

FAMILY LAW REFORM IN TUNISIA (Reading the Rules of Polygamy in The Tunisian Code of Personal Status 1957)

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Abstract: This paper examines polygamy in the context of legislation in Muslim countries by taking the context of Tunisia. The prohibition of polygamy in Tunisia by criminalizing the perpetrators and their facilitators is the first in an Islamic State. Even though it has become a state regulation in the form of a law, this rule remains an issue of controversy that is debated. There have even been attempts to amend the regulation prohibiting polygamy. This research uses qualitative-literary research, with the primary data source being The Tunisian Code of Personal Status 1957. The results of the study show that there are two reasons put forward by Tunisia for prohibiting polygamy: first, the institution of enslaved people, and polygamy only existed during the developmental or transitional period of the people. Islam was prohibited during the next period of Islamic development; second, the absolute condition for the permissibility of polygamy is the ability to treat wives fairly, while historical facts prove only the Prophet saw. Who can be fair to his wives? Tunisia interprets the demand for justice not only on external issues but also on issues of deep love, compassion, and concern Qs. An-Nisa [4]: 29 is declared unable to be realized even though he has tried hard. However, the prohibition of polygamy does not benefit Muslims in Tunisia. What happened was just the opposite; various social problems emerged. For example, the trend of adultery, underhand marriage, divorce, and the phenomenon of the increasing number of old maids.

Keywords: *Prohibition, Polygamy, Tunisia*

Abstrak: Paper ini mengkaji poligami dalam konteks legislasi di Negara-negara Muslim dengan mengambil konteks Negara Tunisia. Pelarangan poligami di Tunisia dengan mengkriminalisasikan pelaku dan fasilitatornya merupakan yang pertama di Negara Islam. Meski sudah menjadi aturan negara yang tertuang dalam bentuk Undang- Undang, namun aturan ini tetap menjadi isu kontroversi yang diperdebatkan bahkan ada upaya untuk mengamandemen aturan pelarangan poligami. Penelitian ini menggunakan penelitian kualitatif-pustaka dengan sumber data utama adalah The Tunisian Code of Personal Status 1957. Hasil penelitian menunjukkan bahwa Ada dua alasan yang dikemukakan Tunisia untuk melarang poligami: *pertama*, bahwa institusi budak dan poligami hanya ada pada masa perkembangan atau masa transisi umat Islam, tetapi dilarang pada masa perkembangan Islam berikutnya; dan *kedua*, bahwa syarat mutlak bolehnya poligami adalah kemampuan berlaku adil pada istri, sementara fakta sejarah membuktikan hanya Nabi saw. yang mampu berlaku adil terhadap istri-istrinya. Tunisia menafsirkan tuntutan keadilan tidak hanya pada persoalan lahiriyah, namun juga pada persoalan cinta, kasih, dan perhatian yang dalam Qs. An-Nisa [4]: 29 dinyatakan tidak dapat diwujudkan meski telah berupaya dengan keras. Namun, pelarangan poligami tidaklah membawa kemaslahatan bagi umat Islam di Tunisia. Yang terjadi justru sebaliknya; berbagai persoalan sosial bermunculan. Misalnya trend perselingkuhan, nikah bawah tangan, perceraian, dan fenomena meningkatnya jumlah perawan tua.

Kata Kunci: *Larangan, Poligami, Tunisia*

Introduction

In family law, polygamy is an interesting topic that is widely discussed and invites debate from various groups ranging from (Islamic) legal theorists, anthropologists, sociologists, human rights fighters, and gender observers. Even the boisterous discussion of polygamy is heard by the familiar people.¹ The debate about polygamy is as old as human life. However, the polarization of different views on polygamy cannot be simplified by simply describing the pros and cons of polygamy. Polygamy is very complex, and it is not enough to justify it in black and white to discuss it. So, this is where the 'magical' power of polygamy is so that discussing it remains exciting and up to date.²

Various writings and scientific works on polygamy have been reproduced by various groups with various perspectives, such as normative,³ juridical,⁴ sociological,⁵ ethno-anthropological, feminist, and also economic perspectives. These various perspectives are used to describe the complexity of the problem of polygamy. This paper describes polygamy in the context of legislation in Muslim countries by taking the context of Tunisia. The discussion begins with the

renewal of Islamic family law in Muslim countries, theoretical studies on polygamy, a description of Tunisia and the Tunisian Code of Personal Status, and the Rules of Polygamy in the Tunisian Marriage Code (Tunisian Code of Personal Status).⁶

Literature Review

A Brief Look at the History of Family Law in Muslim Countries.

Renewal of Islamic law in the form of family law legislation began in 1917 with the Turkish government's ratification of The Ottoman Law of Family Rights.⁷ Family law reform in Turkey is a milestone in family law reform in the Islamic world and has significantly influenced the development of family law in other countries.⁸

The phenomenon of renewal in family law generally occurs in almost all Muslim or Muslim-majority countries. J N D Anderson noted the trend of Islamic law in the modern world in three categories, namely²:

1. Systems that still use fiqh as a fundamental basis and apply it as a whole. This first group includes Saudi Arabia, Qatar, Yemen, Bahrain, and Kuwait.⁹

¹ Hendri Hermawan Adinugraha, Fakhroddin, and Ahmad Anas, 'Reaktualisasi Hukum Islam Di Indonesia (Analisis Terhadap Teori Hudūd Muhammad Syahrur)', *Islamadina Jurnal Pemikiran Islam*, 19.1 (2018).

² Ashabul Fadhli and Fathur Rahmi, 'IJTIHAD HAKIM PENGADILAN AGAMA PADA PERKARA POLIGAMI', *Juris: Jurnal Ilmiah Syariah*, 19.2 (2020), 215 – 229 <<https://doi.org/10.31958/juris.v19i2.2429>>.

³ Khairil Anwar and Sri Ikamulia, 'PERKARA IZIN POLIGAMI DI PENGADILAN AGAMA BENGKALIS (Analisis Terhadap Putusan Hakim Nomor: 0307/Pdt.G/2017/PA.Bkls)', *Juris: Jurnal Ilmiah Syariah*, 18.2 (2019), 163 – 174 <<https://doi.org/10.31958/juris.v18i2.1656>>.

⁴ Muslim Ibrahim and Muhammad Safiq Imran Bin Samsudin, 'Prosedur Poligami Di Malaysia (Analisis Aktaundang-Undang Keluarga Islam Wilayah-Wilayah Persekutuan)', *Samarah*, 2.1 (2018), 1 – 26 <<https://doi.org/10.22373/sjhk.v2i1.3102>>.

⁵ John Witte and Andrea Pin, 'The Refusal of Polygamy in the Western World: The Reasons; [Il Rifiuto Della Poligamia in Occidente: Gli

Argomenti]', *Diritto Pubblico Comparato Ed Europeo*, 22.1 (2020), 57 – 82 <<https://doi.org/10.17394/96303>>.

⁶ Rayed Khedher, 'Tracing the Development of the Tunisian 1956 Code of Personal Status', *Journal of International Women's Studies*, 18.4 (2017), 30 – 37 <<https://www.scopus.com/inward/record.uri?eid=2-s2.0-85028718685&partnerID=40&md5=ace72f227655af69b9e907b3dc31099d>>.

⁷ Kate Dannies and Stefan Hock, 'A Prolonged Abrogation? The Capitulations, the 1917 Law of Family Rights, and the Ottoman Quest for Sovereignty during World War 1', *International Journal of Middle East Studies*, 52.2 (2020), 245 – 260 <<https://doi.org/10.1017/S002074382000001X>>.

⁸ Mostafa Minawi, 'International Law and the Precarity of Ottoman Sovereignty in Africa at the End of the Nineteenth Century', *International History Review*, 43.5 (2021), 1098 – 1121 <<https://doi.org/10.1080/07075332.2020.1765837>>.

⁹ Abdullah Abdullah, 'The Legal Impact Of

2. The system by leaving fiqh and replacing it with secular law. Türkiye and Albania are examples of this group of countries¹⁰
3. A system that compromises both views. The majority of the most populous Muslim countries use this system. This group includes Egypt, Sudan, Jordan, Syria, Tunisia, Morocco, Algeria, Iraq, Iran, Indonesia, and Pakistan.¹¹

As revealed by Taher Mahmud that the first country to reform the field of family law was Turkey with its product The Ottoman Law of Family Rights in 1917, followed by Lebanon. Between 1920-1946 the Egyptian state began reforming the family law of the Hanafi school, which was followed by the same method. The other Muslim countries introduced legal reforms similar to those in Sudan, Jordan, Syria, Tunisia, Morocco, Algeria, Iraq, Iran, and Pakistan. In Indonesia, renewal in the form of a new law occurred in 1974 with the promulgation of Law No. 1 of 1974 concerning marriage.

According to Anderson,⁵ in general, there are five methods used in formulating contemporary Islamic law reform, namely:

1. The expedient procedural method in Arabic is called *takhshi>sh al-qadha>*, a method in the form of procedural state rules that limit the rights of judicial authority in terms of person, territory, jurisdiction, and the procedural law applied.
2. The expedient electric method in Arabic is better known as *takhayyur*, namely the method of choosing fiqh teachings other than the schools of the majority of the community if the opinion is more in line with the development of society than the

teachings of the schools adopted by the majority of the community. In addition to the superstitious method, it can also be known in Arabic as the *talfi>q* method, which combines several different schools of thought.

3. The expedient of reinterpretation, namely the reinterpretation method, makes a new interpretation of the Qur'an and sunnah concerning social change.
4. The expedient administrative, a method based on the ruler's policy to apply administrative regulations that are beneficial and not contrary to sharia. In other words, this method is *siyâsah Syariah*, which determines that a citizen must comply with the rules set by the government.
5. The expedient of reform by judicial decisions.¹²

More straightforwardly, Taher Mahmud made a mapping of the development and renewal of law in modern Islamic countries in terms of the two characteristics of the legal reforms that were developed, namely: intra-doctrinal reform. This characteristic is evident in Islamic family law reform, which was carried out by combining the opinions of several priests of schools of thought or taking the opinion of the imam of a sect outside the adhered sect. This is called the *talfi>q* and *taghyi>r* method. Then the second characteristic of renewal is extra-doctrinal reform, namely, carrying out reforms in family law by providing a completely new interpretation of existing texts. This is what is then called the *ijtiha>d* method.⁷

From the brief description above, it is clear that the reform of Islamic family law is a

Islamic Law In The Identity And Provisions Of Qatari Legal System Conceptual Frame and Legislative Directions', *Al-Jami'ah*, 58.2 (2020), 451 – 482 <<https://doi.org/10.14421/ajis.2020.582.%25p>>.

¹⁰ Mehmet Huseyin Bilgin, Giray Gozgor, and Ender Demir, 'The Determinants of Turkey's Exports to Islamic Countries: The Impact of Political Risks', *Journal of International Trade and Economic Development*, 27.5 (2018), 486 – 503 <<https://doi.org/10.1080/09638199.2017.1396489>>.

¹¹ M Alipour, 'Islamic Shari'a Law,

Neotraditionalist Muslim Scholars and Transgender Sex-Reassignment Surgery: A Case Study of Ayatollah Khomeini's and Sheikh Al-Tantawi's Fatwas', *International Journal of Transgenderism*, 18.1 (2017), 91–103 <<https://doi.org/10.1080/15532739.2016.1250239>>.

¹² J N D Anderson, 'RECENT DEVELOPMENTS IN SHAR?'A LAW', *The Muslim World*, 40.4 (1950), 244 – 256 <<https://doi.org/10.1111/j.1478-1913.1950.tb01052.x>>.

step that needs to be taken as a dynamic law that can provide solutions to new problems in a changing social context without ignoring its principles. The principles in question are upholding benefit, justice, and human equality. Benefit and justice are agreed upon by fiqh scholars as the main objectives of Islamic law (maqashid asy-syari'ah al-Islamiyyah).¹³

The forms of legal renewal carried out can be grouped into 3 categories, namely:

1. Reform in the form of law: Most countries carry out reforms and make them happen in the form of a law; Indonesia, Malaysia, Turkey, and Egypt are some countries that have made reforms in the form of laws.
2. Renewal in the form of a Qadhi decision (Mansurah Qadl al-Qudat): Sudan.
3. By Decree of the King, Presidents: Marocco (1958), South Yemen (1942), and Syria (1953).

Regarding the purpose of reforming family law in Muslim countries, Anderson tries to classify it as follows;

1. Legal Unification, or uniformity of generally accepted laws. Contemporary Muslim countries have carried out 5 types of unification;
 - a. Legal unification that applies to all groups, as happened in Tunisia
 - b. Unification was carried out to unite two streams such as Iraq & Iran, which tried to combine the two major streams of Sunni and Shia.
 - c. Unification by combining the Sunni sects. The understanding held by several different schools of thought in the influential Sunni groups has become the basis for legal reforms. As happened in Egypt,

- d. Unification in 1 school of thought includes followers of Shafi'i, Hanafi, or only Hanbali.
- e. Unification based on Imams outside of popular schools of thought, for example, adopting the thoughts of Az-Zahiri, Ibn Subrumah, or Ibn al-Qayyim al-Jauziyah.¹⁴

2. Raising the Degree of Women. In several regulation articles of the law reform products, there are efforts to elevate women's status, such as limiting the minimum age for marriage, registration of marriages, and polygamy procedures are some examples of regulations that substantively protect women.¹⁵
3. Response to the Demands of the Age. Adagium an-nushush mutanahiyah wa al-waqa'i ghairu mutanahiyah is in line with the reality that legal events emerge beyond the laws stated in the regulations. So the purpose of reforming family law is to provide answers to recent events that have yet to be covered in the regulations. The issue of IVF and DNA testing are some of the issues that are being discussed in the renewal of family law.¹⁶

Some important topics that have become the theme of reforming family law in several Muslim countries are the minimum age limit, the role of guardians in marriage, marriage registration, marital finance: dowry and marriage fees, polygamy, living for children and wife, divorce, women's rights after divorce, pregnancy, hadhanah, inheritance, will for heirs, validity and management of family waqf. Polygamy is the main topic of renewal and, in several countries, invites long polemics with different varieties and intensities.

¹³ Annelies Moors, *Debating Islamic Family Law: Legal Texts and Social Practices, A Social History of Women and Gender in the Modern Middle East*, 2018 <<https://doi.org/10.4324/9780429502606>>.

¹⁴ J N D Anderson, 'RECENT DEVELOPMENTS IN SHARĀ' A LAW III', *The Muslim World*, 41.2 (1951), 113 – 126 <<https://doi.org/10.1111/j.1478-1913.1951.tb02515.x>>.

¹⁵ Abu Rokhmad and Sulistiyono Susilo, 'Conceptualizing Authority of the Legalization of

Indonesian Women's Rights in Islamic Family Law', *Journal of Indonesian Islam*, 11.2 (2017), 489 – 508 <<https://doi.org/10.15642/JIIS.2017.11.2.489-508>>.

¹⁶ Dörthe Engelcke, *Reforming Family Law: Social and Political Change in Jordan and Morocco, Reforming Family Law: Social and Political Change in Jordan and Morocco*, 2019 <<https://doi.org/10.1017/9781108634342>>.

Polygamy in Fiqh Discourse and Contemporary Ulama.

Historically, the polygamous marriage system existed long before Islam came. In the history of the prophets, it is said that Prophet David and Prophet Sulaiman had more than three hundred wives and concubines.¹⁷ Prophet Ibrahim also has 2 wives, Siti Sarah and Siti Hajar. Murtaza Muthahari also narrated that polygamy has been practiced since the beginning of time, both among nobles, kings, and the military, even among the Prophets and ordinary people. It is not clear who first entered into this marriage, but historically polygamy appeared alongside the practice of other types of multiple-partner marriages, such as polyandry and sexual communism.

In the history of religions, Islam, Christianity, Judaism, Hinduism, and Buddhism have known the tradition of polygamous marriages. At the credo/teaching level, polygamous marriages in each religion have changed occasionally, ranging from permissibility to absolute prohibition.¹⁸

In Islam, there is an almost uniform perception that polygamy is normatively permissible. Normatively permissible polygamy based on QS. An-Nisa [4]: 3, which reads as follows:

"And if you are afraid that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry (other) women you like, two, three or four. Then if you are afraid that you will not be able to do justice, then (marry) only one person, or the slaves you have, that is closer to not doing wrong."

In addition to the verses mentioned above, the scholars of the madhhab linked several verses related to polygamy, namely, QS. An-Nisa [4]: 129, QS. Al-Ahzab [33]: 50, QS. Al-Mukminun [23]: 5-613. Likewise, with

several hadiths relevant to the issue of polygamy, such as the hadith about a man from Bani Saqif who converted to Islam and had 10 wives, the Prophet ordered him to keep a maximum of 4 and divorce the others.

In general, the scholars of the madhhab do not forbid the act of polygamy, but they limit it with several conditions for people who want to do it. In understanding the verses and hadiths related to polygamy, the priests of the Shafi'i, Hanafi, Maliki, and Hambali schools think that a husband may have more than one wife but are limited to a maximum of four wives. In verse above, Ali Ash-Shabuni and Al-Qurthubi argue that the verse shows that it is forbidden to marry more than four. His opinion refers to the opinion of scholars and fiqh experts. Furthermore, do not agree with the opinion of heresy experts who allow marriage with nine women, bearing in mind that the letter was ۛ is to add and that what is meant is that a person may collect two and three, and four. This permissibility is accompanied by the condition of being able to act fairly towards his wives either from maintenance or turn..¹⁹

According to Imam Syafii, the demand to do justice to wives is related to physical matters such as maintenance, night shifts, and visits both day and night. This demand was based on the Prophet's behavior towards his wives by giving his wives a fair share of night visits.¹⁹ In the case of inner justice, according to Imam Syafii, it is impossible to realize it, as indicated by QS. An-Nisa [4]: 129. Khoirudin's notes stated that only Imam Syafii linked the justice of polygamy with QS. An-Nisa [4]: 129.

Opinion of classical scholars, especially concerning the maximum limit of four, followed by contemporary scholars such as Murtadha Mutahari, Sayyid Sabiq, Yusuf al-Qaradawi, also Wahbah Zuhaili, although there are slight modifications regarding the

¹⁷ Edi Darmawijaya and Mohd Najib Nin Abdullah Sani, 'Legalitas Poligami Dalam Enakmen Hukum Keluarga Islam Tahun 2004 Negeri Perak (Studi Kasus Atas Ketidakpatuhan Masyarakat Taiping)', *Samarah*, 1.2 (2017), 492 – 509 <<https://doi.org/10.22373/sjhk.v1i2.2380>>.

¹⁸ Muhibbuthabry, 'Polygamy and the

Punishment in the View of the Legislation of Modern Countries; [POLIGAMI DAN SANKSINYA MENURUT PERUNDANG-UNDANGAN NEGARA-NEGARA MODERN]', *Ahkam: Jurnal Ilmu Syariah*, 16.1 (2016), 9 – 20 <<https://doi.org/10.15408/ajis.v16i1.2891>>.

¹⁹ Adinugraha, Fakhroddin, and Anas.

reasons and arguments for the permissibility of polygamy²⁰

Al-Maraghi, when interpreting Surah an-Nisa [4]: 3, says, in principle, household happiness for a husband is only when he has only one wife because that form of household is the most perfect. However, sometimes, he continued, there are indeed several conditions experienced by a person that encourages him to deviate from these provisions – he may practice polygamy – because of important benefits related to his household life or the benefit of his people, so polygamy for him is inevitable.

Referring to the letter an-Nisa verse 3, Sayyid Qutb said that rukhshah, "the generosity to practice polygamy is accompanied by an attitude of caution and must be fair. However, if you do not do justice, it is enough for him with monogamy or with the enslaved people he has. Qutb limited polygamy to only 4 wives by basing it on the hadith of the Prophet, narrated by Imam Abu Daud about Umairah al-Asadi.

Contemporary scholars interpret that Qs. An-Nisa' [4]: 3 is a verse that states that polygamy is permissible if there is no fear of being unfair to wives and orphans. Polygamy is prohibited when the husband doubts his ability to do justice to his wife. This argument is strengthened in Qs. An-Nisa [4]: 129 explained that a man cannot do justice even though he tries hard for it.²¹

According to Muhammad Abduh, polygamy is justified in emergencies like war because it does not cause damage and tyranny. Polygamy is considered good in the

context of early generations of Muslims. Abduh believes that although taking more than one wife is permissible in Islam, this permissibility is accompanied by an obligation that the husband must treat his wife fairly. Since the husband would fail to do justice, he would have to be content with just one wife; he stated, "Islamic law allows a man to have up to four wives when he thinks he will be able to treat his wives fairly. However, if he is unable to fulfill such conditions, he is prohibited from having more than one wife.

Qasim Amin, Amina Wadud Muhsin, and Asghar Ali Engineer Riffat Hasan expressed a similar opinion. With various arguments for each, in principle, they put forward to reject polygamy, which most scholars understand as a recommendation..²²

Method

The type of research used in this article is library research.²³ The approach used by researchers is normative..²⁴ Primary data comes from The Tunisian Code of Personal Status 1957.²⁵

Result and Discussion Tunisia and The Tunisian Code of Personal Status.

Tunisia is a country in the North African region in the form of a republic led by a President. The majority of the people (about 98%) are Sunni Muslims, the remaining 1% are Christians, and 1% are Jews, so it is only natural that Islam becomes the country's official religion.²⁶ At first, Tunisia was an

²⁰ Bustamam Usman, 'Poligami Menurut Perspektif Fiqh (Studi Kasus Di Kecamatan Pidie, Kabupaten Pidie, Aceh)', *Samarah*, 1.1 (2017), 276 – 288 <<https://doi.org/10.22373/sjhk.v1i1.1578>>.

²¹ Amira Mashhour, 'Islamic Law and Gender Equality - Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt', *Human Rights Quarterly*, 27.2 (2005), 562 – 596 <<https://doi.org/10.1353/hrq.2005.0022>>.

²² Javaid Rehman, 'The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq', *International Journal of Law, Policy and the Family*, 21.1 (2007), 108 – 127

<<https://doi.org/10.1093/lawfam/ebi023>>.

²³ Larry Crump, 'Conducting Field Research Effectively', *American Behavioral Scientist*, 64.2 (2020)

<<https://doi.org/10.1177/0002764219859624>>.

²⁴ Zulfi Diane Zaini, 'Implementasi Pendekatan Yuridis Normatif Dan Pendekatan Normatif Sosiologis Dalam Penelitian Ilmu Hukum', *Pranata Hukum*, 6.2 (2011).

²⁵ A Booley, 'Progressive Realisation of Muslim Family Law: The Case of Tunisia', *Potchefstroom Electronic Law Journal*, 22 (2019), 1 – 28 <<https://doi.org/10.17159/1727-3781/2019/v22i0a2029>>.

²⁶ Khedher.

autonomous region of the Ottoman government and, in 1883, became a French commonwealth under the La Marsa agreement.

Since the entry and development of Islam in Tunisia, most of the population has adhered to the Maliki school of thought. However, as a consequence of the autonomous region of the Ottoman Empire, the Hanafi school also developed in Tunisia. When France ruled Tunisia, France gave equal authority to the judges of the two schools to settle cases of marriage, divorce, inheritance, and land ownership. In subsequent developments, Tunisia has gradually adopted the principles of French law. So it is also natural that the resulting legal system output is a synergistic blend of Islamic law principles (Maliki and Hanafi) and French civil law principles (French civil law).²⁷

After its independence from France on March 20, 1956, President Habib Bourqoiba issued a controversial rule called the personal status code to replace Islamic law in the areas of marriage, divorce, and Madinah, which had been in effect before. Many observers consider the application of this family law to be 'courageous' in interpreting Islamic law, especially in defending women's rights. However, for certain circles, family law is considered to violate or even oppose the Shari'a.²⁸

The history of the birth of the codification and reform of Tunisian family law began with the thoughts of several legal experts to unite the Maliki and Hanafi schools of thought in the realm of family law, which was adapted to the context of Tunisian society. The thoughts of Tunisian scholars regarding law reform are contained in the *La>iha}>t Majjala>t al-Ah}>ka>m asy-syar'iyyah* (Draft Islamic Law Law). This draft is then studied more deeply by comparing the Family Laws of Egypt, Jordan, Syria, and Turkey.

After being approved by the government, the draft was promulgated on January 1, 1957, under *Majalah al Ahwal al Syakhsiyyah* (Code of Personal Status) 1956, containing 170 articles. This law has undergone several amendments and additions with new provisions. After experiencing several amendments until 2013, this law remains controversial, and several groups are trying to amend the law, a product of the secular regime of Habib Bourqoiba.

There are several reasons for forming and enacting the Marriage Law in Tunisia, including the following.

1. To avoid conflict between Hanafi and Maliki thinkers. This means there is an effort to unite the 2 majority schools of thought developing in Tunisia. The renewal of family law in Tunisia also applies to all groups, including non-Muslims in the minority.
2. For the unification of the courts to become a national court so that there is no longer any difference between the religious court and the district court;
3. Unification through modern law as a reference for judges so that there is an authoritative legal reference;
4. In several regulations, there are efforts to elevate the status of women both substantively and administratively; 3
5. To introduce new laws under the demands of modernity²⁹

Polygamy Rules in Law in Tunisia.

One trend of family law reform in the Islamic world is enacting legal sanctions (criminalization). The issue of polygamy is a family law issue that is always interesting to study. Tunisia is no exception. Tunisia is the first Islamic country to prohibit polygamy through state law. In addition to the prohibition of polygamy, divorce regulations before the Court have received a negative

²⁷ Hafidha Chekir, 'Women, the Law, and the Family in Tunisia', *Gender and Development*, 4.2 (1996), 43 <<https://doi.org/10.1080/741922011>>.

²⁸ Khedher.

²⁹ Amal Idrissi, 'Religious Conscience or Religious Freedom? The Difference between

Official Constitutional Norms and Actual Legal Restrictions in Morocco, Algeria, and Tunisia', *Religion and Human Rights*, 16.2-3 (2021), 117 – 142 <<https://doi.org/10.1163/18710328-bja10018>>.

response from society.

Regarding the criminalization of polygamy in Tunisia, article 18 of The Tunisian Code of Personal Status states:

1. Polygamy is prohibited; anyone who is married before the end of his first marriage and remarries will be subject to a prison sentence of one year or a fine of 240,000 millim³⁶ or both.
2. Whoever is married violates the rules in Law no. 3 of 1957 relating to city regulations, and second marriage contracts, while still married, will be subject to the same punishment.
3. According to unofficial provisions, anyone who intentionally marries someone who is subject to punishment can also be subject to the same punishment.³⁰

Article 18 of the 1957 Law concerning the Law of Individuals (marriage) of the Tunisian State expressly stipulates that Polygamy is prohibited. This prohibition has a legal basis in Qs. An-Nisa [4]: 3 states that a man must marry a wife if he believes he cannot do justice to his wife. In fact, from both experience and the revelation of Qs. An-Nisa [4]: 128, the judge in question will not be fulfilled.

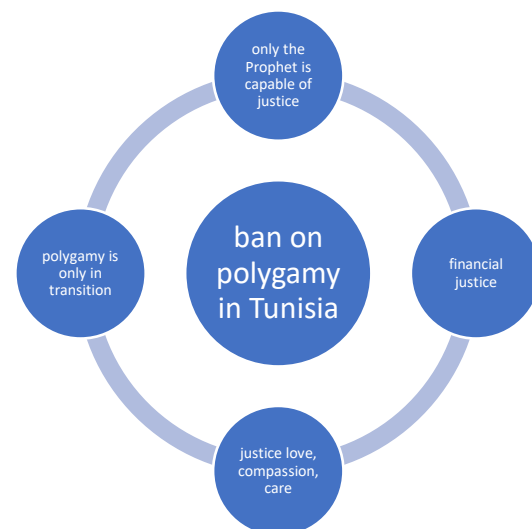
There are two reasons put forward by Tunisia for prohibiting Polygamy: first, the institution of enslaved people and Polygamy only existed during the developmental or transitional period of the Muslim community but was forbidden during the subsequent development of Islam, and second, the absolute condition for the permissibility of Polygamy is the ability to treat wives fairly, while historical facts prove only the Prophet saw. Who can be fair to his wives?

In addition, reformists in Tunisia emphasized that in addition to a husband having the financial ability to support his wives, the Koran also requires polygamists to be able to treat wives fairly. This Al-Quran rule is interpreted not just as a moral imperative but as a legal precedent for polygamists to be obliged to act reasonably.

This means that no second marriage can be permitted unless it is proven to be fair and egalitarian. However, seeing Tunisia's current social and economic conditions, the State views a proper attitude as something impossible. When the immediate needs of Polygamy cannot be met, Tunisian law briefly states, "Polygamy is prohibited."³¹

Tunisia abolished the right to polygamy through Article 18 of the Tunisian Personal Status Act 1956, based on a reinterpretation of Qs. An-Nisa [4]: 3. Tunisia interprets the demand for justice not only on external issues but also on deep love, compassion, and concern Qs. An-Nisa [4]: 29 is declared unable to be realized even though he has tried hard.

Chart 1. Factors prohibiting polygamy in Tunisia



However, the opening of the faucet for freedom due to the Yasmin Revolution (Arab Spring) in Tunisia in 2011 had a broad impact on almost all sectors of life. No exception in family law, especially the ban on polygamy in The Tunisian Code of Personal Status, is now being sued again. Proposals for the permissibility of polygamy continue to strengthen. This suggestion was voiced by many women who incidentally became 'victims' of polygamy.

Several Islamic parties and religious organizations are also eager to propose this amendment. According to them, the

³⁰ Khedher.

³¹ Mashhour.

prohibition of polygamy does not benefit Muslims in Tunisia. What happened was just the opposite; various social problems emerged. For example, the trend of adultery, underhand marriage, divorce, and the increasing number of old maids.³² They strengthened their argument with the results of a survey that stated that 80 percent of husbands and 68 percent of wives in the city of Tunis admitted to having had an affair in all its forms. They also point to data that in 2010, there were 16 thousand marriages and 9,100 divorce cases. The leading causes of this divorce are: Domestic violence, Illness, The wife is not a virgin on the first night, Third-party factors in the marriage.

Conclusion

Based on the above study, it can be understood that the family law reform carried out by Tunisia, according to Tahir Mahmood's categorization, is reform through enacting laws with a different doctrinal reform pattern, namely reforming polygamy rules by providing a new interpretation of existing texts. The prohibition of polygamy in Tunisia by criminalizing the perpetrators and their facilitators is the first in an Islamic State.

There are two reasons put forward by Tunisia for prohibiting polygamy: first, the institution of enslaved people and polygamy only existed during the developmental or transitional period of the Muslim community but was forbidden during the subsequent development of Islam, and second, the absolute condition for the permissibility of polygamy is the ability to treat wives fairly, while historical facts prove only the Prophet saw. Who can be fair to his wives?

Tunisia interprets the demand for justice not only on external issues but also on issues of deep love, compassion, and concern Qs. An-Nisa [4]: 29 is declared unable to be realized even though he has tried hard. However, the prohibition of polygamy does not benefit Muslims in Tunisia. What

happened was just the opposite; various social problems emerged. For example, the trend of adultery, underhand marriage, divorce, and the phenomenon of the increasing number of old maids

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³² Maaïke Voorhoeve, 'Judicial Practice at the Court of First Instance Tunis: The Case of Divorce for Harm on the Grounds of Domestic Violence',

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