

Legal Systems in North African Countries Reviewed from the Perspective of Problems and Solutions

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Abstract

The legal system in every country has a very important position and function. However, it should be noted that each country has a different legal system. Likewise, the legal system in North African countries has a different legal system from other countries in the world. The legal system in North African countries is indeed very interesting to study. The purpose of this research is to examine the legal system in North African countries from the perspective of problems and solutions. The unique combination of Islamic legal traditions, colonial heritage, and local customs creates a complex and dynamic legal system. Literature review is the method used by researchers to uncover the legal system in North African countries. Through analysis of the data obtained, the results of this study were able to show that the legal system in North African countries has unique characteristics, influenced by a long history of colonialism, Islamic influence, and local customs. Some common problems faced by the legal system in North African countries are (1) Legal dualism which is a challenge in itself in legal development; (2) Corruption is a serious problem that hinders law enforcement and weakens public trust in the justice system; (3) Women and minority groups often experience discrimination in access to justice. To overcome these problems, many countries in North Africa have made legal reform efforts, including (1) Legal harmonization is a strategic effort to overcome the complex problem of legal dualism in North African countries; (2) Strengthening judicial institutions is indeed one of the keys to overcoming the various complex problems faced by the legal system in North African countries; (3) Criminal law reform is a crucial step in overcoming the complex problems of the legal system in North African countries.

Keywords: Legal System; North African Countries; Problems; Solutions

INTRODUCTION

The legal system in every country has a very important position and function. The legal system is a set of rules, principles, and procedures that regulate the lives of people in a country (Verdier & Versteeg, 2015). The legal system has a very important role in community life. The legal system does have a very crucial role in community life. Imagine if there were no laws, our lives would be chaotic and full of uncertainty (Merryman & Perdomo, 2018).

As for some of the roles and functions of law in the life of society are maintaining order and security, namely the law provides boundaries that must be obeyed by every individual in society. Protecting human rights, that the law guarantees that every individual has

the same rights and is protected by the state (Milhaupt & Pistor, 2019). Resolving disputes, that the law provides a mechanism to resolve disputes between individuals or groups. Ensuring legal certainty, that the law provides legal certainty for every citizen, so that they can live safely and comfortably.

However, it must be noted that each country does have a different legal system (De, 2024). The differences in legal systems in each country are natural and reflect the richness of the culture and history of each country. By understanding these differences, we can appreciate cultural diversity and build better relationships with other countries. The differences in a country's legal system certainly depend heavily on different history and culture, ideology, geographical conditions, social,

religion, defense, security and politics (Perry, 2017).

The differences in legal systems in each country make the legal world very rich and complex (Siems, 2022). Like a beautiful mosaic, each country has unique pieces of law, formed from different histories, cultures, and values. Understanding these differences is essential for establishing good relations with other countries and resolving various legal problems that arise (Nelken, 2017). Understanding the differences in legal systems in various countries is indeed the key to establishing harmonious relations and resolving various complex legal problems in the current era of globalization (Park & Kim, 2020).

Likewise, the legal system in North African countries has a legal system that is different from other countries in the world. These differences make the legal systems in North African countries very interesting to study more deeply. Moreover, the legal system in North African countries has a unique blend of Islamic legal traditions, colonial heritage, and local customs creating a complex and dynamic legal system.

Therefore, the researcher wants to reveal the legal system in North African countries along with its problems and the solutions offered to solve them. That is why the researcher then raised the title of the research Legal System in North African Countries Reviewed from the Angle of Problems and Solutions.

METHOD

Literature review is a method that researchers use to uncover the legal system in North African countries. Data collection is done by collecting data or scientific papers both sourced from books and journals that can be accessed online. The data collected leads to the object of research or literature data collection. The data obtained is then processed and interpreted in depth to obtain solutions to the problems of the legal system in North African countries.

RESULTS AND DISCUSSION

1. Legal System in North African Countries

The legal systems of North African countries have unique characteristics, influenced by a long history of colonialism, the influence of Islam, and local customs (Dugard, 2015). Islamic influence: The majority of North African countries are Muslim, so Islamic law (Sharia) has a significant influence in their legal systems. Family, inheritance, and criminal law often refer to Sharia principles.

Colonial Legacy: Colonization by European countries, such as France and Spain, left a deep imprint on the legal systems in North Africa. Many countries still use civil law systems derived from the colonizing countries (Valfredo, 2020). Customs: Local customs also play an important role in dispute resolution and legal decision-making.

In general, the legal systems in this region can be categorized into two main types:
a. Civil Law Legal System (Continental Law)

The dominant Civil Law legal system in North Africa is a legacy of colonialism, especially the French and Spanish colonial eras. Countries such as Morocco, Algeria, Tunisia, Libya, and Mauritania were once part of French or Spanish colonies. During the colonial period, the civil law system that was in force in the colonizing countries was applied in their colonies. Main Characteristics
The Civil Law legal system in North Africa has several main characteristics, including:

- Codification: Law written in a comprehensive code.
- Jurisprudence: Court decisions can be used as a reference, but do not have the same force as laws.
- Sources of law: Apart from statutes, other sources of law are doctrine (the opinions of legal experts) and custom.
- Role of judges: Judges have an active role in implementing the law, but do not have the authority to make laws.

Adaptation and Syncretism of Law
Although the Civil Law legal system was adopted from the colonial countries, North African countries adapted and syncretized it with the previously existing Islamic law. This

resulted in a unique and distinctive legal system for each country. Some examples of adaptation and syncretism that can be found:

- Family law: Family law in many North African countries is still heavily influenced by Islamic law, especially regarding marriage, divorce and inheritance.
- Criminal law: The criminal law systems in North Africa generally adopt the principles of French criminal law, but with adjustments to local values and the Islamic religion.
- Customary law: Customary law still has a significant role in several aspects of community life, especially in rural areas (Abduraof, 2019).

b. The Influence of Islamic Law (Sharia)

The influence of Islamic law (Sharia) in the legal systems of North African countries is very significant. Although the legal systems in these countries generally adopt the civil law system (continental law) originating from the French and Spanish colonial era, the legacy of Islamic law remains an inseparable part and continues to influence various aspects of people's lives.

Before colonialism, the North African region had a strong tradition of Islamic law. Islam entered the region in the 7th century and gradually replaced the previous legal system. Islamic law, or Sharia, regulates various aspects of life, from worship, muamalah (transactions), to family and criminal law (Sungay & Booley, 2023).

When Western countries colonized the region, they brought their legal systems with them. However, attempts to completely eradicate the influence of Islamic law were unsuccessful. The local people still adhered to the values and principles of Islamic law, resulting in a syncretism between Islamic law and colonial law.

Islamic law has a very strong

influence in several areas of law in North African countries, including: Family Law: Family law in North African countries is heavily influenced by Islamic law. This is seen in the regulation of marriage, divorce, inheritance, and children's rights.

Criminal Law: Criminal law in these countries is also influenced by Islamic law, especially in cases of crimes related to morality, such as adultery, drinking alcohol, and theft. Civil Law: Civil law, especially those related to contracts and property, also contains elements of Islamic law. Customary Law: Customary law in some areas of North Africa is still very strong and often contains elements of Islamic law.

Manifestation of the Influence of Islamic Law. The influence of Islamic law in the legal systems of North African countries can be seen in several forms, including: Source of law: Islamic law is one of the officially recognized sources of law, in addition to statutes and jurisprudence (Rautenbach, 2010). Legal material: Many legal provisions that regulate various aspects of people's lives are sourced from Islamic law.

Legal procedures: Some legal procedures, especially those related to family matters, are influenced by Islamic law. Legal values: The values of justice, equality, and welfare contained in Islamic law are the basis for the formation and application of law (Waltz, 2023).

2. Problems in North African Legal Systems

Some common problems facing legal systems in North African countries include:

1. Legal Dualism

Legal dualism is a condition in which there is more than one legal system that applies simultaneously in a region. In North African countries, this phenomenon is very complex and is a challenge in legal development. The overlap between formal (written) law and informal (customary) law often causes legal uncertainty and difficulties in implementing the law (Adams, & Turner, 2005).

The Root of the Problem of Legal Dualism in North Africa is like a colonial legacy, where the civil law system brought by the French and Spanish colonizers clashed with the pre-existing Islamic legal system. Then customary law, where the existence of strong customary law in rural communities also complicates the situation. There are differences in interpretation, namely there are differences in the interpretation and application of the law between judges, clerics, and society (Wiredu, 2022).

The negative impacts of legal dualism are legal uncertainty, namely the existence of several legal systems that apply simultaneously causing legal uncertainty for society. The existence of social conflict, caused by differences in interpretation and application of the law which can then trigger social conflict, especially in matters relating to personal status, inheritance, and criminal law. The occurrence of obstacles to development, namely the emergence of legal uncertainty hinders investment and economic development. The existence of discrimination where there is potential for discrimination against minority groups who do not adhere to the majority religion.

2. Corruption

Corruption is a serious problem that hampers law enforcement and weakens public trust in the justice system. Another impact is resource constraints, namely many countries in North Africa face limited human and financial resources to build an effective and efficient justice system. Corruption in North African countries often undermines and weakens the legal system, which in turn negatively affects governance, justice and socio-economic development. As many high-ranking or powerful officials engage in corrupt practices, they are often able to avoid prosecution or sanctions. This leads to impunity, where violations of the law are not prosecuted, and the legal system becomes ineffective. People lose faith in justice because they feel that the law only

applies to ordinary people, not to officials or elites. Corruption in the justice sector can lead to unfair decisions. Judges or legal officials involved in corrupt practices may make decisions based on bribes or external influences rather than objective law. This undermines the basic principle of a fair trial and undermines public trust in the legal system.

3. Discrimination

Women and minority groups often experience discrimination in access to justice. Rapid social changes, such as urbanization and modernization, pose new challenges for legal systems that are still rooted in tradition (Shale, 2019). The emergence of conflict and violence in North Africa has experienced prolonged conflict and violence, which can disrupt legal stability and security.

c. Efforts to Improve the Legal System

To address these problems, many countries in North Africa are undertaking legal reform efforts.

1. Harmonization of Law

Trying to harmonize formal and informal law to create a more coherent legal system. Legal harmonization is one of the strategic efforts to overcome the complex problem of legal dualism in North African countries (Denson, 2024). This concept refers to the process of unifying or integrating various different legal systems into one coherent and consistent legal system.

Harmonization of laws in North African countries is important.

- a) **Eliminating Legal Uncertainty:** With a clear legal system, it will be easier for society to understand and comply with the law.
- b) **Improving Legal Certainty:** High legal certainty will attract investment and encourage economic growth.
- c) **Preventing Social Conflict:** Legal harmonization can reduce the potential for conflict arising from differences in legal interpretation.

- d) **Strengthening Law Enforcement:** With an integrated legal system, law enforcement will be more effective.
2. **Strengthening the Judicial Institutions**
Increasing the independence and accountability of the judiciary. Strengthening the judiciary is indeed one of the keys to overcoming the various complex problems faced by the legal system in North African countries. With an independent, professional, and effective judiciary, it is hoped that legal certainty can be created, social conflict can be reduced, and public trust in the legal system can be increased (Tiliouine & Estes, 2016).
Strengthening judicial institutions is important for the following reasons:
- a) **Ensuring Justice:** A strong judicial system will ensure that every individual receives fair treatment before the law.
 - b) **Preventing Arbitrariness:** Legal decisions taken must be based on applicable laws, not on the interests of certain individuals or groups.
 - c) **Increasing Public Trust:** The public will have more confidence in the legal system if they are confident that justice will be served.
 - d) **Encouraging Investment:** High legal certainty will attract foreign investors to invest in the country.
3. **Criminal Law Reform**
Improving criminal laws and criminal justice procedures to protect the rights of suspects and victims. Improving criminal law and criminal justice procedures in North African countries to protect the rights of suspects and victims is a major challenge, but is critical to ensuring fair and effective justice systems. Criminal law reform is a crucial step in addressing the complex legal system problems in North African countries. By carrying out reforms, it is hoped that a more just, effective and modern criminal law system can be created. Criminal law reform is important for several reasons:
- a) **Adapting to Changing Times:** Criminal law needs to be continually updated to accommodate social, economic, and technological changes.
 - b) **Improving the Effectiveness of Law Enforcement:** Good criminal law will facilitate law enforcement and reduce crime rates.
 - c) **Ensuring Justice:** Criminal law reform aims to create a fairer and less discriminatory legal system.
 - d) **Increasing Public Trust:** People will have more trust in the legal system if they feel that the laws protect their rights.
4. **Legal Education**
Increasing legal awareness in society through legal education. Legal education has a very crucial role in overcoming the problems of the legal system in North African countries. By providing a deep understanding of the law, both to the general public and legal practitioners, it is hoped that a high level of legal awareness can be created, as well as improving the quality of law enforcement. Legal education is important for several reasons.
- a) **Increasing Legal Awareness:** Legal education will make people more aware of their rights and obligations, as well as applicable legal procedures.
 - b) **Forming Legal Character:** Legal education can form the character of individuals who uphold law and justice.
 - c) **Producing Quality Legal Personnel:** Legal education produces graduates who are ready to work in the legal field and contribute to legal development.
 - d) **Preventing Violations of the Law:** By understanding the law, people will be more motivated to obey the law.
5. **International Cooperation**
International cooperation is one of the most effective approaches to addressing the complex legal system issues in North African countries. Through this cooperation, North African countries can obtain support, resources, and expertise from developed countries and international organizations to carry out legal reforms. Cooperate with

international organizations to obtain technical and financial assistance in legal reform. International cooperation is important for several reasons.

- a) Access to Resources: International cooperation can provide access to the financial resources, technology, and expertise needed to carry out legal reform.
- b) Knowledge Transfer: Developed countries can share knowledge and experience in the legal field with North African countries.
- c) Network Strengthening: International cooperation can strengthen networks between countries and international organizations, thereby facilitating coordination and collaboration.
- d) International Legitimacy: Support from the international community can provide legitimacy to legal reform efforts undertaken by North African countries.

CONCLUSION

Through analysis of the data obtained, the results of this study were able to show that the legal system in North African countries has unique characteristics, influenced by a long history of colonialism, Islamic influence, and local customs. Some common problems faced by the legal system in North African countries are (1) Legal dualism which is a challenge in itself in legal development; (2) Corruption is a serious problem that hinders law enforcement and weakens public trust in the justice system; (3) Women and minority groups often experience discrimination in access to justice. To overcome these problems, many countries in North Africa have made legal reform efforts, including (1) Legal harmonization is a strategic effort to overcome the complex problem of legal dualism in North African countries; (2) Strengthening judicial institutions is indeed one of the keys to overcoming the various complex problems faced by the legal system in North African countries; (3) Criminal law reform is a crucial step in overcoming the complex problems of the legal system in North African

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