

The Metamorphosis of Family Law in Turkey: Navigating between Maslahah and Religious Authenticity

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Abstract

This study examines the transformation of family law in Turkey following the shift from Ottoman Hanafi law to the Swiss Civil Code (1926). It aims to analyze how reforms incorporate modern values like gender equality and social justice while engaging with Islamic principles. Using a qualitative normative and comparative approach, the study finds reforms including the ban on polygamy, equal inheritance, women's marriage rights, and updated divorce and compensation rules. The findings show law functioned both as a response to social change and as a tool for social engineering, highlighting that Islamic law can be harmonized with modern legal systems through ijtihad while preserving religious authenticity.

Abstrak

Penelitian ini mengkaji perubahan hukum keluarga di Turki setelah peralihan dari sistem Ottoman berbasis Hanafi ke KUH Perdata Swiss tahun 1926. Tujuannya untuk menganalisis integrasi nilai modern seperti kesetaraan gender dan keadilan sosial dengan prinsip hukum Islam. Dengan pendekatan normatif kualitatif dan analisis historis-komparatif, hasilnya menunjukkan reformasi meliputi larangan poligami, kesetaraan warisan, hak perempuan menikah tanpa wali, serta pembaruan aturan perceraian dan kompensasi. Reformasi ini menunjukkan hukum berperan sebagai respons sosial sekaligus alat rekayasa sosial, serta membuktikan hukum Islam dapat diselaraskan dengan sistem hukum modern melalui ijtihad tanpa meninggalkan keaslian agama.

Keywords

Family Law in Turkey; Maslahah (Public Interest); Legal Metamorphosis; Religious Authenticity; Legal Reform

Kata kunci:

Hukum Keluarga di Turki; Maslahah (Kepentingan Umum); Metamorfosis Hukum; Keaslian Agama; Reformasi Hukum

Pendahuluan

In this contemporary era, Muslims are consistently faced with the question of how to interpret religious teachings, whether they originate from the Quran, Hadith, or other sources of Islamic law, so that these teachings remain relevant to the reality of the Ummah's life which is constantly undergoing transformation. In addition, it is also hoped that the doctrines found in religion can provide a constructive contribution in solving various actual problems faced by the Ummah, which can then be formulated into a more modern conceptual framework.¹

This dilemma pushes the Ummah to choose one of two options. The first option is to disregard religious teachings that are considered no longer relevant and comprehensive in addressing existing legal problems, and are considered to provide a lack of justice for the Ummah, especially with the influence of Western colonialism that has come into contact with Islam. The second option is to adhere firmly to religious teachings without regard to the dynamics of life's development and the demands for new laws, under the influence of religious dogma.²

The encounter between Eastern and Western cultures naturally triggers social dynamics. When these two cultures meet, new ideas and values emerge, which can change the way of life, traditions, and norms in society. This interaction often results in a fusion of cultures or rejection of external influences, which ultimately brings dynamism to the social structure.³

This gives rise to various new problems faced by Muslims, including the relationship between religion and modern life. These social dynamics bring forth a variety of new social characteristics and habits that are implicitly not included in the previously established religious dogma.⁴ This condition encourages questions and even challenges from modernists or reformers regarding various aspects of society's understanding of their religious dogma.

At the beginning of the 20th century, Muslims began to show a zeal for reform in the realm of Islamic family law. These reforms covered various aspects, including the laws of marriage, divorce, inheritance, and so on.⁵ This phenomenon is a manifestation of the understanding among Muslims that traditional religious teachings in the social

¹ Kayan Manggala, "Upaya Mengetahui Tantangan Untuk Memberikan Pemahaman Dan Implementasi Ajaran Al-Qur'an Dan Hadist Dalam Kehidupan Kontemporer," *Issn* 2, no. 1 (2024): 2986–2434.

² A Rellang, Kamilah Kamilah, and Nazaruddin Nazaruddin, "Penggunaan Prinsip Hak Asasi Manusia Untuk Menyelesaikan Konflik Agama Di Indonesia: Pandangan Hukum Nasional Dan Islam," *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam* 6, no. 1 (2024): 33–44, <https://doi.org/10.47435/al-ahkam.v6i1.2445>.

³ Sarjono Soekanto, *Sosiologi Suatu Pengantar* (Jakarta: Raja Grafindo, 1995).

⁴ Lubis, HM Ridwan. *Sosiologi Agama: Memahami Perkembangan Agama Dalam Interaksi Islam*. Kencana, 2017.

⁵ Imron Bey Rosadi, "Reformasi Hukum Keluarga Islam Di Turki," *Jurnal Az-Zawajir* 4, no. 1 (2024): 31–47, <https://doi.org/10.57113/jaz.v4i1.364>.

realm are seen as no longer capable of comprehensively accommodating the needs of the Ummah.

Reform in Islamic law, including family law, is something that cannot be avoided. For instance, reform in Islamic family law must still adhere to the definitive teachings of Allah SWT. One way to achieve this is by considering the value of *maslahah* (public interest) in such reforms.⁶ However, behind social progress and reform in Islamic law, there lies a significant challenge that continues to emerge: preserving the authenticity of religious teachings.

The main driving force behind the reform of Islamic family law is the need to respond to current issues and overcome the limitations of classical *fiqh* books in addressing various new problems that arise. As recorded in history, reform in Islamic family law in various Muslim countries began to take shape at the end of the 19th century AD. The awareness among Muslims of the importance of providing solutions to contemporary *fiqh* problems that require attention, as well as overcoming the limitations of classical *fiqh* books in addressing emerging issues, became the main trigger for this reform movement.⁷

One of the Muslim countries that undertook a reformation of Islamic family law is Turkey. The idea for this reform emerged in 1915 AD and was officially implemented in 1917 AD with the enactment of The Law of Family Rights.⁸ The study of Islamic family law has always attracted attention throughout the Muslim world, as this topic involves important aspects of family and social life. However, this study has a special appeal in Turkey, where Islamic family law reform has been an integral part of significant social and political dynamics. Turkey is a prime example of how Islamic family law can be renewed and adapted to meet the needs of modern society, making it a focal point in the study of Islamic family law.

This study aims to analyze two main issues related to the reformation of Islamic family law. First, this study will identify the factors behind the emergence of reformation in Islamic family law, including social, political, and economic aspects that influence these dynamics. Second, this study will explore how the reformation of Islamic family law is implemented in Turkey, focusing on the process, implementation, and its impact on society. Thus, this study is entitled "The Metamorphosis of Family Law in Turkey in the Footsteps of the Struggle between *Maslahah* and Religious Authenticity," which reflects an effort to understand the dynamics of reformulating Islamic family law in Turkey and the challenges in balancing public interest and the authenticity of religious teachings.

⁶ Rosyadi, H. Imron, and MH SH. *Rekonstruksi Epistemologi Hukum Keluarga Islam*. Prenada Media, 2022., n.d.

⁷ Ali, Zezen Zainul, and Mega Puspita. *Pembaharuan Hukum Keluarga Di Asia Tenggara: Dari Negara Mayoritas Sampai Minoritas Muslim*. Jejak Pustaka, 2023.

⁸ Zamzam Khatab, "Exploring the Evolution of Family Law in Damascus from Pre- Reform Practices to 1953 Reforms : A Comparative History of Sunni Family Law in Syria Exploring the Evolution of Family Law in Damascus from Pre- Reform Practices to 1953 Reforms : A Comparative," *Stockholms Universitet*, 2024, 1-114.

Metode Penelitian

This research is a type of library research, which examines its object of research through the analysis of library data such as books, journals, and other literature. This research focuses on studying the literature related to social dynamics, legal changes, and legal reforms, specifically in the realm of family law in Turkey. The researcher will analyze and examine various sources to understand how the metamorphosis of family law in Turkey reflects the effort to balance public interest (*maslahah*) and the authenticity of religious teachings (authenticity). Using this approach, this research aims to provide in-depth insights into the dynamics of family law reform in Turkey and the challenges faced in maintaining a balance between modern needs and religious principles. This research uses a descriptive method to analyze data. This method helps researchers describe and illustrate facts, processes, as well as the causes and effects of changes in family law in Turkey. In this way, the researcher can provide a clear picture of how family law reform in Turkey occurred, the factors that influenced it, and its impact on society. This also allows the researcher to see possible developments and challenges in balancing public interests with religious teachings.

Hasil dan Pembahasan

Social Dynamics and the Reformulation of Islamic Law

Social dynamics are a constantly unfolding phenomenon, evolving alongside humanity. This phenomenon impacts social systems within a specific space and time frame, indicating differences between current social conditions and those of the past.⁹

Therefore, to observe the occurrence of social dynamics, attention needs to be paid to three main things:

1. Examine differences: It is important to identify differences in condition between the objects being studied. This means that there must be a clear distinction between the current state and the previous state of the object that is the focus of the study. Observing these differences helps in understanding the extent of change that has occurred and its impact on society.
2. Study at different times: Comparison of object conditions needs to be done in different time dimensions. It involves a comparative approach to analyzing how social dynamics develop over time. By comparing conditions at various points in time, patterns of dynamics and the factors driving those dynamics can be identified.
3. Study the same social system: Focus on objects that are in a consistent social system. This means that the objects used as research material must remain in a similar social environment to ensure that the comparisons made are relevant and

⁹ Sorokin, Pitirim. *Social and Cultural Dynamics: A Study of Change in Major Systems of Art, Truth, Ethics, Law and Social Relationships*. Routledge, 2017.

accurate. By studying objects in the same social system, it will be easier to understand how dynamics in one aspect can affect the entire system.¹⁰

Based on these three concepts, it can be concluded that social dynamics is closely related to the elements of space and time. The spatial element explains the context in which social dynamics occur, which is inherently related to the historical aspects of the location. Meanwhile, the time element shows that social dynamics are analyzed in the framework of the past, present and future.

The phenomenon of social dynamics results in a large social impact on the order, structure and social relations that previously existed.¹¹ This statement is in line with Soekanto's view which states that social dynamics occur in social norms and values, social interaction, power and authority, organization, stratification, and other similar aspects.¹²

To understand the pattern of relationship between social dynamics and legal reformulation, it is interesting to examine Achmad Ali's views. According to him, there are two important things, namely:

1. Social dynamics need to be responded to with legal adjustments. This means that the law must adapt to the social dynamics that occur. In this pattern, the law is passive.
2. Law plays a role in regulating the movement of society in a planned direction. In this case, the law is active. This is what has become known as the function of law as social engineering.¹³

Based on this concept, it can be understood that the relationship between social dynamics and legal reformulation has two dimensions, namely the influence of social dynamics on law and legal reformulation on social dynamics. It should be noted that when social dynamics occur, dynamics of needs will emerge in society in various aspects of life, including the need for legal reformulation, both in the realm of positive law and legal institutions.¹⁴ Unfortunately, legal reformulation in response to social dynamics tends to be slow. This is caused by the process of creating new laws or rules which need to wait for social dynamics to reach the stage of crystallization and stability. From this reality emerged the expression "het recht achter de feiten aan" which means "the law staggers along with events." However, if revolutionary social dynamics occur and have a major impact on society, the law will also experience severe shocks due to the demands of the dynamics at that time.¹⁵

¹⁰ Nanang Martono, *Sosiologi Perubahan Sosial* (Jakarta: PT Raja Grafindo Persada, 2012).

¹¹ A Malthuf Siroj, *Pembaharuan Hukum Islam Di Indonesia Telah Kompilasi Hukum Islam* (Yogyakarta: Pustaka Ilmu, 2022).

¹² Rauf Hatu, "Perubahan Sosial Kultural Masyarakat Pedesaan (Suatu Tinjauan Teoritik Empirik)," *Jurnal Inovasi* 8, no. 4 (2011).

¹³ Ali, H. Zainuddin. *Sosiologi Hukum*. Sinar Grafika, 2023.

¹⁴ Titin Samsudin, "Dinamika Hukum Islam Dan Perubahan Sosial," *Istinbath: Jurnal Hukum* 15, no. 1 (2018): 1-16.

¹⁵ Bernard Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum* (Bandung: Mandar Maju, 2009).

The explanation of the concept of legal dynamics is also relevant to Islamic law, although not in its entirety. Islamic law originates from the words of Allah in the Al-Qur'an and the Hadith of the Prophet Muhammad SAW. It is important to note that in these two sources of law, there are laws that are *qath'i* (certain) and *dhanni* (conjectural). In *dhanni* law, rational interpretation can be carried out in accordance with social needs that arise due to social dynamics. This activity is known as *ijtihad*. This is what is meant by the reciprocal relationship between social dynamics and Islamic law. Social dynamics can have an influence on Islamic law, and vice versa, Islamic law can also have an influence on social dynamics.¹⁶ From a historical perspective, the relationship between legal reformulation and social dynamics has been going on since the time of Rasulullah SAW. An example is the abolition of laws through new legal texts, or *nasakh*, such as the prohibition on visiting graves in early Islam. This prohibition was imposed because social conditions at that time were still vulnerable to the practice of polytheism. Once Muslims are deemed to have strong faith, grave visits are permitted again.

Table 1. *Social Dynamics and the Reformulation of Islamic Law*

No	Key Aspect	Brief Explanation	Relation to Law	Concrete Example
1	Differences in Conditions	Important to identify differences between current and past conditions	Helps understand changes that require legal response	Shifts in social norms lead to new regulations
2	Time Dimension	Analysis is carried out within past, present, and future frameworks	Law must adapt to temporal developments	Evolution of customary law into positive law
3	Same Social System	Study conducted within a consistent social environment	Ensures relevance of legal reformulation	Legal research in specific communities
4	Legal Response	Law can be passive (following changes) or active (social engineering)	Determines the direction of legal reformulation	Achmad Ali's theory: law as social engineering
5	Relevance to Islam	There are <i>qath'i</i> (fixed) and <i>dhanni</i> (flexible through <i>ijtihad</i>) laws	<i>Ijtihad</i> becomes a tool to adjust with social dynamics	<i>Nasakh</i> : prohibition of grave visits in early Islam later permitted

From the discussion, it can be concluded that social dynamics and legal reformulation, including Islamic law, have a reciprocal relationship. Social dynamics create the need for legal renewal, while law plays a role in directing society through its function as social engineering. In Islam, the flexibility of *dhanni* law through *ijtihad* allows law to remain relevant to social developments, while *qath'i* law serves as a firm foundation. This shows that although law often lags behind social change, it still has a strategic role in maintaining balance and guiding the direction of societal development.

Traces of the Struggle between Maslahah and Religious Authenticity

As a dynamic religion, Islam is known as a religion of reform that prioritizes egalitarian principles, namely equality between all of God's creatures, in facing various

¹⁶ Ali M Zamroni, Irwan Ishaq, and Muhammad Faisol, "Tuntutan Maslahah Dan Problem Otentisitas Agama Dalam Pembaharuan Hukum Keluarga Islam," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 1 (2023).

new problems.¹⁷ Islamic law reform has been carried out from various perspectives and took place over a long period of time, through a process of adaptation to conditions, situations, developments and demands of the times. This update is necessary because the provisions in classical jurisprudence literature are considered unable to provide solutions to various new problems that arise.¹⁸

History records that reforms in Islamic family law were driven by several crucial main factors. First, the emergence of new problems among Muslims often creates a legal vacuum, especially in the area of family law, which requires immediate solutions to prevent bigger problems. Second, along with advances in science and technology, the Muslim community's demands for legal reform are becoming stronger, in an effort to adapt to current developments. Third, there is a significant push to use Islamic law as a guide in formulating national laws in various Muslim countries, further intensifying the need for reform. Finally, the increasingly massive gender equality movement also influences legal developments, demanding greater justice between men and women. These four factors collectively are the main driver for legal reform, especially in the realm of Islamic family law.¹⁹

Mujtahids have various views and approaches in reforming Islamic family law. Initially, this reform was still based on conventional concepts such as takhsis al-qada and siyasah syar'iyah. The text reinterpretation approach has not been widely used in this process. However, along with the times and concerns about the dominance of the application of conventional concepts, more and more mujtahids have begun to switch to using a text reinterpretation approach to update Islamic family law. This approach is considered more capable of responding to new challenges that arise in modern society.²⁰

Reforms to Islamic family law, whether carried out through conventional or contemporary approaches, are generally still partial. This partial nature refers to the practice of interpreting a verse or part of a verse of the Qur'an and the Sunnah of the Prophet Muhammad SAW without relating it to other relevant verses or Sunnah. This approach ignores the principle of seeing the texts as an interconnected whole. As a result, one text is separated from its overall context, so that the conclusions drawn tend to be limited to a narrow understanding.²¹

Codification of Family Law in Türkiye

Legal reform in Turkey produced a monumental legacy in the form of a legal codification known as al-Majallât al-Ahkâm al-Adliyyâh or al-Majallâh, which was compiled between 1869-1876 AD and completed in 1870. Al-Majallâh became the

¹⁷ Arif Sugitanata, Suud Sarim Karimullah, and Mohamad Sobrun Jamil, "Produk-Produk Pembaharuan Hukum Keluarga Islam Di Turki," *Familia: Jurnal Hukum Keluarga* 2, no. 1 (2021).

¹⁸ Sugitanata, Karimullah, and Jamil.

¹⁹ Sugitanata, Karimullah, and Jamil.

²⁰ Khoiruddin Nasution, "Metode Pembaharuan Hukum Keluarga Islam Kontemporer," 2016.

²¹ Nasution.

applicable civil law book officially throughout the Ottoman Empire, making it the first civil law in the Islamic world. The majority of legal material in al-Majallâh comes from the opinions and views of the Hanafi school. However, even though it is considered an important milestone in the codification of Islamic law, al-Majallâh is not yet completely complete because it does not include family law and inheritance law.²²

One year after the founding of the Modern Turkish Republic, the religious justice system was abolished under the leadership of Mustafa Kemal Atatürk. Al-Majallâh which previously applied in Türkiye was completely replaced by the Civil Code adopted from Western countries. Nevertheless, al-Majallâh was still enforced in several former Ottoman territories and became an important reference for new legal reforms. Furthermore, al-Majallâh has also become the main source of material for legal reform in countries such as Lebanon, Syria and Iraq.²³

Family law reform in Turkey in 1927 was marked by the adoption of the Swiss Civil Code (The Civil Code of Switzerland 1912) as the foundation for the Turkish Civil Code (The Turkish Civil Code of 1926). This code of laws was adapted to the conditions of Turkish society. The consequence of this reform is total secularization in Turkey, which results in the legal system no longer referring to formal sharia regulations, including in aspects such as inheritance law, wills, and so on.²⁴ An important aspect that stands out in Turkish Civil Law lies in the provisions related to *Khitbah* (engagement), the minimum age limit for entering into a marriage, divorce, prohibitions on marriage, marriage registration, polygamy, marriage annulment, and so on.²⁵

The reform of family law in Turkey which took place from 1915 to 1917, both within the scope of reforming Ottoman Turkish family law and the secularization of Modern Turkish law, had a significant influence on the development and renewal of family law in Islam globally. Although the implementation of Ottoman Turkish family law only lasted for a decade, in-depth studies of it continue to be carried out today. This reform had an impact on the family law system in various Muslim-majority countries, especially countries that were previously under the rule of the Ottoman Turks. Jordan, Syria, Palestine and Lebanon are examples of countries that adopted Ottoman family law, with modifications and adjustments to suit their respective local needs and contexts. (Anderson, 1971)

The reform of Islamic family law in Turkey was carried out radically by replacing it with a secular legal system originating from Western countries. In contrast to Turkey,

²² Arif Sugianata, "Hukum Keluarga Islam Di Brunei Darussalam (Studi Analisis Terhadap Pembaharuan Hukum Islam)," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 8, no. 1 (2021).

²³ Lane, Jan-Erik, and Hamadi Redissi. *Religion and Politics: Islam and Muslim Civilisation*. Routledge, 2016.

²⁴ Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam University Press, 2007).

²⁵ Suardi Abbas, "Keberangkatan Dari Konsep Konvensional Ke Dalam PerundangUndangan Hukum Keluarga Islam," *ASAS* 8, no. 2 (2016): 27-41.

other countries with a majority Muslim population have only codified family law without eliminating the main basis which comes from the Koran and Sunnah. Changes in legal regulations in Turkey that occur continuously, starting from al-Majallâh (1876), The Ottoman Law of Family Rights (1917), to the Turkish Civil Code (1926), are a form of response to influences and changing conditions. unstable social, political and economic conditions. At that time, Turkish society was in a major identity crisis, prompting drastic legal reform.

Turkey's commitment to the study of the 1926 Turkish Civil Regulations was demonstrated by the implementation of six amendments, starting from 1933 to 1956. The aim of these amendments was to achieve harmony between the Civil Regulations and various concepts in Islam. Various changes were made, including marriage dispensations, the authority of married couples to improve domestic relations after separation, the elimination of divorce outside the court process, as well as compensation and other issues.²⁶

The Turkish Civil Regulations of 1926 underwent a second amendment in the period from 1988 to 1992. The amendments in 1988 introduced new provisions regarding divorce on the basis of mutual consent, temporary provisions that apply during the divorce process, as well as regulations regarding provision of living. Subsequent amendments in 1990 focused on issues surrounding sermons or engagement, post-divorce conditions, and adoption. This series of amendment processes was finally declared complete in 1992 through legislative procedural mechanisms.²⁷

The 1990 amendment material related to divorce includes three important points. First, a divorce application can be made by one of the parties, either husband or wife, on the grounds of incompatibility in living a domestic life. Second, the party who is innocent and suffers losses due to divorce has the right to file for divorce and demand commensurate compensation from the opposing party. Third, the party who is innocent and is poor has the right to file for divorce and ask for maintenance from the other party for one year.

Various Islamic Family Law Reform Products in Türkiye

In order to realize a just and equal legal system, Turkey is reforming Islamic family law by integrating it into the national legal system. The aim is to create legal equality for all citizens without distinction of religion and eliminate gender discrimination. Some of the main focuses in this update are: Prohibition of Polygamy: The practice of polygamy is prohibited to ensure equal rights and obligations in marriage. Fair Distribution of Inheritance: The inheritance system was reformed to ensure fair distribution between male and female heirs. Marriage Without a Guardian: Women are given the right to enter into a marriage without requiring the consent of a guardian. This reform is an effort to

²⁶ Tahir Mahmood, *Personal Law in Islamic Countries: History, Text and Comparative Analysis* (New Delhi: Academy of Law and Religion, 1995).

²⁷ Mahmood.

improve the status and role of women in society, as well as build a fairer and more modern legal system. The author will briefly explain relevant family law materials, including:

1. **Khitbah (Engagement)**

Khitbah is the process of proposing a man to a woman to become his future wife, which is known by several parties. Family law in Türkiye does not require a special ceremony before a wedding. The purpose of the sermon is to provide an opportunity for the prospective bride and groom to get to know each other and strengthen their relationship before deciding to get married. Sermons can also identify potential incompatibilities that could lead to marriage annulment.²⁸

2. **Minimum Age Limit for Marriage**

Civil Regulations in Turkey set a minimum age limit for marriage, namely 18 years for men and 17 years for women. However, in certain situations, the court can grant dispensation for marriages under the minimum age. It should be noted that the Qur'an and Sunnah do not explicitly regulate the age limit for marriage. By involving the courts and guardians in the process, family law in Türkiye attempts to accommodate the needs and interests of the prospective bride and groom.²⁹

3. **Prohibition of Holding Marriages**

The Civil Code in Türkiye prohibits marriage between individuals who are related by blood in the direct line of descent. This prohibition covers relationships between siblings, uncles, aunts, nephews, siblings, siblings and those who are related by marriage. Interestingly, adoption is also recognized as a factor preventing marriage, although it is not explicitly regulated in Islamic jurisprudence. Article 121 of the Turkish Civil Code states that adoption status can be void if a marriage occurs or there is a statement stating that a marriage has occurred.³⁰

The Hanafi School defines several criteria that lead to the prohibition of marriage, including: differences in religion (polytheism), marital relations (mushaharah), kinship relations, marriage with two siblings at the same time, and marriage between slaves and free people. It should be noted that adoption is not specifically mentioned as a barrier to marriage in the Hanafi School.³¹

There is a difference in perspective between the Turkish Civil Code and Islamic law regarding adoption. Islamic law, as stated in surah Al-Ahzab [33] verse 5,

²⁸ Tahir Mahmood, *Family Law Reform in the Muslim World* (Bombay: N.M. Tripathi, 1972).

²⁹ Muhammad Nur Hasan Latief, "Pembaharuan Hukum Keluarga Serta Dampaknya Terhadap Pembatasan Usia Minimal Kawin Dan Peningkatan Status Wanita," *Jurnal Hukum Novelty* 7, no. 2 (2016): 196, <https://doi.org/10.26555/novelty.v7i2.a5467>.

³⁰ Ritonga, Ali Ummar. *Hukum Perdata Islam Di Negara Muslim*. Publica Indonesia Utama, 2024.

³¹ Hermanto, Agus. *Larangan Perkawinan: Dari Fikih, Hukum Islam, Hingga Penerapannya Dalam Legislasi Perkawinan Indonesia*. Lintang Rasi Aksara Books, 2016.

emphasizes the importance of genetic relationships in the family.³² Although the Turkish Civil Code recognizes the concept of adoption, in practice, Turkish law tends to refer to provisions applicable in Islamic law, especially in the context of marriage.

4. Polygamy

Family law in Türkiye has a firm stance in prohibiting polygamy. The practice of second marriages carried out before the legal dissolution of the first marriage, whether through divorce, death or annulment, will be considered legally invalid. As a country with a majority Muslim population, Türkiye is an example of a country that explicitly prohibits polygamy.³³

This policy is in contrast to the previous regulation, namely The Ottoman Law of Family Rights of 1917. In this regulation, polygamy was permitted on condition that the husband was able to treat his wives fairly. Married women are also given the right to request a clause prohibiting polygamy in the marriage contract.³⁴

The Turkish Civil Code 1926 then replaced the old regulations and established a strict ban on polygamy. Polygamous marriages were declared invalid, although there was no explicit statement regarding the sanctions that would be given. This policy is a significant change from the provisions in force in the Hanafi school of thought, which is adhered to by the majority of Turkish society, and is also different from the views of other Sunni schools of thought. Some Turkish scholars argue that the ban on polygamy is a response to the social and economic conditions of modern society which do not allow the implementation of polygamy in accordance with the corridors of Islamic law.³⁵

5. Wedding Reception

Civil regulations in Türkiye give people the freedom to celebrate wedding receptions in accordance with the teachings of their respective religions. However, formality requirements, such as marriage registration for civil registration, must still be met. In Islam itself, Walimatul Urs or a wedding reception is a sunnah sukakad. Attending the Walimatul Urs invitation is considered an obligation, except in the Hanafi school of thought which considers it sunnah.³⁶

³² M A Pratama et al., "Komparasi Hak Waris Pada Anak Adopsi Dalam Perspektif Hukum Islam Dan Hukum Perdata," *Jurnal Ilmu Pertahanan, Hukum Dan Ilmu Komunikasi* 1, no. 3 (2024): 94, <https://journal.appisi.or.id/index.php/konsensus/article/view/220%0Ahttps://journal.appisi.or.id/index.php/konsensus/article/download/220/361>.

³³ Asman, et Al. *Pengantar Hukum Perkawinan Islam Indonesia*. PT. Sonpedia Publishing Indonesia, 2023.

³⁴ Sari, Eka Yulyana. *Poligami Dalam Perundang-Undangan Indonesia Dan Turki*. BS Thesis. Jakarta: Fakultas Syariah Dan Hukum UIN Syarif Hidayatullah, 2016.

³⁵ Tahir Mahmood, *Family Law Reform in Islamic Countries: History, Text and Comparative Analysis* (New Delhi: Academy of Law and Religion, 1987).

³⁶ Ritonga, Ali Ummar, and MH SH. *Hukum Perdata Islam Di Negara Muslim*. Publica Indonesia Utama, 2024.

6. Marriage Cancellation

Article 112 of the Turkish Civil Code regulates marriage annulment. Several conditions that can cause a marriage to be annulled include: one of the parties is still married to another person; one of the parties experienced a mental disorder at the time of the marriage; and the marriage carried out is included in the category of prohibited marriages. In the Hanafi School, marriage can also be annulled if the conditions and pillars of marriage are not met. In this case, the judge has the authority to forcibly separate husband and wife and the wife is not required to undergo a period of iddah.³⁷

7. Invalid Marriage

Courts in Turkey are given the authority to declare a marriage invalid if there are certain reasons, such as: a conflict of interest that is detrimental to one of the parties; one of the parties does not have the sincerity to get married; the occurrence of fraud; one of the parties has a dangerous disease; one of the parties is still a minor; and marriages that occur due to coercion or threats. Provisions regarding the invalidity of marriage are regulated in Article 20 of the Turkish Civil Code of 1926.³⁸

8. Divorce

The Turkish Civil Code, in Article 20, lists six reasons that can be used as a basis for filing a divorce, namely: infidelity; physical violence; criminal acts committed by one of the parties; one of the parties leaves the residence without a clear reason for three months; one of the parties has a mental disorder as proven by a doctor's certificate for at least three years; and the emergence of disputes that cannot be resolved. Although divorce is permitted, courts still provide mediation options for couples who wish to divorce.

9. Compensation in Divorce

Courts in Türkiye are given the authority to decide on compensation from the guilty party to the injured party in a divorce. This compensation can be given for physical, reputational or financial losses. Furthermore, Turkish regulations also allow courts to require parties filing for divorce, regardless of who is at fault, to provide financial compensation to their ex-spouse. This obligation is valid for one year after the divorce, provided the ex-spouse has not remarried.

10. Regulations on Inheritance

Regulations regarding inheritance in Türkiye are regulated in the Third Book of the Turkish Civil Code. This regulation replaced the previous legal system, which referred to the Hanafi School, and came into force in 1926. Book Three of the Turkish Civil Code adopts the principles stated in the Swiss Civil Code, which upholds gender equality in terms of inheritance distribution. Thus, men and women get equal shares

³⁷ Awaliyah, Indira. *Pembatalan Perkawinan Di Indonesia Dan Turki*. BS Thesis. Fakultas Syariah Dan Hukum UIN Syarif Hidayatullah Jakarta, 2019.

³⁸ Ayatina, Haerini. 'Studi Komparatif Antara Peraturan Perundang-Undangan Di Indonesia Dan Turki Tentang Perceraian.' (2021).

in the distribution of inheritance. This regulation is different from the provisions in Islamic law, stated in the Koran, which stipulates that men's share of inheritance is twice that of women.³⁹

These differences reflect a paradigm shift in the legal approach in Türkiye. Ijtihad, or legal interpretation, currently prioritizes a collective approach and seeks to provide solutions to various contemporary legal challenges. Even though classical fiqh books remain a reference, their role is no longer dominant in the legislative process. This is done to ensure legal certainty in dealing with the complexity of civil and public legal issues.

Table 2. Key Features of Islamic Family Law Reform in Türkiye

No	Legal Aspect	Turkish Civil Code Reform	Difference from Classical Islamic Law	Social Impact
1	Marriage & Guardianship	Women can marry without guardian consent; minimum marriage age (18M/17F)	Islamic law allows guardian's role and no fixed age in Qur'an/Sunnah	Promotes gender equality & child protection
2	Prohibited Marriages	Bans marriages within blood/adoption relations	Adoption not a barrier in Hanafi fiqh	Expands protection of family structure
3	Polygamy	Strictly prohibited; polygamous marriages invalid	Hanafi & classical fiqh permit under fairness conditions	Strengthens women's rights & monogamous stability
4	Divorce & Compensation	Divorce allowed under six grounds; courts may order financial compensation	Fiqh allows talaq with limited compensation provisions	Encourages fairness & support for vulnerable spouses
5	Inheritance	Equal share for men & women	Qur'an: male share = 2 × female share	Promotes gender equality & modern legal alignment

The reform of Islamic family law in Türkiye reflects a paradigm shift from classical Islamic jurisprudence toward a modern legal system based on equality, human rights, and gender justice. By prohibiting polygamy, equalizing inheritance, setting marriage age limits, and granting women autonomy in marriage, Türkiye integrates Islamic values with civil law principles to build a more just and inclusive society. Although it departs from traditional fiqh in some aspects, this reform is seen as an adaptive response to contemporary social realities.

Kesimpulan

The metamorphosis of family law in Turkey illustrates a complex negotiation between the pursuit of *maslahah* (public benefit) and the preservation of religious authenticity, where social dynamics serve as both the catalyst and testing ground for legal reform. From the codification of *al-Majallāh* to the adoption of the Swiss Civil Code, and subsequent amendments, Turkey's legal trajectory reflects how law responds to changing societal needs sometimes passively following the crystallization of social change, and at other times actively steering it as social engineering. The prohibition of polygamy, equal

³⁹ Mahmood, *Family Law Reform in Islamic Countries: History, Text and Comparative Analysis*.

inheritance rights, women's autonomy in marriage, and the integration of civil institutions into family law demonstrate how *ijtihad* in *dhanni* provisions is mobilized to harmonize Islamic principles with modern egalitarian values. Although this reform departs from classical *fiqh* in key aspects, it underscores that legal transformation in Turkey is not a rejection of Islam, but rather an effort to contextualize its norms within contemporary realities, balancing between maintaining religious foundations and ensuring justice, equality, and social relevance.

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