. Part II of the Iranian Civil Code, established in 1930, deals with 6 books dealing with various aspects of civil law, such as missing persons, kinship relations (nasab), marriage and divorce, guardianship, incapacity and guardianship. Provisions regarding inheritance law are regulated in articles 861-949. Meanwhile, the entire book VII on family law issues -which is based on traditional Shi'a law Isna Asy'ariah (Jatfari) -which is still valid today without experiencing any changes.¹⁰

More important reforms were carried out by the Iranian legislature in 1967. On June 24, 1967, the Law on Family Protection (Qanun Himayat Khansiwada) was promulgated. This law aims to regulate the institution of divorce and polygamy to avoid arbitrary actions.¹¹ Iranian family law returns to traditional family law since the success of the Islamic revolution led by Imam Khomeini, the new regime declared that Islamic law is the only source of law in Iran.¹² The 1979 Constitution of the Islamic Republic of Iran, among other things, states that the family is a fundamental unit in Islamic society, therefore, all laws, regulations and administrative provisions must be able to facilitate family unity. This constitution also emphasizes that family relations must be based on Islamic law.

The council provided an opportunity to review all the laws that were used at that time for the purpose of Islamizing the legal system with the fatwa of Ayatollah Khomeini or what is called the transitional law. Sources of law are Islamic law, constitutions, statutory provisions, unwritten sources of law such as customs, revolutionary principles, and so on.¹³

¹⁰Abdullahi A. an-Na'im, *Islamic Family Law in a Changing World...* p. 154.

¹¹Abdullahi A. an-Na'im, *Islamic Family Law in a Changing World..* p. 155.

¹²Muhammad Jawad Mughniyah, *Fiqh Lima Madzhab*, Alih Bahasa Masykur, cet IV (Jakarta: Lentera, 1999), p. 316-318.

¹³Abdullahi A. an-Nallim, *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Book Ltd., 2003), p. 108.

Pre and Post Revolution Iran family law

1. Marriage registration

Every marriage, before it is carried out, must be registered with the authorized institution. Violation of this provision will be given a prison sentence of one to six months (the Marriage Law, 1931 article 1). Before the marriage is registered, the bride and groom must obtain a health certificate from a medical party (Production of Medical-Fitness Certificate Law, 1938 article 1). Marriage registration here is not only limited to permanent marriages. But also for marriages that are mut'ah (temporary), because in Iran marriages like this are allowed, but with conditions that must be clear about the time limit for carrying out the marriage.¹⁴

If we look at the marriage registration regulations, this is included in regulatory (administrative) reforms, because violators only receive physical sanctions, while their marital status remains valid. Provisions like this can be considered pro-women. The consequences of unregistered marriages often have a negative impact and are detrimental to the woman. So by noting it can be seen as one way for the government to regulate marriage as well as to minimize the occurrence of tyranny. Regarding the obligation to register marriages, there is actually no discussion in fiqh, both in the Ja'fari and Sunni schools of thought.

However, for the writer, the registration of marriage does not only contain religious values, but is also part of the effort to protect women's rights in marriage. because of some of the consequences arising from divorce it will be detrimental to the woman if the divorce is dropped from a marriage that was not recorded beforehand. In addition, the registration of marriages is one of the ways used by the State to regulate and control marriages that occur in order to achieve the goals and objectives of the country concerned.

2. After Marriage

As previously mentioned, Iran is a country that makes Islam the official state religion, so they also use Islamic laws in establishing the laws of their country. the majority of Iranian citizens are Shiite imams who adhere to the Ja'fari school of thought. With regard to the minimum age of marriage permissible to carry out marriage according to the Ja'fari school of age, 15 years old for men and 9 years for women, according to the Ja'fari school of thought a woman is considered mature at that age and therefore can enter into marriage. The Ja'fari school also holds the view that a guardian may marry a minor.¹⁵

¹⁴Aulia Rahmat, *Perlindungan Hak dan Kewajiban Perempuan Dalam Hukum Keluarga di Republik Islam Iran*, Al Muqarahan Vol. IV, No. 2, (2013), p. 53.

¹⁵Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab*, alih bahasa Masykur A.B. (Jakarta: Lentera, 1999), p. 316-318.

Even though in the Al-Qur'an and Hadith the Prophet does not openly provide a clear limit on the age of marriage, from the indications the argument indirectly already exists in it, namely that it is permissible to marry when entering the age of puberty. The marriage bond creates reciprocal rights and obligations. The existence of these rights and obligations indicates that the perpetrator is required to be an adult. To set the context today, there is a difference. Apart from the concept given by the scholars, this difference is also influenced by differences in environment, culture, level of intelligence of a community and several other supporting factors.¹⁶

However, after the Iranian revolution, regarding the renewal of the marriage age limit in Article 1031 of the Iranian Civil Code, it stipulates that the minimum age for marriage is 18 years for men and 13 years for women. If someone marries a girl who is below the minimum age for marriage, he can be punished with imprisonment of six months to two years. If a girl is married before the age of 13, the person who marries her is subject to 2-3 years in prison. In addition, those who violate this provision are subject to a fine of 2-20 riyals.¹⁷

3. Marriage Agreement

In classical fiqh, there is no discussion of marriage agreements. The discussion of fiqh is precisely related to the requirements of marriage. According to the Imamiyyah (Syi'ah) school, conditions that are considered null and void in the contract are not considered to be able to cancel the marriage contract or the dowry itself, unless it is indicated in the form of *khiyar*, or the invalidity of all the effects of the contract that are contrary to its own character. If a wife, during the marriage contract, requires her husband not to remarry, not to divorce her, or the right to divorce belongs only to the wife, may not inherit, or other requirements that conflict with the purpose of the marriage contract, then these conditions will be canceled by themselves, whereas the marriage contract remains valid.¹⁸

Couples who want to get married may make an agreement in the marriage contract, as long as it does not conflict with the purpose of marriage. The agreement can be made under the protection of the Court (Marriage Law, article 4). Basically, both parties are obliged to keep their marriage vows even though the material is not written down in the contract materials. Therefore, the negligence of one of the parties to fulfill it, either completely or partially, results in a divorce

¹⁶Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia* (Jakarta: Kencana, 2007), p. 68.

¹⁷Suma, Muhammad Amin, *Hukum Keluarga Islam di Dunia Islam* (Jakarta: Rajawali Grafindo, 2005), p. 54.

¹⁸Mughiyah, Muhammad Jawad, *Fiqh Perbandingan Lima Mazhab*, alih bahasa Masykur A.B. (Jakarta: Lentera, 1999), p. 319-320.

claim. However, the aggrieved party has the right to file an annulment of the marriage.¹⁹

4. Polygamy

Discussions about rules, this matter has been contained in the Family Protection Act, 1967, article 11. This law has explained that a husband who wants to have a polygynous marriage must obtain permission from his wife. The sanction that will be imposed on the husband if the rule is violated is that the first wife has the right to sue her husband for a divorce in court. In addition, the husband must also obtain official permission from the court. Getting permission to practice polygamy is also not easy, because there are several requirements that must be met by the husband. The court will examine the condition of the husband first, whether a person is able to provide more than a wife; and is it possible to be able to do justice to his wives. Violation of this regulation will result in imprisonment for 6 months to 6 years.

Classical fiqh studies have sufficiently addressed the problems and provisions for polygamy. According to Sheikh Muhammad Abduh, the permissibility of polygamy as explained in the Qur'an sura al-Nisa [4] verse 3 has been limited by the explanation in the Al-Qur'an itself, surah an-Nisa [4] verse 129. Thus, the ideal of a marriage based on the Qur'an is to use the principle of monogamy. More than that, if the husband wants to practice polygamy, then the husband is subject to the conditions put forward by feeling capable of being fair to wives, which is a very difficult condition, even impossible to fully realize.²⁰

The need for the wife's approval if the husband wants to practice polygamy is also a new breakthrough not to be arbitrary in marriage. In addition, the wife's permission is also part of the way to ensure the partner's willingness to live a household life, including guaranteeing the well-being of the partner in the family. However, such provisions are not found in the Ja'fari and Hanafi schools. But that was pre-Revolutionary law. Now, the polygyny law in Iran is back as it was in fiqh, but instead it is opposed by the public. Even though Islamic law allows this polygyny, both Shia and Sunni schools. It seems that people have started to realize about the fragile implementation of polygynous families.²¹

Even though there have been restrictions on polygamy permits for husbands, this rule is seen as merely a regulatory reform, because for husbands who violate the law on polygamy licensing they are only given sanctions, but their

¹⁹Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia* (Jakarta: Kencana, 2007), p. 146.

²⁰John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), p. 93.

²¹Fathonah K. Daud, Aden Rosadi, *Dinamika Hukum Keluarga Islam dan Isu Gender di Iran: Antara Pemikiran Elit Sekuler dan Ulama Islam*. *Volksgeist*, Vol. 4 No. 2 (Juli-Des 2021), p. 212.

polygamous marriages are still considered valid. However, on the other hand, it can be seen as a substantive reform, because a polygynous husband without the permission of the first wife can be a reason for the first wife to sue the court for divorce.

5. Family Income

With regard to living in the family, it is the husband's obligation to provide for his wife, both in terms of food, clothing, clothing and household goods properly. If the husband is unable or reluctant to do so in providing for the wife's living, then the wife has the right to submit it to the court. The next court will order the husband to provide compulsory maintenance to his wife. If the husband does not comply with the Court's order, the wife has the right to file a divorce with the Court (the Family Protection Act, 1967 article 10). In a temporary marriage, the wife is only entitled to it if this is included in the material requirements for marriage.²²

In an effort to meet family needs, sometimes the husband's income is classified as lacking in meeting the needs of his wife and family, but in the Ja'fari school, the husband may refuse his wife's right to work, given that the dominant school of Iranian society is the Ja'far school of Shia. There are several professions that are not in accordance with the interests of the family or with her own dignity as a woman and as a wife. A wife's refusal not to have marital relations on the grounds that her husband has an illness is not seen as disobedience.²³ As for the problem of spiritual maintenance, if the wife refuses not to have sexual intercourse, it is because there are acceptable reasons. For example, the husband has a contagious disease. So this is not seen as nusyuz.²⁴

6. Right to Work for Wives

The law on women working to earn wealth with the aim of providing for the family is not obligatory, but there is also no prohibition in the Qur'an and Hadith regarding this matter. So that it can be understood that for women if the husband's income cannot meet the needs of the family, then the wife may give the results of her sweat willingly for the benefit of the family. For women like this there is a record of their own goodness in the sight of Allah swt.

Iran gives the right to work for the wife. However, there are provisions that allow a husband to forbid his wife from working in a profession he doesn't want.

²²Abdullahi A. an-Na'im, *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Book Ltd., 2003), p. 109.

²³Abdullahi A. an-Na'im, *Islamic Family Law in a Changing World...* p. 110.

²⁴Aulia Rahmat, *Perlindungan Hak-Hak Perempuan dalam Hukum Keluarga di Republik Islam Iran*, Al-Muqaranah: vol. 4, no. 2 (2013), p. 20.

Because the profession is seen as inconsistent with the family's vision or with her own dignity as a woman or wife.²⁵

7. Divorce

The regulations regarding divorce in Iran are heavily influenced by classical Shia fiqh. Which requires a certain formulation and two male witnesses. The conditional divorce formulation is considered invalid. The 1992 amendments stipulate that it is illegal to register a divorce without a certificate from the Court. Based on the concept of jurisprudence among the Shiites, a divorce can take several forms. The form that occurs most often is the form of divorce that can be reconciled (*talaq raj'iy*). Divorce is one way out that can be the final choice for households that can no longer be maintained. The existence and absence of certain conditions in the marriage contract provides an option for married couples to cancel their marriage contract.²⁶

The Family Protection Act in Iran has undergone legal reforms that are not only partial on the administrative side, but also enter into the area of legal matters. This can be seen in the abolition of the husband's authority to declare divorce unilaterally. Every divorce, whatever its form, must be preceded by a request to the Court to issue a certificate of impossibility of reconciliation (can't reconcile). The court only issued the certificate after trying to make peace efforts even if necessary, mediation had to be carried out and apparently failed to find a peaceful way (the Family Protection Act, 1967 article 8)

8. Inheritance Law

Iranian Civil Law, especially inheritance law and family law, are based on the traditional Shi'a *Itsna Asy'ariyah* (Ja'fari) law. As for the matter of inheritance law, until now it is still in force without any changes while marriage and divorce laws are undergoing reforms. This legal reform has been carried out several times, but a legal reform effort that was considered quite substantial was carried out in 1967. This effort later resulted in the Family Protection Law (*Qanun Himayat Khaneiwada*). This law aims to regulate the institution of divorce and polygamy to avoid arbitrary actions.²⁷

In the old Iranian Inheritance Law (The Civil Code, 1959: 67-68), a wife who has children can share 1/8 of her husband's inheritance without assets in the form of land. If the husband and wife do not have children, then the wife's share is 1/2 of the *tirkah*. The distribution of the remainder looks at the condition of the

²⁵Aulia Rahmat, *Perlindungan Hak-Hak Perempuan dalam Hukum Keluarga...* p. 38.

²⁶Shahla Haeri, *Divorce in Contemporary Iran: a Male Prerogative in Self Will* (London: Graham & Trotman Limited, 1990), p. 55-69

²⁷Dian Mustika, *Pencatatan Perkawinan Dalam Undang-Undang Hukum Keluarga di Dunia Islam*, p. 56.

existing heirs, if there are other heirs from the deceased husband's side, then they get the rest. But if there are no other heirs, 1/2 of the property is left to the state. Conversely, if the wife dies and the couple has no children, the husband gets all of the wife's deceased assets. If you have children, the husband only gets ¼ (article 91).

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Whereas in the new Inheritance Law after the reform of Iranian family law, husband and wife's inheritance rights are equal, no longer recognizing gender.²⁹ In The Civil Code of 2000 articles 67-68, a wife will get all of her husband's inheritance. So, in the new Inheritance Law, the wife is entitled to her husband's land, which she did not get in the old Inheritance Law. This is a progressive legal provision as an effort to equalize the rights of men and women.³⁰

9. Mut'ah marriage

Mut'ah or munqati marriage is called by Iranian society as 'sigheh'. Here it is important to understand the development and reality of family law in Iran, because Iran is a Shiite country. In the Shia white book it is stated that some Shia scholars such as Ibn al-Babawiyah and al-Kasyany stated that "Mut'ah marriage is our religion and the religion of our ancestors. Whoever practices it means he has practiced religion and whoever denies it means he has violated religion, then he is not included in our religion. They also believe that whoever has done mutah marriage once, then the degree is the same as Al-Husain bin Ali (grandson of the Prophet Muhammad). Whoever has done it twice, then his degree will be equal to that of the Prophet Muhammad. Shia adherents strongly believe in the teachings of the call for mut'ah marriage.³¹

However, in the modern era, especially after the reform of Iranian family law, in fact, this marriage is actually rarely practiced by Iranian people, and as time goes by, it is increasingly being forgotten by Iranian people. But sometimes near Haram Sayyidah Fatimah Ma'someh there are women who want to be mutahed. Their characteristics are by wearing the chador upside down, but people will have difficulty dissecting which chador is upside down or not.³²

²⁸Muhammad Fauzinuddin, *Kontribusi Iran terhadap Sejarah Pembaharuan Hukum Keluarga Islam: Potret Sistem Kewarisan dan Wasiat Wajibah di Iran*, Ulul Albab Vol. 18, No. 2 (2017), p. 209.

²⁹Pakzad, Sima, *The Legal Status of Women in the Family in Iran*, (London: 1994), p. 77-79.

³⁰Schirazi, Asghar, *The Constitution of Iran: Politics and The State in The Islamic Republic* (London: 1997), p. 10-11.

³¹Daud, F. K., *Nikah Kontrak Modus Human Trafficking (Kritik atas Fiqh Munakahah Syiah)*, Jurnal Al Hikmah: (2018), p. 256.

³²Sukron Makmun, *Fenomena Pernikahan Mut'ah di Republik Islam Iran (Antara Ada dan Tiada)*, Jurnal MUWAZAH, vol. 1, no. 2 (2009), p. 153.

The Birth of Islamic Feminism in Iran

Muslim women, like other women in the world, have always been aware of the challenges of gender equality, but the emergence of feminism has always been delayed until recently. This delay reflects at least in part the complex relationship between women's demands for rights and the anticolonial nationalist movements of the first part of the twentieth century. At a time when feminism, both as a consciousness and as a movement, is being shaped and making an impact in Europe and North America, it also serves to morally justify attacks on indigenous (Muslim) peoples and to support the notion of European comprehensive superiority.³³

The emergence of feminism in Iran was motivated by the fact that many European travelers and diplomats in the nineteenth century voiced and demonstrated what they perceived as the subordination of women in Muslim society in Iran. The emergence of non-defensive Muslim anti-colonialist and nationalist movements regarding traditional gender relations. The situation is further complicated by the modern nation-state in the Muslim world and the appropriation of Islam, and the "women's question" in the nation-building process. The new regime not only selectively reformed the classical rules of Islamic family law, grafting on the unified legal system of the time, they also attempted to define the scope of women's rights and to control nascent female activism. The extent to which they succeeded or failed varied from one country to another and from one period to another.³⁴

Muslim women who acquired a feminist consciousness at that time began to carry out movements in the quest for equal rights for women who were under pressure to conform to the anti-colonial and nationalist and secularist priorities, but the despotic agendas of the new countries. Some scholars argue that in the early twentieth century, the boundaries between Islam and women were not so clearly marked and that women often tried to change customary law traditions by appealing to and relying on Islamic sacred texts.³⁵ But in this period women became symbols of cultural authenticity and carriers of religious traditions and ways of life, meaning that any dissent on their part could be interpreted as a kind of betrayal or could be silenced. Contemporary Western Feminists can criticize patriarchal

³³Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate*, (New Haven, Conn, 1992), p. 154.

³⁴Mounira Charrad, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria and Morocco* (Berkeley, 2001); *Women, Islam, and the State*, ed. Kandiyoti (Basingstoke, England, 1991), and Paidar, *Women and the Political Process in Twentieth-Century Iran* (Cambridge, 1995). p. 173.

³⁵Margot Badran, *Feminists, Islam, and Nation: Gender and the Making of Modern Egypt* (Princeton, 1995). p. 156.

elements of their own culture and religion in the name of modernity, liberalism and democracy, but Muslims cannot use these external ideologies or internal political ideologies in fighting for their rights. For colonialists and modernizing secularists, Islamic law is the body of backward systems that must be rejected or tamed under the name of progress. For anti-colonialists and most of the nationalists, namely from the feminist side, advocating for women's rights carries out a colonization project that must be shared. Meanwhile, the undemocratic Muslim “modernists” gave new legal force for gender equality prescribed by classical Islamic jurists. As a result, many Muslim women face a painful choice, as Ahmed puts it, “between betrayal and betrayal.”³⁶ They must choose between their Muslim identity their faith and their new gender consciousness.

But as the 20th century drew near, this dilemma emerged. One of the overlooked and paradoxical consequences of the emergence of political Islam in the second half of the century was helping to create a space for Muslim women, where Muslim women could reconcile their identity and beliefs with the struggle for gender equality. This is not the case because Islamists offer an egalitarian vision of gender relations, in fact, they do not. Their so-called return to sharia agenda and their efforts to get policies over patriarchal practices, gender, ideas that are traditionally embedded in Islamic Law provoked many women to increase criticism of these assumptions and encourage them to great activism. An increasing number of women are coming to see the inherent logical connection between Islamic ideals and patriarchy, not the contradictions between Islamic religion and feminism, and to free themselves from the previous straitjacket, anticolonial, and nationalist discourses. Using the language of political Islam, they are able to defend a critique of gender bias in Islamic law that was previously impossible.³⁷

Towards the end of the 1980s, there were clear signs of a return to consciousness, a new way of thinking, a gender discourse that was an aspiration and a demand, but an Islamic language and source of legitimacy. One version of this new discourse is called Islamic feminism. The majority of Islamists, however, and some secular feminists, see the notion of a feminist Islamic mass antithetical to their perspective or ideological position and effects as a contradiction in terms.

On the other hand, the birth of a number of Muslim intellectuals, even among them from the Islamic scholars in Iran who have started to re-read *maṣādir al-Islām*. Among them is Ayatullah Murtada Mutahhari (Khurasan, 1919-1979), a pious Ulama, a student of 'Allamah Ṭabaṭṭabāī, who also concentrated on the

³⁶Ahmed, *Early Feminist Movements in the Middle East: Turkey and Egypt*, in *Muslim Women*, ed. Freda Hussain (London, 1984), p. 122.

³⁷Ziba Mir-Hosseini, *Muslim Women's Quest for Equality: Between Islamic Law and Feminism*. The University of Chicago Press. Vol. 32, No. 4 (2006), p. 639.

struggle for gender issues in Iran. 45 However, he was then hit by a bomb attack in 1979. Later several names emerged, who pioneered the feminist movement in Iran, such as Ziba Meer Hussein, who is an intellectual, anthropologist and writer who is also a Muslim intellectual from Iran who is concerned with gender issues. Intellectuals in Iran have now started to concentrate on gender issues, by criticizing several classical scholarly books and medieval jurists' treatises which are seen as gender biased. Furthermore, the process of *tadwin* (codification) and *tawdi'* (legislation) took place. According to Tahir Mahmood, at a methodological level, reforming Islamic law is based on the doctrines of *masawat al-Mazahib fi al-fiqh* (equality of schools of Islamic law), *istihsan*, *masalih al mursalah*, *istidlal*, *tadwin* and *tawdi'*.³⁸

Islamic feminists, such as Sherkat, Teleghani, and Heshmi, have made important contributions to the question of women in Iran. They rely on reinterpretations of Islamic texts to challenge laws and policies they believe are based on orthodox, literalist, and misogynistic interpretations of the text. It also addresses some of the foundations of Islamic doctrine and uses them to debate the gender system that applies in Iran. As a result of this pressure, the Iranian government has adopted several peaceful policies which have effectively raised the status of women in Iran. Moreover, secular women have found ways to express their ideas without undermining Islamic feminist and feminist ideology. What is unique about the feminist debate in Iran is that the protagonists do not simply adopt Islamic discourse but operate within the parameters of a state where the vision of Islam has been realized. The younger generation is quickly forgetting the lessons of the revolution. For them, it is not uncommon to work side by side with women. Women, while still unable to participate directly in religious debates have effected major changes. People in Iran are becoming very aware of gender equality. However, not all steps have been in the right direction. In 1998 a law, proposed by conservative female members of the Majles was passed. It limits women's rights and the women's press to propagate women's rights beyond the boundaries of the legal and Islamic framework currently in place. Other than that, no real debate is offered about the hijab.³⁹

Since the Iranian Revolution, recorded in the preamble to the Constitution of the Islamic Republic of Iran, recognizing equality between men and women before the law. But the movement of women in public is limited. Even though these women have demonstrated many times on the streets of the capital Tehran

³⁸Tahir Mahmood, *Family Law Reform in The Muslim World*, (Bombay: N.M. Tripathi PVT. Ltd., 1972), p. 13.

³⁹Whitcher, Rochelle S. *The Effects Of Western Feminist Ideology On Muslim Feminist*, Monterey, (California. Naval Postgraduate School, 2005), p. 66

without headscarves. This action shows at least one thing, namely the response to the reluctance of Iranian women whose private areas are regulated so that they have freedom of expression. As a result of these new regulations, not a few Iranians have left the country. Even during the Hassan Rouhani era, Iranian women wore headscarves with their hair still visible in the front.⁴⁰ According to the author's opinion, if a country wants to apply Islamic law in governing all state affairs, it is sufficient for the law governing *hablumminannas* relations, namely the relationship between humans and humans, as for laws and regulations concerning *hablumminallah*, the state does not have the right to impose this on the people, bearing in mind that the law is the business of the servant to the Creator, not the business of the servant to His servant.

The Dynamics of the Feminism Movement Against Islamic Family Law Reform in Iran

In 1982 the Panel of Supreme Court Justices announced to each Court that the existing marriage law be adapted to Islamic (Shi'a) law. The Sharia adopted in Iran at that time was very 'patriarchal'. So that Iran's marriage law has traditionally returned to the favor of husbands. The right to divorce belongs to the husband. If a wife wants to divorce, then she must have several legal reasons. For example, her husband has been abusive, has psychological problems or is unable to provide for her. The practice of polygyny and free mut'ah marriage. Nonetheless, polygyny is now being opposed, not only from among women activists, but also from large parts of Iranian society. The promotion of polygyny in 2019 was seen as an advertisement for legal prostitution.⁴¹

Zeeba Mir Hosseini In 1997, when he returned to the Tehran court documentary documentary on divorce, there was little trace of the idealism one encounters in the 1980s. Meanwhile, the imposition of patriarchal fiqh on marriage and divorce has created such chaotic family life, such uproar among women, that the government has been forced to roll back almost all the reforms that had been completed overnight by that one communique of Ayatollah Khomeini. This is done through a series of legislative acts and procedural devices that have a legal logic and a spirit intended to protect and respect women who do not emphasize the lenge to the patriarchal ethos of Islamic law defined by classical Muslim jurists. In order to

⁴⁰Fathonah K. Daud, Aden Rosadi, *Dinamika Hukum Keluarga Islam dan Isu Gender di Iran: Antara Pemikiran Elit Sekuler dan Ulama Islam*. Volksgeist, Vol. 4 No. 2 (Juli-Des 2021), p. 218.

⁴¹Promosi Praktik Poligami oleh Kaum Konservatif, <https://news.detik.com/dw/d-4782791/promosi-praktik-poligami-oleh-kaum-konservatif-picu-kontroversi-di-iran>. diakses pada 28 Mei 2021

exercise the so-called Islamic right to divorce, the safe must now both obtain the consent of his wife to pay him a large compensation.⁴²

There are many boundaries that separate men and women in society, even in terms of education in tertiary institutions the classes are separated between men and women, prohibition for female students on 69 study programs, women are also prohibited from working in several professions, women are also prohibited from certain disciplines in universities, such as engineering and agriculture. Women are prohibited from participating in some sports and are not allowed to see men in sports.⁴³

The feminist movement in Iran experienced such rapid development, before the Iranian Islamic revolution, women under the Pahlavi Regime had the same position as men in terms of voting rights by expanding voting rights to women and utilizing women in various fields. Simply put, the Shah's regime also reformed the position of women. Since the early 1920s, several intellectual figures, men and women, have been struggling to improve education, social status, and women's rights. In small numbers, women began to enter jobs in the education sector, nurses, and even worked in factories. Although the emancipation of women from traditional norms has taken place in the Pahlavi government, in crucial matters in family legislation and political rights legislation there has been almost no change. The practice of divorce (thalaq) remains as something light and easy for men. Child rearing remains the primary responsibility of women. Polygamy and mut'ah marriages are still permitted. It was only with the family protection laws of 1967 and 1975 that women's prerogative rights were partially protected by legislation that required divorce to be filed in court and required the wife's consent to polygamous marriages.⁴⁴

In 1936 the wearing of the hijab was banned and urban women from the upper middle class began to wear modern clothes. Since then, Iranian women who do not like Pahlavi's policy of banning the wearing of headscarves began to put pressure on the government. When Muhammad Reza Pahlavi replaced his father's position as Shah, the policies adopted during Reza Pahlavi's reign used more modern methods. She undertook an extensive propaganda campaign, and women

⁴²Ziba Mir Hosseini, *Muslim Women's Quest for Equality: Between Islamic Law and Feminism*, Critical Inquiry, Vol. 32, No. 4 (Summer 2006), p. 639.

⁴³Ali Akbar Mahdi, *Reconstruction Gender in Post-Revolutionary Iran: Transcending The Evolution Midle East Insight*, Vol. XI, No. 5 (Agustus 1995), p. 54

⁴⁴Ira M. Lapidus, *Sejarah Sosial Umat Islam bagin Tiga* (Jakarta: PT Raja Grafindo Persada, 1999), p. 33.

faced considerable hurdles entering higher institutes or certain social circles while wearing the hijab.⁴⁵

After the Iranian revolution took place, Ayatollah Khomeini imposed different regulations on Iranian women, namely by returning women's fitrah to the path in accordance with Islamic teachings by ordering Iranian women to return to using Hijab or head coverings for women in Iran. A populist revolution in 1978-1979 ended Iran's long tradition of monarchy, replacing it with a unique Islamic republic, where religious clergy held political control under the supreme leader, Ayatollah Ruhollah Khomeini.⁴⁶

Conclusion

Since 1928 to 1935 family law in Iran was codified as part of civil law. It all started when in 1927, Iran's minister of justice created a commission tasked with preparing the draft family law. Provisions other than family law and inheritance law are taken from Napoleon's provisions as long as they do not conflict with sharia principles. Meanwhile, family law and inheritance law are more reflective of the unification and codification of sharia law. The draft prepared by the commission is referred to as Qanun Madani. Iranian civil law covers various aspects of the law. Civil law relating to inheritance law is regulated in articles 861-949 and matters of wills are regulated in articles 843, while the entire book VII deals with family law matters. All inheritance and family law material is based on the family law of the Shia Itsna 'Asyariyah.

Prior to the birth of the marriage law in Iran, issues of divorce and marriage were determined in the Civil Code which had been in effect since 1930. Then the marriage law was replaced by the Family Protection Act in 1967, then exchanged with the Protection of Family in 1975. However, post-revolutionary Iran (1979), Protection of This family was abolished, which was seen as having exceeded Islamic sharia provisions. As for laws that have not been codified, they must be returned to the fiqh of the Asy'ariyah Palace. This shows that there has been a tug of war between the ulema and the secular elite in family law. However, there is a new phenomenon, the divorce rate in Iran has increased dramatically, polygyny and mut'ah marriages are being abandoned, and even being rejected. This phenomenon was influenced by modernization in the Pahlevi era.

⁴⁵Sidik Jatmika & Vonny Nuansari, *Dinamika Partisipasi Politik Perempuan Iran* (Yogyakarta: LPPi, 2002), p. 51.

⁴⁶Krysta Wise, *Islamic Revolution of 1979: The Downfall of American-Iranian Relations*, Legacy: Vol. 11: Iss.1, Article 2, 4.

The emergence of the ideology of feminism in Iran was motivated by the many travelers from Europe in the 19th century coming to Iran, where these European travelers voiced their understanding of emancipation, patriarchy, feminism towards social practices, family and family laws that apply in Iran. So that this made Iranian women aware and they formed a feminist movement that aims to voice women's rights, which from this feminist movement is also the background to the occurrence of family revolution in Iran.

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