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**POLYGAMY IN THE PERSPECTIVE OF FAMILY LAW IN TUNISIA
AND TURKEY**

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ABSTRACT :

Polygamy remains one of the most debated topics in Islamic family law today, particularly in relation to gender equality, justice, and state involvement in religious norms. This study evaluates the regulation of polygamy in Tunisia and Turkey to examine the philosophical basis, legal approach, and concept of justice underlying family law reform in both countries. Tunisia, through its Personal Status Code enacted in 1956, prohibits polygamy based on a progressive reinterpretation of Islamic law that emphasizes maqāṣid al-sharīʿah, particularly the principles of justice and protection of women's dignity. Meanwhile, Turkey, through its Civil Code enacted in 1926, adopted a secular legal system that completely separates family law from religious influence and stipulates that monogamy is the only legally valid form of marriage. By applying a normative juridical method accompanied by a comparative legal approach and philosophical analysis, this study finds that despite their different ideological paths, both Tunisia and Turkey have similar substantive goals, namely to guarantee gender equality, legal certainty, and social justice in the context of the family. These findings indicate that the prohibition of polygamy should not be understood as a denial of Islamic values, but rather as a legal reform or ijthād by the state aimed at realizing the fundamental goals of justice and human dignity in modern Muslim societies.

Key words: *Polygamy, Tunisia, Turkey*

INTRODUCTION

Polygamy has long been a topic of ongoing theological and social debate within Muslim communities. On the one hand, this practice receives normative support from Islamic religious texts; on the other hand, its implementation often raises serious issues related to justice, gender equality, and the protection of women's rights. The issue of polygamy cannot be separated from the patriarchal social and cultural context of Muslim societies, where power relations between men

and women are often unbalanced. This makes polygamy not only a legal issue, but also a moral, sociological, and philosophical problem that requires a deep rethinking.

In the Qur'an, the legal basis for polygamy is found in Surah An-Nisā' verse 3:

“... then marry women (others) whom you like, two, three, or four. But if you fear that you will not be able to be fair, then (marry) only one.”

This verse is often used as the basis for justifying the practice of polygamy in Islam. However, another verse, An-Nisā' verse 129, reminds us:

“And you will never be able to be fair between your wives, even if you try very hard (to do so) . . .”

These two verses reveal an interesting hermeneutic tension: although polygamy is normatively recognized, there are limits to the requirement of fairness that are almost impossible to achieve perfectly. From this point, various interpretations arise in Islamic jurisprudence and law—some see polygamy as a limited permission (*rukhsah*), while others consider it a form of structural injustice that should be avoided.

In the modern era, polygamy also presents real social problems. Many studies show that the practice of polygamy often has an impact on family harmony, puts psychological pressure on wives and children, and creates economic inequality among family members. Therefore, several Muslim countries have begun to reform their family laws to balance religious teachings and the principles of social justice.

Family law reform in various Muslim countries has become a crucial issue that highlights shifting social norms and the demands of modernity, particularly with regard to the regulation of polygamy. The main focus of this reform often revolves around efforts to restore the essence of monogamy as the basic principle of marriage as mandated by contemporary interpretations of the Qur'an. For example, Turkey and Tunisia, two progressive Muslim countries, have taken significant steps to ban the practice of polygamy through strict legislation, reflecting a new understanding of justice and equality in marriage. This legislative approach demonstrates the evolution of Islamic legal thinking from classical interpretations that were often seen as permissive towards polygamy, towards a legal framework that is more in line with universal human rights principles and modern social conditions. A comparison between polygamy law reforms in Turkey and Tunisia, with countries such as Indonesia that still allow polygamy under strict conditions, provides an overview of the spectrum of legal approaches in the Muslim world. This comparative study will examine the

philosophical foundations and sociological implications of polygamy law reform in both countries, as well as highlight the factors that have led to the adoption of different policies in other Muslim regions. This analysis will explore how family law plays a central role in ensuring that the practice of polygamy, if permitted, is carried out with principles of justice and protection of women's rights, as well as a balance between religious freedom and human rights.

This comparative approach will also consider how fiqh priorities, which emphasize public interest and long-term benefits, have shaped polygamy regulations in these countries. In this context, Tunisia, for example, has radically banned polygamy, even imposing criminal sanctions and fines for violators, reflecting a strong commitment to protecting women's rights and positioning it as one of the countries with the most progressive family laws. This approach is rooted in an interpretation of Islamic law that emphasizes monogamy as the ideal norm, in line with the spirit of justice mandated in the Qur'an.

This study is expected to contribute conceptually to the discourse on Islamic legal reform in Indonesia and enrich comparative studies in family law among Muslim communities. By combining legal, philosophical, and social analysis, this research seeks to provide a more comprehensive understanding of the adaptation of Islamic law to the demands of justice and equality in the modern era.

Methods

This study adopts a qualitative method with a normative legal approach and a comparative legal approach. This method was chosen based on the research objective, which focuses on understanding and analyzing in depth the legal provisions regarding polygamy in the Islamic family law systems of two countries—Tunisia and Turkey—as well as exploring the philosophical basis and values of justice that underlie them. The use of a normative legal approach was chosen because this study did not involve field observations but focused on the study of written legal norms, Islamic legal doctrines, and the principles of justice contained in legal texts and Sharia sources.

a. Type and Approach of Research

A comparative legal approach was used to explore the differences and similarities in the regulation of polygamy in Tunisia and Turkey. This approach is relevant because it allows researchers to study how each modern Islamic legal system interprets Sharia texts in the same social and political context. In addition, this study also applies a normative philosophical approach to identify the values of justice (*al-'adl*), benefit (*maslahah*), and *maqasid al-sharia* that exist as the basis of family law in both countries.

b. Data Sources

The data sources in this study are divided into two categories, namely:

1. Primary data, which includes regulations and official legal documents related to polygamy, including:

* Tunisia's 1956 Code of Personal Status;

* Turkey's 1926 Civil Code

2. Secondary data, which includes various academic works and literature such as books, law journals, research articles, and studies by modern Islamic scholars and thinkers on polygamy, gender justice, and Islamic family law reform. Secondary data also includes previous studies discussing legal reform in Tunisia and Turkey, which serve as references in the comparative analysis.

c. Data Collection Techniques

Data was collected through a literature study by examining relevant primary and secondary legal sources. This technique involved a review of legal documents, interpretations of verses and hadiths related to polygamy, and the views of Islamic scholars and legal experts. In addition, the researcher also utilized digital literature documentation such as scientific articles, official reports, and reliable online sources discussing the implementation of family law in both countries.

d. Data Analysis Technique

Data analysis was conducted using descriptive qualitative methods through three main stages:

1. Data reduction, which included grouping and selecting data relevant to the research focus (legal provisions, interpretations, and academic literature).

2. Data presentation, by compiling information in a structured manner to facilitate comparative analysis between family law in Tunisia and Turkey.

3. Drawing conclusions, which was done through an interpretive approach to legal norms and principles of justice in Islam.

In the analysis, the researcher applied the maqasid al-syariah approach and substantive justice theory as the main analytical tools. The maqasid approach is used to evaluate whether family law policies in both countries are in line with the objectives of sharia, such as the protection of honor, justice, and family welfare. Meanwhile, substantive justice theory is used to assess the extent to which the application of polygamy laws can guarantee justice for women in a social and legal context.

In this way, the study not only explains the official legal differences, but also analyzes the philosophical meaning underlying Islamic family law regulations in Tunisia and Turkey. It is hoped that this approach can provide a more comprehensive insight into the direction of fair, human-oriented Islamic law changes that are adapted to the times.

Result

1. Polygamy in the Tunisia Family Law System

Tunisia is known as the first Muslim country to make major changes to its family law. Through the Personal Status Code (CPS) issued in 1956, President Habib Bourguiba completely banned polygamy. This change was made immediately after Tunisia gained its independence from France, and is considered an important step in the modernization of Islamic law in Arab countries.

The ban on polygamy is regulated in Article 18 of the CPS, which states that anyone who remarries before their first marriage has ended will be punished with one year in prison or a heavy fine. Even if the second marriage is unofficial, it is still considered a violation of the law.

Tunisia's initiative did not come without context. This reform was rooted in Bourguiba's view of Islamic modernity, which made social justice and gender equality its main goals. Bourguiba believed that polygamy, like slavery, was a practice that was incompatible with the principles of the times and the human values of Islam. He asserted that Islam did not actually encourage polygamy, but only allowed it under conditions that were almost impossible to fulfill, namely perfect justice to each wife.

In the perspective of Muhammad Abduh and Rashid Rida, two reformers who influenced Bourguiba, the verse on polygamy in QS. An-Nisā':3 must be read in conjunction with verse 129, which morally precludes the possibility of polygamy because justice cannot be achieved perfectly. They argued that the purpose of Sharia law is to create a loving family, not the domination of one party over another.

The prohibition of polygamy in Tunisia is not merely an administrative measure, but part of the state's *ijtihad* efforts to interpret Islamic law in accordance with its *maqāṣid*. The state views equality and the protection of women as part of the objectives of Sharia (*ḥifẓ al-ʿird* and *ḥifẓ al-nasl*). Since its implementation, this law has become a symbol of the progress of Islamic law in the modern era and has been widely accepted by Tunisian society, especially the middle class living in urban areas.

In addition to the prohibition of polygamy, the CPS also introduced various other reforms, such as:

* Abolishing the traditional marriage guardian system and replacing it with marriage based on the consent of both parties (consensual marriage);

* Limiting the husband's right to divorce and granting the wife the right to divorce;

* Setting a minimum age for marriage;

* Strengthening the legal status of children and inheritance rights for women.

Thus, the family law system in Tunisia is egalitarian, modern, and secular-reformative, placing Islamic law in the context of the rationality of state law. Tunisia considers monogamy to be the ideal form of marriage that is in line with the values of justice and social welfare.

2. Polygamy in the Turkish Family Law System

Family law reform in Turkey took place in a very different context compared to Tunisia. The fall of the Ottoman Empire and the establishment of the Republic of Turkey in 1923 marked a fundamental change in the relationship between religion and government. Mustafa Kemal Atatürk saw that a religious-based legal system hindered the process of modernization, and that it needed to be replaced with a secular civil legal system.

The Turkish Civil Code, enacted in 1926 and modeled on the Swiss Civil Code, officially abolished the application of Islamic family law and established monogamy as the only recognized form of marriage. The prohibition of polygamy in Turkish law is not based on theological grounds, but on the principle of equality among citizens and the rationality of modern law.

Within the framework of Kemalist ideology, family law was considered an important tool for building an equal modern society. Women were given equal legal rights to men, both in marriage and divorce. Polygamy was seen as a symbol of backwardness and injustice that had to be eliminated for the progress of the nation.

Although these reforms were initially rejected by religious groups, the prohibition of polygamy was later accepted as an established legal norm. The state consistently refuses to legally recognize the practice of polygamy, even though it still exists informally in some areas. Thus, Turkey affirms the state's position as the sole authority in regulating family law.

Discussion

1. Comparison between Tunisia and Turkey

The comparison between Tunisia and Turkey presents significant theoretical implications for current research on Islamic family law. First, this analysis shows that changes in family law do not need to follow a specific model. Countries can choose to use an approach based on *maqasid al-shariah* or a secular approach, as long as the goals of justice and protection for vulnerable groups remain a priority.

Second, the situation in Tunisia underscores that Islamic law has an internal capacity for adaptation that allows for more progressive interpretations without abandoning its Islamic identity. On the other hand, the example of Turkey shows that the application of secularization in law can also be an effective way to achieve goals that are in line with the principles of justice in Islam.

Third, the prohibition of polygamy implemented in both countries challenges the view that Islamic law is fixed and not open to change. On the contrary, Islamic law has proven to be adaptable to various social and political contexts, both through religious *ijtihad* and legal policies implemented by the state.

2. Philosophical Values and Justice in Maqasid al-Shariah

From a philosophical point of view, both Tunisia and Turkey are based on the principle of *maqāṣid al-syariah*. In the *maqāṣid* framework, the objectives of Islamic law are to protect five main aspects: religion, life, intellect, lineage, and property. Polygamy needs to be evaluated based on the extent to which it protects or harms these five aspects.

Tunisia and Turkey argue that polygamy in modern times brings more harm, such as injustice, emotional abuse, and discrimination against women. Therefore, the prohibition is in line with the *maqāṣid*, which aims to preserve honor (*hifdz al-'ird*) and social justice.

In Al-Ghazali's view, justice means putting everything in its proper place. If polygamy results in injustice and suffering, then its legal permissibility can be considered a moral violation. Therefore, legal reforms that emphasize the protection of women do not contradict Islamic teachings, but are part of the application of the value of justice in sharia.

3. Normative Review of Fiqh on Polygamy

a. Theological Basis of Polygamy in the Qur'an and Hadith

Normatively, the legal basis for polygamy is found in Surah An-Nisā 'verse 3, which allows a man to marry up to four women on the condition that he is able to be fair:

“And if you fear that you will not be able to deal justly with orphan girls (if you marry them), then marry women of your choice, two or three or four; but if you fear that you will not be able to deal justly, then marry only one...”

This verse is generally interpreted as a form of legal leniency, not as a command or recommendation. This leniency is conditional—it applies only if justice can be realized in practice. However, Surah An-Nisa verse 129 provides a clear moral limitation:

“And you will never be able to be fair between your wives, even if you try.”

These two verses show a theological dialectic in Islamic family law. On the one hand, Islam does not reject polygamy as a social option in certain circumstances; on the other hand, the Qur'an emphasizes that achieving total justice between wives is very difficult. Therefore, most scholars argue that monogamy is the ideal of Sharia, while polygamy is only an exception in certain situations.

The hadith of the Prophet Muhammad also emphasizes the importance of justice as a key requirement. In one narration, it is said:

“Whoever has two wives and does not treat them equally will come on the Day of Judgment with one side of his body leaning.” (HR. Abu Dawud and al-Nasa'i)

This hadith emphasizes that injustice in polygamy is a moral sin and a serious ethical violation. Thus, although polygamy is legally permissible, Islam places it in a dimension of very heavy moral responsibility.

b. The Four Madhhabs' View of Polygamy

The four main madhhabs in Islam—Hanafi, Maliki, Shafi'i, and Hanbali—agree that polygamy is permissible with a maximum limit of four wives. However, there are differences in emphasis regarding the conditions and moral responsibilities of the husband.

1. The Hanafi school emphasizes the importance of financial capability and material justice as the main conditions. If the husband is unable to provide adequate financial support, then polygamy becomes makruh (disliked).
2. The Maliki school emphasizes moral and social aspects; according to Imam Malik, polygamy is permitted only if there are compelling reasons such as a wife who is barren or specific social needs.
3. The Shafi'i school permits polygamy without requiring specific reasons, but still requires fairness in the division of time and financial support. Imam al-Nawawi emphasizes that fairness of the heart and affection are beyond human control, but physical fairness must be fulfilled.

4. The Hanbali school of thought views polygamy as generally permissible (ibāhah), but asserts that it is a grave sin for a husband to neglect his first wife or not treat his wives fairly.

From these four schools of thought, it can be concluded that polygamy is not maqṣūd bi al-dzātihi (the main objective of Sharia), but is a concession that is permitted on the condition of fairness and ability. In other words, monogamy is the ideal situation, while polygamy is a dispensation in certain situations.

c. Contemporary Scholars' Views

Contemporary scholars have provided many new interpretations of the law of polygamy. Muhammad Abduh and Rashid Rida stated that the Qur'an actually directs Muslims toward monogamy. Abduh argued that the permission for polygamy in verse 3 of Surah An-Nisa' is morally limited by verse 129; thus, essentially, polygamy cannot be used as an ideal family law system. He explains that the justice required by this verse “cannot be fully achieved, because humans cannot regulate their feelings of love fairly.”

Quraish Shihab, in his book *Wawasan Al-Qur'an (Insights into the Qur'an)*, emphasizes that the permission for polygamy is situational. In the modern world, the practice of polygamy that causes injustice, emotional abuse, or suffering for women must be considered contrary to the principles of justice in Islam. He reveals that “permissibility” is not the same as “recommendation,” and Islamic law should be understood based on maqāṣid al-syariah, not only based on the literal text.

Meanwhile, Fazlur Rahman views the verses on polygamy as a gradual legislative process. He argues that the Qur'an does not directly prohibit polygamy because it takes into account the social conditions of Arab society before the advent of Islam, but gradually directs people towards fair monogamy. Thus, the prohibition of polygamy in countries such as Tunisia and Turkey can be seen not as a rejection of Sharia, but rather as a continuation of the spirit of reform that exists in the Qur'an itself.

d. The Concept of Justice as the Basis of Polygamy Law

Justice (al-'adl) is the main basis of family law in Islam. In the case of polygamy, justice encompasses two important aspects: financial justice (maintenance, turns, place of residence) and emotional justice (attention, affection, respect). The scholars agree that financial justice is legally obligatory, while emotional justice is more of a moral aspect, but it remains a measure of the husband's moral character.

From the perspective of *usul fiqh*, justice is the *'illah* (legal reason) that underlies the permissibility of polygamy. If justice is not realized, then the *'illah* no longer applies and the law becomes a prohibition (*haram*). This principle is in line with the *fiqh* rule which states that: “The law is closely related to the existence of its *'illah*; the existence or non-existence of the law depends on the existence or non-existence of the *'illah*.”

In this way, polygamy practiced without justice actually contradicts the spirit of *sharia*. In *maqāṣid al-syariaah*, the law of marriage aims to preserve human dignity (*hifdz al-'ird*), preserve offspring (*hifdz al-nasl*), and create a harmonious life. Polygamy that causes emotional pain, conflict, or injustice contradicts these *maqāṣid*.

Therefore, a number of modern Islamic thinkers such as Amina Wadud, Asghar Ali Engineer, and Fatima Mernissi emphasize the importance of gender-sensitive *ijtihad* in understanding family law. For them, the principle of justice in Islam is substantive rather than procedural. Thus, prohibitions or restrictions on polygamy cannot be viewed as the secularization of law, but rather as the contextual actualization of the value of justice in Islam.

e. Normative Implications for Legal Reform

From the above normative analysis, it can be concluded that polygamy is not an absolute command, but rather a concession with strict conditions of justice. In the context of modern states, restrictions or prohibitions on polygamy do not mean opposing Islamic law, but rather interpreting the principle of *sharia* justice in the form of positive regulations. Tunisia and Turkey have similar views, namely that justice is the basis of Islamic teachings. However, differences arise in the way they apply this principle.

4. Philosophical Analysis and the Value of Justice in the Perspective of Islamic Family Law I

a. Justice as a Fundamental Value of *Sharia*

In Islamic legal thought, justice (*al-'adl*) is the main pillar that underlies the entire framework of *Sharia* law. The Qur'an emphasizes in Surah Al-Nahl verse 90:

“Indeed, Allah commands you to be just and to do good deeds...”

Justice in family law does not only mean equality before the law, but also a balance between rights and obligations, between personal interests and the interests of society. Polygamy, as part of Islamic family law, cannot be separated from this principle of justice.

According to Al-Ghazali, justice is a state in which every element is in its proper place — al-‘adl huwa wad‘ al-syay’ fi mahallihi. This means that justice in a family is realized when each member exercises their rights and obligations in proportion without oppression or inequality. Therefore, the practice of polygamy that causes gender inequality or mental suffering for wives is contrary to the essence of justice, which is the goal of Sharia.

b. Maqāṣid al-Syarī‘ah and Polygamy: Benefit as a Legal Guideline

The concept of maqāṣid al-syarī‘ah (objectives of Sharia) introduced by al-Syathibi emphasizes that all Islamic laws aim to bring about public interest (tahqīq al-maṣlaḥah) for humanity. This benefit covers five main aspects: preservation of religion (hifdz al-dīn), life (hifdz al-nafs), intellect (hifdz al-‘aql), offspring (hifdz al-nasl), and wealth (hifdz al-māl).

In this context, the law governing polygamy must be measured based on the extent to which it supports or hinders these interests. If the practice of polygamy leads to marital breakdown, injustice, or violation of women's rights, then from the maqāṣid perspective, the practice of polygamy becomes irrelevant.

Al-Syathibi emphasized that the reasons behind the law can change along with changes in the social context (taghayyur al-ahkam bi taghayyur al-azman wa al-amkinah). Therefore, the prohibition of polygamy in Tunisia and Turkey is not merely considered a rejection of the Qur'an, but is the result of an understanding of maqāṣid which states that the law must be directed towards protecting the interests of women and families in the modern era.

c. Philosophical Dimension: Formal Justice and Substantive Justice

In legal philosophy, there is a difference between formal justice and substantive justice.

*Formal justice means that everyone is treated equally before the law regardless of their social circumstances.

*Meanwhile, substantive justice requires different treatment if the situation requires it in order to achieve balance and protect the weaker party.

Tunisia and Turkey chose to apply substantive justice by completely banning polygamy because they considered that the patriarchal social structure did not allow women to obtain real justice.

The approach taken by Tunisia and Turkey is in line with John Rawls' theory of justice, especially the “difference principle” which emphasizes that inequality can only be justified if it benefits the

weakest parties. In the context of polygamy, a total ban is considered the most effective way to protect women from structural injustice.

d. Islamic Ethical Perspective on Polygamy

In Islamic ethics, marriage is seen as a means to achieve *sakinah, mawaddah warahmah*. This principle can only be realized if the relationship between husband and wife is based on love, mutual respect, and emotional justice.

In the context of Islamic ethics, justice is not only assessed in terms of law, but also in terms of the motivation and morality of the people involved. A husband who practices polygamy with the aim of maintaining the honor of the family and is able to act fairly both outwardly and inwardly is still in accordance with the principles of sharia. However, if polygamy is practiced out of lust or social ambition, then such actions lose their moral value even if they are legally permitted.

Sufi scholars such as Rumi and Ibn 'Arabi emphasize the importance of the inner dimension of justice as self-balance. In this case, polygamy requires not only financial capability, but also spiritual and moral development. When this inner dimension is lost, polygamy can become a cause of social harm rather than good.

e. Philosophical Review of the Phenomenon of Modern Polygamy

From the perspective of modern justice philosophy, polygamy presents a problem between individual freedom and the protection of society. In principle, Islamic law respects the right of men to practice polygamy within certain limits, but modern states have an obligation to protect the rights of vulnerable groups, especially women and children.

Tunisia and Turkey address this issue by emphasizing that individual freedom must be limited by universal moral principles: no freedom should be allowed to harm others. This is an example of the application of distributive justice that considers individual rights and social interests.

5. Impact on the Reform of Islamic Family Law

This study shows that Islamic law is flexible and adaptable. Polygamy should not be seen as a rigid institution, but rather as a consequence of interpretations of social circumstances. The experiences of Tunisia and Turkey show that Islamic law can be changed without abandoning the fundamentals of sharia.

For Indonesia, the lessons from Tunisia and Turkey are invaluable: the protection of women and justice in the family cannot depend solely on administrative regulations, but also require a theological reinterpretation of the meaning of justice in Islam. The direction of family law reform in the future should focus on strengthening the principle of maqasid al-sharia so that the law can be more responsive to humanity and equality.

Conclusion

This comparative study shows that the prohibition of polygamy in Tunisia and Turkey reflects the process of family law reform in Muslim countries that prioritize justice, the protection of women's rights, and social welfare. Although they take different approaches, namely Tunisia through an internal reinterpretation of Islamic law that focuses on maqasid al-sharia and Turkey through the separation of religion and state in family law, both countries agree to make monogamy the main norm in contemporary marriage. These differences confirm that Islamic law is dynamic and can adapt to changes in the social, political, and ideological contexts. The prohibition of polygamy cannot be seen as a rejection of Islamic principles, but rather as a form of government ijtihad or modern legal policy aimed at creating substantial justice, gender equality, and protection of human dignity within the family structure, in accordance with the main objectives of sharia and universal human values.

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