

## **A DIVIDED LOYALTY: POLITIZING THE FATWA ON DUAL CITIZENSHIP IN TUNISIA**

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**Abstract:** This paper describes the circulation and impact of the fatwa that was never issued. During 1933 and 1934, tens of thousands of Tunisian Muslims participated in a movement protesting a fatwa allegedly pronounced by sharia court, in which the court was supposed to declare that Muslims who became naturalized French citizens could be buried in Muslim cemeteries. This position contradicts the growing notion among nationalists that naturalization is an act of apostasy and therefore hinders Muslim burial ceremonies. In fact, no fatwa has been officially enacted, due to disagreements between the sheikhs who represent Tunisia's two Sunni factions - the Maliki majority and the Hanafi minority. But rumors need to be a powerful driver of political transformation. This article concludes that there has been a politicization of the fatwa on dual citizenship in Tunisia, and there is no evidence that those who have dual citizenship experience divided loyalties in their country.

**Keywords:** fatwa; dual citizenship; loyalty, Tunisia

### **Introduction**

The fatwa in modern Islamic times is mostly a jurisprudential mechanism, from which it is intended to obtain a legal opinion for a religious or civil dilemma as a social dilemma, but the fatwa is not at the level of a binding legal ruling, nor is it the same as civil law, but rather it is a practical solution, personal diligence, and an intelligent way out. In the absence of the text and the law, and in the end, it is only an answer to what

constitutes legal issues. However, the fatwa has the power of influence, which makes it the time of its issuance, and in periods of social crises, it erupts loudly, receives a remarkable popular response, and becomes the best weapon of confrontation in religious and political conflicts, by cutting off regardless of their mechanisms and the backgrounds that motivate them.

The methodological conception of this work is based on two stages: the first is historical framing, which is necessary to update or synchronize the fatwa, and the second is interpretive, which concerns the various readings of religious expression of the political conflict through the naturalization law, the fatwas and the events resulting from it. should contain the general background, state of the art, significance, and method.

## **Result and Discussion**

On December 20, 1923, the French protectorate issued the naturalization law during the era of Muhammad al-Habib Bey (1922-1929), known as “his subjugation to power.” “The authority claimed that the law would be optional, not compulsory, but it opened the doors of Frenchization for Tunisians who can read and write French well, for conscripts by land and sea, for those married to French women, and for those who have advantages over the French state.” Every foreigner born in Tunisia is considered a French citizen, Or one of his parents was born in the Tunisian state as well, and it takes place automatically starting from the third generation, but those belonging to the fourth generation will be compulsory French.” That the law raises internal problems due to the slow pace of the naturalization process, and its secrecy in many cases. Ali’s people, these people reject him and boycott him as soon as they learn of his naturalization, and despite the severe secrecy that surrounded this process by the administration during the 1920s, researchers were able to reveal what happened, and provide statistics on the naturalization of Muslims starting in 1924, and their number in 1933 may have reached the limits of 710 A Muslim with French citizenship.<sup>1</sup>

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<sup>1</sup> Christopher Barrie, “The Contentious Politics of Nationalism and the Anti-Naturalization Campaign in Tunisia, 1932–1933,” *Nations and Nationalism* 23, no. 4 (2017): 707–725.

At the beginning of the thirties, the issue of naturalization returned to the forefront of internal events when a number of naturalized Tunisians died, and the Muslims refused to bury them in their cemeteries, and each case of these burials became an occasion for violent altercations between Muslims and the security forces, and the first clashes were in the cemetery of Bizerte on December 31, 1932. The demonstrators prevented the burial of the named Shaaban in the Islamic cemetery, and he was buried in the European cemetery, and the position of the people was supported by the fatwa of “Sheikh Idris al-Sharif” in Bizerte calling for a naturalized person to be considered a non-Muslim, and it is not permissible to bury him with Muslims, and this fatwa was one of the main factors in awakening religious and national sentiment the people have.<sup>2</sup>

As for within the authority, this fatwa aroused Abdul Qadir al-Qabili, head of the “Nationalized Association”, who, with the support of Manchour, sent a strongly worded complaint to Moreno, the Minister of the Colonies, and to his friends in France, protesting against the government’s failure, and asking for exemplary punishments to be imposed on the worker and the mufti, and even on the observer. The French Foreign Ministry ordered the general resident in Tunisia to find a solution, so he entrusted the matter to the Grand Vizier who contacted the bey, but the bey refused to put him in this matter, and suggested creating a separate cemetery for the naturalized, but the general resident, in cooperation with the Grand Minister Hadi Lakhweh, was able to obtain On the fatwas of Hanafis and Malikis from the two sheikhs of Islam in the Great Mosque, namely: Muhammad ibn Yusuf al-Nifer and Muhammad al-Tahir ibn Ashour opposing the fatwa of the Sheikh of Bizerte, which was enjoying absolute popular support, the two sheikhs met with Hanafi and Malik scholars on 3 and 4 April 1933, and they submitted fatwa “for the question put to them by the government”, and its content “that the naturalized person is an apostate, but his repentance is acceptable provided that he verbally announces his relinquishment of his French nationality, and at that time it is possible to burial in Islamic cemeteries.”<sup>3</sup>

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<sup>2</sup> Mark I. Choate, “Identity Politics and Political Perception in the European Settlement of Tunisia: The French Colony versus the Italian Colony,” *French Colonial History* 8 (2007): 97–109, <https://doi.org/10.1353/fch.2007.0003>.

<sup>3</sup> Sukarta Sujadi, “The Religio-Political Attitude of The Shaykh Rashīd Ridā In Response to The French Authority In Tunisia by the Colonial Time (A Case Study on the French

Bloody events took place in the capital on April 14 and 15, 1933, as a result of the insistence of the colonial authorities to bury a naturalized person, Musa bin Said Chaouch, in the former Finance Department. A large number of Muslims, and clashes renewed on May 1st in Tunis on the occasion of the burial of Abdelkader Kabaili's wife, and she was buried in the Jallaz cemetery under heavy guard all day and night with the help of the police and the army.<sup>4</sup>

These incidents are added to the fatwa of the scholars of the Great Mosque (*al-Jami' al-A'zam*), which will be invested in a successful political investment by the members of the national movement, especially among them, the lawyer Habib Bourguiba in his articles in the Tunisian Labor newspaper, as they come in the context of previous attacks on the feelings of Muslims, including the erection of the statue of Cardinal Lavignerie in the Stock Exchange Square in front of the largest door From the gates of the old city on November 23, 1925, the Eucharistic Conference was held, a global Christian event organized by the Church in the suburb of Carthage from May 7 to 11, 1930, to clearly confirm the Christian presence in Africa in general and Tunisia in particular.<sup>5</sup>

#### *The first naturalization laws*

The first laws allowing Tunisians to obtain French citizenship were passed in 1887, six years after the establishment of the protectorate. The law of July 29, 1887 specified:<sup>6</sup>

Article 1: May after the age of twenty-one may enjoy the rights of French citizens: a Tunisian citizen who served three years in the French army or navy, or who performed civil duties or functions paid for by the French treasury.

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Law of Naturalization Through Rashīd Ridā's Fatwa," *Al-Jami'ah: Journal of Islamic Studies* 37, no. 63 (1999), <https://doi.org/10.14421/ajis.2022.3763.50-62>.

<sup>4</sup> Kenneth Perkins, *A History of Modern Tunisia* (Cambridge: Cambridge University Press, 2004).

<sup>5</sup> Julia A. Clancy-Smith, *Rebel and Saint: Muslim Notables, Populist Protest, Colonial Encounters (Algeria and Tunisia, 1800–1904)* (Berkeley, 1994).

<sup>6</sup> Jumah Farhan, "French Policy toward Tunisia 1881-1914," *Alustath Journal for Human and Social Science* 1, no. 214 (2015).

Article 2: The three-year period is reduced to one year for the individuals mentioned in the previous article who have rendered exceptional service to France.

Article 3: It will also allow the enjoyment of the rights of French citizens: Tunisian nationals who, without serving in the armed forces or performing civil duties or functions paid by the French Treasury, make France an exceptional service.

Article 4: The application for naturalization shall be submitted to the civil controller of the county in which the applicant resides. The Civil Comptroller automatically performs a review of the applicant's history and character [...] In each case, the results of the investigation, along with the application and supporting documents, are sent to the Resident General, who passes a file with his reasoned opinion to the Department of State.

This law was repealed without substantial amendments by decrees of February 28, 1899, October 2, 1910, August 20, 1914, and November 8, 1921. The 1910 law only expanded the possibility of applying for Tunisian citizenship to French spouses. Women (with children), to holders of higher degrees (at that time, these degrees could only be acquired in France), and those deemed medically unfit to serve in the armed forces.<sup>7</sup>

However, reactions to the 1921 decree, which facilitated obtaining French citizenship for foreigners (mostly Jews and Italians) born in Tunisia, were lively. Some Tunisian newspapers criticized this "attack on Tunisian citizenship" and argued that foreigners in Tunisia could be granted Tunisian citizenship. On the other hand, others have found it more natural for Christian foreigners born in Tunisia to seek French citizenship rather than Tunisians.<sup>8</sup>

The first "official" opposition came from Nasser Bey on April 8, 1922, when he threatened to abdicate if his 18 requests were not met. Point nine demanded "the complete abolition of the Tunisian naturalization

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<sup>7</sup> Jessica M. Marglin, "Citizenship and Nationality in the French Colonial Maghreb," in *Routledge Handbook OF Citizenship in the Middle East and North Africa* (London: Routledge, 2020).

<sup>8</sup> Mary Dewhurst Lewis, "Divided Rule: Sovereignty and Empire in French Tunisia, 1881–1938," in *Mediterranean Historical Review*, 2016, <http://dx.doi.org/10.1080/09518967.2016.1234108>.

decree, whether for those who served in the army or those who did not." However, Bai soon had to withdraw his demands.<sup>9</sup>

*The number of naturalizations*

1891-1898: 23 Jews

1899-1910: 101 Jews

1911-1919: 77 Muslims and 213 Jews

1920: 22 adults and 6 children, including two Jews

1921: 10 adults and 9 children, including 9 Jews

1922: 33 adults and 24 children, including 29 Jews

1923: 39 adults and 25 children, including 30 Jews

This, then, is the entirety of the historical data borderline on the issue of naturalization.<sup>10</sup> How was this law read? How were the events associated with it interpreted? Where does the religious expression of the political conflict between actors in the fields of politics and religion appear?

*The first:* The naturalization law issued in 1923 has an organizational and administrative nature, which means that a naturalized Tunisian, whether he is a Muslim or a Jew, does not lose his religion once he obtains French citizenship, because nationality and religion are two separate matters: the separation of goals and objectives that the author of the law seeks from On the one hand, and those wishing to obtain Tunisian citizenship on the other hand, the protection authority was aiming behind this law to make the French element more numerous and strong, to have more internal control over the country, and to put an end to the conflict between it and Italy over the strategic area of Tunisia, by limiting the increase in Their number, and cut off their greed. As for those wishing to obtain citizenship from Tunisians, they were few of those who joined the French administration, or joined its army, the privileges and temptations pushed them to naturalization, meaning that material gains, and sometimes moral, are the strongest justification for obtaining citizenship, although

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<sup>9</sup> Thomas Willing Balch, "French Colonization in North Africa," *he American Political Science Review* 3, no. 4 (1909): 539–551.

<sup>10</sup> Sakis Borutta, Manuel & Gekas, "A Colonial Sea: The Mediterranean, 1798–1956," *European Review of History* 19, no. 1 (2012): 1–13.

The issue of naturalization - as I mentioned - concerns only a small group of Tunisians, as it was considered at that time an issue of a people threatened in its nationality, nationality and religion, but rather in its civilized existence as a whole. Al-Zaytouna water during the issuance of the naturalization law, stating that naturalization is apostasy and a departure from Islam, because if a Muslim breaks the rule of the Qur'an, he will not remain a Muslim and will be subject to man-made laws in marriage, divorce and inheritance and may carry arms to fight his brothers in religion and homeland, which means that he has become an infidel as soon as he obtains another nationality. In this regard, Saleh Farhat, a lawyer and a member of the New Constitutional Free Party, says: "Nationality and religion to us are nothing but one." Muhammad Shakir, the vice-rector of Al-Azhar Mosque, was given a fatwa. Every person from the Tunisian people, or from any other Islamic people, has naturalized with French nationality, or with a nationality other than his Islamic nationality." It is not clear to us what is in this absolute, and the explicit between nationality and religion from the Islamization of the politician on the one hand, and the politicization of the Islamist on the other hand, "The apostasy is By choosing French citizenship, it will be seen from that moment on as a religious apostasy."

*The second:* If obtaining citizenship has no de facto and legal relationship with religious identity, and the matter of applying sharia is nothing but a cause, then on the other hand it has to do with political identity, and here it seems that the colonial policy turned against the legal principle for which it came, which is protection, so it turned protection into direct colonialism, and it sought to transform direct colonialism into annexation and integration, and it did not succeed in that, and unless it achieved it by force and violence, it tried to realize it through naturalization. Bardo, as Saleh Farhat says, "She recognized for us the respect for our internal sovereignty, and the goal of naturalization is to increase the number of French people in order to overcome the people, and this will make the number of Tunisians decrease, and in doing so undermine the authority of our emir, who will see the number of his subjects decrease."

In this same context, Ahmed Al-Safi wrote a letter of protest to the French President on October 2, 1923, in which he expressed to him the people's deep indignation over this project because it eliminates the religion and patriotism of the Tunisians, and assured him that the treaties

concluded between Tunisia and the French government are committed to respecting the Tunisian judicial personality and that the naturalization project threatens Islam in this country and, therefore, it is a double breach of treaties. Taher El-Haddad discussed the naturalization law from a political and legal point of view in an article for him in Al-Umma newspaper dated November 13, 1923 entitled Naturalization as a breach of the covenant, in which he stated that this law, which came to make Tunisians French, clearly contradicts the treaty of peace and friendship that It was confirmed and specified in the so-called Bardo Treaty, and the issue of naturalization was not suddenly in his belief in the course of French politics.

*The third:* At the beginning of the thirties, and on the occasion of the death of some naturalized people - as we have seen - the phenomenon of religious expression returns to the political struggle again. The dead naturalized from the legal point of view is a Muslim by religion and a French by nationality, but from a legal point of view he is an apostate and an infidel, and Sheikh Idris al-Sharif issued a fatwa in At that time, it was necessary to bury him outside the Islamic cemeteries, which actually happened, and the incidents we referred to previously revealed the centrality of the religious issue in the collective feeling, which enabled the leaders of the national movement, including Habib Bourguiba, from a successful way to frame the masses and direct them politically. For the split in the Executive Committee, and at that time he needed mass support and party leadership, especially since the religious establishment in its various colors remained silent, so the party invested this issue to link patriotism and religion. In fact, this naturalization project, as some of them refer to, had more than one goal, in addition to being a violation of sharia. Islam and subjecting Muslims to man-made laws, the supreme goal is the elimination of their personal components such as language, religion, values and their spiritual dispossession, so they become lifeless corpses led by animal matter to the circle of atheism, and all of this results in the demise of resistance and national sentiment.

When “the people’s voice is heard” and no longer fears the provocations of the protection authority, and the situation in Tunisia deteriorates to an alarming point, the protection authority, which is a secular authority, proceeded to confront the ferment of the people, by issuing a fatwa from the Shari’a Council that apparently permits, at least, the burial of naturalized persons in Islamic cemeteries. It is a fatwa that



addresses the fatwa of Sheikh Idris, which was mainly a religious fatwa, and was invested for political and propaganda purposes, while the fatwa of the official Zaytuna scholars, is a political fatwa, which took on a religious veil, “almost making the country a plunder of fire and a scene of bloodshed” because the people smelled the conspiracy in it.

This prompted the Zaytuna professors to contact Bourguiba, and expressed to him their dissatisfaction with the fatwa and their repudiation of it, “and it seemed to them that it was absurd for the Islamic religion to contain in the core of its texts themselves provisions that would help to destroy it, by opening the door of forgiveness in the faces of renegades from its fold, and those who refuse to submit to His teachings.”<sup>11</sup>

Although the government rejected the official fatwa, and decided to bury the naturalized in a special cemetery in the region of Bourgel, the political actor reaped the popularity and charisma to the extent expressed by the people of anger and denunciation towards the authority of protection, and towards the official clergy “they appeared in the form of cowards, profiteers and accomplices with protection

It is not strange for these incidents to be brought up in the field of political conflict with France, for Bourguiba was “one of the staunch opponents of the call for mourning to be unveiled, and the authority’s call to dismantle the screen at the Alawi Institute” because he believed that these manifestations are Arab and Islamic symbols, and part of the country’s character and identity. In preserving it, the nation is preserved from annihilation and assimilation. Moreover, abandoning it is like giving up nationality, and it is considered in Bourguiba’s political philosophy as “a disgrace to our dignity because this favor stems from adhering to the theory of French supremacy, and the will to impose it in all aspects of life.”

Fourth reading: In the issue of naturalization and the fatwas that accompanied it, there are two issues: the first is the link between nationality and religion, that is, the link of the naturalized to the religious identity of the country, a link placed in the circle of defense of the self-constituents of the nation, including nationality, and hijab, because colonialism sought to dismantle all institutions Patriotism, including the

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<sup>11</sup> Ian Coller, “Barbary and Revolution: France and North Africa, 1789– 1798,” in *French Mediterranean Transnational and Imperial Histories*, ed. Patricia M. E. Lorcin and Todd Shepard (Lincoln: University of Nebraska Press, 2016).

symbolic institution, through the attempt to integrate the civil element into French culture, and mobilizing all means for this: the naturalization law, the Eucharistic conference, the education of girls in nuns' schools, the erection of the statue of Cardinal Lavigerie, in front of one of the gates of the ancient city, the burial of the naturalized in Islamic cemeteries. But the association of nationality with religion ceased after independence, because the political actor believes that the identity of the country is no longer in danger, and that the colonial cause has vanished, so it is not feared that this identity will dissolve and vanish. The revolution is popular in the modern state, so what is left?

The second issue remained, which is the nationality of the cemetery: is the cemetery just a group of pits to bury the dead, or are they thumbnails of the community of the living? But the living usually define their nationalities within the framework of their political identity, while the dead are determined by their religious affiliation, which makes burial of non-Muslims in Islamic cemeteries unacceptable. Totally: in housing, administration, schools, markets in all the open spaces created by modern societies of different religions: tolerance, fraternity, and solidarity, people live in one space that brings them all together without distinction, races, religions and sects mix.<sup>12</sup>

What is permitted for the dead, what is permitted for the living? Why when a believer dies needs a space of his own, as a Muslim, or a Christian, or a Jew? Do bodies have an identity? It is certain in the heavenly religions that the body of the dead is not just a corpse: it has a sacred aspect, in which there is an essence that makes its presence alongside other bodies exposes it to mixing. Therefore, there is a danger of desecration. Especially - that the adjectives that must be left apart should be mixed, if they are to preserve their own virtues. For this reason, Roji Kiwa believes that most of the prohibitions in societies that are said to be primitive, are prohibitions that concern - in the first place - mixing, because it is recognized that direct contact, or indirect, and the parallel presence in the same closed space constitutes in itself a mixture.”

The cemetery is a closed place that applies what applies to places of worship, it has its sanctity and purity, and rituals specific to each religion are practiced in it, and from here it is necessary to separate the

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<sup>12</sup> Dwight L. Ling, “The French Invasion of Tunisia, 1881,” *The Historian* 22, no. 4 (1960): 396–412.

dead of different religious nationalities. Cemeteries: to prevent desecration, and to confirm purity from a doctrinal angle, but from a philosophical, logical, scientific, and even religious point of view, it would be absurd to gather the living and separate the dead in religious societies that call for fraternity, solidarity and dialogue, and call for a comprehensive human rapprochement. Reconsider the relationship of the dead to each other, in light of religious tolerance and the globalization of values.<sup>13</sup>

## Conclusion

The naturalization was placed in two frameworks: *the first* is religious, and it had no effects or dimensions, because all the fatwas will not prevent the naturalization of some Tunisians and foreigners, which confirms that the religious objections were almost fabricated in the twenties, and *the second* was political, which achieved success, as the authority of protection was realized. Part of its goals, which is the transfer of some civil and other elements to French citizenship, which actually enlarged the number of its community compared to other communities, and in this support for its settlement policy, and the Tunisians were very aware of the political dimensions of the naturalization process, and they did not have any weapon in their hands to confront the law, except to force it a palace in the circle of the sacred, which means that entering the French nationality means leaving the religion of the Prophet Muhammad, and the feeling of alienation and alienation that ensues in a society that derives its strength and cohesion from the abundance of his religious passion.

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<sup>13</sup> Donald Vernon Mckay, "The French in Tunisia," *Geographical Review* 3 (1945): 368–390.

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**Conference Program The 6th International Conference on Law and Justice (ICLJ)  
The Faculty of Sharia and Law, UIN Syarif Hidayatullah Jakarta\*  
Sunday-Tuesday, 28-30 August 2022**

**Venue: Sheraton Hotel, Lombok, West Nusa Tenggara**

<b>Time</b>	<b>Sessions</b>
<b>Sunday, 28 August 2022</b>	
18.30-19.00	Registration
19.00-21.00	Diner and Welcoming Ceremony
<b>Monday, 29 August 2022</b>	
08.00-08.20	Opening Session: MC: -Quran Recitation -National Anthem of Indonesia: -Reciting Prayers:
08.20-08.30	Opening Remarks: Prof. Dr. H. Ahmad Tholabi Kharlie, S.Ag., S.H., M.H., M.A. (Dean of Faculty Sharia and Law, UIN Jakarta)
08.30-08.45	Welcoming Speech: Prof. Dr. Amany B. Lubis, Lc.,MA. (Rector of UIN Syarif Hidayatullah Jakarta)
08.45-09.15	Keynote Speech I: Dr Anwar Usman, S.H., M.H (Chief Justice of the Constitutional Court of Republic Indonesia)
09.15-09.45	Keynote Speech 2: Prof. Dr. Widodo Ekatjahjana, S.H., M.Hum (Head of National Law Development Agency Republic of Indonesia - BPHN RI-Indonesia)
09.45-10.00	Tea Break
10.00-10.30	Invited Speaker 1: Prof. DR. Asep Saepuddin Jahar

\* This is a tentative program detail. Updates will be made and informed.

	(Faculty of Sharia and Law, UIN Jakarta)
10.30-11.00	Invited Speaker 2: Prof. Dr. Masykuri Abdillah (Faculty of Sharia and Law, UIN Jakarta)
11.00-11.30	Invited Speaker 3: Prof. Timothy Lindsey (The University of Melbourne, Australia)
11.30-12.00	Invited Speaker 4: Prof. Najma Moosa (University of the Western Cape-South Africa)
12.00-13.00	Lunch Break
14.00-14.30	Invited Speaker 5: Prof. Christian Lange (Utrecht University - Netherland)
14.30-15.00	Invited Speaker 6: Prof. Burkhard Schafer (University of Edinburgh)
15.00-15.30	Tea Breaks
15.30-16.30	Panel Session 1
16.30-17.30	Panel Session 2
17.30-19.30	Diner
19.30-20.30	Panel Session 3
<b>Tuesday, 30 August 2022</b>	<b>Panel Sessions</b>
08.30-09.30	Panel Session 4
09.30-10.30	Panel Session 5
10.30-11.30	Panel Session 6
11.30-11.40	Closing Remarks Windy Triana, MA, Ph.D
11.40-12.40	Lunch Break

The Faculty of Sharia and Law of Syarif Hidayatullah State Islamic University Jakarta  
in collaboration with the Faculty of Sharia of Mataram State Islamic University

# Certificate

Proudly Presented to

## *Saifuddin Herlambang*

In Recognition as

### Presenter

In the event of The 6th International Conference on Law and Justice (ICLJ)  
Sharia towards the Digital World: Breakthroughs in the Fields of Law, Justice, and  
Human Rights in Smart Society 5.0  
Sheraton Hotel, Senggigi, Lombok, West Nusa Tenggara