

The Transformation of The Islamic Religious Judiciary in Tunisia Following The Reform of The Code of Personal Status

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Abstract

This study examines the transformation of Tunisia's Islamic religious judiciary following the enactment of the *Code of Personal Status* (CPS) in 1956 and its impact on family law. The research focuses on changes in the authority and institutional position of religious courts after independence under President Habib Bourguiba. The CPS reforms reduced the jurisdiction of religious courts and transferred family law matters, including marriage and divorce, to a unified state judicial system. Using a qualitative library research method, this study analyzes legislation, historical documents, fatwas, and relevant scholarly works through a descriptive-analytical approach. The novelty of this research lies in its focus on the institutional transformation of religious courts rather than solely on substantive family law reforms. The findings show that Tunisia developed a hybrid legal model that combines Islamic legal values with a modern state legal framework. While this transformation promoted legal modernization and strengthened women's rights, it also generated tensions between religious authority and secular state governance. The Tunisian experience illustrates how legal reform can reshape both family law and religious judicial institutions in a Muslim-majority society.

Keywords: Islamic Judiciary, Secularization, Tunisian Family Law, Code of Personal Status, Religious Courts, Legal Reform

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INTRODUCTION

Subject in contemporary studies of Islamic law. In several Muslim-majority countries, efforts to modernize legal systems have not only affected the substance of family law but have also transformed the structure and authority of religious judicial institutions. Tunisia presents a significant case in this regard due to the comprehensive reforms introduced after independence, particularly through the enactment of the *Code of Personal Status* (CPS) in 1956. These reforms reshaped the administration of family law and redefined the role of Islamic religious courts within the national judicial system. Tunisia is a republican state located in the North African region. Geographically, the country is bordered by the Mediterranean Sea to

the north and east, Libya to the south, and Algeria to the west. This strategic position makes Tunisia an important gateway connecting Africa and Europe through maritime routes. The majority of Tunisia's population consists of Arabs and Berbers, with Islam as the predominant religion. The official language used in government and education is Arabic, although French continues to play a significant role in everyday communication particularly in the fields of economics, diplomacy, and education due to the country's long history of French colonial influence (Vandromme 2020).

Throughout its historical trajectory, Tunisia was at one time under the rule of the Ottoman Empire after previously existing as a territory with its own sovereign authority. Ottoman influence left a significant imprint on the structure of governance and the legal system, particularly in social and religious affairs. Economically, Tunisian society practiced diverse modes of livelihood. Certain groups lived as nomads who relied on livestock, while others settled as relatively prosperous agricultural communities. Meanwhile, international trade became a central driver of the country's economy. Tunisia's strategic position along the Mediterranean coast transformed it into a hub of economic interaction as well as a meeting point for various cultures from antiquity to the modern era (Habib 2023).

Islam is designated as the official religion of the state in the Tunisian Constitution. The presence of Islam in the country cannot be separated from the long historical influence of the Ottoman Turks, who once governed Tunisia. Prior to Ottoman rule, the majority of Tunisian Muslims predominantly followed the Mālikī school of thought, as was common across the broader North African region. However, when Tunisia came under formal Ottoman administration, the Ḥanafī school began to be widely introduced and subsequently gained an important position in legal practice. As a result, throughout its historical development, Tunisia came to recognize two legal authorities represented by two qāḍīs (judges): one adhering to the Ḥanafī school and the other to the Mālikī school, particularly during the Husainid dynasty under Ottoman governance (Munawarah 2019).

From an academic perspective, Tunisia has frequently become a subject of scholarly inquiry due to its distinct characteristics in the development of Islamic law, its political system, and the relationship between religion and the state. In the field of family law, Tunisia is well known for undertaking fundamental reforms that diverge significantly from practices in many other Muslim-majority countries. The country's family law framework is often regarded as unique even radical particularly because of its restrictions on polygamy and its efforts to strengthen the role of women within both domestic and social spheres. At the same time, Tunisia's democratic development reflects a trajectory marked by fluctuations and recurring challenges. Following the wave of the Arab Spring, the nation entered a political transition that has not always proceeded smoothly. Nevertheless, these circumstances reveal a complex interaction between Islamic values, the spirit of secularism, and the principles of modern democracy (Rachmatulloh 2021).

Furthermore, Tunisia is often regarded as one of the more progressive and liberal Muslim majority countries, particularly in its protection of women's rights. Its consistent prohibition of polygamy and the implementation of family law regulations that promote gender equality have become defining features of the Tunisian legal landscape. These factors illustrate that religious dimensions in Tunisia do not operate in isolation; rather, they coexist alongside broader forces of modernization and secularization. From this perspective, Tunisia can be viewed as a compelling socio-political and legal laboratory. Its experience reflects a unique phenomenon in which Islam, as the official state religion, is able to coexist with a modern secular legal system producing policies that differ significantly from those adopted in most other Muslim-majority countries (Frini and Muller 2023).

Tunisia is one of the North African countries with a long-standing history of interaction between religion, law, and the state. Islam is established as the official religion according to the constitution, yet in its state governance, Tunisia presents a distinct character compared to most other Muslim-majority nations. Since gaining independence in 1956, the country has embarked on a strong path of secularization, particularly in the areas of family law and the religious judiciary. Prior to independence, the religious court system in Tunisia played a significant role in regulating matters of family life, including marriage, divorce, and inheritance. Two major legal schools Mālikī and Ḥanafī exerted considerable influence over the judicial structure during the Ottoman period. However, upon independence, the government under the leadership of Habib Bourguiba implemented radical reforms through the introduction of the Code of Personal Status (CPS). This legislation effectively abolished the existing religious courts and replaced them with a civil judicial system, while still retaining elements of Islamic legal principles through interpretations that were more modern and progressive (Nurali 2021).

This transformation marked a significant shift: the religious courts, which once functioned as formal institutions, gradually disappeared from the state structure. Civil courts subsequently assumed full authority over family matters, resulting in divorce being granted only through judicial decisions, the prohibition of polygamy, and the legal reinforcement of women's rights. These policies positioned Tunisia as the first Muslim-majority country to implement family law reforms grounded in a secularist approach. This phenomenon presents an important discourse within legal and political studies. On one hand, Tunisia is regarded as progressive for upholding gender equality and strengthening the protection of women's rights. On the other hand, these reforms have sparked substantial debate, particularly regarding their alignment with the principles of Shari'a traditionally applied in Islamic family law. It is this tension between religious values and secular principles that shapes the distinctive character of Tunisia's legal system (Ismail and Hasan 2020).

In the academic context, Tunisia is often regarded as a socio-political laboratory that demonstrates how a Muslim-majority state can undertake profound legal reforms while still retaining Islam as its official religion. The transformation of the religious judiciary system in Tunisia illustrates how secularism can reshape Islamic legal institutions, while simultaneously opening space for broader discussions on the relevance of Shari'a, legal modernization, and the evolving relationship between religion and the state in the contemporary Muslim world. Research on the transformation of Tunisia's religious judicial system is both important and compelling because it highlights a phenomenon rarely found in other Muslim-majority countries. Tunisia serves as a concrete example of how a predominantly Muslim nation has chosen a path of legal secularization one that extends even to the abolition of religious courts, which traditionally held authority over family matters (Permana 2020).

The uniqueness of this study lies in several key aspects. First, Tunisia demonstrates how Islamic values remain embedded within family law despite being framed within a secular-oriented civil legal system. This challenges the classical assumption that Shari'a and secularism cannot coexist. Second, Tunisia presents a legal laboratory that exhibits both tension and harmonization between religious principles, modernization, and democratic governance. Reforms such as the prohibition of polygamy, the requirement that divorce be processed through civil courts, and ongoing efforts to equalize inheritance rights have become central issues in the global discourse on gender equality in Islam. Third, this research is relevant for understanding how a Muslim-majority state redefines its legal identity amid pressures of modernization and international demands related to human rights. Tunisia offers a model distinct from other states, including Indonesia, which continues to maintain a religious court system within its national judiciary. Thus, this study not only provides an

overview of Tunisia's legal evolution but also offers a new perspective for understanding the dynamics of the relationship between Islam, law, and the state in the contemporary era. The findings are expected to enrich academic scholarship in the fields of Islamic law, comparative legal studies, and the study of secularism in the Muslim world (Muhajir 2021).

Previous studies on Tunisian family law have primarily focused on the substantive reforms introduced by the Code of Personal Status (CPS), including the prohibition of polygamy, the expansion of women's rights, and the modernization of marriage and divorce regulations. Other scholars have examined the influence of secularism on legal development and state policies in post-independence Tunisia. However, relatively limited attention has been given to the transformation of Islamic religious judicial institutions and the changes in their authority following the implementation of the CPS. As a result, the institutional dimension of legal reform remains insufficiently explored in the literature on Tunisian Islamic law. This gap raises an important research problem concerning how the CPS reforms reshaped the authority and institutional position of religious courts within Tunisia's judicial system and how these changes reflect the broader process of secularization. Therefore, this study aims to analyze the transformation of Tunisia's Islamic religious judiciary following the enactment of the CPS and to examine the implications of these reforms for the relationship between Islamic legal institutions and the modern state. Through this analysis, the study seeks to contribute to contemporary discussions on legal reform, secularization, and the development of Islamic law in Muslim-majority societies.

METHOD

This research is qualitative in nature and is based on a library research approach. A qualitative method is employed because the study seeks to understand and analyze the transformation of Tunisia's Islamic religious judiciary within its historical, legal, and socio-political context. The library research approach is appropriate since the research object consists of documentary sources rather than field data. The study relies on the examination of primary and secondary materials, including legal texts, historical records, government regulations, fatwas, and scholarly works related to the development of the religious judiciary and family law in Tunisia. The research adopts a descriptive-analytical method. The descriptive aspect aims to explain the historical development and institutional transformation of Tunisia's religious courts, while the analytical aspect examines the relationship between secularization policies, judicial reforms, and changes in the authority of religious judicial institutions. Through this approach, the study seeks to provide a comprehensive understanding of how the enactment of the Code of Personal Status reshaped the position of religious courts within Tunisia's modern legal system. This study employs a qualitative approach using library research methods. (Tiro, Nusrang, and Sudarmin 2020) This method is considered appropriate because the object of inquiry relies heavily on the analysis of historical data, legal documents, and academic literature discussing the development of the religious judiciary system in Tunisia (Teniwut 2022). In general, the research is descriptive analytical, aiming not only to provide an in-depth description of the transformation process of Tunisia's religious judiciary but also to analyze the influence of secularism on the shifting role of these institutions (Mudjiyanto 2017). Within this framework, a historical approach is used to trace the trajectory of the religious judiciary from the Ottoman period to the emergence of the Code of Personal Status (Teniwut 2022). In addition, a normative juridical approach is employed to examine various legal regulations and policies formulated by the Tunisian government, particularly those related to family law (Ardiansyah, Risnita, and Jailani 2023). A sociological approach is also applied to understand the socio-political impact of legal secularization on Tunisian society, including how the relationship between religion, the

state, and women's rights protection has been shaped through these reforms. The data used in this study are derived from three main types of sources (Maulida 2020). First, official documents such as the Tunisian Constitution and the Code of Personal Status, which serve as the legal foundation for the transformation. Second, academic literature including books, journals, and scholarly articles addressing secularism, Islamic family law, and comparative legal systems. Third, supplementary sources such as encyclopedias, legal dictionaries, and credible news reports that support the analysis (Huberman and Miles 1992). Data collection was conducted through the review of printed and digital literature, followed by analysis using content analysis techniques (Fajar ND and Achmad 2007). This method enables the researcher to examine documents and literature to identify patterns and dynamics related to the transformation of Tunisia's religious judiciary. The findings are then interpreted critically to provide comprehensive answers to the research questions (Benuf and Azhar 2020).

RESULTS AND DISCUSSION

1. The Transformation of Tunisia's Religious Judiciary before the 1956 Code of Personal Status

The history of Tunisia as a political and legal entity cannot be separated from the long-standing influence of Ottoman rule, which became prominent beginning in the 16th century. In 1574, the territory of Tunisia officially came under the control of the Ottoman Turks following their conquest of the Hafsid Dynasty, which had previously governed the region. Nevertheless, Ottoman governance in Tunisia did not immediately dismantle existing local structures; instead, it integrated central Ottoman authority with local elites through the Beylik system, headed by a Bey. Over time, this system granted Tunisia a relatively high degree of autonomy compared to other Ottoman provinces, while still maintaining allegiance to Istanbul. In the legal sphere, Tunisia under Ottoman rule implemented a religious judicial system based on Islamic law. The Mālikī school followed by the majority of the population served as the primary foundation for the administration of family law, inheritance, waqf, and other religious matters. Sharī'a judges (qāḍīs) held broad authority in adjudicating various legal cases, while the Ottoman administration also introduced elements of the Ḥanafī school as part of its imperial administrative influence. During this period, social life in Tunisia remained closely intertwined with Islamic tradition, with the religious courts functioning as central institutions responsible for maintaining legal order within society (Agustina, Asasriwarni, and Zulfan 2024).

Entering the 19th century, European influence in Tunisia became increasingly pronounced. The region's strategic location along the Mediterranean coast made it a target of colonial interests, particularly from France and Italy. Although Tunisia formally remained under the Ottoman umbrella, it faced mounting pressure in the form of economic penetration and diplomatic intervention by Western powers. Ultimately, in 1881, France officially established a protectorate over Tunisia through the Treaty of Bardo. From that moment onward, Ottoman authority became largely symbolic, while Tunisia's administration and legal system grew progressively shaped by French colonial structures. The French colonial period introduced significant changes to Tunisia's legal framework. The French civil law system began to take root, especially in matters related to commerce, economics, and state administration. Nevertheless, family law and personal status issues remained within the jurisdiction of the religious courts, which continued to operate under Islamic law administered by qāḍīs. This arrangement produced a dualistic legal system in which modern colonial law and Islamic law coexisted, although the colonial legal framework gradually became more dominant in line with the expanding authority of the French administration (Ramadhani 2023).

After a prolonged struggle, Tunisia gained independence in 1956, marking a significant turning point in its political and legal history. Under the leadership of President Habib Bourguiba, the newly established republic adopted an ambitious modernization agenda aimed at restructuring state institutions and legal governance. One of the most influential reforms was the enactment of the Code of Personal Status (CPS) in 1956, only a few months after independence. The CPS became a landmark legal instrument that transformed Tunisian family law by prohibiting polygamy, regulating divorce through judicial procedures, and strengthening women's legal rights (Khedher, 2017; Maghfiroh et al., 2025) (Retnowulandari 2018).

One of the most significant provisions of the CPS was the prohibition of polygamy, a practice previously permitted under Islamic law. Bourguiba and the drafters of the CPS viewed polygamy as incompatible with the principles of equality and modernity. Article 18 of the code even introduced criminal sanctions for men who violated this prohibition. In addition, divorce could no longer be carried out unilaterally by the husband; instead, it could only be granted through the civil courts. This reform provided greater legal protection for women and expanded their access to justice within the family. Thus, from the Ottoman period to independence, the historical trajectory of Tunisia reveals a remarkably dynamic transformation. The country evolved from a territory fully governed by Islamic law, to a French protectorate with a dual legal system, and ultimately to a nation with a secular legal order through the CPS. The abolition of the religious courts was not merely an administrative measure but represented an ideological symbol of Tunisia's new direction as a modern state that places secularism and gender equality at the core of its legal development (Kau 2013).

The transformation of the religious court system in Tunisia reflects a long historical trajectory beginning in the Ottoman era and culminating in its formal abolition through the Code of Personal Status (CPS) in 1956. During the early period of Ottoman administration, Islamic law was widely applied in Tunisia, particularly through the predominance of the Maliki school, which was followed by the majority of the local population. Within this context, religious courts played a central role in the social and religious life of Tunisian society. These courts exercised authority over various matters related to family law such as marriage, inheritance, wills, and endowments. Maliki judges (qādīs) functioned as guardians of the shari'a, while Ottoman influence also introduced elements of the Hanafi school into judicial practice. This period illustrates how Islamic law served as the foundational framework for shaping the legal order and social structure of Tunisia (A.P.Kau 2013).

The situation underwent a significant transformation after Tunisia gained independence in 1956. The newly established government under President Habib Bourguiba promptly enacted the *Code of Personal Status* (Majallat al-Ahwal al-Syakhshiyyah), which later became one of the most important milestones in the history of legal reform in the Muslim world. This legislation was designed to reconcile the principles of Islamic law with the values of modernity, particularly the principle of gender equality. Through the CPS, Bourguiba modernized family law by positioning civil law as the primary legal foundation of the state, while simultaneously abolishing the religious court system. Consequently, the authority that had previously been held by the *qadhi* of the sharia courts was fully transferred to a more organized and secular-oriented civil judiciary (Rahmat 2015).

The abolition of religious courts in Tunisia was not merely a political decision but also an ideological symbol marking a new direction for the country. One of the most significant provisions of the CPS was the prohibition of polygamy, explicitly stated in Article 18, which even imposed criminal penalties on violators. This made Tunisia the first Muslim-majority country to officially ban polygamy through national legislation. In addition, divorce could no longer be carried out unilaterally by the husband; instead, it could only be granted

through the civil court system. Thus, the CPS introduced fundamental changes to the structure of Tunisian family law, which for centuries had been governed by religious judicial institutions (Ramdan Wagianto and Moh. Sa'i Affan 2022).

The enactment of the CPS and the abolition of religious courts had a profound impact on the legal landscape of Tunisia. This step affirmed the government's vision of modernization and secularization in alignment with the presidential republican model it sought to build. Tunisia positioned itself as a progressive Muslim-majority country with a family law system that prioritizes gender equality. However, despite the abolition of religious courts, the influence of Islamic law did not disappear entirely. Sharia remained one of the main sources of legislation in Tunisia, although it was largely adapted and reinterpreted in accordance with the aspirations of a modern state. The transformation of the religious court system in Tunisia was not simply a matter of eliminating an institution; it represented a long-standing struggle between Islamic tradition and secularism. Tunisia presents a unique model in the Muslim world a country where Islam remains the official state religion while secular principles serve as the foundation for legal and judicial administration. This phenomenon makes Tunisia an important case study for understanding the complex dynamics between religion and the state in the contemporary Muslim world (Munawaroh 2022).

The transformation of the religious court system in Tunisia is one of the most compelling phenomena in contemporary Islamic legal studies. Viewed historically, Tunisia's trajectory from the Ottoman period to the abolition of religious courts through the *Code of Personal Status* (CPS) illustrates a fundamental shift from a state deeply rooted in the traditions of sharia to a modern nation that places secularism at the core of its legal framework. From the author's perspective, Tunisia's actions cannot be understood merely as reforms of family law; rather, they should be seen as political and ideological strategies. Bourguiba, as the leader of the post-independence era, appeared intent on demonstrating that Tunisia was a Muslim country distinct from most other Islamic states. By closing religious courts and prohibiting polygamy, he not only solidified the spirit of modernization but also sent a message to the international community that Tunisia stood firmly for gender equality and progressive values (Wulan Sari and Aji Purwanto 2023).

On the other hand, this transformation also reveals a dynamic tension between Islam and secularism. Although the CPS succeeded in abolishing the religious court system, Islamic law continued to be upheld as a source of legislation in other areas. This indicates that legal secularization in Tunisia did not completely remove religion from the public sphere; rather, it represented a process of adaptation in which Islamic values were blended with modernity. This distinctive approach sets Tunisia apart from other Muslim-majority countries, which often either maintain a dominant religious legal system or, conversely, remove it entirely (Nadia 2023).

However, this radical step was certainly not without consequences. For some groups, the abolition of religious courts was seen as a weakening of Islamic identity and a disregard for deeply rooted traditions. Tensions between conservative and progressive factions frequently surfaced, although politically Bourguiba was relatively successful in maintaining stability. From the perspective of legal development, the author views Tunisia as having taken a bold risk to establish a family law system that provides greater justice, particularly for women. Thus, the Tunisian experience can be understood as a unique laboratory illustrating how a Muslim-majority country attempts to balance its Shari'ah heritage, the demands of modernization, and the forces of secularism. The elimination of religious courts is not merely a legal matter, but also a reflection of national identity and the ideological direction of the state. From this, it becomes clear that law is not only a normative product but also a political and social instrument used to shape the new face of a nation (Hidayatul et al. 2017).

The model of legal reform in Tunisia marked by the abolition of religious courts and the implementation of the Code of Personal Status presents two contrasting dimensions. On one hand, this reform reflects a level of political courage rarely found in the Muslim world. Tunisia succeeded in modernizing its family law by providing stronger protection for women's rights, particularly through the prohibition of polygamy and restrictions on unilateral divorce. The civil court system that replaced the religious judiciary created legal uniformity, reduced the complexities arising from the dualism between Shari'ah and civil law, and reinforced the nation's identity as a modern republic grounded in the values of equality. In this respect, Tunisia emerges as a progressive model often cited in discussions on family law reform in the Muslim world (Muin 2022).

However, this achievement is not without inherent weaknesses. The abolition of religious courts is viewed by some groups as a severing of ties with the Islamic tradition that had shaped Tunisian society for centuries. Although Islamic law remains recognized as a source of legislation, many provisions within the Code of Personal Status are considered by critics to deviate from classical Shari'ah principles, thereby creating tension between the state and religious authorities. Moreover, the reform was heavily dependent on the political authority of Habib Bourguiba and the modernist elites who supported him, which means its social legitimacy was not entirely solid. As a result, despite its formal success, the reform left pockets of resistance that may resurface in demands to restore a more traditional role for Islamic law in the future (Agustina, Asasriwarni, and Zulfan 2024).

From this experience, it becomes evident that Tunisia's legal reform represents a bold experiment in finding a meeting point between Islam and secular modernity. On the one hand, it opens the path toward creating a more just and egalitarian system of family law; on the other hand, it generates identity dilemmas for a society still deeply rooted in religious tradition. Tunisia thus exemplifies how law can function not only as a normative framework but also as a political and ideological instrument used to shape the character and direction of a nation (Wagianto and Affan 2022).

2. The Influence of Secularism on the Changing Role and Existence of Religious Courts in Tunisia's Family Law System

In the Tunisian legal system, the judicial structure is designed in hierarchical levels, each with its own distinct functions. The court of first instance holds an essential role because, in addition to serving as the court that hears civil and commercial cases at the initial stage, it is also authorized to handle appeals against decisions previously issued by lower courts. In other words, it occupies a dual position both as the primary trial court and as an appellate body within certain jurisdictions. These courts of first instance are distributed across all regions of Tunisia to ensure that access to justice is evenly available to the public. Each court at this level is generally presided over by a panel of three judges, meaning that decisions are the product of collective deliberation, not the ruling of a single judge. Within its jurisdiction, the court of first instance handles a variety of commercial and civil cases without imposing limits on the value of claims. This means that both minor disputes and high-value cases can be examined before this court (Hidayatul et al. 2017).

The authority of the court of first instance also covers matters that are highly vital to the business sector and the national economy. For example, this court has the power to validate a company's articles of association or constitutional documents, to decide on the dissolution or liquidation of a business entity, and to handle cases related to the restructuring of companies experiencing financial difficulties or even facing bankruptcy. Thus, the court of first instance does not deal solely with disputes between individuals; it also plays a role as

a legal institution that supports order within the economic sector. Above the court of first instance is the court of appeal. This institution functions to review and decide on legal remedies against decisions issued by the court of first instance. If a case has been heard by a lower court and is then appealed, the court of first instance will handle it; and if its decision is further contested, the court of appeal becomes the next forum. In this way, the system establishes a hierarchical pathway that ensures every decision can be re-examined by a higher judicial body (Fathony and Pradana 2023).

The authority of the court of appeal primarily encompasses two aspects. First, it handles appeals against decisions issued by the court of first instance at the district level within its jurisdiction. Second, it adjudicates appeals on cases with summary procedures that were previously referred back by the president of the court of first instance, including matters concerning payment orders. The presence of the court of appeal ensures that the principles of justice and accountability are maintained within the judicial process, as parties still have the opportunity to review decisions they deem unsatisfactory. The courts of appeal in Tunisia are not centralized in the capital; rather, they are located in three major cities Tunis, Sousse, and Sfax. This distribution is intended to make the appeal mechanism more accessible to people across various regions and to reduce the burden of cases accumulating in the capital. Above all these levels stands the Supreme Court, which constitutes the pinnacle of the judicial system and serves as the highest guardian of consistency in the application of law and justice in Tunisia. Secularism has become one of the most significant issues in debates concerning the relationship between religion and the state in the modern Muslim world. Tunisia is one of the countries that displays the most striking dynamics in this regard. Since the Ottoman era, religious courts based on Islamic law, particularly the Maliki school, played a central role in regulating family matters such as marriage, divorce, inheritance, and waqf. Religious courts functioned not only as legal institutions but also as symbols of the continuity of Islamic tradition in the life of society (Zaelani 2014).

This situation changed drastically after Tunisia gained independence in 1956 under the leadership of Habib Bourguiba. Through the enactment of the Code of Personal Status (CPS), religious courts were officially abolished and all family matters were transferred to the civil judiciary. This policy was not only a legal reform but also a manifestation of a secularist vision aimed at positioning the state on a path toward modernity by reducing the dominance of religion in the public sphere. The influence of secularism on the transformation of the role and existence of religious courts in Tunisia is evident in several aspects. On one hand, secularism opened space for the creation of a more egalitarian family law system, with regulations emphasizing equality between men and women. On the other hand, these changes sparked tensions between the state and religious groups who felt that the abolition of religious courts amounted to a weakening of Islamic identity (Khoiri 2013).

Secularism in Tunisia brought fundamental changes to the role of religious courts, particularly in the realm of family law. The post-independence reforms illustrate how principles of Islamic law were combined with elements of French legal heritage to create a modern and secular-oriented family law system. One of the most significant milestones in this process was the enactment of the Code of Personal Status in 1956, which reformed the rules governing marriage and divorce. Through this legislation, Tunisia sought to integrate Islamic values with ideas of modernity, resulting in regulations that aligned more closely with the vision of a secular state that was being constructed. The background of secularism in Tunisia cannot be separated from the leadership of Habib Bourguiba, who had a strong orientation toward modernization (Suchamdi 2013). After gaining independence, he pushed for progressive reforms in family law that were heavily inspired by secular policies and the French legal system. The Code of Personal Status became the concrete manifestation of this

spirit. The law altered many aspects of Islamic family law by emphasizing gender equality and restricting practices considered incompatible with modern notions of justice, such as polygamy. Tunisia thus became one of the first Muslim-majority countries to officially ban polygamy through state legislation (FUAD 2020).

These major changes had a direct impact on religious courts. The secularism adopted by Tunisia separated religious affairs from state affairs, causing religious courts to lose their position as the sole institution authorized to regulate family matters. Family law no longer referred exclusively to traditional fiqh, but instead became a synthesis between Islamic law and French-style civil law. Through this approach, Tunisia sought to achieve justice, welfare, and the broader public interest in line with the vision of a modern state it aimed to build. Although religious courts were not completely abolished, their existence became significantly more limited. Their function shifted toward reinterpreting Islamic teachings so that they align with worldly legal principles and the needs of modern society. In other words, religious courts in Tunisia still exist, but their role is placed within the framework of a secular state that emphasizes reform and modernization (Nasrullah, Husna, and Waharjani 2022). The reform of family law through the Code of Personal Status also carries a broader meaning. It not only marks the modernization of the legal system but also demonstrates how Tunisia sought to ensure the welfare of its people through rules that are more egalitarian and adaptable to changing times. Islamic principles continue to be acknowledged, but they are positioned within a new context that fits contemporary social and political demands. The result is a unique family law system: modern, secular, yet still rooted in Islamic values reflecting both the political direction and ideological identity of the Tunisian state (Husna and Ranuwijaya 2016).

The transformation of family law in Tunisia demonstrates political boldness in shifting the authority of religious courts toward a more secular system. For the author, this step is not merely a legal reform but also a reflection of the country's ideological direction one that seeks to combine modernity with Islamic identity. Through the Code of Personal Status, Tunisia has become an example of how a Muslim-majority nation can formulate progressive family law that emphasizes gender equality while restricting practices considered incompatible with universal human rights values. However, this shift also brings a sense of ambivalence. On the one hand, the modernization of family law successfully steered Tunisia toward a more egalitarian framework, particularly concerning women's rights in marriage and divorce. On the other hand, limiting the role of religious courts raises debates about the extent to which the state has the right to intervene in the private sphere an area long considered sacred by Muslims. The tension between religious authority and the secular state remains palpable today, even though Tunisia has formally established itself as a pioneer of family law reform in the Islamic world (Ranuwijaya and Husna 2016).

According to the author, Tunisia's success lies in its ability to turn family law into an instrument of modernization without completely abandoning its Islamic roots. The hybrid approach combining Islamic law with elements of the French legal system demonstrates that law does not have to be rigid or static; rather, it can adapt to societal needs and the demands of changing times. Even so, the greatest challenge of this model is maintaining legitimacy in the eyes of a Muslim society that still regards family law as an inseparable component of the Shari'a. Secularism in Tunisia can be seen as a double-edged sword. On the one hand, it drives progress; on the other, it carries the potential for ideological conflict between religious tradition and the demands of modernity (Juliandi, Ibrahim, and Herlambang 2018). The author views Tunisia's unique experience as rooted in the state's willingness to take such risks an approach that opens broader discussions about the possibility of similar transformations in other Muslim-majority countries.

The findings of this study both confirm and extend previous scholarship on Tunisian legal reform. Khedher (2017) argues that the Code of Personal Status represented a major effort to modernize family law and improve the legal status of women in post-independence Tunisia. Similarly, Maghfiroh et al. (2025) view the CPS as a form of contextualized *ijtihad* that reconciles Islamic legal principles with modern social demands. While these studies primarily emphasize substantive reforms in family law, the present study highlights a less explored dimension, namely the institutional transformation of the Islamic religious judiciary. The analysis demonstrates that the CPS was accompanied by the abolition of religious courts and the transfer of their jurisdiction to a unified state judicial system, thereby fundamentally reshaping the administration of family law in Tunisia. This finding is further supported by primary legal sources, particularly the Code of Personal Status of 1956 and the judicial reforms enacted during the Bourguiba era. These reforms not only prohibited polygamy and introduced judicial divorce procedures but also centralized legal authority under state institutions, reducing the independent role previously exercised by religious courts. The transformation illustrates that secularization in Tunisia was not limited to changes in legal norms but also involved a restructuring of judicial institutions and state-religion relations. Therefore, this study contributes to the literature by demonstrating that the Tunisian experience should be understood as both a reform of family law and a transformation of religious judicial authority. This institutional perspective provides a more comprehensive explanation of how secularization reshaped Islamic legal governance in modern Tunisia.

CONCLUSION

The transformation of family law in Tunisia illustrates how secularism can fundamentally reshape religious courts and the legal system as a whole. The enactment of the Code of Personal Status in 1956 marked a pivotal turning point, signaling a major shift from the dominance of traditional *fiqh* toward a modern family law system influenced by the French legal framework. This reform produced positive outcomes, including the strengthening of women's positions, the prohibition of polygamy, and the modernization of marriage and divorce procedures. At the same time, these changes sparked debates over legal legitimacy, as the role of religious courts was reduced and replaced by secular state authority. Tunisia's uniqueness lies in its ability to create a hybrid family law model, blending Islamic values with secular principles to meet the needs of modern society. This demonstrates that law can be adaptive, not static, and capable of responding to the demands of the times without entirely abandoning its traditional roots. Nevertheless, ideological tensions between religion and the state remain an ongoing consequence in Tunisia's legal dynamics. Thus, Tunisia's experience is not only relevant to the study of family law but also serves as an important reflection for other Muslim-majority countries seeking to understand the relationship between secularism, religion, and modernity in building a just and civilized legal system.

AI USAGE

The authors used Artificial Intelligence (AI) tools solely to assist in language refinement, grammar checking, and improving the clarity and readability of the manuscript. AI-generated outputs were carefully reviewed, edited, and verified by the authors to ensure accuracy, coherence, and compliance with academic standards. The AI tools were not used to generate original research findings, analyze data, formulate arguments, or draw conclusions. All interpretations, analyses, and scholarly contributions presented in this article remain the sole responsibility of the authors.

AUTHOR CONTRIBUTIONS

Nella Liandini, as the first author and corresponding author, conceived the research idea, developed the research framework, conducted data collection and analysis, and prepared the original manuscript draft. Zulfan contributed to the development of the research methodology, literature review, and validation of the analytical findings. Yusnita Eva contributed to the interpretation of the research findings, refinement of the discussion, and critical review of the manuscript. Hilda Rahmatul Jannah, as an international collaborator, contributed to the academic review process, provided comparative international perspectives, strengthened the scholarly arguments, and assisted in the final editing of the manuscript to ensure compliance with international publication standards. All authors participated in the preparation of the article, reviewed and approved the final version of the manuscript, and agreed to be accountable for the integrity and accuracy of the work.

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CONFLICT OF INTEREST

The authors declare that there are no conflicts of interest regarding the publication of this article. The authors have no financial, professional, personal, or institutional relationships that could be perceived as influencing the research, analysis, or conclusions presented in this study.

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