

Islamic Family Law in Tunisia: Reforms, Characteristics, and Challenges

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Abstract

Tunisia is a country in North Africa with a Muslim majority population that underwent significant reforms in family law after independence in 1956 through the passage of the Code du Statute Personnel (CSP). The reform is known to be progressive because it promotes gender equality and the protection of women's rights, while remaining grounded in Islamic values. Previous studies have focused more on normative aspects or described Tunisia as a model for family law reform in the Islamic world, but there is still limited research that explores the characteristics of this reform in a socio-political context, especially after the 2011 Revolution. This study uses a literature review method with a descriptive-qualitative approach to analyze regulations related to marriage, divorce, marital rights and obligations, and inheritance in Tunisian family law. The results of the study show that the reform of family law in Tunisia is marked by a balance between the principles of modernity and religious tradition, which is reflected in egalitarian policies towards women and restrictions on discriminatory practices in the family. These findings affirm Tunisia's position as a pioneer of Islamic family law reform with a distinctive model, while revealing the dynamics and challenges that arose in its implementation after the 2011 Revolution. This research provides an academic contribution in the form of a critical analysis of the Tunisian experience which can be an important reference for the development of Islamic family law in other Muslim countries.

Keywords: Family Law Reform, Tunisia, Code du Statute Personnel, Gender Equality, Contemporary Islamic Law.

Abstrak

Tunisia merupakan negara di Afrika Utara dengan mayoritas penduduk Muslim yang mengalami reformasi signifikan dalam hukum keluarga pasca-kemerdekaan tahun 1956 melalui pengesahan Code du Statut Personnel (CSP). Reformasi tersebut dikenal progresif karena mendorong kesetaraan gender dan perlindungan hak-hak perempuan, dengan tetap berlandaskan pada nilai-nilai Islam. Kajian sebelumnya lebih banyak menyoroiti aspek normatif atau menggambarkan Tunisia sebagai model reformasi hukum keluarga di dunia Islam, namun masih terbatas penelitian yang mendalami karakteristik reformasi ini dalam konteks sosial-politik, terutama pasca-Revolusi 2011. Penelitian ini menggunakan metode kajian pustaka dengan pendekatan deskriptif-kualitatif untuk menganalisis regulasi terkait pernikahan, perceraian, hak dan kewajiban suami istri, serta warisan dalam hukum keluarga Tunisia. Hasil kajian menunjukkan bahwa reformasi hukum keluarga di Tunisia ditandai oleh keseimbangan antara prinsip modernitas dan tradisi keagamaan, yang tercermin dalam kebijakan egaliter terhadap perempuan serta pembatasan praktik-praktik diskriminatif dalam keluarga. Temuan ini menegaskan posisi Tunisia sebagai pelopor reformasi hukum keluarga Islam dengan model yang khas, sekaligus mengungkap dinamika dan tantangan yang muncul dalam implementasinya pasca-Revolusi 2011. Penelitian ini memberikan kontribusi



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akademik berupa analisis kritis terhadap pengalaman Tunisia yang dapat menjadi rujukan penting bagi pengembangan hukum keluarga Islam di negara-negara Muslim lainnya.

Kata Kunci: Reformasi Hukum Keluarga, Tunisia, Code Du Statut Personnel, Kesetaraan Gender, Hukum Islam Kontemporer.

INTRODUCTION

Tunisia is one of the countries located in the North African region with a strategic position on the coast of the Mediterranean Sea. Geographically, the country is bordered by Algeria to the west, Libya to the southeast, and the Mediterranean Sea to the north and east. With an area of about 163,610 km² and a population of more than 12 million, Tunisia occupies an important position in the dynamics of the Maghreb region. Its capital, Tunis, is not only the center of government, but it also plays a vital role in the national economic, social, and cultural development. These geographical and demographic conditions give Tunisia a distinctive political and cultural identity in a regional context.¹

Historically, Tunisia has a long legacy formed from the interaction of various civilizations. Starting from the Phoenician civilization and the glory of Carthage, this region then became part of the Roman Empire, followed by the Islamic caliphate, until the period of French colonialism. After gaining independence in 1956, Tunisia developed into a modern republic that prioritized socio-political stability and legal development. This historical transformation makes Tunisia an interesting social laboratory to study, especially in terms of the relationship between tradition, colonialism, and the modernization of law.²

One of the important milestones in Tunisia's modern journey was the 2011 Revolution that was part of the Arab Spring wave. The revolution marked a turning point in contemporary political history that prompted a democratic transition, a reorganization of state institutions, and increased public attention to civil rights. These changes not only have an impact on the political realm, but also on the legal configuration and the broader social system. It is in this context that family law reform in Tunisia is an important issue because it is directly related to the basic values of society, namely religion, gender, and family structure.³

Tunisia is known for having a progressive approach to family law reform. Since the enactment of the Code du Statute Personnel (CSP) in 1956, the country has taken different reform steps compared to many other Muslim countries. The CSP affirms the principle

¹ Zelfeni Wimra et al., "The Living Fiqh: Anatomy, Philosophical Formulation, and Scope of Study," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (June 2023): 185, <https://doi.org/10.31958/juris.v22i1.9491>; Iwan Setiawan et al., "Reforming Marriage Law in Indonesia: A Critical Examination of Islamic Law on the Ban of Interfaith Marriages," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (July 2024): 179–98, <https://doi.org/10.24090/mnh.v18i2.11134>; Rizqi Suprayogi, "REFORMASI HUKUM PERKAWINAN ISLAM DI INDONESIA," *Indonesia Journal of Business Law* 2, no. 1 (January 2023): 29–37, <https://doi.org/10.47709/ijbl.v2i1.1962>; Ade Khoirunnisa et al., "Comparison of Islamic Family Law in Malaysia and Indonesia" 2 (2025): 109–20.

² Wimra et al., "The Living Fiqh: Anatomy, Philosophical Formulation, and Scope of Study"; Setiawan et al., "Reforming Marriage Law in Indonesia: A Critical Examination of Islamic Law on the Ban of Interfaith Marriages"; Suprayogi, "REFORMASI HUKUM PERKAWINAN ISLAM DI INDONESIA"; Khoirunnisa et al., "Comparison of Islamic Family Law in Malaysia and Indonesia."

³ Lathifah Munawarah, "POLITIK HUKUM KELUARGA ISLAM DI TUNISIA," *Jurnal Al-'Adl* 12, no. 1 (2019); Martina Sabra, "Die Schwäche Des Rechtsstaats Ist Die Stärke Der Islamisten. Geschlechterdemokratie Und Politischer Islam In Der Arabischen Welt," *Internationale Politik Und Gesellschaft*, no. 3 (2006); M Sabra, "The Constitutional State's Weakness Is the Islamists' Strength. Gender Democracy and Political Islam in the Arab World," *Internationale Politik Und Gesellschaft*, no. 3 (2006).

of gender equality, prohibits the practice of polygamy, and provides broader rights for women in terms of divorce and childcare. This reform marked a shift in legal orientation from the classical fiqh base to a more secular system, which at the same time sought to balance Islamic values with the demands of modernity.⁴

The dynamics of family law in Tunisia are interesting because they raise tensions as well as negotiations between sharia principles and modern positive legal principles. On the one hand, the legal reforms carried out reflect the spirit of social justice and the protection of women's rights. On the other hand, there is a debate regarding the extent to which Islamic law remains the main reference in the formation of regulations.⁵ This phenomenon raises an important academic question: what are the distinctive characteristics of family law reform in Tunisia, and how does it represent a paradigm shift in the legal landscape in the context of Muslim countries?

Several previous studies have discussed Islamic family law in Tunisia. For example, an article written by Lusiani Bancin examines family law through a literature study with content analysis. The results of the study show that the formation of the CSP was influenced by secular-educated nationalism and French colonialism, but these reforms did not completely abandon Islamic principles. Its main goal is to create benefit, security, and peace for Tunisian society through a more contextual reinterpretation of family law.

In addition, Agus Rachmatulloh's research also highlights the assimilation of Islamic law and Western law in Tunisia. This study confirms that family law reform does not stop only at the codification of Maliki or Hanafi fiqh, but also involves the influence of French colonialism in shaping the new legal framework. According to him, the reforms in Tunisia are an example of the democratization of the law that adapts to the times, without completely ignoring the sharia heritage. This shows that Tunisia is taking a more radical path of legal reform than other Muslim countries.

Despite several previous studies, research on Islamic family law reform in Tunisia still leaves room for further elaboration. Most previous research has focused on the historical aspects and influences of colonialism, while an in-depth study of the distinctive characteristics of Tunisian family law reforms, especially in terms of the relationship between Islamic norms and secular principles, has been relatively limited. Therefore, this research is important to fill these gaps by providing a more focused analysis.

Based on the above description, this study aims to analyze the reform of Islamic family law in Tunisia and identify the main characteristics that distinguish it from other Muslim countries. By examining the historical, political, and legal context behind it, it is hoped that this research can make an academic contribution to the development of

⁴ Anna Kashina, "Gender Issue in Tunisia: From Politics to Practice," *Asia and Africa Today*, no. 2 (2022): 69, <https://doi.org/10.31857/S032150750015833-8>; Rebecca L. Torstrick, "Women and Power in the Middle East, and: Secularism, Gender and the State in the Middle East: The Egyptian Women's Movement, and: Unveiling Traditions: Postcolonial Islam in a Polycentric World (Review)," *NWSA Journal* 15, no. 1 (2003), <https://doi.org/10.1353/nwsa.2003.0042>; Bryan S. Turner, "Islam, Gender, and Democracy in Comparative Perspective," *Journal of Religious and Political Practice* 4, no. 2 (2018), <https://doi.org/10.1080/20566093.2018.1439439>.

⁵ Mounira M Charrad, "Family Law Reforms in the Arab World: Tunisia and Morocco," *United Nations Department of Economic and Social Affairs (UNDESA)*, 2012; Kashina, "Gender Issue in Tunisia: From Politics to Practice"; Ratih Lusiani Bancin, "Hukum Keluarga Islam Di Tunisia," *Jurnal: Penelitian Medan Agama* 9, no. 2 (2018); Anna Kashina, "GENDER EQUALITY IN TUNISIA: CURRENT TRENDS," *Journal of Social Sciences Transformations & Transitions*, July 19, 2021, <https://doi.org/10.52459/josstt1140721>; Anis Hidayatul Imtihanah, "Pembaharuan Hukum Keluarga Islam Di Tunisia (Menuju Konsep Syari'ah Modern Abdullah Ahmad An-Na'im)," *Lentera: Kajian Keagamaan, Keilmuan Dan Teknologi* 2, no. 2 (2017).

contemporary Islamic law studies. In addition, this research also seeks to enrich the discourse on the relationship between Islam, modernity, and human rights within the framework of family law.

RESEARCH METHODS

This study uses a literature review method with a descriptive-qualitative approach. This method was chosen to study and analyze the various scientific literature related to the Islamic Family Law Reform in Tunisia and its accompanying characteristics. The descriptive-qualitative approach allows this study to delve deeply into the dynamics of Islamic family law by utilizing conceptual, normative, and contextual data, so that the results of the study can provide a comprehensive picture of legal reform in Tunisia.

The research data source consists of primary and secondary data. Primary data is obtained from official documents of Tunisian legislation, specifically the Code du Statute Personnel (CSP) which is the framework of family law in the country. The secondary data was obtained from scientific papers in Islamic law journals, relevant books and documents, as well as other academic literature that discusses the issue of Islamic family law reform. The selection of sources is carried out purposively, taking into account their relevance, authority, and contribution to the focus of the research.

Data collection is carried out through literature and documentation searches, then analyzed with content analysis techniques. The analysis process includes identifying, classifying, and comparing information from various sources related to key issues in Islamic family law in Tunisia, such as marriage, divorce, spousal rights and obligations, and inheritance. The results of the analysis were interpreted to discover the main characteristics of Islamic family law in Tunisia, as well as assess their implications in the context of modernity and legal reform. Thus, this research is expected to provide a deeper academic understanding of the dynamics of Islamic family law in Tunisia.

RESULTS AND DISCUSSION

History of the Development of Islamic Family Law in Tunisia

The official name of the Republic of Tunisia (Republic of Tunisia or Al Jumhuriyah At Tunisiyah), with its capital in Tunis. The form of the Republic State, a semi-presidential unitary system of government, with the Head of State of the President and the Head of Government the Prime Minister. The national anthem is Houmat El Hima (The Nation's Guardians), and the language spoken is Arabic (although French is also widely spoken). It covers an area of 162,155 km², consisting of 23 provinces, with a population of 10,777,500 people, who are Muslims (98%) (majority Sunni Muslims), Christians (1%), Jews and others (1%), as well as Arabs (98%), Europeans (1%), Jews and others (1%).⁶

Tunisia is located on the Mediterranean coast of North Africa, halfway between the Atlantic Ocean and the Nile Delta. The western and southern parts are bordered by Algeria (965 km), the northern and eastern parts are bordered by the Mediterranean Sea, and the southern and southeastern parts by Libya (459 km). Tunisia is located between latitudes 30° and 38° N, and longitudes 7° and 12° E. The Constitution of Tunisia was passed on June 1, 1959, which expressly states in article 1 that Tunisia is a State based on the Islamic religion. In fact, in article 38 it is stated that the president of the Republic of Tunisia must be a Muslim.⁷

⁶ <https://kemlu.go.id/tunis/id/read/profil-negara-republik-tunisia>, accessed on Sunday, February 16, 2025.

⁷ Abdullahi A. An-Na'im (ed), *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Books Ltd., 2002), hlm: 182.

The national language is Arabic with almost uniform dialects. Meanwhile, French is positioned as the second official language. However, there are very few residents who are comfortable with French. Fluency in French became a symbol of social status and a gateway for Tunisians to make international contacts. In its history, Tunisia, which in ancient times was inhabited by the Berber tribe, was ruled by the Roman Empire in 149 BC and introduced Christianity and its architectural art.⁸ However, in the first abbot of the Hijri, the Arabs conquered this country and was followed by the conquest by the largest Muslim Empire, the Ottoman Empire from 1534 to 1881 (about three hundred years more).

After the fall of the Ottoman Empire, Tunisia was ruled by France until it gained independence as a sovereign state in 1956. March 20, 1956 is commemorated as its independence day. The system of government adopted by Tunisia is the Parliamentary Republican system of government where the head of state is a President while the head of government is a Prime Minister. The President of Tunisia is directly elected by his people for a 5-year term while the Prime Minister is elected by a parliament which is generally the leader of a majority party or coalition. The Tunisian parliament, called the *unicameral Assembly of the Representatives of the People* or *Majlis Nuwwab ash-Sha'b*, consists of 217 seats with a five-year term.

In foreign relations, the Republic of Tunisia is a member state of the Arab League, the Organization of Islamic Cooperation (OIC), the African Union and like other sovereign countries, Tunisia is also a member state of the United Nations (United Nations) and international institutions under the United Nations.

The Republic of Tunisia is one of the countries located in North Africa, to the west it is bordered by Algeria, to the north and east by the Mediterranean and to the south by Libya. Tunisia was an autonomous region under the Ottoman Empire and in 1883 became a French Commonwealth under the Treaty of *La Marsa*, and on March 20, 1956, the French government officially recognized Tunisia's independence. In the same year President Habib Bourguiba, a French law scholar, was appointed the first president and issued controversial rules called *the Personal Status Code* to replace the Qur'anic laws in the areas of marriage, divorce and hadhanah. This rule not only opposes some traditional Muslim practices but even declares confrontation with them.

According to the Tunisian constitution, Islam is the official religion of the State, while the Maliki School has a very dominant influence in the country. One of the major agendas of Burgess in the early days of his reign was the unification of the judiciary and the drafting of modern family law. The process of drafting family law began with the formation of a committee chaired by Shaikh Muhammad Aziz Ju'ait, a prominent cleric and former Minister of Justice in the pre-independence period. Prior to that - precisely in 1948 - Shaikh Ju'ait compiled *La'ikhat Al-Ahkam Ash-Shar-iiyyah*, which is a kind of compilation of Islamic law, consisting of 2464 articles, about 800 of which are related to family law.⁹

⁸ Rayed Khedher, "Tracing the Development of the Tunisian 1956 Code of Personal Status," *Journal of International Women's Studies* 18, no. 4 (2017); Auliya Ghazna Nizami, "Mapping of Responses to Tunisian Islamic Family Law Issues; Regulatory Study of Equal Inheritance Rights of Men and Women," *Al Ahkam* 18, no. 2 (January 24, 2023): 37–44, <https://doi.org/10.37035/ajh.v18i2.7439>; Emna Chikhaoui and Yusuff Jelili Amuda, "Marriage of Minor: Implications from Nigerian and Tunisian Legal Systems Framework," *Access to Justice in Eastern Europe* 6, no. 5 (June 15, 2023): 235–46, <https://doi.org/10.33327/AJEE-18-6S020>.

⁹ Ahmad Bunyan Wahib, "Reformasi Hukum Keluarga Di Dunia Muslim," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 1 (June 30, 2014): 1, <https://doi.org/10.18326/ijtihad.v14i1.1-19>;

There are three main sources referred to by the drafting team, namely *La'ikhat Al-Ahkam Ash-Shar'iyah* itself. Second, Family Law in some Muslim countries, such as Egypt, Syria and Iran. Third, French Family Law. When adopting *the laws of fiqh*, the drafting team not only referred to *Maliki's fiqh* which is practiced by the majority of Tunisian Muslims, but also to *other madhhabs* including Hanafi.¹⁰ Based on sources from *Laihat* and the Family Law of Egypt, Jordan, Syria and Turkey, the committee submitted the Family Law Bill to the government. The draft was finally promulgated under the title The Code of Personal Status or *Majallah al-Akhwāl Ash-Shakhshiyyah* in 1956, consisting of 170 articles divided into 12 chapters, namely: marriage, talaq, iddah, nafqah, hadanah, nasab, found children, lost persons, inheritance, forgiveness (al-khijr), wills and grants.

It was then inaugurated throughout Tunisia on January 1, 1957. During the ratification, it was known that there were a number of new articles outside the content of the draft prepared by the drafting team, such as: the prohibition of polygamy, the abolition of *ijbar* rights, and talaq procedures. In some of these additional chapters, Borguiba adopts modernist ideas about the total equality of rights between women and men. For the Tunisian context, this modern thought was carried forward by Tahir Haddad (1899-1935) through his controversial book: *Imro'atuna Fi Ash-Shari'ah Wa Al-Mujtama* (Our Women in Shari'ah and Society).¹¹

Tunisian Law

According to Tunisia's constitution, Islam is the official religion of the country, while the Maliki school has a very dominant influence in the country. The background of Tunisia gives an idea that in Tunisia there was also Islamic law (*fiqh*) based on the Hanafi school, as an influence brought by the Ottoman dynasty government. Habib Borghuiba is known as a president with a secular ideology and is trying to implement a secularization project in this country with a 99 percent Muslim population. One of the major agendas of Borguiba in the early days of his reign was the unification of the judiciary and the drafting of modern family law.¹²

The process of drafting family law began with the formation of a committee chaired by Shaikh Muhammad Aziz Ju'ait, a prominent scholar and former Minister of Justice in the pre-independence period. Previously, in 1948 to be precise, Shaikh Ju'ait compiled *La'ikhat Al-Ahkam Ash-Shar'iyah*, which is a kind of compilation of Islamic law, consisting of 2464 articles, about 800 of which are related to family law. Although it was not officially promulgated, due to opposition from the French colonial government, this *La'ikhat* is considered an embryo for family law in Tunisia.

There are three main sources referred to by the drafting team, namely *La'ikhat Al-Ahkam Ash-Shar'iyah* itself. Second, Family Law in some Muslim countries, such as

Miftahul Huda, "Ragam Bangunan Perundang-Undangan Hukum Keluarga Di Negera-Negara Muslim Modern: Kajian Tipologis," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (February 22, 2018): 49–60, <https://doi.org/10.24090/mnh.v11i1.1267>; Lusiani Bacin, "Hukum Keluarga Islam Di Tunisia"; Charrad, "Family Law Reforms in the Arab World: Tunisia and Morocco."

¹⁰ Ratih Lusiani Bacin, Islamic Family Law in Tunisia, *Journal: Religious Field Research*, Vol. 9, No. 2, 2018, pp: 285-287.

¹¹ Mammuniyatillah & Lilik Andaryuni, Family Law in Tunisia: A Literature Study, *Tana Mana Journal*, Vol. 3, No. 2, 2022, p: 220.

¹² Wahib, "Reformasi Hukum Keluarga Di Dunia Muslim"; Huda, "Ragam Bangunan Perundang-Undangan Hukum Keluarga Di Negera-Negara Muslim Modern: Kajian Tipologis"; Lusiani Bacin, "Hukum Keluarga Islam Di Tunisia"; Charrad, "Family Law Reforms in the Arab World: Tunisia and Morocco."

Egypt, Syria and Iran. Third, French Family Law. When adopting the laws of fiqh, the drafting team not only referred to Maliki's fiqh which is practiced by the majority of Tunisian Muslims, but also to other madhhabs including Ja'fari. This draft was then submitted to the government and officially promulgated on August 13, 1956 under the name of the Code of Personal Status or Majallah al-Akhwal Ash-Shakhshiyyah. It consists of 170 articles divided into 12 chapters, namely: marriage, talaq, iddah, nafqah, hadanah, nasab, found children, lost persons, inheritance, empowerment (al-khijr), wills and grants.

In the following periods, this law underwent several changes and additions with the provisions of new provisions. During the ratification, it was known that there were a number of new articles outside the content of the draft prepared by the drafting team, such as: the prohibition of polygamy, the abolition of ijbar rights, and talaq procedures. In some of these additional chapters, Bourgeois adopted modernist ideas of total equality of rights between women and men, this modern thought was promoted by Tahir Haddad (1899-1935) through his controversial book: *Imroatuna Fi Ash- Shari'ah Wa Al-Mujtama'*.

If examined in depth, Haddad's ideas are indeed very dominant in a number of MAS articles, even MAS is a "concrete realization of Haddad's ideas." Emphatically, this is acknowledged by Habib Bourguiba himself. On the other hand, the process of drafting MAS which seemed to be "chasing air" made it difficult for MAS to be separated from the political context at that time, namely pressure from the French government on Bourguiba to immediately promulgate modern family law, as a replacement for Shaikh Ju'ait's *La'ikhat* which was considered traditional.¹³

Codification and Characteristics of Islamic Family Law in Tunisia

Islamic family law in Tunisia has undergone major reforms through the Majallat al-Ahwal al-Syakhsiyyah (CPS) since 1956, shortly after the country gained independence. This reform was initiated by President Habib Bourguiba with the main goal of modernizing the family law structure which was previously based on the fiqh of the Maliki school, as well as improving the status of women in society. With unique characteristics, family law in Tunisia combines the values of Islamic tradition with modern principles, including the protection of human rights, gender equality, and legal certainty.¹⁴ This makes Tunisia one of the countries with the most progressive Islamic family law system in the Arab-Muslim world.

One of the important aspects of the CPS is the establishment of the minimum age of marriage. Initially, the age of marriage was set at 20 years for men and 17 years for women. However, through Law No. 32 of 2007, this minimum age limit was revised to 18 years for both parties. An exception can only be granted by the court on strong grounds, even without the consent of the guardian if the spouse agrees. This provision reflects Tunisia's orientation on child protection, prevention of early marriage, as well as emphasis on physical and psychological maturity as a condition of marriage. This policy

¹³ Ratih Lusiani Bancin, Islamic Family Law in Tunisia, *"Journal of Religious Field Research"*, Vol.9, No.2, 2018, pp:286-288.

¹⁴ Wimra et al., "The Living Fiqh: Anatomy, Philosophical Formulation, and Scope of Study"; Nizami, "Mapping of Responses to Tunisian Islamic Family Law Issues; Regulatory Study of Equal Inheritance Rights of Men and Women."

is clearly more progressive than the provisions of classical fiqh which do not set a definite age limit.¹⁵

Another aspect that stands out is the obligation to record marriages. The CPS requires that every marriage be registered before an authorized official. Article 4 of Law No. 40 of 1957, which was updated in 1981, affirms that unregistered marriages are considered legally invalid. This provision not only affirms the role of the state in ensuring the legality of marriage, but also provides legal protection for women, children, and property in the family.¹⁶ Thus, Tunisian family law not only restricts traditional marriage practices such as *zawaj 'urfi*, but also ensures modern and rational legal certainty.

Family law reform in Tunisia also shows progressive steps on the issue of polygamy. Article 18 of the CPS expressly prohibits polygamy with the threat of criminal punishment in the form of imprisonment of up to one year or a fine. This prohibition applies to both formal and informal marriages. Tunisia became the first Arab country in North Africa to ban polygamy entirely. This policy was influenced by the thinking of Islamic reformists such as Tahar Haddad and Muhammad Abduh, who argued that polygamy was not the core teaching of Islam, but *rukhsah* that could be forbidden if it caused harm.¹⁷ Thus, Tunisian family law favors monogamy as an ideal form of domestic life that is in accordance with the values of modern morality and the spirit of the Qur'an.

In addition, Tunisia abolished the concept of *ijbar* (coercion of guardians) in marriage. Article 3 of the CPS states that marriage is valid only with the consent of both brides, accompanied by two reliable witnesses and the giving of dowry. With the abolition of *ijbar*, Tunisian women have full freedom to choose their life partners without coercion, including from parents or guardians. This rule reflects the strengthening of the principles of gender equality, individual freedom, and respect for women's rights in marriage.¹⁸

In the aspect of divorce, Tunisian family law also features a modern twist. Divorce cannot be done unilaterally through *talaq*, but must be decided by the court. Divorce can occur at the request of one of the parties, mutual agreement, or for certain reasons such as negligence in providing alimony. The court only granted a divorce after a peaceful

¹⁵ Marie Brossier, "The Debates on the Family Code in Senegal: A Questioning of the Foundations of Legitimate Authority?," *Politique Africaine* 96, no. 4 (2004); Ilhem Marzouki, "The Conquest of Trivialization by the Tunisian Code of Personal Status," *L'Année Du Maghreb* II (2007): 71–95, <https://doi.org/10.4000/anneemaghreb.91>; Sana Ben Achour, "The Tunisian Code of Personal Status, 50 Years After: The Dimensions of Ambivalence," *L'Année du Maghreb* II (2007): 55–70, <https://doi.org/10.4000/anneemaghreb.89>; Mustafa al-Ahnaf, "Morocco. Le Code du statut personnel," *Maghreb - Machrek* n° 145, no. 3 (January 3, 1994): 3–26, <https://doi.org/10.3917/machr1.145.0003>.

¹⁶ Mondher Kilani, "Women, Revolution and the New Government of Bodies in Tunisia," *Anthropologie et Sociétés* 42, no. 1 (May 1, 2018): 57–80, <https://doi.org/10.7202/1045124ar>; Hafidha Chekir, "Women's Rights in Tunisia: Achievements or Political Issues?," *Hérodote* n° 160-161, no. 1 (April 1, 2016): 365–80, <https://doi.org/10.3917/her.160.0365>; AFNOR SPEC S76-001, "Barrier Masks - Guide to Minimum Requirements, Test Methods, Manufacture and Use," *Afnor Spec S76-001* 001, no. 27 March 2020 (2020).

¹⁷ Marie Brossier, "Les Débats Sur Le Droit de La Famille Au Sénégal," *Politique Africaine* N° 96, no. 4 (December 1, 2004): 78–98, <https://doi.org/10.3917/polaf.096.0078>; Ewa MASSAOUDI et al., "AFNOR SPEC S76-001 - Masques Barrières," *Afnor Spec S76-001* 001, no. 27 Mars 2020 (2020).

¹⁸ Kashina, "Gender Issue in Tunisia: From Politics to Practice"; Torstrick, "Women and Power in the Middle East, and: Secularism, Gender and the State in the Middle East: The Egyptian Women's Movement, and: Unveiling Traditions: Postcolonial Islam in a Polycentric World (Review)"; Turner, "Islam, Gender, and Democracy in Comparative Perspective"; Amel Grami, "Gender Equality in Tunisia," *British Journal of Middle Eastern Studies* 35, no. 3 (December 2008): 349–61, <https://doi.org/10.1080/13530190802525148>.

attempt between the husband and wife was unsuccessful.¹⁹ This system limits the husband's unilateral power in imposing talaq, thus providing greater protection for women. In fact, the concept of triple talaq is also positioned as a permanent barrier to remarriage, thereby preventing the abuse of the practice of talaq.

In terms of economic rights, Tunisia provides significant protection for women. CPS regulates maintenance obligations for husbands, as well as provides criminal sanctions for husbands who neglect to fulfill these obligations. A husband who does not provide support for one month can be sentenced to 3-12 months in prison and a fine. This rule shows that family law in Tunisia views the fulfillment of alimony not only as a moral responsibility, but also as a legal obligation that can be enforced by the state for the economic protection of wives and children.²⁰

In addition, Tunisia also progressively regulates adoption. The Guardianship and Adoption Act of 1958 legalized tabannī (adoption with full nasab status), in contrast to the classical fiqh opinion that rejected it. Adopted children in Tunisia get the same legal status as biological children, including in terms of inheritance. These reforms reflect Tunisia's courage to abandon traditional views and place more emphasis on the best interests of the child. In addition, Tunisia also introduced the concept of compulsory wills for orphan grandchildren of the first generation, both male and female, as a form of social protection so that they are not hindered from inheritance rights due to the death of their parents first.²¹

Overall, the material on Islamic family law in Tunisia shows a progressive, modern, and responsive pattern to social needs. The state takes a dominant role in determining the validity of marriage, restricting traditional practices that have the potential to harm women, and affirming the principles of justice and gender equality. However, on some issues, such as interfaith marriage, Tunisia still maintains a conservative approach by prohibiting Muslim women from marrying non-Muslim men. This shows that Tunisian family law is a combination of classical fiqh values, modern reforms, and adaptation to the national socio-political context.

CONCLUSION

Based on the results of the study, it can be concluded that Islamic family law reform in Tunisia has progressive characteristics and represents a form of legal modernization in the context of a Muslim country. Tunisia is listed as the first country in the Arab world to

¹⁹ Sadari, "Women's Rights After Divorce: A Comparative Analysis of Family Law in Indonesia and the World," *Istinbath: Jurnal Hukum* 12, no. 2 (2015).

²⁰ Nur Fadhilah Novianti, "Ketentuan Usia Pernikahan Di Afrika Utara (Mesir, Tunisia, Maroko, Aljazair, Libya)," *BUSTANUL FUQAH: Jurnal Bidang Hukum Islam* 4, no. 3 (December 15, 2023): 360–77, <https://doi.org/10.36701/bustanul.v4i3.1059>; Ramdan Wagianto and Moh. Sa'i Affan, "Reviewing Hak-Hak Perempuan Dalam Reformasi Hukum Keluarga Islam Di Indonesia Dan Tunisia," *Asy-Syari'ah : Jurnal Hukum Islam* 8, no. 2 (July 15, 2022): 81–102, <https://doi.org/10.55210/assyah.v8i2.825>; Amal Idrissi, "Religious Conscience or Religious Freedom? The Difference between Official Constitutional Norms and Actual Legal Restrictions in Morocco, Algeria, and Tunisia," *Religion & Human Rights* 16, no. 2–3 (November 12, 2021): 117–42, <https://doi.org/10.1163/18710328-bja10018>; Imtihanah, "Pembaharuan Hukum Keluarga Islam Di Tunisia (Menuju Konsep Syari'ah Modern Abdullah Ahmad An-Na'im)."

²¹ Nur Fadhilah Novianti, "Ketentuan Usia Pernikahan Di Afrika Utara (Mesir, Tunisia, Maroko, Aljazair, Libya)"; Ramdan Wagianto and Moh. Sa'i Affan, "Reviewing Hak-Hak Perempuan Dalam Reformasi Hukum Keluarga Islam Di Indonesia Dan Tunisia"; Idrissi, "Religious Conscience or Religious Freedom? The Difference between Official Constitutional Norms and Actual Legal Restrictions in Morocco, Algeria, and Tunisia"; Imtihanah, "Pembaharuan Hukum Keluarga Islam Di Tunisia (Menuju Konsep Syari'ah Modern Abdullah Ahmad An-Na'im)"; Charrad, "Family Law Reforms in the Arab World: Tunisia and Morocco"; Lusiani Bancin, "Hukum Keluarga Islam Di Tunisia."

explicitly prohibit the practice of polygamy and impose criminal sanctions on violators. In addition, the abolition of *ijbar* rights provides space for women to have full freedom in determining their life partners. Another significant rule is the determination of the minimum age of marriage between men and women, which is 18 years old, as well as the requirement for official registration of marriages before the state as a form of strengthening legal certainty. This affirms the central role of the state in protecting women's rights and ensuring justice in marriage.

In the aspect of divorce, Tunisia abolished the practice of unilateral *talaq* by establishing the obligation that divorce can only be done through a court decision. This policy provides greater protection for women while ensuring that the divorce process takes place in a fair and transparent manner. In addition, the regulation on alimony, *hadhanah*, and inheritance also affirms the principle of gender equality and alignment with the protection of children and other vulnerable groups. Tunisia even became one of the Muslim countries to adopt the practice of adoption with full *nasab* status, abandoning the classic *fiqh* view of the prohibition of *tabannī*, which showed courage in innovating the law.

Overall, the provisions in Tunisian family law show that the reforms carried out were not merely a codification of classical *fiqh*, but the result of contextual *ijtihad* influenced by Islamic modernist thought, the ideas of reformers such as Tahar Haddad, and the historical experience of French colonialism. This legal approach makes Tunisia a model of Islamic family law reform oriented towards equality, justice, and protection of the rights of women and children. Thus, Tunisia has succeeded in displaying the style of Islamic family law that is relevant to the needs of modern society, but still based on the basic values of Islamic law.

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