



The Reconstruction of Islamic Family Law in Indonesia: A Normative-Comparative Analysis of Gender Justice and Legal Modernity

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Abstract

This report provides a normative-comparative analysis of the reconstruction of Islamic family law in Indonesia. It argues that Indonesia's legal trajectory, particularly since the promulgation of the Compilation of Islamic Law (KHI) in 1991, represents a unique synthesis of classical fiqh, indigenous customary law (adat), and modern state-codified legislation. This process has progressively moved toward gender-sensitive reforms, yet it faces persistent challenges from entrenched patriarchal interpretations and conservative political opposition. The analysis employs a normative framework, evaluating key legal provisions against the principles of maqāṣid al-sharī'ah and modern feminist legal theories. It also utilizes a comparative approach, contrasting Indonesia's model with the legal systems of its ASEAN neighbors, Malaysia and Brunei. The findings reveal a complex, dynamic process in which legal reforms, such as the regulation of polygamy and the raising of the minimum marriage age, are often partial successes. These reforms demonstrate an internal, principled struggle to align jurisprudence with contemporary notions of justice, but their implementation is hindered by institutional fragmentation, judicial discretion, and a well-organized resistance that frames gender equality as a foreign imposition. The report concludes that Indonesia serves as a critical case study, offering a blueprint for how Islamic law can be contextualized within a modern, pluralistic, and democratic society, while also highlighting the profound challenges that remain.

Keywords: Islamic Family Law, Gender-Sensitive Reform, Maqāṣid al-sharī'ah, Contextualization Of Islamic Law

Abstrak

Penelitian ini menyajikan analisis normatif-komparatif mengenai rekonstruksi hukum keluarga Islam di Indonesia. Laporan ini berargumen bahwa jalur hukum Indonesia, khususnya sejak diberlakukannya Kompilasi Hukum Islam (KHI) pada tahun 1991, mewakili sintesis unik antara fiqh klasik, hukum adat lokal, dan legislasi negara modern yang dikodifikasi. Proses ini secara bertahap bergerak menuju reformasi yang sensitif terhadap gender, namun menghadapi tantangan yang persisten dari interpretasi patriarkal yang sudah mapan dan oposisi politik konservatif. Analisis ini menggunakan kerangka normatif, mengevaluasi ketentuan hukum kunci berdasarkan

prinsip-prinsip maqāṣid al-sharī'ah dan teori hukum feminis modern. Analisis ini juga menggunakan pendekatan komparatif, membandingkan model Indonesia dengan sistem hukum negara-negara ASEAN tetangganya, Malaysia dan Brunei. Temuan menunjukkan proses yang kompleks dan dinamis, di mana reformasi hukum, seperti regulasi poligami dan peningkatan usia minimal pernikahan, seringkali hanya berhasil sebagian. Reformasi ini mencerminkan perjuangan internal yang berprinsip untuk menyelaraskan yurisprudensi dengan konsep keadilan kontemporer, namun implementasinya terhambat oleh fragmentasi institusional, diskresi yudisial, dan resistensi terorganisir yang menggambarkan kesetaraan gender sebagai penekanan asing. Hasil temuan penelitian ini menyimpulkan bahwa Indonesia merupakan studi kasus yang krusial, memberikan gambaran tentang bagaimana hukum Islam dapat diadaptasi dalam masyarakat modern, pluralistik, dan demokratis, sekaligus menyoroti tantangan mendalam yang masih ada

Kata kunci: Hukum Keluarga Islam, Reformasi yang Sensitif terhadap Gender, Maqāṣid al-sharī'ah, Kontekstualisasi Hukum Islam

Introduction

As the world's most populous Muslim-majority country, Indonesia offers a compelling case study for the examination of how Islamic legal traditions adapt and evolve in a modern, democratic, and pluralistic society. The nation's legal framework is a complex amalgamation, reflecting a deep historical confluence of classical Islamic jurisprudence (*fiqh*), indigenous customary law (*adat*), and the principles of a modern, secular state.¹ This unique legal ecology positions Indonesia as a critical site for global scholarly discourse on the reform of Islamic law, particularly in the domain of family relations. The codification of Islamic family law through state legislation, most notably the Compilation of Islamic Law (KHI), signifies a deliberate and systematic effort to harmonize religious norms with national legal imperatives. This process, however, is not without its tensions, as it navigates the intricate dialectic between preserving traditional religious values and addressing the contemporary demands for gender equality and legal modernity.

The 1991 Compilation of Islamic Law (KHI) stands as a landmark achievement in the codification of Islamic family law in Indonesia.² Despite its role in providing legal uniformity and certainty, it remains a subject of intense scholarly and public debate. The central

¹ J. M. Otto and Otto J.m, *Sharia and National Law in Indonesia*, Law, Governance, and Development (Leiden University Press, 2010), 433–90, <https://hdl.handle.net/1887/16318>.

² Otto and J.m, *Sharia and National Law in Indonesia*.

problem lies in its attempt to synthesize classical *fiqh* norms, especially those of the *Shāfi'ī* school, which is predominant in the country, with the contemporary aspirations of gender justice and human rights. Issues such as polygamy, child marriage, guardianship, and inheritance, as codified in the KHI, are continually scrutinized. While the KHI provided a significant step toward legal unification, its provisions are criticized for sometimes institutionalizing patriarchal norms that privilege male authority and limit women's rights within the family.³ This ongoing tension between the legal text and the lived experiences of women underscores a profound and persistent challenge in Indonesia's legal system.

Methods

This study is a normative legal study employing a comparative approach. The analysis is grounded in a meticulous examination of primary and secondary sources, structured around a robust analytical framework.

Primary Sources: The research is based on a close reading of key Indonesian legal documents, including the 1991 Compilation of Islamic Law (KHI)⁴, Law No. 1 of 1974 on Marriage⁵, and the landmark Law No. 16 of 2019, which amended the marriage age.⁶ These legal texts are supplemented by an analysis of relevant Supreme Court decisions that reflect the evolution of judicial practice.

Secondary Sources: The report synthesizes a broad range of secondary materials, including classical *fiqh* manuals (particularly the

³ Ahmad Burhanuddin et al., "Criticism of Islamic Feminism towards Patriarchy in Islamic Family Law in Indonesia," *West Science Islamic Studies* 3, no. 03 (2025): 226–32, <https://doi.org/10.58812/wsiss.v3i03.2066>.

⁴ Abd. Rasyid Sidiq et al., "Gender Analysis of Marriage Guardians in the Compilation of Islamic Law," *INTERNATIONAL JOURNAL OF CONTEMPORARY ISLAMIC LAW AND SOCIETY* 3, no. 1 (2021): 1–14, <https://doi.org/10.24239/ijcils.Vol3.Iss1.24>.

⁵ "The Republic Of Indonesia The Compilation Of Islamic Laws," n.d., <https://muslimfamilylawindex.com/wp-content/uploads/2022/12/The-Compilation-of-Islamic-Laws-No.-1-1991.pdf>.

⁶ "Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," n.d., <https://peraturan.bpk.go.id/Download/113523/UU%20Nomor%2016%20Tahun%202019.pdf>.

Shāfiʿī school tradition), contemporary Islamic jurisprudence, and scholarly works on gender justice and family law reform in Indonesia and other Muslim-majority countries.⁷

Analytical Frameworks: The normative dimension of the analysis evaluates legal provisions against the principles of *maqāṣid al-sharīʿah* (the higher objectives of Islamic law)⁸ and modern feminist legal theories.⁹ This approach allows for a critique of the laws from within the Islamic tradition while also drawing on external, human rights-oriented perspectives. The comparative analysis contrasts Indonesia’s legal framework with the systems in Malaysia and Brunei, highlighting similarities, divergences, and their underlying institutional and political rationales.¹⁰ This dual-pronged approach provides a comprehensive and multifaceted perspective on Indonesia's journey toward legal modernity in the family law sphere.

Results and Discussion

The Trajectory of Islamic Family Law Reform in Indonesia: A Historical-Legal Overview

Pre-Codification Pluralism

The history of Islamic family law in Indonesia is one of profound legal pluralism. Before the era of state codification, the legal landscape was shaped by the intricate interplay of three distinct systems: Islamic law, indigenous customary law (*adat*), and the civil legal framework inherited from Dutch colonial rule. The *Shāfiʿī* school of *fiqh* was widely practiced, but its application was often mediated by local customs, leading to a de facto fusion of religious and traditional norms. During the colonial period, Islamic law was primarily relegated

⁷ Deris Arista Saputra and Zul-kifli Hussin, “The Evolution of Fasakh in Indonesia and Malaysia: A Legal Comparative Bibliometric Review,” *DIKTUM: Jurnal Syariah Dan Hukum* 23, no. 1 (2025): 85–101, <https://doi.org/10.35905/diktum.v23i1.11332>.

⁸ Nur Solikin and Moh. Wasik, “The Construction of Family Law in the Compilation of Islamic Law in Indonesia: A Review of John Rawls’s Concept of Justice and Jasser Auda’s *Maqashid al-Shari’a*,” *Ulumuna* 27, no. 1 (2023): 315–40, <https://doi.org/10.20414/ujs.v27i1.708>.

⁹ Burhanuddin et al., “Criticism of Islamic Feminism towards Patriarchy in Islamic Family Law in Indonesia.”

¹⁰ Deris Arista Saputra and Zul-kifli Hussin, “The Evolution of Fasakh in Indonesia and Malaysia.”

to the realm of personal status matters for the indigenous Muslim population. Religious scholars (*panghulu*) were appointed as advisors to the colonial courts (*Landraad*), but their opinions, which were often based on a literal reading of religious texts, were frequently overlooked in favor of colonial legal principles.¹¹ This historical backdrop underscores that the dynamic of blending *fiqh* and *adat* is a long-standing characteristic of Indonesia's legal culture, predating modern codification and shaping the very nature of its legal development.

The 1974 Marriage Law (UU No. 1/1974)

The passing of Law No. 1 of 1974 on Marriage marked a pivotal moment in Indonesia's legal history, serving as the first step toward national unification of family law. A product of the New Order regime, this law established uniform regulations for all citizens, irrespective of their religion. It introduced a significant departure from traditional practice by formalizing the restrictions on polygamy and child marriage. The law espoused a principle of relative monogamy, allowing a husband to have more than one wife only under specific, strict conditions and with court permission.¹² It also set a minimum marriage age of 19 for men and for women.¹³ While these provisions were viewed as an initial step toward reform, they were the result of tense political negotiations between the state and Islamic organizations. The final text reflected a compromise that accommodated Islamic law without fully embracing a secular-monogamous model.¹⁴ This political process highlights that the trajectory of legal reform in Indonesia is a strategic process by the state to manage and co-opt Islamic legal authority. This "bureaucratization of religion" solidifies the state's legitimacy among the Muslim majority by granting formal recognition to Islamic law while simultaneously subjecting it to state control and interpretation. This is a source of ongoing tension with more conservative factions.

¹¹ Otto and J.m, *Sharia and National Law in Indonesia*.

¹² Muhamad Hasan Muaziz, "Legal Analysis Of Investment Management In Employem Social Security Providering Agency (Bpjs Ketenagakerjaan)," *AL WASATH Jurnal Ilmu Hukum* 3, no. 1 (2022): 13–26, <https://doi.org/10.47776/alwasath.v3i1.330>.

¹³ "The Republic Of Indonesia The Compilation Of Islamic Laws."

¹⁴ Sidiq et al., "Gender Analysis of Marriage Guardians in the Compilation of Islamic Law."

The 1991 Compilation of Islamic Law (KHI)

The KHI, promulgated through Presidential Instruction No. 1 of 1991, solidified the state's role in codifying and administering Islamic law for its Muslim citizens. It was drafted by a team of scholars and judges to serve as the official material law for Religious Courts, providing a harmonized legal framework for three key areas: marriage, inheritance, and religious endowments (*waqf*).¹⁵ The KHI was a political product, designed to complement the 1974 Marriage Law and provide a more explicit Islamic legal basis for the Religious Courts.¹⁶ Its creation was an effort to achieve legal certainty and unification in a nation with diverse Islamic legal interpretations.¹⁷ The KHI, therefore, represents a strategic political tool for the state to formalize and integrate Islamic law into the national legal system, reflecting a shift from the colonial policy of marginalization to one of active state engagement with the Muslim community.

Post-2019 Reforms: The Amendment of Law No. 1/1974

The most significant recent reform to Indonesian family law came with the passage of Law No. 16 of 2019, which amended the 1974 Marriage Law. This amendment raised the minimum marriage age for women from 16 to 19, aligning it with the male minimum age and with international human rights standards. The change was prompted by a Constitutional Court ruling and intense public advocacy from women's and children's rights groups, which cited the negative physical, psychological, and economic impacts of child marriage. The official reasoning behind the law explicitly acknowledges the need to protect a child's constitutional rights to life, growth, and development and to protect them from violence and discrimination.¹⁸ This legislative action demonstrates the growing influence of human rights frameworks on Indonesian legal policy and marks a clear progressive turn toward

¹⁵ Burhanuddin et al., "Criticism of Islamic Feminism towards Patriarchy in Islamic Family Law in Indonesia."

¹⁶ Sri Wahyuni, "Islamic Law in Indonesia (History and Prospects)," UIN Sunan Kalijaga Yogyakarta, n.d., <https://fhukum.unpatti.ac.id/jurnal/ballrev/article/downloadSuppFile/1146/178>.

¹⁷ Erni Sulhati Roudho Siregar, *The Development of Islamic Family Law in Indonesia*, 2, no. 2 (forthcoming).

¹⁸ "Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

gender equality. It provides a definitive example of how reformist legal scholars and activists can successfully utilize a nation's constitutional framework to push for changes rooted in both modern principles and the higher ethical values of Islam.

Table 1. Key Provisions of Indonesian Family Law (1974, KHI, 2019 Amendments)

Legal Instrument	Key Provisions	
Law No. 1 of 1974	<ul style="list-style-type: none"> • Minimum Marriage Age: 19 for men, 16 for women. • Polygamy: Monogamy is the principle, but polygamy is permitted with court permission under strict conditions (wife's consent, husband's financial capability, and ability to be just). • Divorce: Two procedures are recognized: <i>talak</i> (repudiation by husband) and <i>gugat cerai</i> (divorce suit by wife). 	
KHI (1991)	<ul style="list-style-type: none"> • Codification: Codified Islamic civil law for Muslims, serving as the official material law for Religious Courts. • Scope: Governs marriage, inheritance, and 	<ul style="list-style-type: none"> • Key Terms: Defines essential concepts such as <i>wali nikah</i>, <i>mahar</i>, <i>taklik-talak</i>, <i>harta bersama</i> (joint property), and <i>hadhonah</i> (child care).

	<p><i>waqf</i> (religious endowments), harmonizing classical <i>fiqh</i> with Indonesian socio-legal realities.</p>	
<p>Law No. 16 of 2019</p>	<ul style="list-style-type: none"> • Minimum Marriage Age Amendment: Amended Law No. 1 of 1974 to raise the minimum marriage age to 19 for both men and women. • Rationale: Justified on the basis of protecting children’s rights, preventing child marriage, and ensuring physical and psychological maturity for marriage. 	

Normative Analysis of the KHI: Gender Justice and *Maqāṣid al-sharī’ah*

Marriage and Polygamy

The legal framework governing marriage and polygamy in Indonesia exemplifies the tension between historical *fiqh* and modern legal principles. The KHI and Law No. 1/1974 permit polygamy, but only under strict judicial conditions, including the court’s permission and the first wife’s consent.¹⁹ This is a significant departure from classical *fiqh*, which allowed men to take up to four wives without such legal restrictions. From a *maqāṣid al-sharī’ah* perspective, this regulation aims to protect women and children by ensuring the husband’s financial capability and a commitment to justice, thereby

¹⁹ Muaziz, “Legal Analysis Of Investment Management In Employmen Social Security Providering Agency (Bpjs Ketenagakerjaan).”

fulfilling the objective of *hifdz al-nafs* (protection of well-being) and *hifdz al-mal* (protection of property).²⁰

However, feminist critiques argue that these restrictions, while progressive, fail to fully realize gender justice.²¹ The legal provisions are often circumvented through "unregistered marriages" (*nikah siri*), which are considered valid under Islamic law but are not recognized by the state. This practice leaves women and their children vulnerable, without legal identity documents, and with no recourse for financial or legal protection.²² Furthermore, reformist scholars like Siti Musdah Mulia challenge the very premise of polygamy, arguing that the principle of justice is impossible to achieve in practice and that the Quran's foundational principle for marriage is monogamy.²³ This demonstrates a critical re-engagement with religious texts through *ijtihad* to align law with contemporary ethics, moving beyond a literal, historical interpretation toward one that is more humane and just.²⁴

Child Marriage

The recent amendment to Law No. 1/1974, raising the minimum marriage age for both men and women to 19, represents a significant and successful legal reform from a normative perspective. This change directly aligns with the higher objectives of Islamic law, particularly *hifdz al-nafs* (protection of life and physical well-being) and *hifdz al-'aql* (protection of intellect and mental development). By setting a higher age, the law safeguards young individuals, especially girls, from the severe health, psychological, and economic harms of early marriage.²⁵ The reform also promotes the objective of *hifdz al-'aql* by ensuring that girls have the opportunity to complete their education and achieve intellectual maturity before undertaking the responsibilities of

²⁰ Solikin and Wasik, "The Construction of Family Law in the Compilation of Islamic Law in Indonesia."

²¹ Ahdiyatul Hidayah, *Analysis of the Right of Reference for Wives in the Perspective of Gender Justice and Islamic Law in Indonesia*, 18, no. 1 (2025).

²² Wegestin Lagus et al., "Sharia Legal Framework: A Comparative Analysis of Religious Courts in Brunei Darussalam and Indonesia," *Reformasi Hukum* 28, no. 3 (2024): 266–80, <https://doi.org/10.46257/jrh.v28i3.1073>.

²³ Eva F. Nisa, "The Bureaucratization Of Muslim Marriage In Indonesia," *Journal of Law and Religion* 33, no. 2 (2018): 291–309, <https://doi.org/10.1017/jlr.2018.28>.

²⁴ Burhanuddin et al., "Criticism of Islamic Feminism towards Patriarchy in Islamic Family Law in Indonesia."

²⁵ "The Republic Of Indonesia The Compilation Of Islamic Laws."

marriage. This legislative action counters traditional interpretations that permit marriage at the onset of puberty, demonstrating a principled and well-reasoned harmonization of modern legal standards with core Islamic values.

The successful passage of this law highlights a strategic approach to legal reform. Activists and scholars framed the amendment not as an imposition of a "Western" ideology but as an imperative rooted in Islamic ethical principles and national constitutional law.²⁶ The use of modern *maqāṣid* theory, which expands the classical five objectives to include concepts like human rights, freedom of belief, and social solidarity, provides a powerful and Islamically-grounded vocabulary for reformers to argue against patriarchal norms.²⁷ This demonstrates a sophisticated internal legal debate where reform is not merely a reaction to external pressure but a theological and principled project, showing the dynamic nature of *maqāṣid al-sharī'ah* as a tool for critique and legal innovation.

Guardianship and Inheritance

The KHI's provisions on guardianship (*wali nikah*) and inheritance remain a central focus of feminist critique. The traditional requirement for a woman's marriage guardian, a *wali*, is rooted in a patriarchal cultural legacy that predates Islam, where a woman's consent could be overridden by her male guardian's will. Feminist scholars contend that this practice is a cultural bias rather than a core theological requirement.²⁸ Similarly, the inheritance rules in the KHI, which maintain the classical *fiqh* formula of a male heir receiving twice the share of a female heir, are criticized for perpetuating gender inequality.

A deeper normative analysis reveals that these rules, while derived from classical interpretations, are not an unchangeable part of Islamic theology but rather socio-cultural biases codified into law.²⁹

²⁶ "Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan."

²⁷ Solikin and Wasik, "The Construction of Family Law in the Compilation of Islamic Law in Indonesia."

²⁸ Sidiq et al., "Gender Analysis of Marriage Guardians in the Compilation of Islamic Law."

²⁹ Burhanuddin et al., "Criticism of Islamic Feminism towards Patriarchy in Islamic Family Law in Indonesia."

Reformist scholars advocate for a reinterpretation of these rules in light of the broader Islamic value of justice (*al-`adala*) and equality. This reinterpretation is already taking place at the judicial level. The Supreme Court has, through its decisions, attempted to introduce more equitable practices, such as the application of *wasiat wajibah* (mandatory will) for non-Muslim heirs and the equitable distribution of joint property after divorce.³⁰ The reliance on judicial discretion to incorporate local customs (*adat*) and achieve a sense of fairness, as seen in inheritance cases in South Kalimantan, further indicates that legal practice is already attempting to soften the patriarchal bias of the law to achieve a more equitable outcome.³¹ This highlights a dynamic where the "living law" on the ground is more pluralistic and adaptable than the formal legal text might suggest, challenging the notion of a perfectly unified legal system.

Comparative Perspective: Indonesia's Reforms in the ASEAN Context

Indonesia vs. Malaysia

While Indonesia and Malaysia both have large Muslim populations and are rooted in the *Shāfi`ī* school, their institutional and legal approaches to Islamic family law differ significantly. Malaysia operates a decentralized system where each state has its own Islamic Family Law Enactment and autonomous Sharia Courts.³² This decentralized structure, while allowing for regional legal diversity, can lead to legal inconsistency and complexities, particularly for citizens who move between states.³³ In contrast, Indonesia has pursued a

³⁰ Rusli Mole and Ahmad Faisal, "Ahli Waris Dalam Kompilasi Hukum Islam," *As-Syams: Journal Hukum Islam* Vol. 4 No. 1 (2023): 28–45.

³¹ Baiq Tiffani Yunita et al., "A Maqasid Shariah Review of the Contra Legem Judge's Decision in the Application of Article 97 of the Compilation of Islamic Law," *International Journal Of Humanities Education and Social Sciences (IJHESS)* 4, no. 6 (2025), <https://doi.org/10.55227/ijhess.v4i6.1757>.

³² Deris Arista Saputra and Zul-kifli Hussin, "The Evolution of Fasakh in Indonesia and Malaysia."

³³ Yusna Zaidah et al., "Unveiling the Role of Local Cultural Considerations in Judicial Discretion: An Analysis of Inheritance Decisions in the Religious Courts of South Kalimantan," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (2023): 47–58, <https://doi.org/10.30631/alrisalah.v23i1.1351>.

centralized system, with the KHI serving as a single, national law and the Religious Courts operating under a unified, hierarchical structure.³⁴

This difference in structure is a direct consequence of their distinct political systems. Malaysia's parliamentary federation, with its constitutional division of power between the federal government and states, places Islamic law under the jurisdiction of the individual states. This contrasts with Indonesia's presidential system and its national, comprehensive legal framework.³⁵ While Malaysian enactments can be highly structured, Indonesia's legal system is often seen as more flexible, integrating local customary law (*adat*) and allowing greater judicial discretion, which can sometimes lead to outcomes that diverge from the codified law.³⁶ The institutional frameworks are therefore not merely a matter of legal philosophy but are deeply embedded in the political and constitutional fabric of each nation.

Indonesia vs. Brunei

Brunei Darussalam presents a more conservative and centralized model of Islamic family law compared to Indonesia. The legal system is heavily influenced by the Sultan, who serves as both the head of state and the religious authority. This monarchical structure centralizes control and leads to a stricter, more uniform adherence to classical *fiqh* principles with less room for legal contestation or progressive reinterpretation.³⁷ While Brunei, like Indonesia, requires a judge's permission for a man to take a second wife, its approach is perceived as more rigid, with clear penalties for those who circumvent the law.³⁸

³⁴ 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>.

³⁵ Arrasyid et al., "Islamic Family Law Reform in Indonesia Through Supreme Court Circulars."

³⁶ Deris Arista Saputra and Zul-kifli Hussin, "The Evolution of Fasakh in Indonesia and Malaysia."

³⁷ 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>.

³⁸ Muhammad Awaluddinul Akbar et al., "A Comparative Study of Inheritance Law Systems in Malaysia and Brunei Darussalam: An Examination of Legal Dualism

A key divergence between the two countries lies in the scope of their respective Islamic legal systems. While Indonesia's application of sharia is largely limited to family and personal status matters, Brunei's recent implementation of the Syariah Penal Code Order 2013 extends its jurisdiction to a broader range of criminal offenses.³⁹ This demonstrates a more expansive role for sharia in Brunei's national life, contrasting sharply with Indonesia's more limited and compartmentalized approach. The Brunei model highlights how a centralized, top-down political structure can result in a less flexible and more literalist application of Islamic law, with significantly less room for internal legal debate or reformist pressures from civil society.

Table 2. Comparative Analysis of Islamic Family Law in Indonesia, Malaysia, and Brunei

Feature	Indonesia	Malaysia	Brunei
Legal System Structure	Centralized national system.	Decentralized, state-based system.	Centralized monarchical system.
Primary Codification	KHI, UU No. 1/1974.	State Islamic Family Law Enactments (varying by state).	Islamic Family Law Act (Cap. 217).
Polygamy Regulation	Relative monogamy with strict judicial conditions and	Relative monogamy with judicial permission (specifics vary by state).	Judicial permission is required; a fine of \$2,000 for non-compliance.

and Its Implementation in Muslim Communities,” *Nternational Journal of Social Welfare and Family Law* Vol. 2 No. 3 (2025), <https://doi.org/10.62951/ijsw.v2i3.399>.

³⁹ Ade Khoirunnisa et al., “Comparison of Islamic Family Law in Malaysia and Indonesia.”

	consent of first wife.		
Minimum Marriage Age (Female)	19 (since 2019).	16-18 (varies by state).	16 (court approval for exceptions).
Judicial Structure	Centralized Religious Courts.	Autonomous state Sharia Courts.	Syariah Courts (centralized).
Influence on Law	Significant influence of <i>adat</i> law and national legal principles.	Varies by state; Islamic law is applied alongside common law and customary law.	Strict adherence to classical <i>fiqh</i> ; law is more conservative and less flexible.

Challenges and Limitations of Legal Reconstruction

Legal and Institutional Fragmentation

Despite the KHI's objective of legal unification, fragmentation remains a persistent challenge. The most significant source of this fragmentation is the ongoing influence of local customary law (*adat*), which is not codified in the KHI and must be navigated by judges on a case-by-case basis, particularly in inheritance disputes. This institutional dynamic reveals that the law is not a rigid hierarchy but a complex web of overlapping authorities. A judge's decision may be influenced not only by the KHI but also by local *adat* and their own interpretive judgment. The reliance on judicial discretion, while intended to achieve a sense of substantive justice, can lead to inconsistent applications of the law, thereby undermining legal certainty.⁴⁰ The concept of "living law" in Indonesia, where law on the ground remains highly pluralistic, presents a fundamental challenge to the ideal of a perfectly unified and consistent legal system, highlighting a gap between the formal legal texts and their practical implementation.

⁴⁰ Baiq Tiffani Yunita et al., "A Maqasid Shariah Review of the Contra Legem Judge's Decision in the Application of Article 97 of the Compilation of Islamic Law."

Societal and Political Resistance

Reform efforts in Indonesia are met with strong and often politically motivated opposition from conservative groups. These groups frequently frame gender-sensitive reforms as a foreign, "Western ideology" incompatible with authentic Islamic values. This strategic framing is used to build moral panic and stall legislative progress. For instance, the proposed Sexual Violence Eradication Bill faced significant resistance from parties like the Prosperous Justice Party (PKS), which argued that it would promote adultery and support LGBTQ+ individuals.⁴¹ Similarly, the Indonesian Ulema Council (MUI), a quasi-state body, issued a fatwa that opposed a Constitutional Court ruling on children born out of wedlock, arguing it would legitimize adultery.⁴² This demonstrates that the debate is not merely legal but profoundly ideological. The framing of gender justice as a "Western import" forces reformers to consistently defend their positions on theological grounds, even when their arguments are rooted in Islamic principles like *maqāṣid al-sharī'ah*.⁴³ This highlights a dynamic struggle between competing visions of what constitutes "Islamic modernity" in Indonesia.

The Gaps in Implementation

Beyond legislative and political hurdles, significant practical challenges remain in the implementation of codified laws. A prime example is the gap between the KHI's strict regulations on polygamy and the widespread practice of unregistered marriages (*nikah siri*). Because these marriages, while valid under Islamic law, are not legally recognized by the state, they leave women and their children without legal protection and access to state-provided rights.⁴⁴ Additionally, feminist legal theory points to a lack of gender awareness among judges in Religious Courts. Studies of court decisions and proceedings have found that judges may perpetuate patriarchal stereotypes, leading to a

⁴¹ Tb Syaiful Hidayat, *Urgency of Islamic Civil Law in Heritage Aspect*, 10, no. 2 (2021).

⁴² Lagus et al., "Sharia Legal Framework."

⁴³ Burhanuddin et al., "Criticism of Islamic Feminism towards Patriarchy in Islamic Family Law in Indonesia."

⁴⁴ Hidayah, *Analysis of the Right of Reference for Wives in the Perspective of Gender Justice and Islamic Law in Indonesia*.

"revictimization" of women and outcomes that fall short of justice, particularly in cases of domestic violence.⁴⁵ While Supreme Court regulations have been introduced to guide judges on gender-sensitive adjudication, the persistence of these biases underscores the need for deeper systemic reform beyond the codification of laws.

Conclusion

The reconstruction of Islamic family law in Indonesia is a progressive and complex journey, marked by a unique synthesis of religious, customary, and state legal traditions. The nation's legal framework has demonstrated a capacity for adaptability, with key reforms such as the regulation of polygamy and the raising of the minimum marriage age for women. These changes, while incomplete, indicate a partial success in aligning Islamic law with the core ethical principles of *maqāṣid al-sharī'ah* and modern notions of justice. However, this reform trajectory is not linear. It is a contested process fraught with significant challenges, including the persistence of legal fragmentation, the inconsistent application of judicial discretion, and a well-organized political and social resistance from conservative groups. The report concludes that a persistent gap exists between the reformist ideals of codified law and the patriarchal biases that continue to influence legal practice on the ground.

This study offers a distinct contribution by applying a normative-comparative framework to the Indonesian legal experience. By evaluating Indonesia's legal trajectory against a reinterpreted *maqāṣid al-sharī'ah* and a comparative analysis with its ASEAN neighbors, the report positions Indonesia not as a passive recipient of external norms but as a dynamic model of internal legal modernization. The Indonesian experience provides a blueprint for how Islamic jurisprudence can be critically engaged and contextualized within a modern, pluralistic, and democratic society. The ongoing struggle for reform demonstrates that the "modernity" of Islamic law is inextricably linked to the political and institutional environment in which it operates.

⁴⁵ Haris Hidayatulloh, "Reconciling Religion and Law: The MUI Fatwa and the Constitutional Court's Ruling on Children Born Out of Wedlock," *International Journal of Scientific Research and Management (IJSRM)* 13, no. 08 (2025): 730–36, <https://doi.org/10.18535/ijssrm/v13i08.11a01>.

Indonesia's legal system, with its separation of powers and civil society activism, allows for a dynamic contestation of legal interpretations that is less feasible in more centralized or authoritarian contexts.

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