

# Islam and the Constitution in Turkey: The Struggle of Islamic Law under the Shadow of Secularism

Fadlan Masykura Setiadi<sup>a,1\*</sup>, Ayat Alsalih<sup>b,2</sup>

<sup>a</sup>Sekolah Tinggi Agama Islam Negeri Mandailing Natal, Jl. Prof. Dr. Andi Hakim Nst, Pidoli Lembang, Mandailing Natal 22977, Indonesia

<sup>b</sup>Süleyman Demirel University, Çünür, Süleyman Demirel Cd., Isparta 32260, Turkey

<sup>1</sup>[fadlanmasykura@stain-madina.ac.id](mailto:fadlanmasykura@stain-madina.ac.id); <sup>2</sup>[ayatalsalih@sdu.edu.tr](mailto:ayatalsalih@sdu.edu.tr)

\*Corresponding Author

## ARTICLE INFORMATION

## ABSTRACT

### Article History

Accepted : October 3, 2024

Revised : December 16, 2024

Accepted : January 04, 2025

### Keywords

Islamic law

secularism

Turkish constitution

Islamist party

The transformation of Islamic law in Turkey underwent significant changes after the adoption of secularism by Mustafa Kemal Atatürk in the early 20<sup>th</sup> century. The legal reforms undertaken led to the separation of religion from the state, removing the Islamic legal system from the constitution, and replacing it with civil law based on Western models. However, in recent decades, the rise of Islamist parties, especially the Justice and Development Party (AKP), has created a new dynamic in the interaction between secularism and Islamic law. This research aims to analyze the transformation of Islamic law in the Turkish constitution, the challenges and opportunities of integrating elements of Islamic law in the modern legal system. Using a qualitative approach based on literature study, this research examines constitutional changes, socio-political dynamics, and implications for the future of Islamic law in Turkey. The results show that although Islamic law does not have a formal position in the Turkish legal system, more flexible policies towards religious expression have provided space for the reinterpretation of Islamic law in social and educational aspects. This study contributes to understanding the complex relationship between secularism and Islam in a country with a strong historical background in both aspects.

## 1. Introduction

Turkey has a long history of transforming Islamic law, particularly after the adoption of secularism by Mustafa Kemal Atatürk in the early 20<sup>th</sup> century (Hannanong et al., 2024). The legal reforms undertaken led to the separation of religion from the state, removing the Islamic legal system from the constitution and replacing it with civil law based on Western models (Nor & Ibrahim, 2023). The debate over the position of Islamic law in Turkey's constitutional system continues to this day, especially with the emergence of Islamist parties trying to reinterpret the role of Islam in state law (Tasgetiren, 2016). The relevance of this study is important to understand the dynamics of the interaction between secularism and Islamic law in the context of modern states.

A number of studies have examined the relationship between Islam and law in Turkey, such as Göle's (1997) study discussing Islamism and secularism in Turkish politics and Yavuz & Öztürk's (2019) study highlighting the rise of moderate Islam under the leadership of Recep Tayyip Erdoğan. However, most studies have focused more on political aspects rather than in-depth legal analysis. This research gap points to the need for a more systematic study of how Islamic law has adapted or experienced marginalization in Turkey's constitutional legal system after the fall of Mustafa Kemal Atatürk's regime.

Based on this gap, this research seeks to answer the main question: How has Islamic law been transformed in the Turkish constitution after the adoption of secularism? What are the challenges and opportunities in integrating elements of Islamic law into Turkey's modern legal system? In doing so, this research offers a new perspective on the relationship between Islamic law and the constitution in the context of a secularized state. The main objective of this research is to explore the evolution of Islamic

law in the legal system in post-Atatürk Turkey, by highlighting the dynamics between secularism and Islamic law and identifying the factors that influenced the constitutional debate regarding Islamic law.

The novelty of this research lies in its interdisciplinary approach that combines historical review, constitutional analysis, and sociological perspectives. The main contribution of this study is that it provides a deeper understanding of the changes in Islamic law in Turkey in the context of secularism and provides insight into the possibility of integrating Islamic elements in a secular legal system. In addition, this research can also serve as a reference for other countries experiencing tensions between religious law and state law in their legal systems.

## 2. Method

This research employed a qualitative method with a library research approach (Connaway & Radford, 2021). Data were collected from various primary and secondary sources, including legal documents, books, scientific journals, as well as articles from relevant websites. The analytical methods used were legal discourse analysis (Cheng & Machin, 2023) and historical approach (Rabindra & Pathak, 2019). Legal discourse analysis was applied to understand how Islamic law is positioned in the Turkish constitutional system, while the historical approach was used to trace the development of Islamic law transformation in the context of social and political changes that occurred. The research process was conducted through several main stages. First, data collection was conducted by identifying and collecting legal sources and academic literature related to Islamic law and secularism in Turkey. Second, the data obtained was categorized based on historical periods, legal policies, and socio-political responses to changes in Islamic law. Furthermore, data analysis was conducted using an interpretative approach to understand the dynamics of interaction between Islamic law and the constitution in various eras of government. Finally, validation of the findings was done by comparing various credible sources and applying data triangulation techniques to ensure the validity of the research results.

## 3. Results

### 3.1. Constitutional Changes and Their Impact on Islamic Law

Constitutional Changes and Their Impact on Islamic Law Constitutional changes in Turkey, particularly those that took place in 1982 following a military coup, reflected an attempt to strengthen the secularism that had been the cornerstone of the state since the era of Mustafa Kemal Atatürk (Özbudun, 2011). The constitution stipulated that the state should be separate from religious influence in policy and law making. However, under the rule of the Justice and Development Party (Turkish: *Adalet ve Kalkınma Partisi* (AKP), English: Justice and Development Party) there have been significant changes that suggest a relaxation of religious expression in the public sphere (Faizin et al., 2021). These measures include lifting the ban on headscarves in educational and governmental institutions, increasing individual freedom of worship, and changes in the education system that allow for an Islamic values-based curriculum.

Secularism in Turkey, or *laiklik*, was first introduced in 1928 and later reinforced in the 1937 constitution (Bülent, 1988). This principle makes Turkey a state without an official religion, where control over religious practices is exercised through state institutions such as the *Diyanet* (Directorate of Religious Affairs) that oversees all religious activities (Öztürk, 2018). However, since the AKP came to power, there have been policy changes that allow more religious expression in the public sphere. Examples include the lifting of the ban on headscarves in educational and government institutions and the increase in individual freedom of worship in public places (Domo et al., 2018).

These changes not only impacted the legal aspects, but also the social and political dynamics in Turkey. On the one hand, this policy creates space for more open religious practice; on the other, there are concerns about the increasing influence of Islam in public policy and education. Erdoğan and the AKP have pushed an Islamization agenda through a more Islamic values-based education curriculum, creating a more religious generation (Yavuz & Öztürk, 2019). This has sparked criticism from secularists who feel marginalized in the process.

These constitutional changes also impacted the application of Islamic law in Turkey. Although Islamic law does not formally apply in the Turkish legal system, the relaxation of religious practices provides room for new interpretations of Islamic family law. According to Witro et al. (2020) that Islamic family law reform in Turkey, inspired by Western ideas such as rationalism and democracy, shows how the country is trying to integrate Islamic values with the modern legal system. This creates a challenge for policymakers to find a middle ground between tradition and modernity.

Overall, the constitutional and policy changes in Turkey illustrate the complex dynamics between secularism and religion. This process reflects not only political change but also broader social change, where societies seek to negotiate their identities in the context of globalization and modernization. As such, Turkey provides an interesting example of how a secular state can respond to societal demands to better accommodate religious values without compromising the basic principles of secularism.

### **3.2. Socio-Political Dynamics and the Role of Islamist Parties**

Socio-Political Dynamics and the Role of Islamist Parties In recent decades, Islamist-oriented parties in Turkey, especially the Justice and Development Party (AKP), have played a central role in shaping the country's socio-political dynamics (Tobing & Nurwijoyo, 2021). Founded in 2001 by Recep Tayyip Erdoğan and his colleagues, the AKP managed to attract widespread support from the public with a pragmatic approach that combined Islamic values with democratic principles (Damayanti & Ardabili, 2024). This success reflects a significant change in Turkey's political landscape, where Islamist parties serve not only as a voice for the Muslim community but also as key actors in political decision-making.

One important dynamic seen is the attempt to strike a balance between secularism and Islam in public policy. Although Turkey has a strong secular tradition, the AKP has pushed for policies that are more inclusive of religious practices (Yabancı, 2022). For example, the lifting of the ban on headscarves in educational and government institutions and the increase in freedom of worship in public spaces show that the party seeks to expand the space for religious expression without changing the country's secular legal basis (Nor & Ibrahim, 2023). This creates an atmosphere where Islamic values can be integrated into people's daily lives without compromising existing secular principles.

In addition, the AKP has also succeeded in increasing the influence of Islamic groups in the economic and education sectors. Pro-business economic policies and support for small and medium enterprises have provided the impetus for rapid economic growth (Tobing & Nurwijoyo, 2021). In the education sector, curriculum changes that are more based on Islamic values allow the younger generation to get an education that reflects their religious identity. This shows that Islamist parties are not only focusing on the political aspect, but also trying to shape people's social identity through education.

However, this development has not gone smoothly. Responses from the secular opposition to the AKP's policies often highlight concerns about the increasing Islamization of the country. Secular parties such as the Republican People's Party (CHP) have criticized the government's policies as leading to a reduction of space for secularism. These tensions create polarization in Turkish society, where groups with different views often engage in heated debates over the future direction of the country.

Based on the data above, it can be seen that the socio-political dynamics triggered by Islamist parties in Turkey reflect the country's complex journey in navigating religious and secular identities. The AKP's success in gaining widespread support shows that Turkish society is looking for alternatives that can accommodate their traditional values while still engaging in modern political processes. How this development plays out in the future will depend largely on the ability of all parties to dialogue and find common ground between different social and political interests.

### **3.3. Implications for the Future of Islamic Law in Turkey**

Implications for the Future of Islamic Law in Turkey The implications for the future of Islamic law in Turkey reflect a complex journey involving the interaction between secularism and religious values. Given the political and social dynamics at play, there are several possible directions for the development of Islamic law in the country. One possibility is the consolidation of secularism (Noviyanti, 2018). If secular political forces gain strength, the secular legal system is likely to remain dominant (Somer, 2012). In this scenario, tighter restrictions on the role of religion in public policy may be imposed. This could happen in response to concerns about the increasing influence of Islam in public life, especially from secularists who feel threatened by policies that are perceived to lead to Islamization. In this context, Islamic law may be increasingly marginalized, and the state will focus on implementing laws that are universal and not tied to religious values.

On the other hand, if Islam-oriented parties such as the AKP continue to hold the reins of government, then we may see a gradual process of Islamization. A more inclusive policy towards Islamic law may develop, albeit within the confines of a democratic system (Yilmaz, 2022). In this case, Islamic law could be integrated into certain aspects of social life and public policy, such as family and inheritance

law (Purnamasari & Prasetyo, 2021). This shows that despite the strong influence of secularism, the space for the application of Islamic values remains and can evolve along with social change.

The third possibility is the search for a new balance between secularism and Islamic law. Turkey may find a more flexible model of secularism, where Islamic law can play a role in certain aspects, especially in the social and family spheres, without losing the secular character of the state (Ulutas, 2010). In this scenario, Islamic law is not only seen as an alternative legal system but also as part of a broader national legal framework (Powell, 2013). This could create space for dialogue between religious traditions and modernity, and allow communities to negotiate their identities in the context of globalization.

The dynamics of Islamic law in Turkey show that this development is strongly influenced by domestic political dynamics and people's responses to government policies. Increasingly strong secular political forces may reinforce the narrative that secularism is the only way to maintain state stability. However, if Islam-oriented parties manage to maintain public support, we could see greater integration of Islamic values in the legal system.

#### 4. Discussion

Constitutional changes in Turkey, especially after the 1982 military coup, reflected the state's efforts to strengthen secularism that had been implemented since the era of Mustafa Kemal Atatürk (Cremer A. Serra, 2016). However, the rise of the Justice and Development Party (AKP) brought significant changes by increasing the space for religious expression in public policy (Yavuz & Öztürk, 2019). This phenomenon suggests a new balance between the principles of secularism and the demands of a more religious society, although Islamic law remains formally absent from Turkey's legal system (Ince, 2018).

In comparison with other countries, Turkey has a unique Islamic law dynamic (Akyol, 2009). Tunisia, for example, retained secularism in its constitution after the 2011 revolution, but accommodated Islam as the state religion, creating a balance between modernism and tradition (McCarthy, 2014). Indonesia, with its Pancasila principles, makes room for religious pluralism in politics without the dominance of Islamic law (Simanjuntak, 2022). Malaysia even has a dual legal system that allows for the application of Islamic law in family and economic aspects (Barlinti, 2011), in contrast to Turkey which maintains an entirely secular legal system.

The socio-political dynamics in Turkey also show how Islamist parties such as the AKP have succeeded in changing the political landscape by incorporating Islamic values in democracy (Cinar, 2006). The lifting of the headscarf ban in educational and government institutions shows the flexibility in the interpretation of secularism (Damayanti & Ardabili, 2024). However, the response of the secular opposition to this policy created a sharper political polarization compared to other countries, such as Indonesia, which has a more stable balance between Islamic and democratic aspirations.

According to Yeşilada (2023), the prospects for Islamic law in Turkey are strongly influenced by the evolving political and social dynamics. If the dominance of secular forces persists, the marginalization of Islamic law is likely to continue. Conversely, if Islamist parties continue to hold the reins of government, the integration of Islamic values in social and educational policies is predicted to strengthen. Morocco can serve as an example of how Islamic law can be harmonized with the modern legal system without abandoning the principle of secularism. In practice, Morocco has successfully accommodated the principle of gender equality in family law, as explained by Wahyudani et al. (2023).

From the findings above, Turkey has the potential to become a model state that is able to balance secular traditions with religious expression in the public sphere. Despite officially adopting the principle of secularism, political developments show that there is room for reinterpretation of Islamic law in various aspects of social life and public policy. The debate on Islamic law in Turkey will continue to evolve, influenced by domestic and global political dynamics, including the rise of Islamic movements and pressure from Western countries to maintain secularism. Negotiations over religious expression in the public sphere reflect the dynamic interaction between secularists and Islamists, where dialog is key to creating a balance between law and public policy. An inclusive approach that allows compromise between the principles of secularism and Islamic values will be a decisive factor in maintaining social and political stability, making Turkey an example for other countries in managing the relationship between religion and state in a modern legal system.

## 5. Conclusion

This research revealed that Islamic law in Turkey has experienced a dynamic journey in the context of strong secularism. Although secular reforms have changed the legal structure of the country, Islamic elements continue to have influence in various aspects of social and political life. The limitation of this study lies in the lack of direct interviews with legal experts in Turkey, which could provide a more in-depth perspective. Therefore, a more empirical follow-up study, including research on public acceptance of Islamic law-related policies, is a key recommendation. Overall, the debate on Islamic law and secularism in Turkey is ongoing and will continue to evolve in line with social, political and legal changes in the country.

## References

- Akyol, M. (2009). What Makes Turkish Islam Unique? In C. Arvanitopoulos (Ed.), *Turkey's Accession to the European Union* (pp. 183–193). Springer Berlin Heidelberg. [https://doi.org/10.1007/978-3-540-88197-1\\_17](https://doi.org/10.1007/978-3-540-88197-1_17)
- Barlinti, Y. S. (2011). Harmonization of Islamic Law in National Legal System: A Comparative Study Between Indonesia Law and Malaysian Law. *Indonesia Law Review*, 1(1), 35. <https://doi.org/10.15742/ilrev.v1n1.95>
- Bülent, D. (1988). Secularism In Turkey. In *Ankara Üniversitesi SBF Dergisi* (Vol. 43, Issue 1, p. 1). [https://doi.org/10.1501/sbfder\\_0000001495](https://doi.org/10.1501/sbfder_0000001495)
- Cheng, L., & Machin, D. (2023). The law and critical discourse studies. *Critical Discourse Studies*, 20(3), 243–255. <https://doi.org/10.1080/17405904.2022.2102520>
- Cinar, M. (2006). Turkey's transformation under the AKP rule. *Muslim World*, 96(3), 469–486. <https://doi.org/10.1111/j.1478-1913.2006.00138.x>
- Connaway, L., & Radford, M. (2021). Research Methods in Library and Information Science. In *Research Methods in Library and Information Science* (6th ed). Libraries Unlimited. <https://doi.org/10.5040/9798216007876>
- Cremer A. Serra. (2016). Turkey Between the Ottoman Empire and the European Union: Shifting Political Authority Through the Constitutional Reform. *Fordham International Law Journal*, 35(1), 279–349.
- Damayanti, R., & Ardabili, F. S. (2024). Faith and Modernity : Navigating the Intersection of Islam , Secularism , and International Relations in Contemporary Turkish Society. *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya*, 9(2), 171–186. <https://doi.org/10.15575/jw.v9i2.38424>
- Domo, A. A., Bachtiar, N., & Zarkasih, Z. (2018). Revolusi Sosial masyarakat turki: Dari Sekularisme Attatur Menuju Islamisme Erdogan. *Sosial Budaya*, 15(2), 83. <https://doi.org/10.24014/sb.v15i2.6696>
- Faizin, A., Mansur, A., & Abdillah, A. M. (2021). Islam, Human Rights, and AKP (Adalet ve Kalkinma Partisi) in Turkey. *Abkam: Jurnal Ilmu Syariah*, 21(2), 279–298.
- Göle, N. (1997). Secularism and Islamism in Turkey: The making of elites and counter-elites. *Middle East Journal*, 51(1), 46–56. <http://www.jstor.org/stable/4329022>
- Hannanong, I., Murniati, Hasaruddin, & Syukur, S. (2024). The history of the birth of the secular Islamic state of Turkey and the idea of the renewal of Mustafa Kemal Atatürk. *Jurnal Ilmu Sosial Dan Pendidikan (JISIP)*, 8(2), 1033–1041. <https://doi.org/10.58258/jisip.v7i1.6630/http>
- Ince, B. (2018). Remapping citizenship in Turkey: Law, identity, and civic virtue 1980-2014. In *The Middle East in Transition: The Centrality of Citizenship* (pp. 49–71). Edward Elgar Publishing. <https://doi.org/10.4337/9781788111133.00009>
- McCarthy, R. (2014). Re-thinking secularism in post-independence Tunisia. *Journal of North African Studies*, 19(5), 733–750. <https://doi.org/10.1080/13629387.2014.917585>
- Nor, M. R. M., & Ibrahim, M. K. (2023). From separation between state and religion to religion-freeing state: the changing faces of secularism in Turkey. *Indonesian Journal of Islam and Muslim Societies*, 13(1), 85–114. <https://doi.org/10.18326/ijims.v13i1>
- Noviyanti, R. (2018). Book Review: “Islam and the Secular State: Negotiating the Future of Sharia.” *MAQASHID Jurnal Hukum Islam*, 1(1), 19–37. <https://doi.org/10.35897/maqashid.v1i1.123>
- Özbudun, E. (2011). *The Constitutional System of Turkey*. Palgrave Macmillan New York. <https://doi.org/https://doi.org/10.1057/9780230337855>
- Öztürk, A. E. (2018). Transformation of the Turkish Diyanet both at Home and Abroad: Three Stages.

- European Journal of Turkish Studies*, 27. <https://doi.org/10.4000/ejts.5944>
- Powell, R. (2013). Evolving Views of Islamic Law in Turkey. *Journal of Law and Religion*, 28(2), 467–487. <https://doi.org/10.1017/S0748081400000114>
- Purnamasari, S., & Prasetyo, A. (2021). Dynamics of State Power and Religious Authority in the Formation of Family Law : Case Study of Indonesia and Malaysia. *Indonesian Journal of Islamic Law*, 04(1), 35–53. <https://doi.org/https://doi.org/10.35719/ijil.v4i1.2058>
- Rabindra, K., & Pathak, R. (2019). Historical Approach to Legal Research. In *Legal Research and Methodology Perspectives, Process and Practice*.
- Simanjuntak, S. H. (2022). Legal Pluralism as Pancasila's Reflection to Realize Substantive Justice in Law Enforcement and Law-Making. *Pancasila: Jurnal Keindonesiaan*, 2(1), 37–48. <https://doi.org/10.52738/pjk.v2i1.88>
- Somer, M. (2012). *Turkey 's New Constitution & Secular Democracy: A Case for Liberty*. 1–10. <https://www.e-ir.info/2012/06/05/turkeys-new-constitution-secular-democracy-a-case-for-religious-and-non-religious-liberties/>
- Tasgetiren, O. (2016). *Rethinking Turkey 's Laicism In Light Of The Debates About Liberal Neutrality*. <https://doi.org/10.13140/RG.2.2.18998.73281>
- Tobing, F. B. L., & Nurwijoyo, A. (2021). Turkish Islam-Nationalism Under AKP: A New Model for the Muslim World? *Global: Jurnal Politik Internasional*, 22(2), 268. <https://doi.org/10.7454/global.v22i2.532>
- Ulutas, U. (2010). Religion and secularism in Turkey: The dilemma of the directorate of religious affairs. *Middle Eastern Studies*, 46(3), 389–399. <https://doi.org/10.1080/00263200902899812>
- Wahyudani, Z., Tarantang, J., Nurrohman, N., & Astarudin, T. (2023). Family Law Reform in Morocco. *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan*, 10(1), 51–64. <https://doi.org/10.32505/qadha.v10i1.5866>
- Witro, D., Hamzah, A., Yulisa, I., Rasidin, M., Syamsarina, S., & Hainadri, H. (2020). Turkish State Family Law: History Reform, Legislation, and Legal Materials. *Politica: Jurnal Hukum Tata Negara Dan Politik Islam*, 7(1), 31–42. <https://doi.org/10.32505/politica.v7i1.1621>
- Yabancı, B. (2022). Religion, Nationalism, and Populism in Turkey Under the AKP. *Middle East Institute, October*, 1–8.
- Yavuz, M. H., & Öztürk, A. E. (2019). Turkish secularism and Islam under the reign of Erdoğan. *Journal of Southeast European and Black Sea*, 19(1), 1–9. <https://doi.org/10.1080/14683857.2019.1580828>
- Yeşilada, B. A. (2023). The AKP, religion, and political values in contemporary Turkey: implications for the future of democracy. *Turkish Studies*, 24(3–4), 593–616. <https://doi.org/10.1080/14683849.2023.2186784>
- Yilmaz, I. (2022). Islamist Legal Hybridity on Government and Opposition. In *Authoritarianism, Informal Law, and Legal Hybridity* (pp. 177–201). [https://doi.org/10.1007/978-981-19-0276-5\\_7](https://doi.org/10.1007/978-981-19-0276-5_7)