

Islamic Legal Modernism and Women's Emancipation in Tunisia

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Abstract

The article aims to analyze the role of modern interpretations of Sharia on women's emancipation in Tunisia. Even though Tunisia is a Muslim country influenced by the Maliki school of thought, its social, cultural, and political conditions are conducive to women's emancipation efforts. This condition was created partly by the government's efforts to adopt Sharia's modern interpretation in Tunisia. Efforts to modernize Islamic law through state law have been going on for a long time and are consistent. Islamic legal modernism is evidenced by the Constitution, which guarantees women's equal rights, manifested in state law and policies. A case in point is family law in Tunisia that prohibits the practice of polygyny, gives equal share of the inheritance, and punishes perpetrators of domestic and sexual violence against women. Modern interpretations of Sharia have resulted in Islamic law that is more gender-friendly and maximizes women's potential in Tunisia's public sector. As a result, women's political participation in Tunisia is very high: they occupy many Parliament seats and high government bureaucracy positions. The condition of equality of women in Tunisia is far different from that of its compatriots in the middle east and north African countries, which are still influenced by conservative Islamic law interpretations.

Keywords: Islamic Legal Modernism, Women's Emancipation, Polygyny prohibition, Tunisia

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Introduction

Tunisia is the northernmost country in Africa, which has a Muslim population percentage of 99%. Tunisia gained its independence from France in 1956. The country was run by the Democratic Constitutional Rally (Rassemblement Constitutionnel Démocratique, RCD) Party.² Since its independence in 1956, Tunisia has focused on developing its country to compete with European countries. The Tunisian government, which was previously a secular country, strongly supports women's emancipation, especially in terms of family law, careers, and being actively involved in socio-politics.³

Women have played a vital role in the development of civilization in Tunisia.⁴ In Tunisia in the late 19th century to the middle 20th century, French colonialism strongly influenced women's equality through education and culture. Moreover, now, Tunisia's women have enjoyed equality and freedom at its highest between MENA countries (the Middle East and North Africa).⁵ This achievement was caused by modernization policy by the first president of Tunisia, Habib Bourguiba (1957-1987). He has advanced the freedom and equality of women in Tunisia.⁶ In 2011 Tunisia became a democratic country, providing women who can improve themselves prestigiously at the political and social level.⁷

² Magnus Ohman, *Political Finance and the Equal Participation of Women in Tunisia: a Situation Analysis*, (Netherland: Netherland Institute Multiparty Democracy, 2016), p.14.

³ Development Progress, *Building Momentum Women's Empowerment in Tunisia: Victoria Chambers with Clare Cummings*, (London: Overseas Development Institute, 2014), p. 9.

⁴ Rediandi Rachman Anandana, Siti RohmahSoekarba, "Pengaruh Pemikiran Tahar Haddad terhadap Emansipasi Perempuan dalam Hukum Keluarga Tunisia", *Jurnal Middle East and Islamic Studies*, Vol.6, No.2, 2019.

⁵ Sanja Kelly & Julia Breslin, *Women's Right in the Middle East and North Africa: Progress Amid Resistance*, (New York: N.Y. Freedom House, 2010).

⁶ Amel Grami, *Women, Feminism and Politics in Post Revolution in Tunisia*, (Tunisia: Feminist Dissent, 2018), p.23.

⁷ Ohman, *Political Finance*, p.14.

As early as the 20th century, there has been the initiator of the idea of freedom and equality women's rights through his work, namely Tahar al-Haddad. Tahar al-Haddad wrote *Imra'atuna fi al-Sharia wa al-Mujtama'* (Women in Law and Society) in 1930. Its ideas influence the women's rights movement, one of which is Tunisian Family Law (Personal Status Code) as the legal basis for emancipation of women in Tunisia. He supports freedom, equal rights, and education for Tunisian women.⁸

The book "*Imra'atuna fi al-Sharia wa al-Mujtama'*", was written based on Tahar al-Haddad unrest during his time as a notary at Sharia court regarding suffering women and various problems social issues facing Tunisia in the 1920s. Tahar al-Haddad saw profound injustice Sharia court system and conditions bad for women. Tunisian women are not allowed to go out of the house and have to wear the veil (*Hijab*) and a long veil covering the face (*Niqab*) and accompanied by a husband or guardian.⁹ This happened in the world, especially in Arab countries. The influence of Tahar al-Haddad's ideas indirectly has an impact that is significant on the condition of Tunisian women. Tunisian Family Law, inspired by Haddad's writing, underlies a new beginning from women's emancipation. However, Tunisian family law is not perfect but gives various rights that do not found in several countries of Arabs.

For many decades Tunisia has been considered a well-performing country in the Arab and Muslim world regarding women's rights.¹⁰ Since emancipation and gender equality echoed in Tunisia, women have the same position as men in many ways, such as education and

⁸ Jane Adas, "Tunisia's Personal Status Code and Modernity, Development and Human Rights," *Washington Report on Middle East Affairs*, <https://www.wrmea.org/007-march/tunisi-as-personal-status-code-and-modernity-development-and-human-rights.html>, accessed on December 20, 2020.

⁹ Ibid

¹⁰ Development Progress Report, *Building Momentum Women's Empowerment in Tunisia: Victoria Chambers with Clare Cummings*, (London: Overseas Development Institute) 2014. p.9.

employment. According to what researchers observed in Tunisia, women can work outside; they can live freely, can educate in high education, even a lot of household matters are handled by men.

Islam is the official religion in Tunisia, while the Maliki *Mazdhab* has a powerful influence dominant among the Muslim society. Tunisian background gives the picture tells us that at least Tunisia has also prevailed Islamic law (*fiqh*) based on the Hanafi school of influence. Despite this fact, the Tunisian government has sought to modernize the society from classical *fiqh*. Habib Bourguiba is known as a president with a secular ideology and trying to implement a secularization project in this 99% Muslim country. One of Borguiba's major agendas during the early days of his reign is the judiciary's unification and drafting of modern family law.¹¹

Hence, the emancipation of women in Tunisia began since Tahar gave the ideas of equality of women. The first president of Tunisia, Bourguiba, transformed women's new lives into equal men in many conditions and positions to develop their country. Although at some regulations are in contradiction with Islamic law.

Many articles have been written on the topic of women and Islam in Tunisia. Anandana's and Soekarba's essay, for example, discusses the condition of women in the early 20th century Tunisia, the views of Tahar Haddad on women and Islam, his influence on the Tunisian Code of Personal Status, and its impact to develop women's rights in modern Tunisia.¹² Bancin, on the other hand, shows that Islamic family law in Tunisia is considered unique because of the complexity of Tunisia. This country attempts to codify the Maliki School of jurisprudence and takes progressive and revolutionary steps to legalize and

¹¹ Ibid.

¹² Rediandi Rachman Anandana, Siti RohmahSoekarba, "Pengaruh Pemikiran Tahar Haddad terhadap Emansipasi Perempuan dalam Hukum Keluarga Tunisia", *Jurnal Middle East and Islamic Studies*, Vol.6, No.2, 2019.

administer the legal sector, especially family law.¹³ Khedher investigates the radical attempt to modernize and reinterpret the Sharia jurisdiction by re-reading this new set of laws. They came in *Majallat Al-Ahwal Al Shakhshiya* to better understand the context in which it was promulgated and the reasons accounting for its success. The article utilizes a few secondary sources which document and scrutinize the roots of Tunisia's trajectory towards the advancement of women's causes.¹⁴ This article is different because the main focus is studying women's emancipation in Tunisia and Islamic legal modernism.

This article aims to analyze why Tunisian women can get emancipation, freedom, equal with men. Meanwhile, in many Muslim countries, women still cannot get equal rights. The Tunisian government regulation is highly respected women; for example, Article 18 of the Tunisian Family Law Act states that having more than one wife is an act banned. Other regulations protect women from sexual harassment, equal inheritance between men and women, and involve many social and political sectors. Furthermore, the majority of Muslims in Tunisia follow *Mazdhab Maliki*. Despite the notorious image of classical fiqh, Tunisian can develop women's rights and emancipation. Meanwhile, other countries still cannot apply emancipation of women. The correlation between Islamic legal modernism and women's emancipation in Tunisia is the main focus of this research.

Women in Islamic Texts and Problems of Interpretation

The fate of women in pre-Islam is like an object; they were considered inferior and did not have equal rank with men. The behavior of men towards women is also insulting

¹³ Ratih Lusiana Bancin, "Hukum Keluarga Islam di Tunisia", *Jurnal Penelitian Agama Medan*, 2018.

<http://jurnal.uinsu.ac.id/index.php/medag/article/view/3974>

¹⁴ Rayed Khedder, "Tracing the Development of the Tunisian 1956 Code of Personal Status", *Journal of International Women's Studies*, Vol 14, No.8, 2017,

<https://www.researchgate.net/journal/Journal-of-International-Womens-Studies-1539-8706>.

and inhuman. Women only must serve the men; they should stay at home and not occupy a position above them. She cannot do anything without permission and must serve what men needed.¹⁵ In history, even baby girls were just thrown away and felt ashamed for the families who gave birth to them.¹⁶ Before the advent of Islam, there was a tradition in *Jahilliyah* Arabs to bury alive the daughters (female infanticide) because they were deemed as a burden or disgrace for the family.¹⁷ Because of this tradition and customs, the Arabs were known to be infanticide of girls. Male Arabs before Islam were associated with that habit.¹⁸ Al-Zubaidi added, "Kind of used to abuse the girl."¹⁹, Mudhar and Khuza'a used to bury the girls alive, and most of them were tamim."²⁰ Those are the habits pre-Islamic era, but women become more valuable after Islam, with their characteristics.

This situation and habits slowly changed along with the Prophet Muhammad's presence in conveying Islam in society. Women were appointed, freed slaves, rights to life, socializing, gaining knowledge, and giving women opinions. Even women can participate in *da'wah* activities and warfare. Many Islamic female figures emerge and provide new inspiration for Arab society where previously women

¹⁵ Ibid, p.2

¹⁶ Aziz al-Asyqar, *Zhahirah wa'du al banat qabla al-Islam baina al-Haqiqah wa al-Khiyal al-Syu'bi*, (Lebanon: Awraq al-Tsaqafiyah, 2019), p.1.

¹⁷ Alfitri, "Women's Right and Gender Equality Issues in Islamic Law in Indonesia: The Need to Re-Read Women's Status in The Islamic Religious Texts," *Jurnal Mazahib: Jurnal Pemikiran Hukum Islam*, Vol13, No.1, 2014. <https://journal.iain-samarinda.ac.id/index.php/mazahib/article/view/349>

¹⁸ Aziz al-Asyqar, *Zhahirah wa'du al banat qabla al-Islam baina al-Haqiqah wa al-Khiyal al-Syu'bi*, (Lebanon: Awraq al-Tsaqafiyah, 2019), p.1.

¹⁹ Ibn Hajar al-Asqalany, *al-Ishabahfi Tamyiz al-Shahabah, tahqiq Ali Muhammad Muawwidh*, (Beirut: Dar al-Kutub al-Islamiyah, 1995), p. 3. Ibn Hajar al-Asqalany, *Fath al-Bary*, (Beirut: Dal Ma'arif, 1960), p.180.

²⁰ Ibnu Syarif, Mahmud, *Al-Islam wa al-Usrah*, 2nd Edition, (Beirut: Dar wa al-maktabah al-Hilal, 1983), p.5.

were marginalized, including Khadijah Binti Khuwaylid, Nusaybah binti al-Anshary, Aisyah binti Abu Bakr, and others at the beginning of the Islamic era.²¹

Islam itself has allowed women to take part in social society. The proof is, historically, there have been many previous Muslim women who took part in social activities. Nevertheless, they still maintain social relations between men and women who are not their *mahram*. They also wear clothes that cover their body according to His commands. Besides, Islam allows women to be career women and develop their potential outside the home, with the following conditions: (1) Get permission from the husband, (2) Not doing pilgrimage and tabarruj with non-mahram men, (3) Covering aurat with syar'i hijab 4) Lowering his eyes and guarding the farji, (5) Not dressing like an ignorant woman, (6) Not changing her nature as a woman, (7) Can divide time between serving her husband and educating children.²² Although some opinions, in this case, some classical scholars pointed out that women cannot go outside for work because the main task is at home. However, contemporary scholars argued that women could work based on their nature (*fitrah*).

Women are allowed to work outside the home in specific fields according to femininity, motherhood, and wittiness, such as teaching, medicine, nursing, and commerce, which is in tune with femininity.²³ In the Prophet period, women worked, such as a bridal make-up, like Umm Salim bint Malhan. There was being a nurse or midwife, doing Business such as Khadijah bint Khuwailid the first wife of Prophet Muhammad, she was noted as a very successful person.²⁴ Ibn `Abbas said: "*Rasulullah PBUH cursed the people women who resemble men and*

²¹ Ibid.

²² Asriaty, "Wanita Karir dalam Pandangan Islam" *Jurnal al-Maiyyah*, Vol. 07, No.2, 2014.

²³ Hartini, *Peranan Wanita dalam Rangka Meningkatkan Kesejahteraan Sosial Keluarga Melalui Usaha Ekonomi Produktif*, (Yogyakarta: Departemen Sosial, 1989),

²⁴ Muhammad Quraish Shihab, *Membumikan al-Qur'an*, (Bandung: Mizan, 2003), p.275-276.

(damn too) men who resemble women.” (Narrated by al-Tirmidzî).²⁵ The prohibition here is not going out of the house, but rather on kind the work he does, in which women are encouraged to vote profession following their nature as a woman. Qâsim Âmîn argued that women's obliges to be in her house is none other than sourced from the customs and traditions of the Arab community in the past. The Arab *Jahiliyyah*'s life is filled with war and murder (for a fight over territory) because their livelihood is hunting. These conditions do not allow women to participate in doing what men do. As for now, we are in a relatively safe state; all of them have laws regulating them.²⁶

Therefore, Islam does not differentiate between men and women in allowing working, except obedience; for this reason, the degrees of women and men cannot be distinguished unless Allah judges them.²⁷ Islam generally improved women's status compared to earlier Arab cultures, prohibiting female infanticide and recognizing women's full personhood.²⁸ Islam places women in a suitable place in three areas: First, the Humanitarian Area, Islam recognizes the rights of women as human beings to be perfectly equal to men. Second, the Social Sector, which is wide open for women at all levels of education, occupying important and respectable positions in society. Third, in law, Islam gives women the right to have the property correctly and use them when they reach adulthood.²⁹

²⁵ Abu Isa Muhammad bin Isa al-Tirmidzi, *Sunan al-Tirmidzi*, (Beirut: Dar al-Fikr, 2004), Vol.3, P.531.

²⁶ Qasim Amin, *Al-Mar'ah al-Jadidah*, (Mesir: Mathba'ah al-Sya'bi, 1998), p.86-88.

²⁷ Islamic Base, “Emansipasi Wanita dalam Islam” on Redaksi dalam Islam, <https://dalamislam.com/info-islami/emansipasi-wanita-dalam-islam>, accessed on October 16, 2020.

²⁸ Oxford Islamic Studies Online, “Women and Islam” <http://www.oxfordislamicstudies.com/article/opr/t125/e2510>, accessed on November 22, 2020.

²⁹ Ahmad Ilyas, “Islam Berbicara Emansipasi Wanita”, <https://www.kompasiana.com/ahmadilyas/552e591b6ea834bc4f8b4599/islam-berbicara-emansipasi-wanita>, accessed on November 22, 2020.

Emancipation of women in Islam is based on the following conditions: First, women's position is equal to men in the sight of Allah as per al-Ahzab verse 33, which explains that "*Men and women are the same, the only difference is their faith and obedience.*" According to Imam Ibnu Katsir's interpretation, the *asbabun nuzul* from this verse is related to the question of women, "*Why does the Al-Qur'an mention men while women do not?*" It is clear that this verse does not distinguish between men and women; the only difference is the level of faith and devotion.³⁰ This verse proves that Allah greatly honors women. Second, women's position is the same as men trying to acquire, own, hand over or spend their assets. Third, women's position is the same as that of men to become heirs and obtain the inheritance, according to the determined division. Fourth, the rights and obligations of women and men, in certain respects the same can be seen in (Q.S. Al-Baqarah: 228 and At-Taubah: 71) and in other respects are different because their natures are same and different (QS An-Nisa: 11 Q.S. An- Nisa: 43). By nature, that creates roles and responsibilities between men and women; for example, as husband and wife, their functions are different.³¹

The interpretation of some verses about gender in Islam also influences the emancipation of women in Islam. Such as the meaning of "*qawamah*" among the interpreter scholars. Gender verses become part of the object of interpretation by both classical commentators and contemporary. With various methods and approaches of interpretation from the commentator, causes the product the interpretations also vary.³² Allah mentioned in the

³⁰ Ibnu Katsir, *Tafsir Ibnu Katsir*, (Mesir: Dar al-Salam, 2000), Vol.5, P.343.

³¹ Ahmad Ilyas, "Islam Berbicara Emansipasi Wanita", <https://www.kompasiana.com/ahmadilyas/552e591b6ea834bc4f8b4599/islam-berbicara-emansipasi-wanita>, accessed on November 22, 2020.

³² Mintaraga Eman Surya, "Tafsir Ayat-ayat dalam Al-Qur'an dengan Pendekatan Ekofeminisme: Kritik terhadap Tafsir Feminisme Liberal", *Journal Muwazah*, Vol.6, No.1, 2014.

Quran Surah An-Nisa verse 34: "Men are leaders for women." Imam al-Qurthubi, one of the classic commentators, explained in his book that the meaning of "qawwamun" is that they (men) spend and care for women.³³ Meanwhile, contemporary commentators also interpret this verse, such as in *Tafsir Jalalain* explained that the meaning of "qawwamun 'ala an-nisa" is men having power over women and has right to obligated to educate and guide them because Allah has exaggerated some of you over others namely power and also have to spend over them their property.³⁴ Therefore, the meaning of "qawwamun" means a leader is in the family, so that some scholars argue that women can go outside and being a leader of such small communities. Such as Saidah Aisyah, who is being a leader of *the Jamal war*. In this situation, Yûsuf al-Qardhâwî explained the prohibition for leaving the house except in emergencies is explicitly intended for the Prophet's wives. The ban was "violated" by Sayyidah `Âisyah, who was involved as well as in the Jamal war about fulfilling religious obligations to carry out *qishâsh* punishment against those who have killed `Uthmân bin `Affân.³⁵

From this point of view, women have played an essential role since the arrival of Islam. The condition of women continues to develop until this era. Many women doing work, be a part of social organization, occupy a position in the political sector and Parliament, and even be a mayor, governor, and minister leader. The meaning of emancipation of women in Islam is evident with the verses and hadiths shows that men are women equal in many conditions except matters related to worship.

³³ Abi Abdillah Muhammad bin Ahmad al-Anshari al-Qurthubi, *Tafsir al-Qurthubi al musamma al-Jami' li Ahkam al-Qur'an*, (Beirut: Dar al-Fikr, 2005), Vol.3, p.84.

³⁴ Jalaluddin Muhammad bin Ahmad al-Mahally and Jalaluddin Abdul Rahman bin Abi Bakar al-Suyuti, "Tafsir Al-Jalalain", (Beirut: Dar al-Fikr lilturats, 1998), Vol. 2, p.31.

³⁵ Yusuf al-Qardhawi, *Fatawa Mu'asharah*, (Mesir: Dar al-Wafa', 1998), 3rd edition, Vol.2, p.386.

Emancipation of Muslim Women in Tunisia

Emancipation is a term used to describe the struggle for women's political rights or women's equality before men in society's social context. Emancipation refers to freedom and equality. As mentioned in the dictionary, Emancipation etymology means free, separate legally.³⁶ Every action which is referred to free or separate can be understood as emancipation. Emancipation is a tricky word. The Oxford English dictionary denotes the lifting of "Restrains imposed by superior physical force or legal obligation. In Roman law, emancipation referred to the freeing of women and children from the father's power."³⁷ Freedom, feel free in some conditions make women strong. A sense of freedom and unfettered sometimes has a positive effect on developing a woman's soul. Meanwhile, the term emancipation shows the fact or process of being set free from legal, social, or political restriction: liberation, the social and political emancipation of women.³⁸ Historically, the word emancipation has often been synonymous with freedom's liberation, but not necessarily with equality.³⁹ So emancipation women can be understood as freedom of women to realize themselves, maximizing their right in many ways of life.

Human rights are considered to be the right of the people just by being human. The procedural sense of human is primarily about creating and maintaining individuals and groups' space to achieve justice, personal security, well-being, general political stability, and economic development.⁴⁰

³⁶ Public Counsel, *So You Want to Become Emancipated?*, (n.p: Public Counsel, n.t), p.3.

³⁷ Joan Wollach Scott, *Emancipation and Equality: A Critical Geneology*, (Utrecht: Treaty of Utrecht, University Utrecht, 2012), p.5.

³⁸ Lexico, Oxford English and Spanish Dictionary, Thesaurus, and Spanish to English Translator, <https://www.lexico.com/definition/emancipation>, accessed on November 17, 2020.

³⁹ Scott, *Emancipation, and Equality: A Critical Geneology*, p.7.

⁴⁰ Saira Bani Orakzai, "the Rights of Women in Islam: The Question of Public and Private Spheres for Women's Rights and Empowerment

Tunisia, one of the countries colonized by France, refers to a country in the northern African continent, most "influenced by western culture." In 1981, the Tunisian government issued a decree prohibiting women from wearing the veil in schools and government offices. Tunisian President, Zine El Abidine Ali, said wearing a veil was part of the old-fashioned clothes that entered the country without being invited. The Council on American-Islamic Relations (CAIR) urged that religious freedom be upheld and respected. However, since the Tunisian Revolution in 2010-2011, Tunisian women have become increasingly free to wear the Muslim's clothes, even made women dare to wear the *niqab*.⁴¹

Islam and women cannot be separated in all situation in Tunisia since most Tunisian women are Muslim. Around 99% are Muslim Sunni, 90% follow Maliki *madhhab*, while 9 % other *madhhabs* of Hanafi, Syafi'i, and Hambali.⁴² There are several characteristics in Maliki *madhhab* of *fiqh* that make his methods unique, impacting developing the Maliki *madhhab* and making it appear different from other scholars. First, Maliki *Madzhab* adheres to Experts Medina's charity because Medina is the Prophet's emigrate place. Second, the use of *mashalih al-mursalah (istishlah)* as a source of law. Third, Imam Malik adhered to fatwas best friends (*qaul sahabi*) because they are people previously from the group of people who migrated with Rasulullah (*Muhajirin*) or who help Rasulullah (*Ansor*). Fourth, Imam Maliki used *Istihsan* in

in Muslim Societies," *Journal of Human Rights in the Commonwealth*, Vol.2, No.1, 2014.

⁴¹ "5 Negara yang Melarang Hijab atau Niqab: Prancis hingga Turki", <https://www.voaindonesia.com/a/negara-melarang-hijab-niqab-burka-islam-turki-prancis/4769261.html>, accessed on November 20, 2020.

⁴² Index Mundi, "Tunisia Religion," <https://www.indexmundi.com/tunisia/religions.html>, accessed on November 19, 2020. U.S. Embassy in Tunisia, "2019 Report on International Religious Freedom: Tunisia", <https://tn.usembassy.gov/2019-report-on-international-religious-freedom-tunisia/>, accessed on November 19, 2020.

various problems, Fifth, the sunnah's position before Imam Malik. He does not require that he accept the hadith famous in the public affairs of *al-Balwa*.⁴³ Based on observation, this Maliki *madhab* influences some parts of their lives, such as apply *mashlahat* in many conditions. However, secularism and liberalism also influenced any part of women's life.

Tunisian women have equal rights as men. Some regulations in Tunisia give advantages for women according to emancipation, some of them:

1. Prohibition of polygamy

President Habib Bourguiba, who graduated from a university in France, was appointed the first president and issued controversial regulations called the Personal Status Code replacing the Quran's law in marriage, divorce, and child care. This rule is not just against some practices; traditional Muslims even declared confrontation.⁴⁴ Tunisian's law about family law year 1958 number 18 mentioned:⁴⁵

“Whoever gets married while in a marital state and before dissolving the infallibility of the previous marriage shall be punished with imprisonment for one year and a fine of two hundred forty thousand francs, or one of the two punishments, even if the new marriage is not concluded according to the provisions of the law.

Whoever was married in contravention of the formulas stipulated in Law No. 3 of 1957 dated 4 Muharram 1377 (August 01, 1957) relating to the regulation of civil status,

⁴³ Abdurrohman Kasdi, “Menyelami Fiqih Madzhab Maliki (Karakteristik Pemikiran Imam Maliki dalam Memadukan Hadits dan Fiqih)”, *Jurnal Yudisia Pemikiran Hukum dan Hukum Islam*, Vol.8, No.2, 2017.

<https://journal.iainkudus.ac.id/index.php/Yudisia/article/view/3242>

⁴⁴ Ratih Lusiana Bancin, “Hukum Keluarga Islam di Tunisia”, *Jurnal Penelitian Agama Medan*, 2018.
<http://jurnal.uinsu.ac.id/index.php/medag/article/view/3974>

⁴⁵ Tunisian Government, Family Law, Number 18, the year 1958, <http://www.legislation.tn/affich-code-article/code-du-statut-personnel-article-18>, accessed on December 10, 2020.

concludes a second marriage contract and continues to be associated with his first wife, shall be punished with the same penalties."

Recent reports suggest that although polygamy is illegal in Tunisia, there may nonetheless be a practice of customary or 'urf (verbal, non-registered) marriages as a means of circumventing the formal system to create a polygamous marriage. Such marriages place women in vulnerable situations when the "husband" abandons them and their children with no rights stemming from legal marriage.⁴⁶ the prohibition on polygamy and other regulations, which significantly elevates the position of women.

2. Equality between Men and Women in Inheritances

According to the legal law in Tunisia, Women have an equal right to men in inheritances. In the part of women's rights, the Constitution sets forth a principle of equality that is a departure from the currently applicable family law—the Code du Statut Personnel of 1956 (CSP), mentioned that; A particularly stark example is the case of inheritance law: under the CSP women are only due to inherit one-half the share due to a man, but article 21 of the new Constitution states: "All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination."

Although Tunisia lifted all special reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) after the revolution, it has yet to revise domestic laws to conform to the principle of equality for all citizens that the new Constitution mandates.⁴⁷ However, inheritance is still

⁴⁶ The Advocates For Human Rights and MRA Mobilising For Right Associate, "Tunisia: Women's Right joint Stakeholder report for the United Nations Universal Periodic Review," the 27th Session of the Working Group Universal

⁴⁷ Mari Norbakk, "The Women's Rights Champion Tunisia's Potential for Furthering Women's Rights," on

controversial among the people, where many of them still adhere to the provisions of inheritance law in Islam. However, there are also apply Tunisian's law. To illustrate the inheritance distribution in Tunisia, like what happens to Gharsalli's family, he is 47, grew up with three brothers and six sisters on her family's 7 hectares (17 acres) of land the region of Kasserine, on which they grew olive trees and grains. When their father died in 1997, Gharsalli and her sisters inherited half as much land as their brothers, under Tunisian law.⁴⁸ This case was practiced in Tunisia. Even some of them still follow the provision of Islamic Law.

3. Women have the right to work.

Tunisian women have the right to work, as mentioned in the Constitution Republik of Tunisia chapter 2 Rights and Freedom, Article 41: "Work is a right for every citizen and citizen, and the state shall take the necessary measures to guarantee it based on competence and fairness. Every citizen and citizen has the right to work in decent conditions and for a fair wage."⁴⁹

This regulation is the legal foundation for allowing Tunisian women to work. In Tunisia, women are highly valued. Where the position is equal to men in terms of self-development, women can work outside, being part of Parliament, and study at a higher level. The proportion of women in the Tunisian Parliament is impressive. However, it is not matched by gender equality in other areas, such as in the cabinet or the leadership of parliamentary committees. Creating opportunities for further advances in gender equality requires work on many fronts, such as addressing women and men's

<https://www.cmi.no/publications/5973-the-womens-rights-champion>, accessed on November 13, 2020.

⁴⁸ Kasserine, "Tunisia Divided Over Equal Inheritance for women," <https://www.arabnews.com/node/1463806/middle-east>, accessed on November 13, 2020.

⁴⁹ The Constitution Republic Tunisia, Chapter II article 41, 2014.

social attitudes, improved education and training for women, and legal protection concerning violence against women.⁵⁰

Women's social status is determined by the number of women, mostly in the public sector (public sector). The situations in which they work objectively that equations women may be seen from the number of active women in the public sector and their position in that public space.⁵¹ Many positions in the Tunisian government occupied by women, the first mayor in Tunisia, Souad Abderrahim, are prominent figures in Enhada from a conservative democratic Muslim party.⁵² By the latest data of Tunisian's government, women who occupied by Parliament is 26.39% (57 women, it contained on the official website of the Republic of Tunisia's Parliament, there are 57 women (26,37%) who sit in Parliament, and 159 men (73.61%). One of the deputy speakers of the Tunisian Parliament is a woman, namely Madame Samira Shouashi.⁵³ This data shows that women in Tunisia have opportunities to take part in politics.

4. Sexual Harassment and Women Protection

Tunisian government published legal law about the protection of women. The newly amended Article 227, rapists incur a 20-year prison term if convicted and a life sentence if the use of a weapon has accompanied the act. After raising the age of sexual consent from 13 to 16 years, the revised article foresees a six-year prison sentence for sexual intercourse with a minor without

⁵⁰ Magnus Ohman, *Political Finance and the Equal Participation of Women in Tunisia: a Situation Analysis*, (Netherland: Netherland Institute Multiparty Democracy, 2016), p.8.

⁵¹ Nursalim, "Deskriminasi Gender di Media televisi",

⁵² Umi Nur Fadhilah, "Tunisia Miliki Wali Kota Perempuan Pertama" https://republika.co.id/berita/internasional/afrika/18/07/05/pb_db3x366-tunisia-miliki-wali-kota-perempuan-pertama , accessed on 13rd November 2020.

⁵³ Majlis Na'ib al-Syu'bi, "Ri'asah Majlis Nawab al-Syu'bi" <http://www.arp.tn/site/main/AR/docs/presidence.jsp>, accessed on December 07, 2020.

consent. Consent is deemed absent if the victim is less than 16 years old. The sentence is doubled if the perpetrator is a close relative with influence over the victim.⁵⁴ This regulation even not entirely successful, but the government tries to protect women more in many aspects.

In connecting with emancipating women, gender is a characteristic to differ between masculinity and femininity. Gender is the range of characteristics about and differentiating between masculinity and femininity. Depending on the context, these characteristics may include biological sex (i.e., the state of being male, female, or an intersex variation which may complicate sex assignment), sex-based social structures (including gender roles and other social roles), or gender identity. Some cultures have specific gender roles that can be considered distinct from male and female, such as the hijra (chhaka) of India, Pakistan, and Indonesia. Gender differentiation is nothing unless this creates injustice.⁵⁵

Likewise, in Tunisia, women are not discriminated against by the state, even protected by the laws. The government has enacted laws that protect women in Tunisia, including laws related to the family, such as the prohibition of polygamy, difficulty in divorcing, and protection of women from sexual harassment. Women are also free to work in the public sector, such as being a taxi driver, toll guard, even working as a parliament, serving as a minister. So women are not considered as weak, absurd women. Women have the same rights as men. This country considered most progressive,

⁵⁴ Youssef Mahmoud, "Tunisia's New Protections for Women: a Legislative Revolution and Missed Opportunity," <https://theglobalobservatory.org/2017/08/tunisia-violence-against-women-law/>, accessed on November 19, 2020.

⁵⁵ Alfitri, "Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia," *Studia Islamika*, vol. 27, no. 2 (2020): 273-307, <http://dx.doi.org/10.36712/sdi.v27i2.9408>. Oksiana Jatningsih, "Existence of Women's Emancipation at Universitas Negeri Surabaya (UNESA), Indonesia," *Global Journal of Arts, Humanities and Social Sciences*, Vol.5, No.2, February 2017,

liberals and radicals from deep Muslim countries concern for women's rights issues, consistency in the prohibition of polygamy through law for more than half a century, and alignments and development of the interests of the people girls.⁵⁶

From this statement, it can be concluded that Tunisia gives an exceptional right for their women because they believe it can develop their country. Family law and equality between women and men, which are still not applicable in some countries. According to Mr. Essebsi, the proposed law is based on the Tunisian Constitution, which states that Tunisia is a civilian state and is based on three elements: citizenship, the will of the people, and the rule of law.⁵⁷

Progress in women's rights in Tunisia is always traced back to liberalization reforms instituted by the country's first post-independence president, Habib Bourguiba. Since his early rule of the North African country, Bourguiba, a secular nationalist and visionary leader embarked on a bold nation-building campaign that included instituting reforms to protect women's rights and ensure equal access to education.⁵⁸

5. Freedom in giving an opinion, thought, expression, and publication

Women can express themselves freely, free to share their opinions, thoughts, expressions, information, and publications. As mentioned in Tunisian Government Law, section 2 about Rights and Freedoms, chapter 31:

⁵⁶ Budi Juliandi, "Wakaf dan Politik di Tunisia" *Jurnal Ahkam*, Vol XV, No.2, Juli 2015.

⁵⁷ Budi Riza, "Pemerintah Tunisia Siapkan RUUKesetaraan Hak Waris, Apa Isinya?", <https://dunia.tempo.co/read/1149789/pemerintah-tunisia-siapkan-ruu-kesetaraan-hak-waris-apa-isinya/full&view=ok>, accessed on November 20, 2020.

⁵⁸ Iman Zayat, "Tunisia Marks Long Struggle for Women's Rights, " <https://thearabweekly.com/tunisia-marks-long-struggle-womens-rights>, accessed on November 13, 2020.

"Freedom of opinion, thought, expression, information, and publication are guaranteed. It is not permissible to exercise prior censorship of these freedoms".⁵⁹

When women have the same right as men in many ways, it gives women space to develop their rights. While in many countries in the world, women still get limited rights. Tunisia, as a majority Muslim, comes to show that women can be protected by legal formal. Women are also not restrained by curfews, permission to leave the house, so that according to the author, women there are more influenced by secularism and liberalism. Simultaneously, the flow they adhere to from the Maliki school of thought is not so influential.

The first move to that end was to enshrine the principle of equality between men and women in the Constitution against Islamists' attempts to water down the legal advances through changes in the Constitution.⁶⁰ Mentioned in the Constitution of Republic Tunisia, section 2 about Rights and Freedoms, chapter 26 that: "The right to political asylum is guaranteed under what is stipulated by law, and it is prohibited to extradite those who have political asylum."⁶¹

In 2017, women's rights made two more significant advances. First, Tunisian women were given the legal right to marry non-Muslim men after the late President Beji Caid Essebsi called on the prime minister and justice minister to review a 1973 ministerial decree that barred Tunisian women from doing so. In the same year, a landmark law on violence against women was approved, abolishing Article 227 (a) of the Tunisian criminal code that allowed rapists to escape punishment

⁵⁹ The Constitution of Republic Tunisia, Tunisian Government Law, Section 2, Chapter 31, 2014.

⁶⁰ Ibid.

⁶¹ The Constitution of Republic Tunisia, Tunisian Government Law, Section 2, Chapter 26, 2014.

if they married their victims.⁶² It is interesting if we compare to other countries in the world. In principle, Women Muslim cannot marry non-Muslim men. Islam also prohibited to marry different religion.

Tunisia is viewed as a relatively advanced country in terms of women's rights. Tunisia has repeatedly expressed its willingness to meet international norms and standards regarding human rights protection and women's rights. The country has adopted several national measures regarding women's rights, including granting women the vote in 1957 and granting women reproductive freedom in 1962 with access to birth control measures. In 2014, a new Constitution was drafted. The new Constitution included Article 46, which guarantees the "equality of opportunities between men and women to have access to all levels of responsibility and in all fields" and fair representation in all elected bodies.⁶³

As a result, over 4000 women ran for Parliament in 2011, and almost as many ran again in 2014. Correspondingly, women currently hold more than 31% of seats in Parliament, which is significantly higher than other states in the North Africa region and the U.S. record of 19.4% of the seats occupied by women in Congress. Moreover, on the electorate side, the number of women involved in the political process was relatively high. During the elections in 2014, female Tunisian voters outnumbered men among newly registered voters.⁶⁴

⁶² Iman Zayat, "Tunisia Marks Long Struggle for Women's Rights, " <https://thearabweekly.com/tunisia-marks-long-struggle-womens-rights>, accessed on November 13, 2020.

⁶³ Gender Concerns International, "The Situation of Women in Tunisia," on <http://www.genderconcerns.org/country-in-focus/tunisia/the-situation-of-women-in-tunisia/>, accessed on November 13, 2020

⁶⁴ Gender Concerns International, "The Situation of Women in Tunisia," on <http://www.genderconcerns.org/country-in-focus/tunisia/the-situation-of-women-in-tunisia/>, accessed on November 13, 2020

Jamal al-Din Darawil, assistant professor of modern civilization at the University of Carthage, confirms in an interview with "Arabi 21" that women were a central issue in the extension of the reform at the beginning of the twentieth century, especially among Sheikh Muhammad al-Nakhli al-Qasrawi and his student Tahar al-Haddad and scholar Muhammad al-Taher bin Ashour, as he considered these the entry of women into the arena of social and political struggle with men alike is considered a compulsory path for the advancement of the Arab Islamic society and Tunisia as an example for it, adding that the leaks of this awareness began with the reformers of the 19th century with Ahmad Ibn Abi Al-Diyaf and Muhammad Al-Senussi.⁶⁵

Tunisian women's rights are a definition of all the rights of Tunisian women permitted by Tunisian law. The rights of women in the family were concerned with the Personal Status Code issued on August 13, 1956. Among these rights: Good treatment by the father, brother, and husband. The family allows her to learn at the various stages of the study. Her right to spend on her even after the divorce. Her right to inherit as defined by Sharia. Her right to express her opinion and participate in family decisions. It is right to equality when its conditions are met. The Personal Status Code also mentioned in Chapter 18 that polygamy is forbidden, which is in Tunisian women's interest. It is also a woman's right to choose her husband and not divorce except in court. Sister projects at Commons Pictures and files on Women's rights in Tunisia.

Tunisian women's rural areas' position remains extremely problematic: 40% of women living in rural areas are illiterate. In contrast, many rural women face numerous health problems due to a lack of free healthcare access. Furthermore, these women are not

⁶⁵ Al-Husain Ibn Omar, al-Mar'ah al-Tunisiah baina Muthradah al-Siyasah wa sundan al-Dzukuriyah, on Arabi21, <https://arabi21.com/story/1205683/>, accessed on 20 November, 2020.

well integrated into the economic and political scene. As recommended in the final report of the Gender Election Observation Mission (GEOM) 2014, 300,000 Tunisian women mostly living in these rural areas, who have been excluded from the electoral process, need to be given access to voting future elections in Tunisia. The fact that these 300,000 women lacked the official identity card necessary to cast their vote underscores the gap in Tunisia's democratic system, especially about gender parity.⁶⁶

Tunisian women celebrate their rights and achievements on two key dates: March 08, International Women's Day, and August 13, which marks Women's National Day and the anniversary of the establishment of Tunisia's much-celebrated Code of Personal Status (CPS).⁶⁷

From those explanations, describe the situation and position of Tunisian women. A Tunisian women's organization, such as the Tunisian Association of the Democratic Women (ATFD), celebrate women's day on two select dates annually. Many women sit on the Parliament, Constitution; they have right equal to men in many ways of life.

Islamic Law and the Emancipation of Women in Tunisia.

As mentioned, Tunisian women have an equal right to men. The Tunisian government provided specific laws for women under many conditions. Since the day of the independence of Tunisia, women have changed to improve their freedom. Even though Tunisia is a majority Muslim country, their social life has shown that women's position is exciting to discuss.

⁶⁶ Gender Concerns International, "The Situation of Women in Tunisia," on <http://www.genderconcerns.org/country-in-focus/tunisia/the-situation-of-women-in-tunisia/>, accessed on November 13, 2020

⁶⁷ Rodina Rodi, "Hasytagh al-Yaum, Nisa' Tunis, Nisa' dan Tunis," on alarab.co.id, <https://alarab.co.uk>, accessed on November 13, 2020

Tunisian journalist Hussein Bin Omar opens in a report on "Arabi 21", the file of Tunisian women's political role from the presidential and legislative elections' entrance. The file of women in Tunisia has returned to hang over the intellectual and political arenas and top the agenda of civil society organizations in Tunisia, in conjunction with the presidential and legislative elections season, whose battles began early in literature the media before political issues. Although the battle for equality in the legacy proposed by the late Tunisian President Beji Caid Essebsi has not yet stopped its chapters, it seemed remarkable to notice women's modest presence on the list of candidates for the presidential elections.⁶⁸

Tunisia opens up the same opportunities for women to participate in many prestigious positions such as Parliament, governor, and president. According to the Tunisian government's effective law, equality of rights and freedom are the same between men and women.

If we refer to the Islamic context, in the pre-Islam era, women's position is pathetic. However, prophet Muhammad PBUH has a crucial role in safeguarding the dignity of women in Islam. Since emancipation and feminism come, Islam was not discriminate against women's rights. Although there are limitations regarding worship at some conditions, such as women cannot be an *Imam* in performing congregation prayers (*shalatu al-Jama'ah*) among men, except being *imam* among women, another example is women cannot be a witness of marriage. However, in another part, women have equal rights in Islam, as Allah explained in al-Quran that what distinguishes men and women is their obedience.

According to Asghar Ali Engineer, a massive revolution in which the Prophet Muhammad PBUH had initiated a change in Makkah society as a whole, gradually Islam became a very established religion with very high

⁶⁸ Al-Husain ibn Omar, "al-Mar'ah al-Tunisiah baina Mathradah al-Siyasah wa sundan al-Dzukuriyah", <https://arabi21.com/story/1205683/>, accessed on October 20, 2020.

ritualization.⁶⁹ This is the beginning of women's lives having the right to express their lives, as long as not against *Sharia*.

In history, women have played a very strategic role in the early days and Islam's growth and development, both in all matters. This is evident through women's role in helping the Prophet's struggle, carrying out *da'wah* missions, or in battlefield missions. Khadija, for example, the Prophet's very loyal wife, gave all the wealth she had for the sake of preaching and struggling for Islam.⁷⁰

Islam optimizes the potential of women by providing rights to live. Thus it can be expected to reduce the level of stress and depression of women because, in any situation, everything is guaranteed in the Islamic order and even establishes guards and ensures the lives of women.⁷¹ Ibn' Abbas narrated that he heard the Prophet PBUH said: "*No Muslim has two daughters and then he takes care of her well, unless he will go to heaven.*" (Narrated by al-Bukhari).

Islam has given a noble status to women so that women do not need to feel less valuable, must prove themselves in competition with men, who are always faced with an excessive fear of failure.⁷² Islam does not limit women's movement only in domestic life but also recognizes men and women's cooperation in public life. Women who do not have domestic responsibilities, such as single or mothers whose children are independent, are encouraged to take social life roles in society.⁷³

Based on the above *hadith* concluded that women in Islam are exceptional. They have their characteristics and

⁶⁹ Asghar Ali Engineer, "Menemukan Kembali Visi Profetis Nabi: Tentang Gagasan Pembebasan dalam Kitab Suci", *Ulumul Qur'an*, No. 4, Vol. III, tahun 1992, p. 65

⁷⁰ Fadlan, *Islam, Feminisme dan Konsep Kesetaraan Gender Dalam Al-Qur'an*, KARSA, Vol. 19. No. 2 Tahun 2011, p. 111

⁷¹ Erma Pawitasari, *Muslimah Sukses Tanpa Stres*, (Jakarta: Gema Insani, 2015), p. 31-46. Erma Pawitasari *Pendidikan Khusus Perempuan Antara Kestaraan Gender dan Islam*, *Jurnal Tsaqafah*, Vol. II, No. 2 November 2015, p. 266.

⁷² Erma Pawitasari, *Muslimah Sukses Tanpa Stres*, p. 59.

⁷³ Erma, *Muslimah Sukses...*, p. 60.

responsibilities to take care of themselves. That is why Allah and Prophet Muhammad Peace be Upon Him, reminding parents and men who can take care of women will get heaven's reward. In principle, the Al-Qur'an does not prohibit women from working, while the recommendation to stay at home is intended to protect and more to preventive issues (prevention). Al-Qur'an even gives women the right to work, both in the sense of doing good deeds and earning a living for themselves and their families.⁷⁴ Allah SWT mentioned in surah An-Nisa verse 32:

“And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned. Moreover, ask Allah for his bounty. Indeed Allah is ever, of all things, Knowing.” (Q.S.: an-Nisa: 32).

This verse shows that women have the opportunity to work. Women are known for many needs, both for their own needs and for clothing, food, cosmetics, and other needs. So that working will make it easier for women to be able to fill out all these needs.

Tunisia gives women the same opportunities to work, such as being a member of Parliament, constitution members, and other significant government positions. Seven years after the 2011 Revolution and four years after adopting the Constitution, women now make up 47% of Tunisia's local council positions following the May 2018 elections. The dramatic increase in women members results from a 2016 electoral law that includes the principles of parity and alternation between men and women on candidate lists for all elections".⁷⁵

So, The Tunisian's law is friendly to women in protecting themselves and develop their rights in many

⁷⁴ Qurash Shihab, *Tafsir al-Misbah*, jilid II, p. 267.

⁷⁵ Aswat Nissa, *Historic Leap in Tunisia: Women make up 47 Percent of Local Government*, on "unwomen.org", <https://www.unwomen.org/en/news/stories/2018/8/feature-tunisian-women-in-local-elections>, accessed on October 18, 2020.

ways of life. The regulation mentioned before conditions contradicts the Islamic law, such as prohibiting polygamy and equal proportion in inheritances. Refere to *Maliki Madzhab*, Maliki does not argue to forbid polygamy because Al-Qur'an allows it. However, the revolution of this law is based on the *maslahat* for women in Tunisia. Therefore, emancipation in Tunisia is influenced by Islamic law and modernization, secularism, and liberalism. This Understanding brought up the first president of Tunisia since its independence.

According to Tunisia, it is an example of Muslim women in this century. Women's activities are not discriminated against; in middle east Muslim countries, the Tunisia government issued special regulations to protect women. The influence of women is highly expected to develop a country. Because women have a crucial role in many ways, women are the first teacher of their children, so women with higher education will educate a bright generation. Many cases can affect women, for example, domestic violence, so the existence of legal regulation regarding family law, the prohibition of domestic violence, and the forbidding of polygamy will protect women's lives. Tunisia has implemented it. Therefore, Tunisian women as a figure of women Muslim in the world. Where now, we can see many women have actively participated in public activities in society.

Conclusion

Tunisia, a majority Muslim country, implemented legal regulations regarding Tunisian women. They have an equal right to men in many ways, such as freedom of opinion, expression, publication, and the same right to a man in occupying Parliament, minister, governor, mayor. Also providing special regulation, especially in family law, such as forbid polygamy, the equal proportion in inheritances, sexual harassment, and opportunities to work and develop their rights.

Islam, in its principle, does not prohibit Muslim women from doing many ways in their life. However, in a

particular position, women are limited compare to men, especially in worship. Otherwise, at other positions and opportunities, women can work, study at higher education, and participate in social life, even in public matters. Historically, it can be seen in the Prophet Muhammad PBUH era, where women were involved in any activities.

With its characteristics, Tunisia can be a role model to other countries among Muslim countries to show that women's emancipation does not mean women are free in all conditions. However, in the feminist part, women can explore themselves, be educated women to educate their children, be businesswomen, be governor, mayor, and regent, Head of an office as long as not leaving her obligations as a woman, as a wife, as a mother, and a pious woman. Indeed, it does not work against Islamic law, which also allows women to work and understand their rights, as long as they can maintain their natures as Muslim women.

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