



Reforming Islamic Family Law in Southeast Asia: A Comparative Study of Indonesia, Malaysia, and Brunei Darussalam

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Received 26-03-2025 | Revised 18-04-2025, 04-05-2025, 15-05-2025 | Accepted 13-06-2025

Abstract

This study examines the reform of Islamic family law in Southeast Asia through a comparative analysis of Indonesia, Malaysia, and Brunei Darussalam. The research addresses the gap between traditional interpretations of Islamic law—often marked by gender bias—and contemporary demands for justice and human rights. The main objective is to explore the dynamics of reform, the driving and inhibiting factors, and the socio-legal implications of changes in family law, particularly concerning marriage, divorce, inheritance, and women's rights. The study employs a comparative legal analysis based on primary sources (statutes, court decisions, fatwas) and secondary literature, guided by the frameworks of Maqāṣid al-sharī'ah and gender justice theory. Findings reveal that Indonesia demonstrates a progressive and decentralized reform trajectory with strong civil society involvement; Malaysia presents a complex dualism between Shari'ah and civil courts; while Brunei enforces a more centralized Shari'ah system under state authority. The implications highlight the need for collaboration among state institutions, religious authorities, and civil society to achieve gender-just, contextually relevant, and ethically grounded reforms in Islamic family law. This study contributes to the scholarly discourse on Islamic law in Southeast Asia and provides policy recommendations for strengthening justice and protection of Muslim families.

Keywords: Islamic Family Law, Reform, Southeast Asia, Gender, Maqāṣid al-sharī'ah

Abstrak

Penelitian ini menganalisis reformasi hukum keluarga Islam di Asia Tenggara melalui studi komparatif di Indonesia, Malaysia, dan Brunei Darussalam. Latar belakang penelitian berangkat dari adanya kesenjangan antara interpretasi tradisional hukum Islam yang kerap mempertahankan bias gender dengan tuntutan kontemporer atas keadilan dan hak asasi manusia. Tujuan penelitian ini adalah memahami dinamika reformasi, faktor pendorong dan penghambat, serta implikasi sosial-hukum dari perubahan hukum keluarga Islam, khususnya terkait perkawinan, perceraian, waris, dan hak-hak perempuan. Metode yang digunakan adalah analisis hukum komparatif berbasis dokumen primer (undang-undang, putusan pengadilan, fatwa) dan literatur sekunder, dipandu oleh kerangka Maqāṣid al-sharī'ah serta teori keadilan gender. Hasil penelitian menunjukkan bahwa Indonesia menampilkan pola reformasi progresif dan desentralistik dengan peran kuat masyarakat sipil; Malaysia memperlihatkan kompleksitas dualisme hukum antara pengadilan syariah dan

perdata; sementara Brunei menegakkan sistem syariah yang lebih terpusat dengan penekanan pada otoritas negara. Implikasi dari temuan ini menegaskan pentingnya kolaborasi antara negara, otoritas agama, dan masyarakat sipil dalam mendorong reformasi hukum keluarga yang lebih adil gender, kontekstual, serta tetap berakar pada etika Islam. Penelitian ini berkontribusi pada pengayaan kajian hukum Islam di Asia Tenggara sekaligus memberikan rekomendasi kebijakan bagi pembuat regulasi dalam memperkuat keadilan dan perlindungan hak keluarga Muslim.

Kata kunci: Hukum Keluarga Islam, Reformasi, Asia Tenggara, Gender, Maqāṣid al-sharī‘ah

Introduction

This report provides a comprehensive analysis of the reform trajectories within Islamic family law across three key Southeast Asian nations: Indonesia, Malaysia, and Brunei Darussalam. It examines the historical evolution of these legal systems, the contemporary challenges they face, and the diverse approaches to reform, with a particular focus on issues of gender justice and human rights.

The introduction of Islam in Southeast Asia, beginning around the 13th century with the arrival of Arab traders and missionaries, marked the genesis of a distinct legal landscape. This gradual dissemination led to the establishment of various Islamic kingdoms and sultanates, each integrating Islamic practices into their existing societal structures. Unlike a monolithic imposition, the implementation of Islamic law in the region was characterized by a unique blending with local customs and traditions, often referred to as *adat* law.¹

This syncretism resulted in a distinct form of Islam, sometimes termed "Malay Islam," which diverges from more orthodox interpretations found in the Middle East.² This historical adaptation underscores a foundational characteristic of Islamic law in Southeast Asia: its inherent flexibility and responsiveness to local contexts. The ongoing negotiation between Islamic law, customary law, and state law is a direct continuation of this historical process.

The legal traditions of Southeast Asia are inherently pluralistic, with Islamic law (Shari'ah) co-existing alongside state law and

¹ Sarah Lee, "Shariah Law: A Deep Dive into Southeast Asia's Legal Landscape," accessed July 28, 2025, <https://www.numberanalytics.com/blog/shariah-law-southeast-asia-deep-dive>.

² Sarah Lee, "Understanding Islamic Law in Southeast Asia," accessed July 28, 2025, <https://www.numberanalytics.com/blog/islamic-law-in-southeast-asia>.

customary law. This legal pluralism was further shaped by colonial legacies. The British colonial influence, shared by Malaysia and Brunei, and the Dutch legacy in Indonesia, led to the establishment of dual-track legal systems. These systems typically comprise civil courts, which handle general legal matters, and Shari'ah courts, which possess jurisdiction primarily over Muslim personal and family affairs, including marriage, divorce, and inheritance.³ This bifurcation of legal authority reflects the complex interplay between religious, customary, and secular legal traditions.

Islamic law holds profound significance in the lives of Muslims across Southeast Asia. It is regarded as divine law, derived from the foundational texts of the Quran and Hadith (the sayings and actions of Prophet Muhammad), and its implementation is perceived as a pathway to spiritual and moral guidance. Consequently, it governs a wide array of personal and social matters, extending beyond mere ritualistic worship to encompass family dynamics, community relations, and even economic activities.⁴

The *Maqasid al-shariah*, or the five objectives of Islamic law—preservation of religion, life, intellect, lineage, and property—serve as primary motivations for its implementation and policy decisions in the region, particularly within the commercial sphere.⁵

Despite its deep roots and pervasive influence, the implementation of Islamic law in Southeast Asia is not without its challenges. These include diverse interpretations and applications across different jurisdictions, concerns regarding human rights (such as the application of *hudud* punishments), and the ongoing need to reconcile Islamic principles with evolving cultural and social norms.⁶ The varying degrees to which countries like Brunei Darussalam, Indonesia, and Malaysia have integrated Shari'ah law into their national legal systems further complicate this landscape.⁷

A significant catalyst for reform efforts is the persistent issue of gender inequality within the family context, a pervasive concern in

³ Lee, "Shariah Law."

⁴ Lee, "Understanding Islamic Law in Southeast Asia."

⁵ Jeong Chun Phuoc, "Sharī'ah Law in South East Asian (ASEAN) Region: Business and Religion – An Exploratory Introduction," *GlobaLex / Foreign and International Law Research*, n.d., accessed July 28, 2025, <https://www.nyulawglobal.org/globalex>.

⁶ Lee, "Understanding Islamic Law in Southeast Asia."

⁷ Lee, "Shariah Law."

many Muslim societies globally.⁸ Women's rights advocates and liberation movements have increasingly voiced the need for elevated social and legal status for women.⁹ Specific areas of contention include disparities in inheritance laws, which often grant females half the share of their male siblings, the unilateral nature of divorce procedures for men (*talaq*)¹⁰, the regulation of polygamy¹¹, and the challenges women face in securing maintenance rights post-divorce.¹² These issues highlight a fundamental tension between traditional interpretations of divine law and contemporary societal demands for justice, particularly concerning human rights and gender equality. This tension necessitates a critical re-evaluation of how religious texts are interpreted and applied in modern contexts, driving the search for progressive scholarship and the application of ethical frameworks like *Maqasid al-shariah* to bridge perceived gaps.

The imperative for continuous adjustment and reinterpretation of Islamic family law is also driven by the broader dynamics of globalization, modernization, and shifting social values.¹³ As societies evolve, legal frameworks must remain relevant and responsive to new challenges, ensuring that the law continues to serve the well-being of individuals and communities. This ongoing process of adaptation and reform is crucial for Islamic family law to maintain its legitimacy and effectiveness in the contemporary world.

This comparative study aims to address the following research questions:

1. How have Islamic family law frameworks in Indonesia, Malaysia, and Brunei Darussalam evolved in response to historical, social, and political changes?

⁸ Zainah Anwar dan Jana S Rumminger, "Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform," *Wash. & Lee L. Rev.* 64 (2007): 1529.

⁹ Zanariah Noor and Tanjung Malim, *Gender Justice and Islamic Family Law Reform in Malaysia*, Fakulti Sains Sosial dan Kemanusiaan, Universiti Pendidikan Sultan Idria, 2008.

¹⁰ Lee, "Understanding Islamic Law in Southeast Asia."

¹¹ Mark Cammack dkk., "Legislating Social Change in an Islamic Society-Indonesia's Marriage Law," *Am. J. Comp. L.* 44 (1996): 45.

¹² "Religious Issues | International Academy of Family Lawyers | IAFL," accessed July 28, 2025, <https://www.iafl.com/resources/articles/religious-issues/>.

¹³ Sampurna Siregar, "Moderation of Islamic Family Law in Southeast Asia," *El-Sirry: Jurnal Hukum Islam Dan Sosial* 2, no. 2 (2024): 57–70.

2. What are the key areas of reform and ongoing debates within Islamic family law in each country, particularly concerning marriage, divorce, inheritance, and women's rights?
3. What are the roles and influences of state institutions, religious authorities, and civil society organizations in driving or impeding Islamic family law reform in these three nations?
4. To what extent have principles of *Maqasid al-shariah* and human rights been integrated into Islamic family law reforms, and with what outcomes for gender justice?
5. What commonalities and divergences exist in the reform trajectories of Indonesia, Malaysia, and Brunei Darussalam, and what implications do these hold for future legal development in the region?

The primary objective of this study is to comparatively analyze the legal frameworks, reform dynamics, and socio-legal implications of Islamic family law in Indonesia, Malaysia, and Brunei Darussalam, with a particular focus on gender justice and human rights integration.

The geographical scope of this research is confined to Indonesia, Malaysia, and Brunei Darussalam. These three nations are selected due to their Muslim-majority populations and their diverse, yet interconnected, approaches to the implementation and reform of Islamic law.¹⁴ The thematic scope is centered on Islamic family law, encompassing critical aspects such as marriage, divorce, inheritance, and the broader spectrum of gender-related issues within the context of legal reform.

This research endeavors to make several significant contributions. Academically, it seeks to deepen the scholarly understanding of Islamic law in Southeast Asia, building upon the foundational contributions of prominent scholars like M.B. Hooker, Tim Lindsey, and Kerstin Steiner, who have extensively documented Islamic legal practice and its manifestation in state structures.¹⁵ By providing a comparative lens, the study aims to offer more nuanced

¹⁴ Lee, "Shariah Law."

¹⁵ Melissa Crouch, "Islamic Law and Society in Southeast Asia," dalam *The Oxford Handbook of Islamic Law*, oleh Melissa Crouch, ed. oleh Anver M. Emon dan Rumea Ahmed (Oxford University Press, 2018), <https://doi.org/10.1093/oxfordhb/9780199679010.013.44>.

insights into the complexities faced by Muslim families in these areas, addressing the identified gap in comprehensive solutions for pressing issues within Islamic family law. From a policy perspective, the findings are intended to offer valuable insights for policymakers and legal practitioners. By illuminating successful strategies and persistent challenges, the research can inform the development of more responsive, equitable, and contextually appropriate legal frameworks that genuinely address the real-life needs of Muslim families in the region.¹⁶ Socially, by highlighting the dynamics of reform and the efforts to integrate principles of justice and human rights, the study contributes to ongoing dialogue and advocacy for enhanced gender justice and human rights within Islamic legal systems.

Methods

This section outlines the methodological approach employed for the comparative study of Islamic family law reform in Indonesia, Malaysia, and Brunei Darussalam.

Research Design

The research adopts a comparative legal analysis design, focusing on the statutory laws, significant court decisions, and influential religious edicts (fatwas) that shape Islamic family law in each country. This approach allows for a systematic examination of the similarities and differences in legal frameworks and their practical application across the three jurisdictions. The study will also incorporate a socio-legal perspective to understand the broader societal context and impact of these laws.

Data Collection

Data collection primarily involves a comprehensive review of primary legal documents, including national constitutions, specific Islamic family law statutes, and relevant court judgments from Shari'ah and civil courts. This is complemented by an extensive review of secondary academic literature, including scholarly articles, books, and reports on Islamic family law, legal pluralism, gender studies, and

¹⁶ Khuluq Dhaifallah Muhammad Agha et al., "Unravelling the Threads: Bibliometric Exploration of Islamic Family Law Research in Southeast Asia (2004-2024)," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 24, no. 2 (2024): 345–59.

human rights in Southeast Asia. This dual approach ensures both legal precision and contextual depth.

Analytical Frameworks

Two primary analytical frameworks will guide the interpretation of the collected data:

1. *Maqasid al-shariah* (Objectives of Islamic Law): This framework will be utilized to assess how reforms align with the higher objectives of Islamic law, such as the preservation of religion, life, intellect, lineage, and property. It provides a normative lens to evaluate the ethical and practical implications of legal provisions and reforms, particularly in promoting justice and human well-being.
2. Gender Justice Frameworks: This approach critically examines how Islamic family laws and their reforms impact the rights, roles, and status of women within the family and society.¹⁷ It helps identify discriminatory provisions and assess the extent to which reforms contribute to genuine equality and fairness.

Comparative Approach

The comparative analysis will involve both horizontal and diagonal comparisons.¹⁸ Horizontal comparison will examine the similarities and differences in specific legal provisions and their application across Indonesia, Malaysia, and Brunei Darussalam. Diagonal comparison will delve into the underlying factors, such as historical legacies, political systems, religious interpretations, and civil society engagements, that explain the observed variations in reform trajectories. This multi-faceted comparative method enables a nuanced understanding of the unique legal and socio-political dynamics at play in each country.

Results

¹⁷ Anwar and Rumminger, "Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform."

¹⁸ Syahrul Adam and Ade Irma Imamah, *Woman Rights to Refuse Rujuk: Gender Equity on Islamic Family Law in Indonesia, Malaysia, and Brunei Darussalam*, 2020.

This section presents the findings of the comparative study, detailing the legal frameworks, reform drivers, gender justice implications, and current debates within Islamic family law in Indonesia, Malaysia, and Brunei Darussalam.

Indonesia: Pluralism, Decentralization, and Progressive Interpretations

Indonesia, as the world's most populous Muslim-majority nation, has a distinctive approach to Islamic family law, characterized by a dynamic interplay of national legislation, regional variations, and a relatively progressive judiciary. The historical evolution of its Islamic legal structure can be traced back to a late 19th-century Dutch decree establishing Islamic tribunals on Java and Madura, which initially had limited jurisdiction over matrimonial and inheritance disputes.¹⁹ Post-independence, the Islamic judiciary was placed under the Ministry of Religion, leading to its expansion, and later, the Religious Judicature Act of 1989 statutorily guaranteed the existence of these courts and vested them with enforcement powers. In 2004, administrative supervision of the Islamic judiciary was transferred to the Supreme Court.²⁰

Key legislative milestones include the Marriage Act of 1974 and the Compilation of Islamic Law (KHI) of 1991.²¹ The Marriage Act of 1974 was a significant legislative revision, aiming to limit arbitrary divorce and polygamy and reduce child marriage by requiring judicial approval and statutory grounds. It also set minimum marriage ages (16 for girls, 19 for boys), which was later amended to 19 for both genders in 2019.²² The KHI, drafted by scholars and judges, codified Islamic law adapted to Indonesia's social and cultural conditions, serving as a main reference for Religious Courts on marriage, inheritance, and religious endowments.²³

Indonesia's Islamic law system is marked by its pluralistic and decentralized nature. The post-Suharto era, particularly since 1998, has

¹⁹ Jan Michiel Otto, "Sharia and National Law in Indonesia," in *Sharia Incorporated*, by Jan Michiel Otto (Amsterdam University Press, 2012), <https://doi.org/10.1515/9789400600171-013>.

²⁰ Mark E Cammack and R Michael Feener, "The Islamic Legal System in Indonesia," *Pac. Rim L. & Pol'y J.* 21 (2012): 13.

²¹ Otto, "Sharia and National Law in Indonesia."

²² Cammack et al., "Legislating Social Change in an Islamic Society-Indonesia's Marriage Law."

²³ Otto, "Sharia and National Law in Indonesia."

seen a "contested accommodation" of Islamic norms, where they are selectively engaged and renegotiated within democratic institutions.²⁴ Law No. 22 of 1999 on Regional Autonomy allowed local governments to adopt Shari'ah-based regulations, leading to variations across provinces, most notably in Aceh, which was granted special autonomy to enforce Islamic law more comprehensively.²⁵ This decentralization has, at times, led to "productive intolerance," where majority-driven morality influences public policy.²⁶

Reform in Indonesia is driven by a combination of state institutions, religious authorities, and active civil society organizations. The Religious Courts, despite broader judicial challenges, have been lauded for their reforms in improving access to justice, particularly for women and the poor, by waiving court fees and legalizing marriages to facilitate access to social welfare programs.²⁷

The Supreme Court has also issued numerous circulars (SEMAs) integrating *Maqasid al-shariah* principles into Islamic civil law, covering aspects like human rights, equality, and women's rights.²⁸ Women's advocacy groups such as Kalayanamitra, LBH-APIK, Mitra Perempuan, Rifka Annisa, and PEKKA have played a crucial role in advocating for legal reforms, including amendments to the Marriage Law and KHI, and supporting the rejection of child marriage.²⁹ The KUPI (Congress of Indonesian Women Ulama) fatwa against child marriage in 2017 exemplifies the influence of religious scholars in driving progressive change.

²⁴ Krismono Krismono et al., "Negotiating Islam, Democracy and Pluralism: Islamic Politics and the State in Post-Reform Indonesia," *Mazahib* 24, no. 1 (2025): 101–30.

²⁵ Lee, "Shariah Law."

²⁶ Krismono et al., "Negotiating Islam, Democracy and Pluralism: Islamic Politics and the State in Post-Reform Indonesia."

²⁷ Cate Sumner and Timothy Lindsey, *Courting Reform: Indonesia's Islamic Courts and Justice for the Poor*, 1. ed, Lowy Institute Paper 31 (Lowy Inst. for Internat. Policy, 2010).

²⁸ Fauzan Arrasyid et al., "Islamic Family Law Reform in Indonesia Through Supreme Court Circulars: A Maqasid Sharia Perspective," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 6, no. 2 (2024): 208, <https://doi.org/10.30659/jua.v6i2.29236>.

²⁹ Queen Adila and Zamzami Ahmad, "The Dynamics of Women's Involvement in the Formulation of Islamic Family Law in Indonesia: Analysis of Law No. 1 of 1974," *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsyiyah* 8, no. 2 (2025): 343–58, <https://doi.org/10.58824/mediasas.v8i2.345>.

In terms of gender justice and human rights, Indonesia tends towards more flexible and progressive interpretations.³⁰ Reforms reflect a conscious effort to balance Shari'ah with evolving societal needs, upholding justice and integrating universal human rights. This is evident in provisions concerning the minimum age of marriage, the status of children born out of wedlock, and the regulation of polygamy.³¹ Efforts are also being made to implement concepts like *iddah* (waiting period) for husbands to promote equality of rights and obligations.³² However, resistance from conservative groups adhering to traditional interpretations remains.³³

Current debates in Indonesia include the high divorce rates, which reached an all-time high in 2022, indicating a growing acceptance of the practice but also highlighting the financial vulnerability of women post-divorce. Mediation is compulsory for all divorce petitions in Religious Courts, aiming for more flexible, less costly, and less time-consuming dispute resolution.³⁴

Malaysia: Dualism, Centralization, and Jurisdictional Complexities

Malaysia operates a distinctive dual legal system, where civil courts based on common law coexist with Shari'ah courts that apply Islamic law.³⁵ This structure emerged from Malaysia's multicultural society and its British colonial past.³⁶ While civil courts handle general matters for all citizens, Shari'ah courts have jurisdiction over personal

³⁰ Arifin Nugroho and Ratna Dewi, "Enhancing Mechanisms for Protecting Women's Rights within Islamic Family Law: A Comparative Study of Indonesia and Middle Eastern Practices," *Indonesian Journal of Islamic Law* 3, no. 2 (2024): 1–19, <https://doi.org/10.35719/ijil.v3i2.2005>.

³¹ Mughniatul Ilma, "Islamic Legal Reform and the Principle of Moderation: A Study of Indonesian Family Law," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 15, no. 1 (2025).

³² Ruby Isla et al., "Islamic Family Law Reform: Iddah for Husbands as an Effort for Gender Equality," *Indonesian Journal of Islamic Law* 6, no. 1 (2023): 1–16.

³³ Nugroho and Dewi, "Enhancing Mechanisms for Protecting Women's Rights within Islamic Family Law."

³⁴ Azwina Wati Abdull Manaf et al., "Mediation in Islam," *Advanced Science Letters* 24, no. 7 (2018): 5171–73, <https://doi.org/10.1166/asl.2018.11297>.

³⁵ Lee, "Shariah Law."

³⁶ Mohd Amir Bin Abdullah, "Analyzing the Dynamics Between Sharia Law and Civil Law in Governing Divorce Proceedings Among Muslims in Malaysia and Comparing Legal Outcomes," *Law and Economy* 3, no. 4 (2024): 29–38, <https://doi.org/10.56397/LE.2024.04.05>.

and family law for Muslims, including marriage, divorce, and inheritance.³⁷ Islamic law is implemented at the state level, with each of the 13 states having its own religious laws and courts.³⁸ The Federal Constitution designates Islam as the "religion of the Federation" but allows other religions to be practiced in peace and harmony. Sultans serve as the "Heads of Islam" in their respective states, advised by state muftis and Islamic religious councils.³⁹

The Islamic Family Law (Federal Territories) Act of 1984 is a pivotal piece of legislation governing Muslim family matters.⁴⁰ It stipulates that every marriage must be officially registered.⁴¹ The National Fatwa Council, comprising state muftis and Islamic scholars, issues religious edicts (fatwas) that are legally binding for Muslims, though their enforcement depends on state Islamic authorities.⁴²

Reform efforts in Malaysia are influenced by state policies that promote Sunni Islam and the significant advocacy of women's organizations. These organizations have been vocal in demanding comprehensive reform of the Islamic Family Law (Federal Territories) Act of 1984, developing draft model family laws grounded in Islamic principles of equality and justice.¹⁵ They also conduct national public education campaigns to build support for reform.¹⁵ Despite these efforts, the "Islamization" of politics and conservative interpretations continue to pose challenges.⁴³

Gender justice in Malaysia's Islamic family law is often framed around "reciprocal" or "complementary" rights rather than "equal" rights. This framework can restrict women's personal rights, particularly through the "maintenance-for-obedience" principle, where

³⁷ Lee, "Shariah Law."

³⁸ Lee, "Understanding Islamic Law in Southeast Asia."

³⁹ "Malaysia The Constitution Protects Freedom of Religion," n.d., <https://2009-2017.state.gov/documents/organization/171657.pdf>.

⁴⁰ Anwar and Rumminger, "Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform."

⁴¹ Ade Khoirunnisa et al., "Comparison of Islamic Family Law in Malaysia and Indonesia," *An-Nisa: Journal of Islamic Family Law* 2, no. 2 (2025): 109–20, <https://doi.org/10.63142/an-nisa.v2i2.226>.

⁴² Musawah | A. Global Movement For Equality and Justice in the Muslim Family, *Malaysia - Campaign for Justice in Muslim Family Laws*, n.d., accessed July 28, 2025, <https://campaignforjustice.musawah.org/repository/malaysia/>.

⁴³ "Malaysia," *United States Department of State*, n.d., accessed July 28, 2025, <https://www.state.gov/reports/2018-report-on-international-religious-freedom/malaysia/>.

a wife risks losing financial maintenance if she is deemed disobedient (*nusyuz*). While the Islamic Family Law Act has been amended to be more gender-neutral, this has sometimes resulted in enhanced rights for men (e.g., reduced burden of proof for polygamy, ability to freeze wives' assets) without corresponding improvements for women, potentially placing women in a more vulnerable position. The minimum marriage age for Muslim girls is 16 and for boys is 18, with Shari'ah court permission allowing for lower ages.⁴⁴ Critiques also extend to the lack of legal protection or remedies for women against errant husbands in traditional interpretations.⁴⁵ The integration of human rights is selectively covered by Islamic law, with the broader scope covered by federal civil law.⁴⁶

Current debates in Malaysia frequently revolve around jurisdictional conflicts between civil and Shari'ah courts, particularly in cases involving conversion from Islam. The Federal Court, Malaysia's highest judicial body, has increasingly asserted its jurisdiction over the procedures of Shari'ah administrative authority, especially in cases concerning the conversion of minors.⁴⁷ Efforts are ongoing to harmonize the dual legal systems through legal reforms, judicial training, and public awareness campaigns to reduce conflicts and enhance legal process efficiency.⁴⁸

Brunei Darussalam: Centralized Authority and Comprehensive Shari'ah Implementation

Brunei Darussalam stands out for its comprehensive implementation of Shari'ah law, particularly since the introduction of the Syariah Penal Code (Chapter 275), fully implemented in 2019.⁴⁹ The country operates a dual legal system, with the English common law alongside the Islamic law. The Sultan is the head of the official religion (Shafi'i school of Sunni Islam) and is advised by the Islamic Religious

⁴⁴ Equality and Family, *Malaysia - Campaign for Justice in Muslim Family Laws*.

⁴⁵ Noor and Malim, *Gender Justice and Islamic Family Law Reform in Malaysia*.

⁴⁶ Mohamed Azam Mohamed Adil and Nisar Mohammad Ahmad, "Islamic Law and Human Rights in Malaysia," *Islam and Civilisational Renewal* 5, no. 1 (2014): 43–67, <https://doi.org/10.12816/0009803>.

⁴⁷ Yvonne Tew, *The Malaysian Legal System: A Tale of Two Courts*, 2011.

⁴⁸ Abdullah, "Analyzing the Dynamics Between Sharia Law and Civil Law in Governing Divorce Proceedings Among Muslims in Malaysia and Comparing Legal Outcomes."

⁴⁹ Lee, "Syariah Law."

Council on all matters related to Islam, holding significant authority over the development and implementation of Islamic law.⁵⁰ This centralized control is deeply embedded in the national philosophy of *Melayu Islam Beraja* (Malay Islamic Monarchy).⁵¹

The SPC extends the jurisdiction of Syariah courts to cover a wide range of criminal and civil/family matters involving Muslims, and for certain offenses, even non-Muslims.⁵² It includes provisions for corporal and capital punishment for offenses such as *qatl'* (murder), *sariqah* (theft), *zina* (adultery), *zina bil-jabar* (rape), *liwat*, (sodomy), drinking intoxicating drink, *irtidad* apostasy, and blasphemy. However, it is important to note that, apart from caning, no capital or corporal punishments have been enforced since 1957, and a de facto moratorium on the death penalty has been in place since 2019⁵³, which applies to both common law and syariah law cases. Non-Muslims are exempt from certain provisions of the SPC, such as mandatory Friday prayers and *zakat*.⁵⁴

Reform efforts in Brunei, though often stricter due to the strong influence of the Shari'ah legal system, still aim to maintain a balance by providing protection to women and children.⁵⁵ The government encourages the use of wills and gifts to offer greater flexibility in asset distribution, allowing women broader access to inheritance assets, which traditionally might be less.⁵⁶ The application of *Maqasid al-shariah* is emphasized as a framework to ensure justice, equity, and the

⁵⁰ Article 3(2) and 3(3) of the Constitution of Brunei Darussalam.

⁵¹ Ann Black, "The Syariah Factor: One of the Many Challenges for 'Foreign' Judges in the Courts of Brunei Darussalam," in *The Cambridge Handbook of Foreign Judges on Domestic Courts*, 1st ed., ed. Anna Dziejic and Simon N. M. Young (Cambridge University Press, 2023), <https://doi.org/10.1017/9781009106238.241>.

⁵² Section 3(1) of the SPC.

⁵³ Royal Decree of His Majesty Sultan Haji Hassanal Bolkiah, *titah*, 5 May 2019.

⁵⁴ "Brunei," *United States Department of State*, n.d., accessed July 28, 2025, <https://www.state.gov/reports/2022-report-on-international-religious-freedom/brunei/>. Refer to Syariah Penal Code (Cap. 275), Section 194 (*Failure to perform Friday Prayers*) and Section 236 (*Non-payment of zakat or fitrah*).

⁵⁵ Siregar, "Moderation of Islamic Family Law in Southeast Asia."

⁵⁶ Opik Roziqin and Ah. Fathonih, "The Evolution of Marriage and Inheritance Law in Brunei Darussalam: A Comparative and Historical Study," *Indonesian Journal of Advanced Research* 3, no. 11 (2024): 1675–88, <https://doi.org/10.55927/ijar.v3i11.12117>.

protection of human dignity, asserting that misinterpretations rather than Islamic law itself often perpetuate gender inequality.⁵⁷

Challenges regarding gender justice and human rights persist, particularly concerning inheritance rights, where women typically receive smaller shares than men based on traditional interpretations. Women's roles in marriage and divorce proceedings are also often dictated by laws and customs that limit their agency. Despite these challenges, there are ongoing efforts to promote women's rights through reforms within the Syariah Courts, public awareness campaigns, and advocating for women's active participation in judicial and policy-making roles.⁵⁸

Current debates in Brunei largely center on the implications of the comprehensive SPC for human rights and the rule of law, as well as the balance between religious provisions and contemporary societal needs.⁵⁹ The government's ban on religious groups considered "deviant" and restrictions on proselytization for non-Muslims also remain points of concern.⁶⁰

Discussion

This section synthesizes the findings, offering a comparative analysis of the reform trajectories in Indonesia, Malaysia, and Brunei Darussalam, and exploring the broader implications for gender justice and human rights in the region.

Comparative Analysis of Reform Trajectories

The reform of Islamic family law in Southeast Asia is a complex and dynamic process, shaped by shared historical experiences, distinct national policies, and varying degrees of engagement from state, religious, and civil society actors.

Commonalities:

All three nations share a historical foundation rooted in the gradual introduction of Islam, which then blended with indigenous *adat* (customary law). This syncretic heritage distinguishes Southeast Asian Islamic law from its Middle Eastern counterparts and provides a

⁵⁷ Iqrar Ul Hassan, "Promoting Women's Rights in Brunei Darussalam: Combating Gender Discrimination through Islamic Judicial Systems," preprint, Unpublished, 2023, <https://doi.org/10.13140/RG.2.2.14309.92648>.

⁵⁸ Iqrar Ul Hassan, "Promoting Women's Rights in Brunei Darussalam."

⁵⁹ Lee, "Syariah Law."

⁶⁰ "Brunei."

historical precedent for legal adaptation. Furthermore, the colonial legacies (British in Malaysia and Brunei, Dutch in Indonesia) led to the establishment of dual-track legal systems, where civil courts operate alongside Shari'ah courts with specific jurisdiction over Muslim personal law.⁶¹ Key areas of reform and ongoing debate across all three countries consistently revolve around marriage, divorce, and inheritance, reflecting universal concerns within Muslim family law globally.⁶²

Divergences:

Despite these commonalities, significant divergences exist in the extent and nature of Islamic family law reform. Brunei Darussalam represents the most comprehensive and centralized application of Shari'ah law, particularly with its Syariah Penal Code (SPC).⁶³ In addition, the Islamic Family Law Act (Chapter 217) governs family matters, including marriage, divorce, custody of the child, and other family aspects. This approach is heavily influenced by the Sultan's role as the head of Islam and the national philosophy of *Melayu Islam Beraja*.

In contrast, Indonesia exhibits a more decentralized and pluralistic system, where Islamic norms are accommodated through evolving institutional mechanisms and regional autonomy, leading to variations across provinces.⁶⁴ Malaysia occupies a middle ground, with a dual legal system where Shari'ah law is implemented at the state level, creating complexities and jurisdictional conflicts between civil and Shari'ah courts.⁶⁵

The influence of civil society also varies considerably. Indonesia has a vibrant civil society, particularly women's organizations, which have actively pushed for progressive reforms, often in collaboration with state institutions and religious scholars.⁶⁶ In Malaysia, women's groups have also been instrumental in advocating

⁶¹ Lee, "Shariah Law."

⁶² Abdullah Raihana, "A Study of Islamic Family Law in Malaysia: A Select Bibliography," *International Journal of Legal Information* 35, no. 3 (2007).

⁶³ Lee, "Shariah Law."

⁶⁴ Otto, "Sharia and National Law in Indonesia."

⁶⁵ Tew, *The Malaysian Legal System: A Tale of Two Courts*.

⁶⁶ Adila and Ahmad, "The Dynamics of Women's Involvement in the Formulation of Islamic Family Law in Indonesia."

for reform, developing model family laws and launching public campaigns, though they often face a more conservative political and religious landscape.⁶⁷ In Brunei, while there are calls for public awareness and women's participation, the highly centralized nature of governance suggests a more top-down approach to reform.⁶⁸

Factors Influencing Reform:

Several factors underpin these varying reform trajectories. State institutions play a critical role in codifying and administering Islamic law. In Indonesia, the Religious Courts have actively embraced reforms, improving access to justice and addressing poverty alleviation.⁶⁹ In Malaysia, the state-level Shari'ah courts and the National Fatwa Council are key actors, but their relationship with federal civil courts is a constant source of tension.⁷⁰ Brunei's monarchy directly drives the Islamization process, with the Islamic Religious Council advising the Sultan.⁷¹

1. Religious authorities (ulama, muftis) are central to interpreting and legitimizing reforms. Their intellectual knowledge and willingness to codify principles significantly shape the legal landscape.⁷² The application of *Maqasid al-shariah* by these authorities offers a framework for adapting Islamic law to modern needs.
2. Civil society organizations, particularly women's groups, are powerful drivers of change, advocating for gender justice and human rights within Islamic legal frameworks.⁷³ Their "reform from within" approach, grounded in Islamic legal arguments, has proven effective in many contexts.⁷⁴
3. Colonial legacies continue to influence the legal systems, with former British colonies (Malaysia, Brunei) often retaining a stronger common law foundation alongside Shari'ah, while Indonesia, influenced by Dutch civil law, has integrated Islamic

⁶⁷ Anwar and Rumminger, "Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform."

⁶⁸ Iqrar Ul Hassan, "Promoting Women's Rights in Brunei Darussalam."

⁶⁹ Sumner and Lindsey, *Courting Reform*.

⁷⁰ Tew, *The Malaysian Legal System: A Tale of Two Courts*.

⁷¹ "Brunei."

⁷² Noor and Malim, *Gender Justice and Islamic Family Law Reform in Malaysia*.

⁷³ Anwar and Rumminger, "Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform."

⁷⁴ Kristen Stilt et al., *THE AMBITIONS OF MUSLIM FAMILY LAW REFORM*, 41 (n.d.).

law differently.⁷⁵ The blending with local customs (*adat*) remains a crucial element, shaping the unique identity of Islamic law in each country and influencing its acceptance and implementation at the grassroots level.⁷⁶

Implications for Gender Justice and Human Rights

The integration of human rights and gender equality principles into Islamic family law reforms presents a nuanced picture across the three countries. The imperative for reform arises from the perceived inadequacy of traditional interpretations to meet contemporary standards of justice, particularly for women.⁷⁷

Indonesia demonstrates a notable tendency towards flexible and progressive interpretations, actively integrating gender equality and human rights principles into its family law.⁷⁸ The Supreme Court's circulars, guided by *Maqasid al-shariah*, reflect a conscious effort to balance Shari'ah with societal needs, upholding justice and incorporating universal human rights in areas like minimum marriage age and polygamy regulation.⁷⁹ This approach has led to more supportive court decisions for women's rights in marriage and divorce.⁸⁰

In Malaysia, the pursuit of gender justice faces challenges due to a legal framework that often emphasizes "reciprocal" rather than "equal" rights, as seen in the maintenance-for-obedience principle.⁸¹ While there are efforts to provide stronger protection for women's rights in areas like inheritance and matrimonial property, the selective coverage of human rights under Islamic law and the ongoing jurisdictional conflicts between Shari'ah and civil courts create complexities.⁸² Women's organizations actively challenge

⁷⁵ Otto, "Sharia and National Law in Indonesia."

⁷⁶ Lee, "Shariah Law."

⁷⁷ Anwar and Rumminger, "Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform."

⁷⁸ Siregar, "Moderation of Islamic Family Law in Southeast Asia."

⁷⁹ Arrasyid et al., "Islamic Family Law Reform in Indonesia Through Supreme Court Circulars."

⁸⁰ Nugroho and Dewi, "Enhancing Mechanisms for Protecting Women's Rights within Islamic Family Law."

⁸¹ Equality and Family, *Malaysia - Campaign for Justice in Muslim Family Laws*.

⁸² Siregar, "Moderation of Islamic Family Law in Southeast Asia."

discriminatory provisions, advocating for reforms grounded in Islamic principles of equality and justice.⁸³

Brunei's stricter approach to Islamic family law, particularly with the SPC, raises significant human rights concerns, although a de facto moratorium on severe corporal and capital punishments is in place.⁸⁴ Despite the conservative framework, there are efforts to promote women's rights by reinterpreting Islamic teachings through the lens of *Maqasid al-shariah*, emphasizing justice and equity. This includes encouraging wills and gifts to provide women with greater access to inheritance assets. However, patriarchal interpretations and customs continue to influence women's access to justice and their roles in family matters.⁸⁵

The application of *Maqasid al-shariah* emerges as a crucial framework for progressive interpretations across the region. It allows for the adaptation of Islamic legal principles to contemporary challenges while remaining grounded in the ethical vision of Islam. This framework provides a theological and jurisprudential basis for advocating for reforms that promote human dignity, fairness, and equality, demonstrating that Islamic law can be both contextually responsive and normatively sound. The ongoing tension between religious doctrine and universal human rights standards necessitates continued dialogue and reinterpretation to achieve more equitable outcomes.

Future Directions for Research and Policy

The comparative study of Islamic family law reform in Indonesia, Malaysia, and Brunei Darussalam reveals a rich landscape for future research and policy development.

Future Research:

Future scholarly endeavors should delve deeper into the socio-legal dynamics of Islamic family law, moving beyond statutory analysis to explore the lived experiences of Muslim families and the practical impacts of reforms.⁸⁶ Research could focus on specific areas that still lack comprehensive solutions, such as the complexities of unregistered

⁸³ Anwar and Rumminger, "Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform."

⁸⁴ "Brunei."

⁸⁵ Iqrar Ul Hassan, "Promoting Women's Rights in Brunei Darussalam."

⁸⁶ Agha et al., "Unravelling the Threads: Bibliometric Exploration of Islamic Family Law Research in Southeast Asia (2004-2024)."

marriages in Malaysia and their impact on women's rights.⁸⁷ Further comparative studies on the effectiveness of mediation in divorce cases across the three countries could also yield valuable insights.⁸⁸ The role of technology in facilitating or challenging Islamic family law administration and reform, including digital platforms for legal aid or public discourse, warrants exploration. Additionally, examining the long-term effects of decentralization on Islamic law implementation in Indonesia, particularly concerning minority rights, would be beneficial.⁸⁹

Policy Recommendations:

For policymakers, the findings underscore the importance of a multi-stakeholder approach to legal reform. This includes fostering collaboration between state institutions, religious authorities, and civil society organizations to ensure that reforms are both jurisprudentially sound and socially responsive.⁹⁰ Legal reforms should prioritize the integration of *Maqasid al-shariah* principles to ensure that laws uphold justice, protect human dignity, and promote gender equality in a manner consistent with Islamic ethics. This includes reviewing and amending discriminatory provisions related to marriage, divorce, inheritance, and child custody.

Public education campaigns are crucial to raise awareness among Muslim communities about their rights and obligations under reformed Islamic family laws, particularly concerning issues like marriage registration and women's access to justice.⁹¹ Strengthening the capacity of Shari'ah courts and legal practitioners through specialized training on gender-sensitive interpretations and human rights principles

⁸⁷ Nur Hana Maruan et al., "Addressing Unregistered Marriages in Malaysia: A Maqasid al-Shariah Approach to Legal Challenges and Women's Protection," *International Journal of Research and Innovation in Social Science* IX, no. VI (2025): 6104–13, <https://doi.org/10.47772/IJRIS.2025.906000468>.

⁸⁸ Manaf et al., "Mediation in Islam."

⁸⁹ Krismono et al., "Negotiating Islam, Democracy and Pluralism: Islamic Politics and the State in Post-Reform Indonesia."

⁹⁰ Anwar and Rumminger, "Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform."

⁹¹ Anwar and Rumminger, "Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform."

is also vital.⁹² Furthermore, policies should aim to resolve jurisdictional ambiguities between civil and Shari'ah courts, particularly in areas affecting fundamental rights and inter-religious disputes, to ensure legal certainty and access to effective remedies for all citizens.⁹³

Conclusion

The comparative study of Islamic family law reform in Indonesia, Malaysia, and Brunei Darussalam reveals a dynamic and evolving legal landscape shaped by a complex interplay of historical legacies, diverse political systems, and varied interpretations of Islamic jurisprudence. While all three nations share a common foundation in the blending of Islamic principles with local customs and the establishment of dual legal systems, their reform trajectories exhibit significant divergences.

Indonesia demonstrates a more decentralized and progressive approach, actively integrating human rights and gender equality through legislative reforms and judicial interpretations guided by *Maqasid al-shariah*. Malaysia navigates a complex federal-state dynamic, where state-level Shari'ah law coexists with federal civil law, leading to ongoing jurisdictional challenges and a focus on "reciprocal" rather than "equal" rights for women. Brunei Darussalam represents a highly centralized system with a comprehensive implementation of Shari'ah, where reforms are driven primarily by state authority, albeit with an increasing emphasis on *Maqasid al-shariah* to address gender concerns.

The imperative for reform across the region is fundamentally driven by the tension between traditional interpretations of divine law and contemporary societal demands for justice, particularly concerning women's rights and human dignity. The ongoing efforts by state institutions, religious authorities, and vibrant civil society organizations highlight a continuous negotiation to adapt Islamic family law to modern contexts. Moving forward, the success of these reforms will depend on sustained dialogue, progressive scholarship, and collaborative policy initiatives that ensure Islamic family law remains

⁹² Abdullah, "Analyzing the Dynamics Between Sharia Law and Civil Law in Governing Divorce Proceedings Among Muslims in Malaysia and Comparing Legal Outcomes."

⁹³ Tew, *The Malaysian Legal System: A Tale of Two Courts*.

relevant, just, and responsive to the evolving needs of Muslim families in Southeast Asia.

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