



ABOLITION OF POLYGAMY IN TURKIYE: JURIDICAL STUDY OF KEMALIST REFORM

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Abstract

This study aims to examine the historical and legal transformation of polygamy regulation in Turkiye, from its initial permissibility to its eventual prohibition under the influence of Kemalist secular reforms. With information acquired from documentation and library research, this study employs a juridical-normative approach and a qualitative-descriptive method. The findings indicate that the abolition of the 1917 Ottoman Family Law resulted in the unequivocal prohibition of polygamy, which had been permitted under certain situations, with the enactment of the Turkish Civil Code by Mustafa Kemal Atatürk. The study highlights the significant role of Kemalism in shaping the legal landscape of Turkiye, particularly in transitioning from religious to secular legal frameworks. While the research offers important insights into the intersection of law, secularism, and social reform, it is limited by its reliance on secondary sources and the absence of field-based empirical data. Nevertheless, it contributes to the broader discourse on legal modernization and the socio-political implications of secularism in Muslim-majority societies.

Introduction

Turkiye has long been recognized for its historical and cultural richness, with ancient settlements such as Troy and Hattusha (Boghazkoy) offering archaeological evidence of early civilizations (Cesur & Aykut, 2023). Throughout its history, the region has been home to several prominent empires, including the Byzantine (395–1453 AD), the Seljuk (1071–1300 AD), and the Ottoman Empire (1300–1922 AD). As a predominantly Muslim population, Turkish society maintained strong religious and cultural ties to Islam, with the Ottoman Empire serving as the epicenter of the Islamic Caliphate for centuries. During its height, the empire represented a dominant force in the Islamic world, both politically and spiritually (Bhagwati & Baird, 2005).

In modern times, Turkiye has emerged as a key player in the global arena, being a founding member of the United Nations, OSCE, OECD, and OIC. The country is also ranked among the top 20 global economies and has established strong ties with both Western



and Eastern nations. Politically, Türkiye is a secular, unitary, democratic republic—a major shift that began with the formal adoption of secularism in 1928, following the dissolution of the Ottoman Empire after World War I (Lapidus & Esposito, 1997; The Oxford History of Islam, 2000). This transformation marked a significant departure from Islamic tradition, especially in the legal domain. Although a civil code was introduced in 1876, laws concerning marriage and divorce were initially based on the Hanafi school of Islamic jurisprudence. These were later codified and enforced under the Law of Family Rights just before the Ottoman collapse. However, with the abolition of the Caliphate and the rise of the Turkish Republic, Islamic family laws were replaced by the 1926 Turkish Civil Code, signaling a decisive shift toward a Western legal system (Anderson, 1976).

A new principle was born, and Turkish society easily agreed to abolish the caliphate and sultanate system in Türkiye because the principle reads that all administrative matters are in the hands of the people. All of this began when Mustafa Kemal became a leader in Türkiye to establish a secular state centered in Anatolia (Goldbach, 2019). Legal reform in Türkiye began in 1923. The country had undergone a massive change, from following Eastern principles to following Westernized principles (Hakim, 2022).

Mustafa Kemal, who popularized secularism in Türkiye, has succeeded in revoking the attachment of the Turkish state to religion (Islam) against the background of Western thought (Nursalam et al., 2024) which aims at cultural modernization by revoking Islamic-based organizations which are referred to as illegal organizations. Not only that, Mustafa Kemal abolished polygamy, recognized equal rights in divorce, and gave equal inheritance rights to women (Arat, 2022).

The transformation of Türkiye in the early 20th century gave rise to three major ideological streams: the nationalist, the Westernist, and the Islamic. Proponents of the Westernist school, such as Tewfik Fikret, attributed the decline of the Turkish state to a failure to modernize and called for the adoption of Western values and education. In contrast, scholars aligned with the Islamic school, including Mehmed Akif, argued that the root cause of the decline was the neglect of Islamic Sharia, asserting that proper implementation of Sharia was essential for national progress. The nationalist school, represented by Zia Gokalp, maintained that Türkiye's stagnation resulted from the Muslim community's resistance to reform and innovation (Eren Topal, 2017). These ideological divisions reflect the broader struggle over Türkiye's identity during its transition from the Ottoman Empire to a modern republic.

Amid these transformations, the legal framework surrounding family law—particularly polygamy—was significantly influenced by the rise of secularism. While several studies have examined polygamy in the context of Turkish law (Andaryuni, 2013; Darmawijaya, 2015; Fitria & Ariani, 2021; Hakim, 2022), this paper specifically explores the impact of secularism on the development of polygamy law from the late Ottoman period to the early Republican era. It investigates how the shift toward a secular legal system, particularly during the leadership of Mustafa Kemal Atatürk, contributed to the repeal of the 1917 Ottoman Law of Family Rights and the enactment of the 1926 Turkish Civil Code, which prohibited polygamy. Accordingly, the central research question addressed in this study is: How has secularism influenced family law—particularly polygamy legislation—in the Turkish legal context?

Research Method

In making scientific work, especially legal research scientific work, it is required to use legal research methods (Sugiyono, 2018). Legal science seeks to present the law integrally in accordance with the needs of the study of legal science itself, so research

methods are needed to obtain a comprehensive research direction (Nurhayati, 2013). In this study, the research method used qualitative-descriptive (Fajar & Achmad, 2007). This type of research used library research (Karuru, 2013) and a juridical-normative research approach (Noor, 2023). In addition, this research required two data collection techniques (Ardiansyah et al., 2023), namely documentation and literature study (Fadli, 2021). The systematic discussion in this article was to first explain the Concept of Turkish Secularism in which there are two sub-discussions: the first, Secularism in Turkiye, and the second, Secularism and Nationalism. Then, this article covered Family Law in Turkiye as well as Polygamy in Turkish law, which included amendments to the polygamy law as well as sanctions for polygamy for those who violate these rules.

Results and Discussion

Meaning of Secularism

The phrases secular, secularist, secularism, and secularization are significant difficulties for Muslims. Literally, secular is derived from the Latin *Saeculum*, which means temporal, worldly, of the time (period), or unrelated to religion and spiritual things (Religion et al., 2023). The Arabic term for secularism, *Ilmaniyah*, is a translation of the English word secularism, which refers to a sense of worldliness. In the Big Indonesian Dictionary, "secularism is an understanding or philosophical view that holds that morality does not need to be based on religious teachings". Meanwhile, secularization is a way of life that separates religious affairs from state affairs (Mu'ammam, 2016). Secularists adhere to secularism's teachings and practice secularization in the life of society and the state (Ibrahim & Nor, 2018). It can be said that secular means worldly or mundane, meaning that the world's problems remain worldly problems, and religious problems (hereafter) remain religious problems. Thus, secular is to release the affairs of this world from religious affairs (Mahsyar et al., 2024).

Turkiye's Background to Implementing Secularism

Secularism, like the Western world (Seth, 2024), the Islamic world is not homogeneous (Potočnik, 2019). Despite the Muslim majority, each country is fundamentally different, "but religious commonality does not imply commonality of social and political traditions" (Khalla, 2005). In this case, it can be seen that Turkiye, having a majority Muslim population, chooses a form of governance that is ideal for a pluralist society, which eventually leads to a secular character by changing the government system from the Turkish Sultanate to the Republic of Turkiye, (Muvid, 2022). However, it does not mean that the secular government is against religion, but Turkiye does not make religion the basis of legitimacy in running its government (Samsuriadi et al., 2023). The Ottoman Turkish armies led by Sultan Muhammad II captured Constantinople, the Byzantine capital, in 1453, marking Turkiye's first encounter with the Western world. Constantinople (Rocchi, 2022) and Istanbul, subsequently called, were cities on both the Asian and European continents. This was the beginning of the Ottoman Turks' golden period, which lasted until the 18th century, with a large empire ranging from Northern Hungary in the west to Iran in the east, from Ukraine in the north to the Indian Ocean in the south (Asy-Syaukani, 2011).

Ottoman Turkiye was successful in creating a huge Empire with a multi-ethnic and multi-religious population. The Caliphate system, with its Islamic idea, displayed a great attitude of tolerance and justice, as seen by the independence and cultural autonomy offered by the Empire to its non-Muslim citizens. "The sultan was also the caliph, meaning

that as the leader of the state, he also held the position of religious leader, a factor that hindered the progress of 19th century Turkiye at a time when the West had mastered science and technology" (Martykánová, 2024).

This condition, as happened in the Dark Ages in medieval Europe, where the King doubled as head of state and head of religion (church), has hampered progress for the European nation (Jaenudin, 2019). The Islamic world (East) experienced its golden age when many gave birth to scientists in various fields of science. The Ottoman Turkish Caliphate was supported by first the power of the ulama (Shaykhul Islam) as the holder of sharia law and second, the power of the army, known as the Janissari army (Qomariyah, 2021). This disciplined military force supported the expansion of the Ottoman Empire, leading to its collapse in the 20th century. Because the TurkiyeEuropeans' development of modern science and technology killed Turkiye's steps in defending its territory, they felt the need for a new concept in rebuilding Turkiye.

Western nationalism grew and developed concurrently with the French Revolution, which, together with the Industrial and Social Revolutions, gave rise to capitalism, colonialism, and modern imperialism. In this context, the pressure of industrial economic needs for raw materials and markets, which resulted in political and economic competition among European countries, prompted the desire to implement a new system in the colonies, including the introduction of a Western education system in order to obtain skilled and cheap labor. Using the slogan "The White Man's Burden" (only Europeans are blessed by God as the best country), Europeans, under the cover of "Mission Sacre, namely a mission to civilize the East, began their modern colonization in the 19th century" (Syahadha, 2020). So, at the beginning of the 20th century, there was a balance of power between the colonial states, where they had established their power in their respective colonies.

In a secular country (Muslim, 2018), the slogan that is constantly exalted is that religion belongs to God, while the state belongs together, in the sense that the King's affairs are left to the King, and God's affairs to God. God's might and the King's power are considered as distinct entities. This phrase is essentially antithetical to Islamic teachings, as the Qur'an (al-Imran 154) states, "All affairs belong to Allah." (al-Hadid 3) states, "He is the beginning and final Lord, Lord of all that is visible and hidden. "He has complete knowledge of everything" (Supriyanto, 2017). From the Islamic perspective, secularism is the modern manifestation of the notion of Al-dahriyat. as in the Qur'an (Surat Al-Jatsiyah 24) reads: They say "this life is nothing but the life of this world; we die, we live, and nothing destroys us but time", And they have no knowledge of it, but only conjecture". By this time, man is in a state of loss (Kementerian Agama, 2020).

The compatibility of Islam and secularism largely depends on how both concepts are interpreted. When religion is viewed through a rigid, conservative lens, it becomes difficult to reconcile with secularism, which emphasizes liberalism, pluralism, and individual freedom. Similarly, if secularism is perceived narrowly and rigidly, it may appear inherently oppositional to religious values. This ideological tension played a central role in the Turkish modernization project led by Mustafa Kemal Atatürk, who dismantled the Ottoman Caliphate and established the secular Turkish Republic. For Atatürk, the West's advancement was attributed to its secularization, and he believed that for Turkey to achieve similar progress, it needed to secularize its religious worldview, legal system, and social structures (Rosenthal, 1968).

The period from 1913 to 1918 marked the decline of the Committee of Union and Progress (CUP), culminating in Sultan Abdul Hamid II's abdication and the reintroduction of the constitution (Ediyono, 2018). This era also signified the end of early Kemalist

reforms and the final stages of Sultan Mahmud's legislative and educational secularization efforts. Among the most transformative Kemalist policies was secularism, which manifested in three key dimensions: the secularization of public life, rejection of European civilizational symbols, and the dismantling of institutionalized religious authority (Hasnahwati, 2020). These reforms led to sweeping legal changes, including the prohibition of religious associations and the replacement of Sharia, even in family matters, with civil codes modeled after Swiss (Bern) and Italian (Rome) systems in 1926. In March 1924, the Ministry of Education unified the national education system, established secular institutions such as a school for professors and preachers at Istanbul University, and abolished traditional madrassas and religious schools (Rohayati, 2020).

The secular reforms initiated during the early Republican era in Turkey aimed to comprehensively reshape society by eliminating the institutional influence of religion. Sharia, which had previously governed matters limited to the family sphere, was entirely abolished and replaced by civil codes adopted from the Swiss (Bern) and Italian (Rome) legal systems in 1926. In March 1924, the Ministry of Education implemented a major educational reform by centralizing and unifying the national curriculum, establishing a secular school for professors and preachers at Istanbul University, and abolishing traditional madrassas and religious schools (Rohayati, 2020). Among the symbolic moves of secularization was the replacement of the Arabic-Persian script with a Latin-based Turkish alphabet. This linguistic reform was not merely technical; it was designed to sever cultural ties with the Islamic and Middle Eastern traditions, thereby fostering a more Westernized national identity.

Further reforms followed, including the 1934 Surname Law, which granted Mustafa Kemal the honorary title "Atatürk," meaning "Father of Turkey"—a name that symbolized the nation's rebirth under secular principles, though he left no descendants to carry it forward (Qur'ani et al., 2022). The secularization of social life also intensified with the suppression of the Tarekat (Darwish) sect in November 1925. Long associated with both religious and social functions under the Ottoman Empire, these orders were dissolved as part of the Kemalist agenda to curb religious influence in public life. The reforms extended into symbolic domains such as religious ceremonies, attire, places of worship, and the authority of religious figures. However, these radical measures provoked widespread unrest, particularly in reaction to the earlier abolition of the Caliphate, highlighting the deep cultural and emotional ties many Turks still held toward Islamic traditions (Rocchi, 2022).

Turkiye's changing face to a contemporary or modern and certainly not the same has been generally recognized, and also the result of these reforms is that a Muslim country or a country with Eastern customs chose to follow Western customs and leave its past behind (Kelly, 2022). There are some famous books about Türkiye published in the 1930s, 1940s, and 1950s: Eleanor Bisbee, 1951 (*The New Turks*); Sir Harry Luke, 1935 (*The Old Türkiye and the New*); Henry Elisha Allen, 1935 (*The Turkish Transformation*); Kurt Ziemke, 1930 (*Die neue Turkei*); Geoffrey Lewis, 1955 (*Modern Türkiye*), and many more. In general, these authors overestimated the rate of change in Turkish society (Topal, 2023). The secularization and nationalization steps taken by Kemal were to change the face of Türkiye as a whole from political, economic, socio-cultural, and other life to adhering to Western principles and becoming a Nasional state, not an Islamic state. This turned out to have a huge impact on Turkish society, especially Muslims, especially on the polygamy law, which originally regulated the permissibility of polygamy even with several conditions to be not allowed at all.

The Background of Polygamy Prohibition and Secularism Factors Influencing Polygamy Laws in Turkiye

Although Turkiye is culturally rooted in Islam, it has become a reference point for Muslim-majority countries that prohibit polygamy through civil legislation. Under the 1917 Ottoman Law of Family Rights, Article 74 permitted polygamy on the condition that husbands treated all spouses fairly. Furthermore, Article 38 granted wives the right to include a stipulation in the marriage contract prohibiting the husband from remarriage, with violation constituting valid grounds for divorce (Baroroh, 2022). However, with the rise of Mustafa Kemal Atatürk and the formation of a secular, national republic, the Ottoman Dynasty was dismantled, and the legal codes of 1876 and 1915–1917 were repealed. These were replaced by the 1926 Turkish Civil Code, which officially outlawed polygamy. The shift signified a decisive break from Islamic legal traditions and the abolition of the caliphate system in Turkey. While polygamy had previously been permitted under strict conditions (Zayyadi, 2020), the new law introduced under Kemalist reforms banned the practice entirely, framing it as a violation of women's dignity and a form of systemic violence (Sajadi, 2019; Karimullah, 2021). This transformation illustrates the profound impact of Kemalist secularism on the Turkish legal system, particularly in redefining gender relations and family law.

Article 93 of the 1926 Turkish Civil Code stipulates that an individual seeking to enter into a new marriage must demonstrate that their prior marriage has been rendered invalid through death, divorce, or annulment. Article 112 reinforces this provision by stating that a marriage is deemed void if one spouse has a permanent disorder or if the spouses are related by blood or close kinship. A void marriage is defined as a union that lacks legal validity, rendering it null from the beginning. The articles highlight the legal principle that a second marriage is contingent upon the conclusive dissolution of the first marriage.

The fourth amendment to the Turkish Civil Code led to a more precise regulation of marriage and polygamy with the introduction of the Turkish Family Law of Cyprus in 1951. This legislation explicitly forbids polygamy and supersedes the previous stipulations of the 1926 Civil Code concerning marriage. Article 8 of the 1951 law states, "Polygamy is absolutely prohibited," and requires individuals to present legal evidence of their unmarried status prior to entering into a new marriage (Youngmevittaya, 2024). Moreover, if it is subsequently determined that an individual was already legally married, the following marriage may be annulled. Article 19A states that a marriage is deemed invalid if either party possesses a pre-existing lawful spouse. Article 8 of the 1959 revision affirms that remarriage is prohibited unless the existing marriage is considered irreparable for valid reasons, including death, annulment, or divorce. These legal developments illustrate a sustained dedication to monogamy and the safeguarding of marriage integrity within the Turkish legal framework.

This amendment, however, states that the husband must bring evidence that his first marriage has been declared invalid if he wants to remarry. If examined according to the text above, it means that the non-fulfillment of the conditions that must be met causes it to be invalid. It turns out that this is in line with the new 2001 regulation Article 130, which states that "whoever wishes to enter into a second marriage, the first marriage must be declared terminated". The text here is simpler than the previous text in that anyone wishing to enter a second marriage must prove that the previous marriage has ended. The word "ended" makes it quite clear that there is no longer any attachment to the previous marriage.

It is clear from these polygamy provisions that Turkish positive law is in line with the Hanafi school and even with the (conventional) Islamic law of several schools of thought. The invalidity of polygamy is something that is still new among classical scholars. The word of Allah SWT states that polygamy is not forbidden, but in certain situations, Turkish Muslims have changed it. The reasoning, which some Turkish scholars have mentioned, is that the Qur'anic mention of polygamy is "monogamy as a remedy to the unrestricted practice of polygamy in the pre-Islamic period in Arabia". Given the Qur'anic conditions, polygamy could not be realized due to the changing social and economic conditions in Turkiye (Sugitanata et al., 2021).

The Qur'ān has permitted polygamy, but given the circumstances, this has been unexpectedly changed by the Muslim community in Turkiye. Judging by this new law in Turkiye, there is a deviation from the long-held Hanafi school of thought. This was stated by Turkish intellectuals, with the reason being that the permissibility of polygamy in the Qur'an is considered a concept towards the principle of monogamy. In comparison, the limitation system (four wives) on polygamy is a kind of regulation that greatly preserves the humanization of women because, during the jahiliyyah period (before the birth of Islam), polygamy had no limits. Even one of the inheritances at that time was women.

The implementation of the polygamy law in Turkiye is motivated by the history of legal reform carried out by Mustafa Kemal (Zaki, 2018). There have been major changes, and Turkiye has moved toward Western laws. The dark history of a government led by a monarch who believed in Islam but behaved in a faraway Islamic way (Halim, 2016). It was a huge disappointment to the people that when Mustafa Kemal introduced a new republican system of government and declared the principle of government for the people, the people gladly accepted the Westernized culture (Irmayanti, 2017). Therefore, although the majority of Turkiye's population is Muslim, the government and its policies are far from Islamic principles. This is evidenced by the prohibition of polygamy. According to Christianity, a religion that is widely practiced in Switzerland, polygamy is prohibited because it is considered to be miserable for a woman. However, this is basically inversely proportional to the situation created by the prohibition of polygamy. Countries that prohibit the practice of polygamy will open up great opportunities for illicit relationships because the state does not make allowances for human nature, which tends to always be dissatisfied with what is owned.

Turkiye's marriage laws make polygamy illegal (Mukkavilli & Prabhakar, 2020). However, there is no explicit provision on sanctions for such violations in The Turkish Family Law of Cyprus 1951 (Tabrani, 2016a). However, the law implicitly states that polygamy is not permitted in Turkiye, and those who violate it are liable to punishment (Marzuki, 2019). Reforms in Eurasian countries have not really affected the region's rural communities (the largest population) except for the family law, where polygamy is prohibited (Madina et al., 2023). Farmers are still able to do so, sometimes even taking their second wives to live with them without being legally married according to Turkish regulations, and often even taking care of their children from the madam (Tabrani, 2016b).

There are several factors that influence the polygamy law in Turkiye. The collapse of the Islamic State in Turkiye, the Republic of Turkiye, was born on the collapse of the Ottoman Turkish caliphate founded by Mustafa Kemal with the principles of secularism, modernism, and nationalism. Kemalist goals wanted the Turkish state to be separated from Eastern customs and turned into Westernized customs. Therefore, the first step for Kemalists to form a Republican state was to abolish the caliphate system in Turkiye, which

was implemented right on November 1, 1922, by the National Supreme Council under the leadership of Mustafa Kemal.

Abolition of Sharia Law in Turkiye: on February 17, 1926, the Committee of Jurists made the Swiss Civil Law instead of the Sharia Law in accordance with the decision of the Supreme National Council this was done to meet the legal needs in Turkiye. On October 04, 1926, the Swiss Civil Law came into force in Turkiye, among other things, prohibiting polygamy or applying monogamy and establishing equal rights between men and women in determining marriage and divorce. The consequence was that Islamic inheritance law was abolished. In addition, inter-religious marriages in Turkiye were allowed or given freedom in inter-religious marriages (Munzir et al., 2022).

Conclusion

After the 1917 Law was no longer used, the regulation of polygamy, which was originally allowed under certain conditions, became absolutely not allowed after the birth of the Turkish Civil Code under the rule of Mustafa Kemal, who brought and spread secularism. It can be concluded that Kemalism had a major influence on the government in the Turkish state, as well as on the laws in the Turkish state, especially the laws on polygamy. By using extra doctrinal reform, Turkiye strictly prohibited the practice of polygamy. Turkiye was created as the first example for other countries that did not allow polygamy. The study of the influence of secularism on Turkish family law and the practice of polygamy provides insight into how ideological changes can shape and influence legal policies and social structures. This study investigates the impact of secularism introducing modern legal principles, such as the prohibition of polygamy, and how these interact with existing cultural traditions and social norms. One of the main implications of this study is the significant influence that secularism has had on the reform of Turkish family law. Secularism, as an ideology that promotes the separation of religion and state, has played a key role in shaping the legal system to focus more on the principles of equality and human rights. The prohibition of polygamy, implemented through the Civil Family Code of 1926, reflects this transformation, where the principle of monogamy became the legal standard adopted to promote gender equality and individual rights. This study highlights how secularism has helped move Turkiye towards a more egalitarian legal system that is in line with international norms regarding individual rights. From a social perspective, this study reveals profound changes in family structures and gender relations as a result of secular reforms. By prohibiting polygamy and implementing the principle of monogamy, Turkiye has experienced a change in the way society views marriage and the family. These reforms not only changed the legal aspects of marriage, but also had an impact on the social values held by the community. The study shows that while there is widespread acceptance of these new principles, there are still challenges in overcoming resistance to these changes, especially among more conservative communities.

This study holds important international relevance, as Turkiye's experience in applying secularism to family law reform presents a potential model for other countries considering similar transformations. As a nation that has managed to modernize its legal system while maintaining cultural continuity, Turkiye offers valuable insights into how legal reform can be implemented without entirely severing ties with existing traditions and societal values. However, several limitations must be acknowledged. A primary limitation lies in the restricted access to legal documents and statistical data, which constrains a comprehensive analysis of the implementation process and the broader societal impacts of the reforms. Moreover, the perspectives included in this study may not

fully represent the diversity of societal views—particularly those from minority communities or groups who may hold contrasting positions on the implications of secular legal frameworks.

Methodological limitations also warrant consideration. This study's normative legal approach, while useful for doctrinal analysis, may not adequately capture the complex social dynamics and cultural shifts resulting from legal reform. Future research would benefit from adopting a more holistic and multidisciplinary framework. Such an approach could involve broader case studies, as well as the incorporation of qualitative methods such as interviews and community-based surveys to better reflect diverse societal experiences. Integrating perspectives from sociology, anthropology, and political science would allow for a more nuanced exploration of how secularism reshapes family law and everyday social practices. Comparative studies with other countries that have undertaken family law reforms or have experienced shifts toward secular governance could also enrich the analysis. Overall, this study contributes meaningfully to understanding the influence of secular ideology on family law and social transformation in Turkiye, and lays the groundwork for future research that can further contextualize and expand upon these findings.

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