

## THE CONTROVERSY OF ISLAMIC FAMILY LAW IN TUNISIA: BETWEEN SHARIA TRADITION AND STATE MODERNIZATION

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**Abstract:** Penelitian ini mengkaji kontroversi yang melingkupi hukum keluarga Islam di Tunisia, yang berada pada persimpangan antara tradisi syariah dan modernisasi negara. Tunisia dikenal sebagai salah satu negara di dunia Muslim yang secara progresif mereformasi hukum keluarga melalui pengesahan Majallah Al-Ahwal Al-Shakhsiyyah atau Code of Personal Status (CPS) pada tahun 1956. Kodifikasi ini melarang praktik poligami, memberikan hak cerai kepada perempuan, dan menegaskan prinsip kesetaraan gender, yang kemudian memicu perdebatan di kalangan ulama, aktivis Islam, dan masyarakat luas. Artikel ini menganalisis akar sejarah, politik, dan ideologis di balik reformasi tersebut, serta dampaknya terhadap praktik hukum keluarga. Dengan menggunakan pendekatan kualitatif, penelitian ini mengumpulkan data melalui kepustakaan (library research) dengan menganalisis bagaimana konflik antara tradisi syariah dan sekularisme Tunisia membentuk lanskap hukum keluarga yang unik, sekaligus menciptakan kontroversi dari legitimasi reformasi tersebut dalam kerangka hukum Islam. Penelitian ini bertujuan untuk memahami konflik antara tradisi dan modernitas dalam konteks hukum Islam, sekaligus memberikan kontribusi terhadap kajian global mengenai relasi antara agama, negara, dan hukum di masyarakat Muslim kontemporer.

**Abstract:** *This study examines the controversies surrounding Islamic family law in Tunisia, which sits at the intersection of sharia tradition and state modernization. Tunisia is known as one of the countries in the Muslim world that progressively reformed family law through the adoption of the Majallah Al-Ahwal Al-Shakhsiyyah or Code of Personal Status (CPS) in 1956. This codification prohibited the practice of polygamy, granted women the right to divorce, and affirmed the principle of gender equality, sparking debate among scholars, Islamic activists, and the wider public. This article analyzes the historical, political and ideological roots behind the reform and its impact on family law practice. Using a qualitative approach, this study collected data through library research by analyzing how the conflict between sharia tradition and Tunisian secularism shaped Tunisia's unique family law landscape, while creating controversy over the legitimacy of the reform within the framework of Islamic law. This research aims to understand the conflict between tradition and modernity in the context of Islamic law, while contributing to the global study of the relationship between religion, state and law in contemporary Muslim societies.*

**Keywords:** *Controversy, Islamic Family Law, Tunisia, Law Reform*

## INTRODUCTION

Islamic family law is a crucial aspect of the Islamic legal system that regulates family relationships and responsibilities, including marriage, divorce, and inheritance. For centuries, Islamic law, or Sharia, has been the dominant legal system in the Muslim world, including Tunisia. The controversy over Islamic family law in Tunisia reflects the complex dynamics between Sharia tradition and the country's modernization, which has become a major focus of social and political



discourse in the country. Since the implementation of *Majallah al-Akhwāl Ash-Shakhshiyyah* or *Code of Personal Status* (CPS) On August 13, 1956, Tunisia took significant steps towards family law reform aimed at improving the status of women and children. The CPS, one of the first laws passed after independence from French colonial rule, abolished polygamy and introduced fairer divorce procedures and provide new rights for women in terms of guardianship and child care. However, although this reform is considered a breakthrough in reducing gender inequality in the Islamic world, the CPS has also drawn sharp criticism from conservatives who argue that the law is contrary to sharia principles.<sup>1</sup>

This debate has become increasingly heated in the context of broader social changes in Tunisia following the 2011 revolution, where new social and political movements have emerged with diverse agendas. On the one hand, there are groups that support the CPS as a symbol of progress and modernity, while on the other, there are movements that seek to restore traditional norms and Sharia law to the family law system.<sup>2</sup> This tension reflects the ideological struggle between secular values espoused by the modern state and more conservative religious interpretations.

In this context, this article will examine the controversy surrounding Islamic family law in Tunisia in depth, focusing on how the CPS has shaped the country's national and social identity. It will explore various perspectives on the impact of the CPS on family life, as well as the challenges faced in maintaining a balance between tradition and modernity. By analyzing various sources and related literature, this article aims to provide a more comprehensive understanding of how Islamic family law in Tunisia serves as an arena for debate between traditional values and modern demands.

## METHOD

This study employs a qualitative, descriptive-analytical approach, focusing on describing the research object, namely family law in Tunisia, based on the applicable legal framework and a review from a sharia perspective. The aim of this study is to provide a comprehensive description of the object, which is the main problem in the study.

This research uses a library research method (*library research*), namely a data collection technique through a study of sources such as laws and regulations, books, official documentation, publications, and research results related to family law in Tunisia from a sharia perspective and modern views. The primary data in this study is secondary data, namely data obtained through literature reviews and documentation that is the result of research or management of other parties. This data is available in the form of books or documents that are generally accessible in libraries or owned personally by the researcher.

This research uses a qualitative data analysis method, a technique that systematically understands, organizes, and structures the data obtained. This process aims to generate a deep understanding of the issues or conditions under study, particularly those related to the family law controversy in Tunisia from the perspectives of sharia and modernity.

## RESULTS AND DISCUSSION

### History of the Formation of Islamic Family Law in Tunisia

Republic of Tunisia, or *Republic of Tunisia* Tunisia is the northernmost country on the African continent, with its capital in Tunis. It is a republic with a unitary semi-presidential system of government, with the President as the Head of State and the Prime Minister as the Head of Government. With an area of 162,155 km<sup>2</sup>, Tunisia borders Algeria to the west and Libya to the south and east. It consists of 23 provinces and had a population of approximately 10.8 million in

<sup>1</sup> Dede Ahmad Permana, "Majallah Al Akhwāl Ash-Shakhshiyyah Dan Pembaharuan Hukum Keluarga di Tunisia," *Jurnal Studi Gender Dan Anak* 7, no. 01 (30 Juni 2020): 2, <https://doi.org/10.32678/jsga.v7i01.173>.

<sup>2</sup> Muhajir, "REFORMASI HUKUM KELUARGA ISLAM TUNISIA PASCA ARAB SPRING," 27.

2013. The majority of the population is Muslim (98%, predominantly Sunni), followed by Christians (1%), Jews, and others (1%). Ethnicly, 98% are Arab, with Europeans, Jews, and others each accounting for 1%. The official language is Arabic, although French is also widely spoken. Islam is the official state religion, and the President of Tunisia must be a Muslim. In the context of Islamic jurisprudence, the Maliki school of thought is the dominant school of thought in the country.<sup>3</sup>

The Republic of Tunisia gained independence on March 20, 1956, after 75 years of French colonial rule (1881–1956). Habib Bourguiba, a French-educated law graduate, became Tunisia's first president. He was known as a secular leader who sought to implement a secularization project in a country with a Muslim majority (99%). One of Bourguiba's main agendas during his early years was to unify the judicial system and formulate a modern family law.

Shaikh Muhammad Aziz Ju'ait, a renowned scholar and former Minister of Justice of Tunisia before independence, headed a committee that began the drafting of family law. In 1948, Shaikh Ju'ait make *Lā'ikhat Al-Abkām Ash-Shar'iyyah*, a book of Islamic law with 2,464 articles, of which approximately 800 articles deal with family law. The *Lā'ikhat* is considered the forerunner of contemporary family law in Tunisia, although the compilation was never officially promulgated due to its rejection by the French colonial government.

In the process of drafting the Tunisian family law, the drafting team referred to three main sources. First, *Lā'ikhat Al-Abkām Ash-Shar'iyyah*, which is a compilation of Islamic law previously compiled by Shaikh Muhammad Azīz Ju'ait. Second, the Family Laws of several Muslim countries, such as Egypt, Syria, and Iran. Third, the French Family Law. In adopting the provisions of Islamic jurisprudence, the drafting team referred not only to the Maliki school of thought, which is adhered to by the majority of Tunisian Muslims, but also considered the views of other schools of thought, including the Ja'fari school.<sup>4</sup>

The family law was then submitted to the government, and on August 13, 1956, it was officially established under the name *Majallah al-Aḥwāl al-Shakhshīyyah*, also known as the Personal Status Code (CPS). The CPS consists of 170 articles divided into 12 chapters, including *ṭalāq*, *ʿiddah*, maintenance, *ḥaḍānah*, lineage, found child, missing person, inheritance, guardianship (*al-ḥijr*), wills, and grants. This law has changed and been supplemented over time, including adding new provisions to meet the needs of the community.

At the time of ratification *Majallah al-Aḥwāl al-Shakhshīyyah*, it turns out that there are a number of additional articles outside those that have been drafted by the drafting team, such as the prohibition of polygamy, the elimination of the right of *ijbar*, and procedures *ṭalāq*. In these additional articles, Habib Bourguiba adopted modernist ideas that emphasized the complete equality of rights between women and men. This modern thinking was greatly influenced by TyesterdayHAddad (1899-1935), a Tunisian thinker, through his controversial book *Imroatuna Fi Ash Shari'ah Wa Al-Mujtama'*, which criticized the position of women in Islamic law and pushed for more inclusive social change.<sup>5</sup>

If analyzed more deeply, the ideasTyesterdayHThe addad greatly influenced a number of

<sup>3</sup> Anis Hidayatul Imtihanah, "PEMBAHARUAN HUKUM KELUARGA ISLAM DI TUNISIA," *JURNAL LENTERA: Kajian Keagamaan, Keilmuan Dan Teknologi* 16, no. 2 (30 September 2017): 105, <https://doi.org/10.29138/lentera.v16i2.278>.

<sup>4</sup> Sasi Ben Halimah, *Mubādharrāt Fi Qānūn Al-Aḥwāl As-Shakhshīyyah*, (Tunis: Markaz AnNathr Al-Jāmi'i, 2009), 8–9.

<sup>5</sup> Permana, "Majallah Al Akhwal Ash-Shakhshiyah Dan Pembaharuan Hukum Keluarga Di Tunisia," 4.

articles in the CPS, in fact the CPS can be considered a “concrete realization” of these thoughts. <sup>6</sup> This was explicitly acknowledged by Habib Bourguiba himself. However, on the other hand, the seemingly rushed process of drafting the CPS makes it difficult to separate it from the political context of the time. One such context was pressure from the French government on Bourguiba to immediately enact a modern family law, as a replacement. *La'ikhat* Shaikh Ju'aiṭ which is considered “traditional”.<sup>6</sup>

### The Controversy over Islamic Family Law in Tunisia

*Code of Personal Status* (CPS) was considered the most progressive family law in the Islamic world at that time, because some of its articles were considered to be contrary to the concept of fiqh, even with the text of the Qur'an or ḤAdis. Unsurprisingly, after the CPS was launched, there was both pro and con within the public. To assuage public concerns, the Tunisian government attempted to assert that the CPS was the result of government ijtihad, still within the framework of sharia. In his state address, Habib Bourguiba emphasized that the CPS “*lam yukhālif ayatanyesalsoḥatan min ayāt al-kitāb al-majīd, wa inmaa yahtarimu rūḥ ayāt karimah wa yusayyiruhā*” (CPS does not contradict a single verse from the Quran, in fact it respects the spirit of those verses and implements them).<sup>11</sup> Furthermore, Ahmad Mestiri, Tunisia's Minister of Justice at the time, issued a circular stating that “this legal product is accepted by all parties, praised by scholars, and deemed appropriate to the needs of the times. This is because we base this legal product on sharia through various sources, without affiliation with a particular school of fiqh or the thinking of a particular scholar.”

The following is the historicity of some controversial Tunisian family law materials:

#### 1. The Elimination of the Right of Ijbar

Girls are given complete freedom by Tunisian family law to choose their own spouse. With the girl's prior consent, the biological father cannot impose his will (*ijbār*) regarding the marriage of his daughter. Article 3 of the CPS states: “Marriage cannot occur except with the consent of both spouses.” According to this article, the validity of a marriage contract depends entirely on the consent of the prospective bride and groom, not the parents' decision. This consent must be expressed clearly, sincerely, and wholeheartedly by both parties involved.

One of the arguments underlying this article is the view <sup>7</sup> yesterday ḤAddad, which states that a girl should be given the freedom to choose her own partner, without any coercion from her biological father. According to ḤAddad, “marriage is based on the feeling of love and affection that is built between individuals.” Therefore, marriage should be free from interference from others. While it is true that a girl may make mistakes in choosing a partner, ḤAddad argues that the possibility of a mistake in choosing a partner could also occur with the biological father. Thus, a girl's freedom to choose her partner is considered important in this context.<sup>7</sup>

#### 2. Minimum Age Limit for Marriage

The minimum age for marriage is set at 20 years for men and 17 years for women. Article 5 of the CPS states: “Every man who is under 20 years of age, and every woman who is under 20 years of age, shall have the right to marry.” Those under 17 years of age cannot marry.

<sup>6</sup> Muḥamad Ridha al-Ajḥouri, *Al-Khalḥiyah Al-Islāmiyah Li Majallāt Al-Akḥwāl As-Shakshiyah* (Tunis: Dār al-Ma'ālī Tunis, 2012), 12.

<sup>7</sup> Ratih Lusiani Bacin, “Hukum Keluarga Islam Di Tunisia” 3, no. 1 (2016): 297.

Marriages under that age may be conducted with special permission from the court. This permission is only granted for specific reasons and to ensure the well-being of both parties. The Tunisian government amended Law No. 32 of 2007 in 2007, revising Article 5 and establishing that the minimum age for men and women to marry is 18 years. However, in some cases, marriages under that age can be performed without the approval of a judge in court. Thus, if there are urgent reasons and considerations of public interest, the judge can approve a marriage request from both bride and groom who are still under 18 years of age.<sup>8</sup>

Meanwhile, Article 6 of the CPS states: "Marriage of minors occurs with the consent of the father and mother. If the father and mother still disagree, but the child still wishes to marry, the matter can be decided by the court. The permission granted by the court for marriage is final and binding.

This article also seems to be influenced by the views of Ḥaddād who opposes underage marriage. Ḥaddād argues, "Parents should wait until their daughters are adults, when they are able to exercise their right to choose freely. This will prevent harm in their future marriage, as they will be more mature, healthier, and more mature in age to conceive and bear children."<sup>18</sup> Classical scholars do not explicitly discuss the issue of age limits for marriage. Famous scholars never require the bride and groom to be "...*puberty*", which means they must be mature enough, even allowing underage marriages.

The drafters of the CPS set a minimum age for marriage. This can be seen as an effort to achieve the goals of marriage. Marriage creates reciprocal rights and obligations between the married couple. Because of these rights and obligations, the parties must be adults. However, the concept of "adulthood" is relative, and influenced by many factors, including the environment, culture, and the community's level of intelligence, among others. Therefore, this determination of the marriage age can be seen as a contextual *ijtihād*, in line with the demands of the times in Tunisian Muslim society at the time, which still referred to ancient *fiqh* texts.<sup>9</sup>

### 3. Obligations *Nafaqah*

The CPS promotes the spirit of equal partnership between women and men. One concrete manifestation of this is the affirmation that the responsibility for providing a living is not solely the responsibility of the husband as head of the household, but also the responsibility of the wife. Article 23 of the CPS states, "A wife must participate in providing for the family, if she has assets.

According to several supplementary regulations to the CPS, the wife's obligation to earn a living, as stipulated in the article, does not completely replace the husband's obligation. The husband remains responsible for supporting the family, and the wife is only expected to assist, not be the primary breadwinner. Therefore, this provision represents an improvement in Tunisian society at that time, which generally held that women should not work outside the home and that the responsibility for providing for the family rests entirely with the husband, as taught in Islamic jurisprudence books based on several verses of the Qur'an, the hadith of the Prophet Muhammad, and the consensus of scholars.

This article is considered Bourguiba's attempt to encourage women to work in Tunisia. In this country located at the northern tip of Africa, women have the freedom to participate in almost all sectors of life. At the end of 2011, women in Tunisia were recorded as dominating several professions: 42% of doctors, 72% of pharmacists, 40% of lecturers, 29% of judges,

<sup>8</sup> Aulia Rahmat, "Kompleksitas Hukum Keluarga Islam di Tunisia" V (2 Desember 2014): 36.

<sup>9</sup> Bacin, "Hukum Keluarga Islam Di Tunisia," 299.

31% of lawyers, and 43% of journalists were women. Regarding the wife's right to use her personal property, Articles 41 and 52 of the CPS stipulate that a wife may spend her personal property and has the right to request reimbursement from her husband for such property.<sup>10</sup>

#### 4. Talak Procedure

Tunisian Family Law seeks to tighten the process of divorce (*talaq*). According to the CPS, a divorce cannot be unilaterally issued by the husband but can only be decided through a court. Article 30 of the CPS states: "A divorce cannot take place except in court. A divorce cannot take place unless the judge has made efforts to reconcile the parties and is no longer able to do so." According to this article, the CPS aims to eliminate the husband's sole authority to issue a divorce, as explained in Islamic jurisprudence books. The CPS stipulates that a divorce can only be issued through a court after a trial involving all parties, including the wife. The judge is required to hear the wife's opinion, including her consent to the divorce, before the divorce is declared valid.

The CPS emphasizes that only a court can issue a divorce, so a divorce is only legally valid if it is decided by a court. The court can issue a divorce based on mutual agreement or upon the request of one of the spouses, such as in cases of abuse. However, if one party seeks a divorce without mutual agreement, the court can grant the request, provided the party filing the lawsuit is obligated to pay the costs. However, a divorce decree is only issued if reconciliation efforts between the parties fail.

Before this article was passed, Tahir Haddad had proposed the creation of a special institution called the *Mahakim at-Talaq* (Divorce Judge). This institution would have sole authority to handle divorce cases. This recommendation was based on the situation prevailing in Tunisian society at the time, where husbands could easily pronounce divorce on their wives. Hadid argued that the husband's absolute right to divorce his wife at any time was an injustice that harmed women and deprived them of their rights and future.<sup>24</sup> Haddad emphasized that the existence of a divorce court would not harm husbands. Rather, this institution serves to ensure that divorce decisions are made in accordance with Islamic law.

The enactment of this article reflects the Tunisian government's strong commitment to protecting and accommodating women's rights. This article serves several important purposes, including.

- a. Ensure the divorce process is in accordance with the objectives (*maqasid*) of sharia, so that divorce is not carried out carelessly and still meets the principles of justice.
- b. Maintain the implementation of sharia law in a more structured and fair manner through the role of the court.
- c. Straighten the husband's rights in pronouncing divorce without intending to take it away, by ensuring that the decision is in accordance with applicable rules.
- d. Prioritize the interests of society over personal interests, so that divorces that harm other parties can be minimized.
- e. Ensure that the reasons for divorce are legally justified, so that the court can prevent divorce if the husband's reasons are unclear, fabricated, or unproven.
- f. Enable systematic data collection on the reasons for divorce, providing government important data that can be used for community development and policy making.

With this step, the government is not only tightening the divorce process but also encouraging the creation of better social harmony.

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<sup>10</sup> Imtihanah, "PEMBAHARUAN HUKUM KELUARGA ISLAM DI TUNISIA," 110.

## 5. Triple Talaq

One of the important innovations introduced by the CPS is a special regulation regarding the law of triple divorce (*bain kubra*). According to the CPS provisions, triple divorce is considered a cause for a permanent prohibition on marriage (*mani' az-zawaj al-muabbad*). Thus, a husband and wife who have divorced through triple divorce cannot reconcile or remarry in the future. Article 19 states: "The husband may not remarry (*refer*) with the woman he divorced with triple talaq". This article is clearly different from the concept of Islamic jurisprudence which states that a husband and wife who have divorced with triple talaq (*big box*) can still be reconciled, but with certain conditions.<sup>26</sup> In Islamic jurisprudence, the condition is that the ex-wife must first marry another man, have intimate relations, then divorce, and wait until the *iddah* period expires. In contrast, in the CPS, triple divorce results in a permanent ban on marriage, making reconciliation impossible after the divorce. This article clearly differs from the traditional Islamic jurisprudence concept, which states that a husband and wife who have divorced by triple divorce (*big box*) can still be reconciled, but under certain conditions. In Islamic jurisprudence, the condition is that the ex-wife must first marry another man, have sexual intercourse, then divorce, and wait until the *iddah* period expires. Conversely, in the CPS, triple divorce results in a permanent ban on marriage, making reconciliation impossible after the divorce.<sup>27</sup>

## 6. Divorce Fine (*al-Jirayah al-'Umriyah*)

If a husband divorces his wife, he must pay a fine (*al-jirayah al-'umriyah*) to his ex-wife every month during the life of his ex-wife, unless she dies or marries someone else. Article 31 states: "Jirayah is paid to the ex-wife after the *'iddah* period has expired, the amount is reasonable as it was during the marriage, including the cost of the house. This Jirayah continues until the ex-wife dies, or if she has remarried, or if she feels she no longer needs it. In the event of the ex-husband's death, Jirayah is taken from the husband's estate, paid by agreement of the heirs, or determined through the court to be paid in one go, taking into account the age of the ex-wife at that time".<sup>28</sup>

*Al-jirayah al-'umriyah* means *ta'wid ad-darar*, or compensation that a husband must pay to his ex-wife for his decision to divorce them. This *al-jirayah* must be determined through the courts to protect the wife's rights. The concept of *al-jirayah al-'umriyah* does not exist in Islamic jurisprudence, so the ex-wife can retain the same income during her widowhood. According to the jurists, after a divorce, the ex-husband must provide maintenance to his ex-wife during the waiting period, or "*'iddah*." The ex-wife remains in her husband's house during this waiting period. Therefore, it can be said that the concept of *Al-jirayah al-'umriyah* is pure *ijtihad* made by the CPS formulators and is based on the fulfillment of women's privileges in Tunisia.<sup>29</sup>

## 7. Child Adoption (Adoption)

In 1958, the Tunisian government passed the Guardianship and Adoption Law. Law No. 27 of 1958 consists of 60 articles and is divided into three chapters: *kafalah*, adopted children, and general guardianship. Articles 9–16 of this law specifically address adoption. A person must be an adult, married, have full civil rights, be of good moral character, be physically and mentally healthy, and have the means to provide for the needs of the adopted child. In addition, the adoptive party must be a minor, with a minimum age difference of fifteen years between them. This law grants adopted children the same rights as biological children. Article 15 states: "In the eyes of the law, the relationship between an adoptive father and an adopted

child is that of a biological father with an ordinary biological child. An adopted child has the same rights as a biological child. The adoptive father also has the same rights as a biological child."

rights such as the rights of a biological father, as stipulated by law."<sup>30</sup> The basic principle of the adoption permissibility article is that every child born into this world has the right to have a clear lineage so that they can obtain

Additional rights such as inheritance rights, use of the family name, and so on. The CPS drafters stated that the differing opinions on the prohibition of adoption found in the Qur'an and Hadith are still beyond the bounds of *ijtihad*. In other words, adoption cannot be considered as prohibiting or permitting what is permissible or forbidden. It can be done to provide benefits and virtue to the adopted child.<sup>31</sup>

#### 8. Prohibition of Polygamy in Tunisia

Polygamy remains illegal in Tunisia. According to the Prisons Commission, those found guilty of polygamy face imprisonment or a fine. Article 18 of the CPS states: "Polygamy is prohibited. Any man who remarries while still married to one wife and not yet divorced from her shall be punished by one year in prison and a fine of 240,000 riyals, or by one of these two penalties."<sup>32</sup>

In this article, polygamous marriages include both registered and unregistered marriages. This means that marriages with a second wife are still considered prohibited if they are not registered, or are conducted under the influence of law.*zawaji* And *old man* Modernist scholars such as Tahir Haddad and Muhammad Abduh inspired this article. Haddad argued that polygamy was a form of evil that occurred in the Arab world during the Jahiliyah era and was not an Islamic teaching. This practice was intended to be gradually eliminated (*tadarruj*) in Islam by limiting the number of wives to four, then only one.<sup>33</sup> Regarding the polygamy mentioned in the Quran, Haddad stated that it is a grace or concession from Allah SWT, not an obligation or command. In fact, this grace cannot actually be implemented because it must be based on justice, something that is impossible for ordinary people to achieve. Therefore, Haddad argues that polygamy has no basis in Islam and is inconsistent with the goals (*goals*) marriage. Surah An-Nisa' verse 3, which discusses polygamy in the Qur'an, must be understood in the context of the transitional period of Islam when polygamy and slavery were still very common. Haddad stated that polygamy and slavery have become irrelevant in modern cultural society.<sup>34</sup>

According to Muhammad Abduh, rulers can prohibit permissible practices such as polygamy if they are proven to cause problems for society. Abduh reminded Muslims of the context of the verse on polygamy, which prohibits taking the property of orphans, regardless of their status as widows. To avoid this, guardians are permitted to marry up to four other women. However, the Quran instructs them to marry only one wife if they fear they will not be able to treat each other fairly. According to Abduh, "The permissibility of polygamy in Islamic shari'at is an extremely difficult and limited option, as if it were an emergency option, provided that the person is trusted to be fair and avoid cheating."<sup>35</sup> A number of scholars strongly oppose the article that prohibits polygamy because it is considered to prohibit what has been made permissible by Allah SWT. Among them is Shaikh Yusuf Qardhawi, who is of the opinion that this article is unacceptable for the following reasons: (1) this law was decided by a person who is not an expert, (2) *ijtihad* was not carried out properly, and (3) it is based on the wrong *istidlal* methodology.<sup>36</sup>



Quraish Shihab states in his commentary that Surah An-Nisa verse 3 refers to the advice to marry orphans under the care of their guardians, even if they are attracted to their wealth and beauty. In the case of numbers two, three, or four, it is not intended to refer to polygamy, but to the just demands of orphans.

It is important to remember that this verse does not establish a rule regarding polygamy because this practice already existed and was carried out by various religions and customs of society before this verse.<sup>37</sup>

The ban on polygamy is related to the controversial concept of marriage among Tunisian clerics and reformers. Tunisian reformers argue that the principle of marriage is monogamy, not polygamy. They claim that the practice of polygamy has always caused unpleasant problems in Tunisia, with many women and children being neglected. As a result, the practice of polygamy has been tightened in several Muslim countries, such as Morocco, Algeria, and Egypt. Tunisia even strictly prohibits it and punishes those who practice it.

## CONCLUSION AND SUGGESTIONS

The process of formulating and organizing Islamic family law in Tunisia not only made efforts to codify (record) the Maliki school of jurisprudence, but also made progressive and revolutionary efforts to legalize and regulate (administrative arrangements) in the legal field, especially family law, as evidenced by the establishment of the CPS.

Based on the history of the formation of the CPS, France had a significant influence. Furthermore, the Tunisian government implemented legal reforms to address existing problems, not to deviate from or diverge from the principles of Islamic law. Rather, they did so out of a desire to safeguard the welfare, peace, and well-being of the Tunisian nation and people. The reform of family law in Tunisia demonstrates that the goal of family law reform is to create a modern society and, as a product of human thought, can change according to the needs of the times.

## REFERENCE

- Anderson, J.N.D., <sup>3</sup>The TXnisian LaZ of Personal StatXs', International and Comparative Law Quarterly (7 April 1985).
- Anderson, Norman, Law Reform in the Muslim World (The Athlone Press: London, 1976). Avik, Nur, Tunisian Family Law Reform in <http://nuravik.wordpress.com/2010/08/24/reformasihukum-keluarga-tunisia/>
- Az-Zuhaili, Wahbah, Fiqh Islam Wa adillatuhu, Jilid 10, (terj. As'ad Yasin), Jakarta: Gema Insani.
- Bahauddin, Ahmad. "SOCI-POLITICAL REVIEW OF THE BAN ON POLYGAMY (Tunisian Family Law Reform)." *Familia: Journal of Family Law* 1, no. 2 (28 December 2020): 163–73. <https://doi.org/10.24239/familia.v1i2.16>.<sup>37</sup>
- Bancin, Ratih Lusiani. "Islamic Family Law in Tunisia" 3, no. 1 (2016). Bozguiba, Muhamad. *Ḥarakah Taqnīn al-Fiqh al-Islāmi Bi al-Bilad At-Tunisiyyah*. Tunis: Markaz An-Nathr Al-Jāmi'i, 2004.
- Charrad, Mounira M. "FAMILY LAW REFORMS IN THE ARAB WORLD: TUNISIA and MOROCCO," t.t.
- GOV.UK. "Tunisian Family Code." Accessed December 3, 2024. <https://www.gov.uk/government/publications/tunisian-family-code>.
- Halimah, Sasi Ben. *Mubādharrāt Fi Qānūn Al-Akhwāl As-Shakhshiyyah*. Tunis: Markaz An-Nathr Al-Jāmi'i, 2009.
- Imtiḥanah, Anis Hidayatul. "ISLAMIC FAMILY LAW REFORM IN TUNISIA." *LENTERA*

- JOURNAL: Religious, Scientific and Technological Studies* 16, no. 2 (30 September 2017): 104–16. <https://doi.org/10.29138/lentera.v16i2.278>.
- Marzuki, Ismail, and Lathifah Munawaroh. "THE LEGAL POLITICS OF ISLAMIC FAMILY LAW IN TUNISIA." *Al-'Adl* 12, no. 1 (2019): 76–93. <https://doi.org/10.31332/aladl.v12i1.1384>.
- Muhajir, Muhammad. "ISLAMIC FAMILY LAW REFORM IN TUNISIA POST-ARAB SPRING: Between Liberalism and Conservatism." *Al-Ahwal: Journal of Islamic Family Law* 14, no. 1 (12 May 2021): 26–39. <https://doi.org/10.14421/ahwal.2021.14103>.
- Muzdhar, HM. Atho' and Nasution, Khairuddin (ed.), *Family Law in the Modern Islamic World, Comparative Studies and the Applicability of Modern Law from Fiqh Books*, Jakarta: Ciputat Press, 2003.
- Nasution, Khoiruddin, *Marriage and Inheritance Law in the Modern Muslim World*, Yogyakarta: ACAdemia Publisher, 2012.
- Nasution, Khoiruddin, *Status of Women in Southeast Asia*, Leiden-Jakarta: INIS, 2002. Permana, Dede Ahmad, *Journal of Gender and Child Studies*, Vol. 3 No. 1, January-June 2016.
- Permana, Dede Ahmad. "Al Akhwal Ash-Shakhshiyah Magazine and Family Law Reform in Tunisia." *Journal of Gender and Child Studies* 7, no. 01 (30 Jun 2020): 1–18. <https://doi.org/10.32678/jsga.v7i01.173>.
- Qardhawi, Yusuf, *Contemporary Fatwas* (trans. As'ad Yasin), Jakarta: Gema Insani, 1995.
- Rachmatulloh, Mochammad Agus. "A STUDY OF ISLAMIC FAMILY LAW IN TUNISIA." *Al-Syakhsyiah: Journal of Law & Family Studies* 2, no. 2 (2020): 307–26. <https://doi.org/10.21154/syakhsyiah.v2i2.2598>.
- Rahmat, Aulia. "The Complexity of Islamic Family Law in Tunisia" V (2 December 2014): 29–54.
- Rayed Khelder, *Journal of International Women's Studies*, Vol. 18, No. 4, August 2017.
- Rusyd, Ibnu, *Hukum Tarjamah Bidayatul Mujtahid* (trans. Abdurrahman), Semarang: CV. Asy Syifa", 1990.
- Ridha al-Ajhour, Muhammad. *Al-Khalfiyah Al-Islamiyah Li Majallat Al-Akhwal AsShakhshiyah*. Tunis: Dar al-Ma'ali Tunis, 2012.
- Sabiq, Sayyid, *Sunnah Fiqh*, Volume 2, (trans. Asep Sobari et al.), Jakarta: Al-I'tishom, 2008.
- Utang Ranuwijaya and Ade Husna, *Journal of Islamic Studies*, Vol. 3 No. 1, January-June 2016.