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# Integrating Islamic Law and Secular Norms: Tunisia's Code of Personal Status as a Model for Legal Pluralism in Muslim Societies

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**ABSTRACT**

This study analyzes the forms of integration between Islamic law and secular law in Tunisian family law, the legislative process, and state legal argumentation, and their implications for the character of family law as living law. Employing a comparative-historical approach and doctrinal analysis of the Code of Personal Status (CPS) 1956, its amendments, and the Tunisian Constitution of 2014 through thematic categorization and political-legal analysis. The integration manifests in four typologies—substantive, procedural, transformative, and substitutive—which reconstruct Maliki and Hanafi fiqh norms within a modern positive legal framework. The legislative process involves mobilizing political actors, employing dual legitimation strategies (theological-nationalist), and employing state ijtihad through talfiq, takhyir, and maqashid al-shariah. As living law, the CPS has achieved significant social acceptance and strong constitutional legitimacy despite facing resistance from Islamist groups post-2011. The integration of religious and secular law in Tunisia is not total secularization but rather a contextual synthesis that maintains religious legitimacy within the modern state's framework through continuous negotiation among state authority, religion, and social dynamics.

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## 1. INTRODUCTION

The transformation of Islamic family law in the context of modern nation-states represents an inevitable necessity, particularly when such law confronts the evolving social, political, and cultural dynamics of contemporary societies (An-Na'im, 2002; Mir-Hosseini, 2003). Islamic family law cannot be positioned as a static normative system, but rather as a living law that continuously interacts with social realities and state power structures (Bukido et al., 2022; Buskens, 2003; Hallaq, 2009; Sugitanata & Hasan, 2024). Within this context, Tunisia emerges as a particularly significant case for examination, given that this nation implemented radical family law reform through the enactment of Majallat al-Ahwal al-Shakhshiyah or the Code of Personal Status (CPS) in 1956, which continues to be regarded as one of the most progressive models in the Muslim world (M. Charrad, 2001; Voorhoeve, 2014).

Previous research has examined Tunisian family law reform from various perspectives, including the historical formation of law (Borrmans, 1977; M. Charrad, 2001), comparisons with other Muslim countries (Tucker, 2008; Welchman, 2007), and the modernization of Islamic law (Anderson, 1976; Nasir, 2009). However, most of these studies have positioned the CPS merely as a product of legal reform or a symbol of state modernization (Brand, 1998; Perkins, 2014), without comprehensively explaining how the integration between religious law and secular law was systematically constructed within Tunisian family law. Nevertheless, the CPS demonstrates a complex convergence of Islamic norms, modern positive legal principles, and state authority in regulating the family lives of its citizens (Esposito & DeLong-Bas, 2001; Salma et al., 2025; Sonneveld, 2012). The absence of scholarship specifically examining the integration of these two legal systems indicates an academic gap that needs to be addressed.

Based on this gap, this research departs from fundamental questions regarding the forms of integration between Islamic law and secular law in Tunisian family law, how the legislative process and state legal argumentation construct this integration within the CPS, and what implications this integration has for the character of Tunisian Islamic family law as living law. These questions are important for demonstrating that legal integration does not occur naturally, but rather through historical, political, and normative processes that can be scientifically analyzed (Lombardi, 2006; Otto, 2010). To address these issues, this article constructs an argumentative framework by positioning Tunisian family law as the outcome of a dialectic among religious norms, state interests, and the social demands of modern society (Dupret, 2007; Masud et al., 1996). The demonstration of religious and secular legal integration is conducted through normative analysis of the substantive provisions of CPS articles that reflect both Islamic values and secular legal principles, complemented by historical examination of its formation context, and analyzed using living law theory (Ehrlich, 1936; Luntajo & Hasan, 2025; Woodman, 2011) to explain the acceptance and sustainability of this law in social practice.

Theoretically, this research contributes by offering an understanding that the integration of religious and secular law in Islamic family law is not synonymous with secularization or the elimination of sharia values, but rather represents a contextual and functional form of legal synthesis (Baderin, 2003; Masud, 2005). This finding enriches the discourse on Islamic law reform by affirming that Islamic family law can be transformed through mechanisms of normative integration without losing its religious legitimacy within the modern nation-state (An-Na'im, 2008; Vikør, 2005).

## 2. METHODS

This research employs a comparative-historical approach combined with doctrinal legal analysis (Örücü, 2006; Siems, 2014). This approach aims to trace the development and changes in Tunisia's Code du Statut Personnel (CPS) from 1956 to its most recent amendments, while connecting them to the dynamics of integrating religious values and secular principles in family law (Collier, 2011; Mahoney & Rueschemeyer, 2003). Doctrinal analysis examines the CPS as positive law by interpreting the norms, principles, and legal foundations it contains (Hutchinson & Duncan, 2012; Vranken, 2012). The research objects include the Tunisian CPS of 1956, its amendments (particularly the amendments of 1981, 1993, and 2008), the Tunisian Constitution of 2014, as well as family law reform literature (Perkins, 2014; Stepan, 2012). The analysis technique is conducted through thematic categorization of legal provisions (Schreier, 2012) and political-legal reading (Gotanda, 2011; Hirschl, 2004), in order to reveal the policy orientation and legal ideology underlying the integration of religion and secularism in Tunisian family law (Ferrari & Pastorelli, 2013; Yilmaz, 2005).

## 3. RESULTS AND DISCUSSION

### 3.1 Typology of Integration Between Islamic Law and Secular Law In Tunisia's Code of Personal Status

The integration of Islamic law and secular law in Tunisia's Code of Personal Status (CPS) of 1956 constitutes a complex and multidimensional legal phenomenon that cannot be reduced to a simple process of secularization or the elimination of sharia values. On the contrary, this integration reflects a structured legal synthesis through selective mechanisms that draw on classical fiqh norms—particularly the Maliki and Hanafi schools—alongside French civil law principles inherited from the colonial experience (M. Charrad, 2001; Voorhoeve, 2014). To systematically understand the complexity of this integration, this research identifies four main typologies of integration manifested in the substance of the CPS: substantive integration, procedural integration, transformative integration, and substitutive integration. These four typologies demonstrate that the Tunisian state did not adopt a singular approach in formulating family law, but rather employed varied strategies depending on the normative context, social sensitivity, and the state's political agenda (Layish, 2004; Zubaida, 2003).

The first typology is substantive integration, namely the direct adoption of fiqh norms with minor or procedural modifications. In this category, the substance of Islamic law remains the normative foundation, though articulated in modern legal language and codified into the state's legislative structure. The clearest example of substantive integration is visible in the regulations concerning the pillars and conditions of marriage contained in Articles 3 through 17 of the CPS (M. Charrad, 2001). These articles maintain the basic principles of Maliki fiqh regarding the conditions for valid marriage, such as the presence of a guardian, offer and acceptance, and dower (mahr). Nevertheless, the CPS adds modern administrative requirements such as the obligation to register marriages before state officials and the establishment of a minimum marriage age higher than classical fiqh standards—namely, 18 years for women and 20 years for men—as a form of protection against child marriage (Mayer, 2013; Welchman, 2007). Substantive integration is also evident in provisions concerning prohibited marriages, where the CPS maintains the categories of mahram and marriage prohibitions based on lineage, fosterage, and affinity, as in classical fiqh, but adds a dispensation mechanism through the

courts for certain cases that involve medical or social considerations (Esposito & DeLong-Bas, 2001). Thus, substantive integration demonstrates that the state does not abandon fiqh norms but rather adapts them into a positive legal framework, adding procedural and administrative elements that reflect modern state authority (Hallaq, 2009).

The second typology is procedural integration, where the substance of fiqh norms remains recognized in principle, but the implementation mechanism is secularized through the institutionalization of the state judiciary. Procedural integration is most prominent in divorce regulations stipulated in Articles 30 and 31 of the CPS (Sonneveld, 2012). In classical fiqh, both the Maliki and Hanafi schools hold that divorce (talaq) is a prerogative right of the husband that may be exercised unilaterally without external authority (Hallaq, 2009). However, the CPS transforms divorce from a private act into a public legal event that is only valid if decided by a court (M. Charrad, 2001). Article 30 of the CPS explicitly states that divorce must be conducted before a judge, and talaq performed outside court has no legal force. This provision reflects the strong influence of French civil law principles that position divorce as an acte juridique (legal act) requiring state validation (Voorhoeve, 2014). Nevertheless, the CPS does not eliminate the concept of talaq itself, but rather transfers its executive authority from individuals to state judicial institutions (Layish, 2004). Judges within the CPS system have the authority to assess grounds for divorce, consider children's interests, and determine economic compensation for wives divorced without fault—provisions not explicitly regulated in classical fiqh but aligned with maqashid al-shariah principles regarding protection of the vulnerable (Masud, 2005; Baderin, 2003). Thus, procedural integration demonstrates that the state maintains the conceptual legitimacy of fiqh while altering its operational mechanism to ensure state control and protection of women's rights (Mir-Hosseini, 2003).

The third typology is transformative integration, namely, radical reinterpretation of fiqh norms that produces legal conclusions different from, or even contrary to, classical doctrine. The most controversial transformative integration is embodied in Article 18 of the CPS, which explicitly prohibits polygamy and makes it a criminal offense (M. Charrad, 2001; Voorhoeve, 2014). The prohibition of polygamy represents a highly radical legal step in the Muslim world context, considering that both the Maliki and Hanafi schools principally permit polygamy with the condition of justice based on Qur'an 4:3 (Hallaq, 2009). However, the Tunisian state reinterpreted this verse by combining it with Qur'an 4:129, which states that humans will not be able to act justly among wives, even if they desire it greatly (Mir-Hosseini, 2003). Based on a contextual reading of both verses, the Tunisian state argues that justice in polygamy is an empirically impossible condition to achieve, thus the permission for polygamy in Qur'an 4:3 essentially constitutes a veiled prohibition (Mayer, 2013). This argumentation reflects the use of the maqashid al-shariah methodology that emphasizes the objective of protecting women and substantive justice over literal textual interpretation (Masud, 2005). Furthermore, the prohibition of polygamy also aligns with the monogamy principle in French civil law that views marriage as a bilateral contract based on equality and exclusivity (Zubaida, 2003). Thus, transformative integration demonstrates that the state does not merely adopt fiqh norms or secular norms separately, but rather conducts interpretive synthesis that produces new legal norms claiming both religious and modernist legitimacy (An-Na'im, 2008).

The fourth typology is substitutive integration, in which classical fiqh norms are substantially replaced by secular principles, though this replacement remains legitimized through the maqashid al-shariah framework or universal Islamic values. Substitutive integration is most clearly visible in the regulation of spousal relations stipulated in

Article 23 of the CPS (M. Charrad, 2001). In classical fiqh, both the Maliki and Hanafi schools acknowledge the concept of qawwamah (husband's leadership) based on Qur'an 4:34, which has traditionally been interpreted as the husband's authority over the wife in household matters (Hallaq, 2009). However, Article 23 of the CPS shifts the family relations paradigm from a hierarchical pattern toward a partnership-based family model by emphasizing mutual obligations between husband and wife in managing the household, raising children, and managing family finances (Voorhoeve, 2014). This provision reflects the strong influence of the égalité civile principle in French civil law that positions husband and wife as equal partners in the marriage institution (Mayer, 2013). Although the CPS still acknowledges the husband's leadership role in certain aspects, the emphasis on equality and partnership represents a fundamental shift from the classical qawwamah concept (Mir-Hosseini, 2003). Religious legitimacy for this shift is obtained through maqashid al-shariah arguments that emphasize the protection of honor (hifz al-'ird) and justice (al-'adl) as universal Islamic values that must be operationalized in contemporary social contexts (Masud, 2005; Baderin, 2003). Thus, substitutive integration demonstrates that the Tunisian state employs a dual legitimation strategy: on one hand, adopting modern secular principles, while on the other, framing them in maqashid language to maintain the Islamic identity of family law (An-Na'im, 2008; Vikør, 2005).

Overall, these four integration typologies demonstrate that Tunisia's CPS is neither a product of total secularization nor rigid Islamization, but rather the result of complex negotiation among three normative forces: classical fiqh tradition as a source of religious legitimacy, French civil law as a technical and institutional model, and the modern state's political agenda oriented toward gender equality and nation-building (M. Charrad, 2001; Zubaida, 2003). This integration does not occur consistently across all aspects of family law but rather varies according to theological sensitivity, political priorities, and potential social resistance (Layish, 2004). In issues considered less sensitive theologically—such as administrative marriage requirements—the state employs a more conservative substantive integration. Conversely, in issues that constitute modernization agenda priorities—such as polygamy and gender equality—the state employs more radical transformative or substitutive integration (Voorhoeve, 2014). This tiered integration model demonstrates that the Tunisian state strategically manages the tension between religious authority and secular authority through methodological flexibility in family law formation (Hallaq, 2009; Otto, 2010).

Based on the analysis of these four integration typologies—substantive, procedural, transformative, and substitutive—it can be argued that Tunisia's Code of Personal Status represents a strategic and multidimensional model of legal integration, not merely a process of monolithic secularization or Islamization. This integration reflects the Tunisian state's capacity to operationalize legal pluralism in a controlled manner, where Islamic law is not abandoned but rather reconstructed through the selection, reinterpretation, and recontextualization of fiqh norms within a modern positive legal framework. The theoretical significance of this finding lies in the affirmation that the dichotomy between 'religious law' and 'secular law' in Islamic law reform discourse needs to be transcended, as in reality the integration of these two normative systems occurs through complex and contextual mechanisms, not through the total replacement of one system by another. Tunisia's model demonstrates that religious legitimacy and legal modernity are not inherently contradictory, but can be synthesized through the recontextualization of classical Islamic legal methodology to respond to demands for

justice and equality in the context of the modern state. Thus, the integration typologies identified in this research not only explain the technical mechanisms of Tunisian family law formation but also offer an analytical framework for understanding the dynamics of Islamic law reform in other Muslim countries facing similar dilemmas between maintaining religious identity and responding to modernization demands.

### 3.2 Legislative Process and Construction of State Legal Argumentation

The legislative process of Tunisia's Code of Personal Status (CPS) in 1956 cannot be understood merely as a technical-juridical process, but rather as a political project strategically designed to legitimize post-colonial state authority while transforming Tunisian society's social structure (M. Charrad, 2001; Perkins, 2014). The formation of the CPS is an integral part of President Habib Bourguiba's nation-building agenda, oriented toward modernization, controlled secularization, and the consolidation of state power over social institutions previously controlled by traditional religious authorities (Salem, 1984). Within this context, CPS legislation involves three interrelated process dimensions: mobilization of actors and political interests, construction of theological and political legitimation strategies, and the use of state ijtihad methods operationalized through Islamic legal techniques such as talfiq, takhyir, and maqashid al-shariah (Masud et al., 1996; Lombardi, 2006).

The first dimension of the legislative process is the mobilization of actors and political interests that formed the reformist coalition behind the CPS. The main actor in the formation of CPS was Habib Bourguiba himself, who, since before independence, had advocated family law reform as a prerequisite for Tunisia's modernization (Perkins, 2014). Bourguiba viewed traditional family law—controlled by ulama and sharia courts—as the main obstacle to social progress and gender equality, as well as a symbol of backwardness that must be eliminated in the modern state project (Salem, 1984). To legitimize his reform agenda, Bourguiba built a coalition with secular nationalist elites, Tunisian modernist intellectuals, and women activists who had long advocated for women's rights within Tunisia's nationalist framework (M. Charrad, 2001). One key intellectual who influenced Bourguiba's thinking was Tahar Haddad, a Tunisian reformist who in 1930 published the controversial work titled 'Imra'atuna fi al-Shari'ah wa al-Mujtama'' (Our Women in Sharia and Society), which criticized polygamy practices, unilateral divorce, and women's subordination as deviations from true Islamic values (Perkins, 2014; M. Charrad, 2001). Although Haddad died before independence, his ideas served as the intellectual foundation for the family law reform implemented by Bourguiba. On the other hand, Bourguiba strategically ignored or marginalized traditional ulama and religious institutions such as Zaytuna University, which tended to be conservative and opposed radical family law reform (Salem, 1984; Voorhoeve, 2014). This strategy reflects Bourguiba's political decision to position the state, rather than the ulama, as the primary authority for interpreting and implementing Islamic law in modern contexts (Layish, 2004). Additionally, the CPS drafting process also involved legal consultants with French legal education backgrounds, ensuring that the CPS was not only compatible with Islamic law principles but also with the modern civil law system that became Tunisia's post-colonial model (M. Charrad, 2001; Zubaida, 2003).

The second dimension is the construction of theological and political legitimation strategies used to justify family law reform in the eyes of Tunisia's majority Muslim public. Bourguiba recognized that a family law reform too radical to gain religious legitimacy would face massive resistance from society and the ulama; thus, he developed a dual

legitimation strategy combining theological argumentation and nationalist rhetoric (Salem, 1984; Perkins, 2014). From a theological perspective, Bourguiba and his supporters framed the CPS not as a rejection of Islam or as total secularization, but rather as contextual ijtihad consistent with the true spirit of Islam and the demands of modern times (M. Charrad, 2001). In his famous state address in 1956, Bourguiba stated that the CPS 'does not contradict a single verse of the Qur'an, but rather honors the spirit of those verses and applies them according to contemporary conditions' (Haji, 2004; Salem, 1984). This statement reflects Bourguiba's effort to claim interpretive authority over Islam and position the state as a more authoritative interpreter compared to traditional ulama, considered trapped in literalism and taqlid. To strengthen theological legitimacy, the Tunisian government employed a maqashid al-shariah approach emphasizing Islam's universal objectives—such as justice (al-'adl), public interest (al-maslahah), and protection of fundamental human rights—as justification for reinterpreting classical fiqh norms considered no longer suitable for modern social conditions (Baderin, 2003; Masud, 2005). For instance, the prohibition of polygamy was justified through arguments that sharia's purpose is to protect women's honor and welfare, and in modern contexts, polygamy actually contradicts this purpose because it causes injustice and suffering for women (Mir-Hosseini, 2003; Mayer, 2013). From the political side, Bourguiba framed family law reform as part of Tunisia's national liberation project from colonial legacy and traditionalism that hindered national progress (Perkins, 2014). He argued that Tunisia would never achieve economic and social progress if half of its population—women—remained subordinated within patriarchal and unjust family law structures (M. Charrad, 2001; Salem, 1984). Thus, family law reform was positioned not as westernization or betrayal of Islam, but rather as the modernization of Islam itself and as a prerequisite for Tunisia's national renaissance (Perkins, 2014).

The third dimension is the use of state ijtihad methods operationalized through classical Islamic legal techniques recontextualized for reform purposes. The three main methods used in CPS formation are talfiq (an eclectic approach to schools), takhyir (the selection of opinions), and maqashid al-shariah (the objectives of Islamic law) (Masud et al., 1996; Layish, 2004). The talfiq method refers to the practice of combining elements from various fiqh schools to produce new and more suitable legal solutions for contemporary needs (Hallaq, 2009). In the CPS context, talfiq was used to overcome the limitations of the Maliki school—dominant in Tunisia—by adopting opinions from the Hanafi school or even other schools more progressive on certain issues (M. Charrad, 2001). For example, in divorce regulation, the CPS adopted the Maliki school principle that grants wives the right to file for divorce due to dharar (harm or danger), but also integrated the Hanafi school principle that provides judges flexibility to determine divorce based on public interest considerations (Hallaq, 2009; Voorhoeve, 2014). The takhyir method refers to the practice of selecting minority opinions (qaul marjuh) or less popular opinions in the fiqh tradition as the basis for positive law (Masud et al., 1996). In the context of polygamy prohibition, for instance, although the majority of classical ulama permitted polygamy, there existed minority opinions that were highly restrictive or even tended to prohibit polygamy based on a holistic reading of Qur'an 4:3 and 4:129 (Mir-Hosseini, 2003). The Tunisian state adopted this minority opinion and made it the basis of positive law; thus, what had previously been a marginal opinion in the fiqh tradition became a legally binding norm for all of Tunisian society (Layish, 2004). The maqashid al-shariah method, as previously mentioned, was used as an interpretive framework to justify the reinterpretation or even replacement of classical fiqh norms that are no longer

seen as reflecting Islam's universal objectives in modern contexts (Masud, 2005; Baderin, 2003). The maqashid approach enabled the state to argue that although the CPS differs from classical fiqh in many aspects, it remains consistent with the more fundamental spirit and objectives of Islamic sharia (An-Na'im, 2008). The combination of these three methods reflects the Tunisian state's strategy to create symbolic continuity with Islamic legal tradition while implementing substantial discontinuity in the content of legal norms (Hallaq, 2009; Zubaida, 2003).

The CPS legislative process also continued through a series of amendments in 1981, 1993, and 2008, reflecting the state's response to changing social dynamics, pressure from women's movements, and the influence of international human rights norms (M. M. Charrad & Zarrugh, 2014). The 1981 amendment strengthened women's rights in divorce by introducing provisions on economic compensation (mut'ah) that husbands must provide to wives divorced without fault, and by expanding wives' rights to file for divorce in certain situations (Brand, 1998). This amendment was a response to pressure from Tunisian women's movements, which criticized the economic disparities women faced after divorce due to the absence of financial guarantees in family law (M. Charrad, 2001). The 1993 amendment was implemented after Tunisia ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985, aiming to harmonize the CPS with international human rights standards (M. M. Charrad & Zarrugh, 2014). This amendment strengthened women's rights regarding child custody (hadhanah) and post-divorce maintenance, while introducing the principle of the best interests of the child as the primary consideration in court decisions on custody (Brand, 1998; Voorhoeve, 2014). The 2008 amendment further expanded women's rights by granting adopted children inheritance rights—albeit in limited circumstances—and strengthening mothers' rights to obtain child custody under certain conditions (M. M. Charrad & Zarrugh, 2014). Overall, these amendments demonstrate that the CPS is not a static legal product, but rather a continuously evolving legal instrument in accordance with Tunisia's political, social, and normative dynamics (Layish, 2004; Voorhoeve, 2014).

Tunisia's Code of Personal Status legislative process demonstrates that family law formation in modern Muslim states is not merely a technical-juridical process, but rather a political project involving actor mobilization, legitimation construction, and power negotiation between the state and traditional religious authorities. The success of Tunisia in implementing radical family law reform in 1956 was highly dependent on visionary political leadership, dual legitimation strategies combining theological argumentation and nationalist rhetoric, and the use of flexible classical Islamic legal methodology to justify normative changes. Analysis of the legislative process and CPS amendments reveals that the integration of religious and secular law is not a single, static event but an ongoing process responsive to domestic political dynamics, social movement pressure, and international normative influences. State ijtihad methods operationalized through talfiq, takhyir, and maqashid al-shariah demonstrate that the Tunisian state does not claim authority to create entirely new Islamic law, but rather positions itself as an authoritative interpreter, selecting and contextualizing fiqh norms most suitable to national interests and social justice. The implication of this finding is that Islamic family law reform requires not only political will from ruling elites but also the capacity to build convincing theological legitimacy, effective political communication strategies, and methodological flexibility in interpreting Islamic legal sources. Tunisia's experience proves that progressive and sustainable family law reform is possible only when the state

successfully monopolizes interpretive authority over Islamic law while maintaining a commitment to the values of justice, equality, and public welfare.

### 3.3 Integration Implications: Code of Personal Status as Living Law

The concept of living law, developed by Eugen Ehrlich, refers to law that lives and operates effectively in society's social practice, which is not always identical with formal law codified in legislation (Ehrlich, 1936; Woodman, 2011). In the Tunisian context, the fundamental question that needs to be answered is the extent to which the Code of Personal Status (CPS)—as a product of integration between Islamic law and secular law—functions as living law in Tunisia's social practice, judiciary, and political dynamics, particularly post-2011 revolution that transformed the political landscape and power configuration between secular and Islamist groups (Stepan, 2012; Marks, 2015). The implications of legal integration in the CPS as living law can be analyzed through three main dimensions: the level of social acceptance and community practice, judicial practice and judges' interpretation, as well as political resistance and contestation reflecting the ongoing negotiation among state authority, religion, and social dynamics (Voorhoeve, 2014; M. M. Charrad & Zarrugh, 2014).

The first dimension is the level of social acceptance and community practice toward the CPS, reflecting the extent to which CPS norms have been internalized in Tunisian society's legal consciousness. Since its implementation in 1957, the CPS has gradually been accepted by the majority of Tunisian society as the normative framework regulating their family life, although it initially faced resistance from traditionalist groups who viewed it as a deviation from Islamic sharia (Grami, 2008; Voorhoeve, 2014). One indicator of social acceptance toward the CPS is the level of community compliance with key provisions in the CPS, particularly the prohibition of polygamy and the obligation of divorce through courts. A study conducted by Voorhoeve (2014) shows that polygamy practice de facto has drastically decreased in Tunisia since the CPS implementation, and cases of illegal polygamy exposed in courts are relatively rare. This indicates that the prohibition of polygamy functions not only as a formal legal norm but is also widely accepted as a social norm regulating community behavior (Grami, 2008). Similarly, the practice of divorce through courts has become the dominant norm in Tunisian society, replacing the practice of unilateral talaq that was previously common in fiqh tradition (Voorhoeve, 2014). Statistical data from Tunisia's Ministry of Justice shows that the majority of divorce cases are filed through formal legal channels, with the proportion of divorces filed by women continuously increasing since the 1981 and 1993 amendments that strengthened women's rights to file for divorce (M. M. Charrad & Zarrugh, 2014). This phenomenon reflects a transformation in Tunisian society's legal consciousness, in which women increasingly recognize their rights and use formal legal mechanisms to protect their interests in family disputes (Grami, 2008). Nevertheless, social acceptance of the CPS is not uniform across all segments of Tunisian society. A study by Labidi (2007) shows that in some rural areas or more conservative communities, informal practices remain in place that are not fully aligned with the CPS, such as family dispute resolution through customary mechanisms or family mediation without court involvement. However, these informal practices are increasingly marginal and do not replace the CPS's dominance as the main normative framework in Tunisian family law (Voorhoeve, 2014).

The second dimension is judicial practice and judges' interpretation of the CPS, reflecting how the integration of Islamic law and secular law is operationalized in judicial practice. Family courts in Tunisia play a crucial role as institutions that bridge formal CPS

norms, social reality, and community values (Voorhoeve, 2014). In practice, Tunisian judges possess broad interpretive authority in applying the CPS, particularly in cases that require special considerations, such as divorce due to dharar, determination of child custody rights, or determination of post-divorce economic compensation (M. Charrad, 2001; Grami, 2008). A study by Voorhoeve (2014) on Tunisian family court decisions shows that judges tend to use a pragmatic approach in applying the CPS, considering not only formal legal texts but also justice principles, the best interest of the child, and the socio-economic conditions of disputing parties. In divorce cases, for instance, judges have the authority to assess whether there is dharar (harm or danger) experienced by the wife, and in assessing this dharar, judges not only refer to the definition of dharar in classical fiqh but also consider modern standards concerning domestic violence, economic neglect, or treatment degrading to women's dignity (Voorhoeve, 2014; Grami, 2008). In child custody (hadhanah) cases, Tunisian judges consistently apply the principle of the best interests of the child as the primary consideration, reflecting the influence of international human rights norms integrated into the CPS through the 1993 amendment (M. M. Charrad & Zarrugh, 2014). Although the CPS still maintains a general preference for granting custody to mothers—in accordance with Maliki fiqh—judges have the flexibility to deviate from this rule if the child's interests require otherwise (Voorhoeve, 2014). Thus, judicial practice in Tunisia demonstrates that the integration of Islamic law and secular law in the CPS is not mechanical but is mediated by judges' contextual interpretation responsive to substantive justice (Grami, 2008; Hallaq, 2009).

The third dimension is political resistance and contestation of the CPS, reflecting ongoing tension between secular and Islamist groups over the legitimacy and future direction of Tunisian family law. Although the CPS has been an integral part of Tunisia's legal system for over six decades, the CPS's theological and political legitimacy remains an object of debate, particularly post-2011 revolution that opened political space for Islamist groups previously repressed by the Bourguiba and Ben Ali regimes (Stepan, 2012; Marks, 2015). Ennahda Party, as Tunisia's largest Islamist party, initially showed ambivalence toward the CPS, with some of its figures criticizing the CPS as a product of secularism contrary to Islamic sharia and advocating revision of provisions considered un-Islamic, such as the prohibition of polygamy and absolute equality between husband and wife (Marks, 2015; Wolf, 2017). However, massive resistance from Tunisian women's movements and secular groups, who mobilized large-scale demonstrations to defend the CPS and reject attempts to 'Islamize' family law, forced Ennahda to change its position and explicitly state its commitment to maintain the CPS as part of Tunisia's national consensus (M. M. Charrad & Zarrugh, 2014; Stepan, 2012). This political compromise is reflected in Tunisia's 2014 Constitution, which successfully bridged the tension between Tunisia's Islamic identity and civil state principles through careful formulation (Stepan, 2012). Article 1 of the Constitution states that 'Tunisia is a free, independent, and sovereign state; its religion is Islam, its language is Arabic, and its system is republican,' while Article 2 states that 'Tunisia is a civil state, based on citizenship, the will of the people, and the supremacy of law' (M. M. Charrad & Zarrugh, 2014). More importantly, Article 21 of the Constitution explicitly affirms equality between men and women as citizens possessing equal rights and obligations, and Article 46 mandates the state to protect women's rights and promote gender parity in elected institutions (Stepan, 2012; M. M. Charrad & Zarrugh, 2014). These constitutional provisions provide strong constitutional legitimacy for the CPS and make it more difficult to revise the CPS toward a more conservative direction (Stepan, 2012). However, political contestation toward the CPS has not entirely ended. In

2018, President Beji Caid Essebsi proposed an amendment to the CPS to achieve complete equality in inheritance law, which currently still maintains the classical fiqh principle that the male portion is twice the female portion (M. M. Charrad & Zarrugh, 2014). This proposal triggered intense public debate between secular groups supporting complete equality and conservative groups viewing inheritance law changes as a violation of explicit Qur'anic text (Voorhoeve, 2014). Although this proposal has not yet been realized, the debate indicates that Tunisian family law remains an arena of dynamic political and ideological contestation (Stepan, 2012; Marks, 2015).

Overall, analysis of these three dimensions demonstrates that Tunisia's CPS functions as a living law that exists not only as formal legal norms but also in Tunisia's social practice, judiciary, and political dynamics. As living law, the CPS reflects a continuously negotiated balance among state authority, religious authority, and modern society's social demands. The integration between Islamic law and secular law in the CPS is not a stable, final synthesis, but rather an ongoing process responsive to changes in the political configuration, the evolution of community legal consciousness, and pressure from international human rights norms. Tunisia's model demonstrates that Islamic family law can be transformed through normative integration mechanisms without losing its religious legitimacy, provided such transformation is conducted through an inclusive political process and with strong constitutional legitimacy. However, Tunisia's model also shows that integration of religious and secular law never reaches total consensus, and the tension between these two normative systems remains an integral part of law and political dynamics in modern Muslim states.

Analysis of Tunisia's Code of Personal Status as living law reveals that the success of religious and secular law integration is not only determined by normative substance quality or formal legitimacy, but also by the extent to which such law is accepted, practiced, and continuously negotiated in social life, judiciary, and society's politics. The fact that the CPS has survived for over six decades and remains the main normative framework regulating Tunisian family life—despite facing various political and ideological challenges—demonstrates that Tunisia's legal integration has successfully achieved a significant level of social acceptance and strong constitutional legitimacy. However, the persistence of political resistance and contestation, particularly after the 2011 revolution, confirms that integration of religious and secular law never reaches total consensus and remains an arena of ongoing negotiation among various interest groups with different visions of Islam's role in public life. Judicial practice showing judges' flexibility in interpreting the CPS contextually reflects that living law is not identical with law in books, but rather the result of mediation among formal legal texts, social values, and substantive justice considerations in each concrete case. Thus, the theoretical implication of this research is that the living law concept is highly relevant for understanding Islamic family law dynamics in modern Muslim states, where law is no longer merely the product of religious authority or state authority, but rather the result of complex interaction between both, with active participation from civil society, women's movements, and judicial institutions. Tunisia's experience proves that family law reform sustainability requires not only political will and theological legitimacy, but also strong constitutional commitment, active civil society mobilization, and the judicial system's capacity to adapt formal legal norms to continuously changing social realities.

## 4. CONCLUSION

This research affirms that the integration of Islamic law and secular law in Tunisia's Code of Personal Status manifests in four typologies: substantive, procedural, transformative, and substitutive integration. These four typologies demonstrate that the CPS is neither a product of total secularization nor rigid Islamization, but rather a strategic legal synthesis in which Maliki and Hanafi fiqh norms are reconstructed within a modern positive legal framework, with maqashid al-shariah legitimation. This integration reflects the state's capacity to manage legal pluralism in a controlled manner without eliminating the religious identity of Tunisian family law.

The CPS legislative process demonstrates that family law reform constitutes a political project involving actor mobilization, dual legitimation construction (theological and nationalist), and state ijtihad methods through talfiq, takhyir, and maqashid al-shariah. The success of the 1956 CPS legislation and its amendments (1981, 1993, 2008) was highly dependent on Bourguiba's political leadership, the marginalization of traditional ulama, and legitimation strategies that positioned the CPS as Islamic modernization rather than westernization. This process proves that family law transformation requires political will, theological legitimacy, and methodological flexibility in interpreting Islamic legal sources.

As living law, the CPS has achieved significant social acceptance and strong constitutional legitimacy through the 2014 Constitution, despite resistance from Islamist groups following the 2011 revolution. Judicial practice demonstrates that judges interpret the CPS contextually, balancing substantive justice and the best interests of the child. However, the persistence of political contestation—particularly regarding the proposal for complete equality in inheritance—confirms that the integration of religious and secular law constitutes an ongoing negotiation among state authority, religion, and social dynamics. Tunisia's model proves that Islamic family law can be transformed through normative integration mechanisms without losing its religious legitimacy within the modern state framework.

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