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Research Article

## Analysis Of Islamic Family Law Renewal In Türkiye

**Siska Kinasih**

Fakultas Hukum Universitas Wiralodra, [siskaidm73@gmail.com](mailto:siskaidm73@gmail.com)

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**Abstract.** Turkey was the first country to reform Muslim Family Law, and the idea emerged in 1915. Legislation of new laws to complement Islamic law on a large scale was carried out by the Ottoman rulers in the 10th/16th century AD. produce qanun . The Turkish Civil Law further elevates the status of women, especially the prohibition of polygamy, the freedom for wives to file divorce claims for certain reasons, as well as equality in inheritance. The reform of Islamic law in the format of family law legislation began in 1917 with the ratification of The Ottoman Law of Family Rights (Law on family rights) by the Turkish Government. The reform of family law in Turkey is a milestone in the history of family law reform in the Islamic world and has had a major influence on the development of family law in other countries.

**Keywords:** Family Law, Türkiye, Islamic Law.

## INTRODUCTION

Turkey implements the principle of absolute monogamy through the law The Turkish Civil Code 1951. This law regulates marriage second and subsequent (polygamy) are declared invalid and null and void by law. Turkey's ban on polygamy is based on a history of injustice against women by the Ottoman Caliphate during the time of Sultan Abdul Majid. Therefore, the government and liberal-minded ulama reinterpreted the legal context of polygamy in the Qur'an after the end of the caliphate. Based on the perspective of Islamic Law rules Polygamy in Türkiye is against Islamic law because it is prohibited polygamy

Historically, efforts to reform Family Law in the Islamic world began to be realized at the end of the 19th century AD. The Muslim community's awareness of the lagging behind of fikh concepts which had been used as references, fostered a spirit of reform from the formulation of old laws which had been formatted into Laws. which is better able to accommodate the demands of the times and the progress of Islam itself.

Turkey was the first country to reform Muslim Family Law, and the idea emerged in 1915. After carefully observing various phenomena related to these changes, it was only then officially ratified in 1917, namely The Law of Family Rights.

The form of reform carried out varies from one country to another. First, there are several countries that have carried out reforms in the form of laws. Second, there are some countries that carry out reforms based on presidential or royal decrees. Third, there are several countries that carry out reforms in the form of judge's decisions.

In addition, the influence of friction with modern Western thought and looking at the development of more advanced western civilization, encouraged the spirit of its development, the Family Law Law which refers to law with the proclaimed Republic of Turkey (Modern Turkey), with efforts to establish a Turkish Civil Law which adopted from the Swiss Civil Code.

Despite this, the majority of Turks remain convinced that they are Muslims. Even among the ruling circles, most of them emphasized that they did not reject Islam, they only followed the Western attitude that religion is a personal matter (which regulates the relationship between individuals and God), not a legal system that must be implemented by the state.

Briefly and concisely, this study will discuss the history of Turkish family law reform and the factors that influenced it from the Ottoman period until Turkey was formed into a Republic, explaining the elements of Turkish family law reform.

## DISCUSSION

Turkey, is a country that stood on the ruins of the Ottoman Empire which ruled for almost six centuries (1342–1924 AD). The Ottoman Empire reached its peak during the reign of Sulaiman alQanuni. Its territory includes Asia Minor, Syria, Iraq, Egypt, North Africa, the coastal regions of Arabia, Azarbaijan, the Balkans, Hungary, and small areas on the Volga and the southern border regions of Russia. Apart from advances in the military field, there were also advances in the fields of administration,

social institutions, architecture and public works. Istanbul, the capital of Ottoman Turkey, was one of the largest cities in the world.

However, this glory slowly began to fade in 1571. As a result of attack after attack from the Portuguese and Russians, the Ottoman Turks lost one territory after another. Until the end of the early 19th century AD, Ottoman Türkiye was still experiencing total destruction. The emergence of the tanzimat movement, namely the Turkish renewal movement which encouraged the spirit of nationalism to flare up, which in the end, gave up its identity as a Muslim nation. The peak was the formation of the Secular Turkish State under the leadership of Mustafa Kamal Ath-Thaturk. The Ottoman Empire was officially abolished in 1922, marked by the formation of the Republic of Turkey, while the Turkish caliphate was abolished in 1924. The Turkish Nationalism Movement began as a reaction to the destruction of the Ottoman Empire. In its beginnings, nationalism was a religious movement with progressive and modernist tendencies. After the victory of nationalist forces in the Turkish War of Independence, nationalism became secular (HAMukti Ali, 1994: 152). Apart from that, political factors, especially rebellions from Arab countries and pressure from European countries, were also causes for this westernization of politics.

### **Getting married in Türkiye**

Turkish law applies to all marriage procedures of asylum seekers, refugees and stateless persons carried out in Turkey. Under Turkish law, a Turkish citizen and an asylum seeker, refugee or stateless person, or two asylum seekers or refugees with different nationalities, can be married by Turkish authorities. All marriages performed by Turkish authorities are subject to the Turkish Civil Code and related regulations.

Marriages are performed by marriage officers in the municipality's Marriage Department. Therefore, couples who want to get married need to submit relevant documents to the city government. Please see the section below on required documents.

It is important to note that only official (civil) marriages are legally recognized in Turkey, as defined in the Turkish Civil Code. Other forms of marriage, without legal marriage, are not recognized in Türkiye. Being legally married is very important because it will guarantee and guarantee the legal rights of children and partners, especially women. Only after a formal marriage is a religious marriage (performed by priests) permitted.

### **Legal age for marriage in Türkiye**

In Türkiye, the legal age for marriage is 18 years. There are only a few exceptions that allow someone to marry before the age of 18. A person who is 17 years old may be granted permission to marry with the consent of his or her parents or legal guardian; and a person aged 16 years can be given permission to marry based on a court decision and with the consent of his or her parents or legal guardian.

The Turkish Civil Code also regulates the age limit for marriage. The minimum marriage age for men who want to get married is 18 years, while for women it is 17 years. The court can allow a prospective groom aged 15 years to be married to a

prospective bride aged 14 years in certain cases provided that he has obtained permission from his parents or guardian. Unlike in Indonesia, the age limit for marriage is divided into three levels. The first level is that the prospective bride and groom are 21 years old and do not need permission from their parents. The second level is under 21 years of age, the minimum for men is 19 years and women is 16 years with the condition that they must obtain permission from their parents or guardian. The third level is that the prospective bride and groom are under the minimum age of the second level. The condition is that prospective brides and grooms who are below the age limit for marriage must obtain a marriage dispensation from the court.

### **The Problem of Polygamy**

Even though the Qur'an has clearly outlined the law regarding polygamy, in its development there are differences in the legal regulation of polygamy in various countries. Several countries implement laws that allow polygamy but with certain conditions, such as in Indonesia, Malaysia, the Philippines, Brunei Darussalam and Iran.<sup>5</sup> However, in Turkey and Tunisia, polygamy is prohibited, assuming that polygamous marriages cause misery to women. Türkiye is a country that has a majority Muslim population. Türkiye is also the first country to prohibit the practice of polygamy. Since 1926, Turkey has prohibited the practice of polygamy, with the adoption of The Swiss Civil Code of 1912 to become The Turkish Civil Code of 1926. However, as the situation of the Republic of Turkey developed, a new law was formed which regulates family law more specifically, namely The Turkish Family Law of Cyprus 1951.<sup>6</sup> The Turkish Family Law includes matters regarding marriage which include: engagement, marriage age, mahrom, polygamy, wedding receptions, marriage annulment, then divorce and separation, compensation and finally regarding inheritance law.

### **Family Law Reform Methods**

Legislation of new laws to complement Islamic law on a large scale was carried out by the Ottoman rulers in the 10th/16th century AD which resulted in qanuns. Qanun is a product of the sultanate, and not a product of the caliphate. The reform of Islamic law in the format of family law legislation began in 1917 with the ratification of The Ottoman Law of Family Rights (Law on family rights) by the Turkish Government. The reform of family law in Turkey is a milestone in the history of family law reform in the Islamic world and has had a major influence on the development of family law in other countries.

Methods for Reforming Family Law Laws in Turkey Anderson noted that there are 4 general methods used by scholars in reforming contemporary Islamic family law, namely 1). Procedural and administrative rules are in accordance with the demands of modern times without changing the legal substance, 2). Tahayyur or choosing one of the views of the existing schools of fikh, and talfiq or combining the views of a number of alternative schools of thought, for example using administration but not touching on aspects. Judging from the four methods above, Turkey uses the principle of tahayyur in the taklik talak regulations contained in the 1917 Law where The wife has the right to include in the divorce agreement in matters of polygamy.

The prohibition on polygamy contained in the 1926 Turkish Civil Law uses the principle of *ijtihad* with a reinterpretation of the text, namely a reinterpretation that justice is needed to allow polygamy not only in terms of living, but also includes feelings of love. Therefore, according to Pearl - as quoted by Khoiruddin Nasution from Muslim Family Law, - there is a departure from the essence of Islamic law. What Pearl means is an attempt to reinterpret the text to meet the needs and demands of the times. (Khoiruddin Nasution, 2002: 282). In this reinterpretation it depends on the contextual understanding of each mujtahid, some relate it to the background of the revelation of the verse, and connect it to an-Nisa: 129. There are also those who link it to the previous verse an-Nisa: 1-2, which can be concluded that an-Nisa: 3 relates to matters regarding the assets of orphans.

Determining the age limit for marriage uses the principle of *tahayyur*, which also agrees with Asy-Syaukani's opinion that Aisyah's marriage is an exception. This Turkish law provides dispensations in certain cases, where marriages of minors must be permitted by the court and under the approval of the guardian.

The prohibition of marriage, annulment of marriage, invalid marriage, is a codification, because it elevates Islamic law as a positive part of law. In prohibiting marriage in connection with adoption cases, Turkish law adheres more to the principles of *tahayyur* and *talfiq*.

Engagement, an attempt to codify classical Islamic law using methods used by local customs. Likewise Wedding Receptions, only administrative in nature. Regarding marriage compensation, it is different from the compensation stipulated in Islamic law. The legal determination is *tahayyur* in nature.

## CONCLUSION

Observing the dynamics of the development of Islamic legal thought in Turkey, which came much earlier than other Muslim countries, there are several things that can be emphasized, namely:

1. Legislation of new laws to complement Islamic law on a large scale was carried out by the Ottoman rulers in the 10th/16th century AD which resulted in *qanuns*.
2. The Turkish Civil Law further elevates the status of women, especially the prohibition of polygamy, the freedom for wives to file divorce demands for certain reasons, as well as equality in inheritance.
3. The reform of Islamic law in the format of family law legislation began in 1917 with the ratification of The Ottoman Law of Family Rights by the Turkish Government. The reform of family law in Turkey is a milestone in the history of family law reform in the Islamic world and has had a major influence on the development of family law in other countries.

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