



Reconstructing Islamic Family Law in ASEAN: A Normative Analysis of Marriage, Divorce, and Inheritance in Plural Legal Systems

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Abstract

This study discusses efforts to reconstruct Islamic family law in the context of the pluralistic legal systems developing in three ASEAN countries, namely Indonesia, Malaysia, and Singapore. The main focus of the study is on issues of marriage, divorce, and inheritance, which are the points of convergence between Islamic law, state law, and customary or civil legal systems. The objective of this research is to analyze the doctrinal foundations of classical fiqh and the codified provisions of Islamic family law in the three countries, explore the interactions and jurisdictional boundaries between Islamic law and national legal systems, and formulate a normative framework for the reconstruction of Islamic family law that is more adaptive to the pluralistic context and substantive justice values. The research gap addressed is the absence of an adequate normative theoretical framework in previous literature that can bridge the need for harmonization between Sharia law and constitutional principles and human rights in the pluralistic legal system of the ASEAN region. This study uses a normative legal approach through literature review, comparative legal analysis, and the theory of *maqāṣid al-sharī'ah* as evaluative instruments. The results of the study indicate that Indonesia tends to adopt an integrative approach through flexible Islamic law compilation, while Malaysia implements a dual legal system that creates overlapping jurisdictions. Singapore, with its secular but accommodative approach, presents a model of limited but stable recognition of Islamic law. This study recommends a reconstruction model based on contextual *Ijtihad* and *maqāṣid* principles to promote legal integration that is fair, responsive to social change, and consistent with constitutional rights.

Keywords: Islamic Family Law, Legal Pluralism, *Maqāṣid al-Sharī'ah*, ASEAN

Abstrak

Penelitian ini membahas upaya rekonstruksi hukum keluarga Islam dalam konteks sistem hukum plural yang berkembang di tiga negara ASEAN, yakni Indonesia, Malaysia, dan Singapura. Fokus utama kajian adalah pada isu-isu pernikahan,

perceraian, dan warisan yang menjadi titik temu antara hukum Islam, hukum negara, dan sistem hukum adat atau sipil. Tujuan penelitian ini adalah untuk menganalisis landasan doktrinal fiqh klasik serta ketentuan hukum keluarga Islam yang telah dikodifikasi di ketiga negara, mengeksplorasi interaksi serta batas yurisdiksi antara hukum Islam dan sistem hukum nasional, serta merumuskan kerangka normatif rekonstruksi hukum keluarga Islam yang lebih adaptif terhadap konteks plural dan nilai keadilan substantif. Kesenjangan penelitian yang diangkat adalah belum adanya kerangka teoritis normatif yang memadai dalam literatur sebelumnya yang mampu menjembatani kebutuhan harmonisasi hukum syariah dengan prinsip-prinsip konstitusional dan hak asasi manusia dalam sistem hukum plural di kawasan ASEAN. Penelitian ini menggunakan pendekatan normatif yuridis melalui metode studi pustaka, analisis perbandingan hukum, dan teori maqāṣid al-sharī'ah sebagai instrumen evaluatif. Hasil penelitian menunjukkan bahwa Indonesia cenderung mengadopsi pendekatan integratif melalui Kompilasi Hukum Islam yang fleksibel, sementara Malaysia menerapkan sistem hukum ganda yang menciptakan tumpang tindih yurisdiksi. Singapura, dengan pendekatan sekuler tetapi akomodatif, menampilkan model pengakuan hukum Islam yang terbatas namun stabil. Penelitian ini merekomendasikan model rekonstruksi berbasis Ijtihad kontekstual dan prinsip maqāṣid untuk mendorong integrasi hukum yang berkeadilan, responsif terhadap perubahan sosial, dan konsisten dengan hak-hak konstitusional

Kata kunci: Hukum Keluarga Islam, Pluralisme Hukum, Maqāṣid al-sharī'ah, ASEAN

Introduction

Islamic family law (IFL) serves as a foundational framework for regulating personal status matters among Muslims, including critical aspects such as marriage, divorce, and inheritance. In the dynamic landscape of Southeast Asia, particularly within nations like Indonesia, Malaysia, and Singapore, IFL operates not in isolation but within intricate plural legal systems. These systems are characterized by the coexistence of Islamic law, civil law, and in some instances, customary law (*adat* law).¹ This complex interaction inevitably generates areas of tension, overlaps in jurisdiction, and significant opportunities for legal reform and adaptation.

The inquiry into IFL in these diverse contexts is situated within the broader academic and practical discourse surrounding the reconstruction of Islamic law, often referred to as *tajdīd al-fiqh*. This ongoing process of reinterpretation and renewal is driven by the imperative to address contemporary legal, social, and constitutional

¹ Ahmad Imam Mawardi, "The Influence of Colonial Laws on Islamic Legal Developments in Indonesia, Malaysia and Singapore: A Comparative Study," *Vol. .*, 2010.

challenges. The aim is to ensure that Islamic family law remains relevant, just, and effective in modern pluralistic societies. Examining this field requires interdisciplinary studies and robust regional comparisons to understand its varied manifestations and the efforts towards its evolution.²

The operation of Islamic family law within these mixed legal systems is not a static imposition but rather a dynamic interaction. In many Muslim-majority countries, elements of Islamic law are integrated into common law or civil law frameworks, with personal status laws typically regulated by Islamic law.³ This integration has historical roots, as colonial powers, such as the Dutch in Indonesia and the British in Malaysia and Singapore, influenced the legal landscape, leading to the co-existence of indigenous *adat* law, Islamic law, and Western-derived legal codes.⁴ This historical development underscores that IFL in ASEAN is not a monolithic entity but a continuously evolving legal tradition, adapting to and being shaped by its interaction with other legal systems and socio-political realities. The concept of "reconstruction" in this context, therefore, is not about creating an entirely new legal system but about reinterpreting and adapting existing norms within this dynamic pluralistic framework.

This inherent tension between religious norms and state law, coupled with the varied historical influences, necessitates ongoing reform efforts. The plural legal system itself acts as a catalyst for *tajdīd al-fiqh*, as inconsistencies, jurisdictional ambiguities, and evolving societal needs push for a re-evaluation and harmonization of legal provisions. This continuous process reflects the adaptive capacity of Islamic law when confronted with modern legal and social complexities.

This study is guided by a central question: How can Islamic family law be normatively reconstructed to remain relevant, just, and effective within the diverse and evolving plural legal systems of Indonesia, Malaysia, and Singapore—particularly in matters of

² Hüseyin Okur et al., "Academic Discourses On Women In The Context Of Islamic Law: A Bibliometric Approach," *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 1 (2025): 224–54, <https://doi.org/10.18860/j-fsh.v17i1.32523>.

³ "Islamic Legal Systems | Judiciaries Worldwide," accessed August 4, 2025, <https://judiciariesworldwide.fjc.gov/islamic-legal-systems>.

⁴ Mawardi, "The Influence of Colonial Laws on Islamic Legal Developments in Indonesia, Malaysia and Singapore: A Comparative Study."

marriage, divorce, and inheritance? This question reflects the urgent need for a renewed approach to Islamic family law, one that remains rooted in classical *fiqh* authority while being responsive to the socio-legal complexities of the modern Southeast Asian context.

The study aims to thoroughly examine the doctrinal foundations of Islamic family law regarding marriage, divorce, and inheritance, as articulated in classical *fiqh* texts and contemporary codified regulations in the three countries. This doctrinal exploration is essential to understanding both the continuity and transformation in the interpretation of Islamic law as applied within distinct institutional and legal-cultural environments.

Furthermore, the research investigates the complex interactions and jurisdictional boundaries between Islamic law and national legal systems, including civil and customary law (where applicable). In Indonesia, Malaysia, and Singapore, legal pluralism has created an overlapping and sometimes competing legal landscape. This reality poses significant challenges to legal consistency and the protection of citizens' rights, particularly those of women and other vulnerable groups.

Ultimately, this study seeks to construct a normative framework for the reconstruction of Islamic family law within these plural legal contexts. This framework will be guided by the principles of *maqāṣid al-sharī'ah*—the higher objectives of Islamic law, such as justice, public welfare, and the protection of fundamental human rights—and by the concept of legal harmonization, which allows for the integration of Islamic values with national legal norms. Thus, this research goes beyond a descriptive analysis of the current state of the law; it also proposes a principled foundation for legal reform that is fair, inclusive, and aligned with universal values.

The key questions underpinning this study include: What are the doctrinal foundations of *fiqh* on marriage, divorce, and inheritance in Islamic family law? How do the plural legal systems of Indonesia, Malaysia, and Singapore influence the implementation and interpretation of Islamic family law? And what normative principles—derived from *maqāṣid al-sharī'ah* and legal harmonization—can effectively guide the reconstruction of Islamic family law in these ASEAN contexts in a contextual and justice-oriented manner?

Methods

Research Design

This study employs a qualitative normative legal approach. The research design is primarily based on doctrinal analysis, which involves a meticulous examination of legal texts, statutes, and scholarly interpretations. This method is crucial for understanding the foundational principles and contemporary applications of Islamic family law. Furthermore, a comparative legal review is undertaken to highlight similarities, differences, and unique adaptations of Islamic family law across Indonesia, Malaysia, and Singapore. This comparative lens is essential for understanding the diverse manifestations of legal pluralism and identifying distinct approaches to legal reform in the region.

Sources and Materials

The research draws upon a range of primary and secondary sources to ensure a comprehensive analysis:

1. Primary Sources:

- a. Classical *Fiqh* Texts: Key works of classical Islamic jurisprudence, such as *al-Mughni* and *al-Majmū‘*, are consulted to establish the foundational doctrinal norms concerning marriage, divorce, and inheritance. These texts provide the historical and theological bedrock of Islamic family law.
- b. National Legal Codes:
 - 1) Indonesia: The Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), alongside relevant national laws like Law No. 1 of 1974 on Marriage, forms a central focus for understanding codified Islamic family law in Indonesia.⁵
 - 2) Malaysia: The Islamic Family Law (Federal Territories) Act 1984 is examined as a primary legislative instrument, although it is acknowledged that state-level enactments also govern IFL in Malaysia, contributing to its varied application across the federation.⁶

⁵ Laurensia Sherlyn Tania Ika Prabowo et al., “Mandatory Testament for Heirs of Different Religions,” *LEGAL BRIEF* 13, no. 1 (2024): 13–22.

⁶ “Islamic Family Law (Federal Territories) Act 1984,” accessed August 4, 2025, https://www.commonlii.org/my/legis/consol_act/iflta1984362/.

- 3) Singapore: The Administration of Muslim Law Act (AMLA) is analyzed to understand the specific parameters and institutional framework for the application of Islamic family law within Singapore's secular legal system.⁷
2. Secondary Sources:
 - a. Scholarly articles, academic journals, *fatwas* (religious edicts), legal commentaries, and constitutional texts from the three countries provide contemporary interpretations, analyses of implementation challenges, and insights into ongoing reform efforts. These sources offer critical perspectives on how classical norms are being reinterpreted and applied in modern contexts.

Analytical Framework

The primary analytical framework for this study is *maqāṣid al-sharī'ah* (the higher objectives of Islamic law). This framework provides a teleological interpretation of Islamic law, moving beyond literal textual readings to discern the underlying wisdom and purpose of legal norms. The core objectives of *maqāṣid al-sharī'ah* consistently include the preservation of religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*).⁸ This approach is crucial for enabling a flexible interpretation and adaptation of *fiqh* norms to contemporary contexts.⁹ It allows Islamic legal thinkers to utilize rational considerations without disregarding divine guidelines, thereby making the law more contextual and responsive to modern problems. This framework serves as a bridge, facilitating internal reform within the Islamic legal tradition rather than necessitating the imposition of external secular frameworks.

Complementing the *maqāṣid al-sharī'ah* framework are the principles of legal harmonization. These principles guide the

⁷ "Muslim Divorce in Singapore," *SingaporeLegalAdvice.Com*, n.d., accessed August 4, 2025, <https://singaporelegaladvice.com/law-articles/muslim-divorce-in-singapore/>.

⁸ 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 August 4, 2025, <https://www.nyulawglobal.org/globalex>.

⁹ Ziadul Ulum Wahid et al., "Ibn Asyur's Concept of Maqashid Al-Shariah and Its Urgency as a Basis for Contemporary Ijtihad," *Fonologi: Jurnal Ilmuan Bahasa Dan Sastra Inggris* 3, no. 2 (2025): 14–26.

comparative analysis, seeking to identify pathways for reconciling Islamic legal principles with national constitutional values and international human rights standards. The process of *Ijtihad* (independent legal reasoning) is central to this harmonization.¹⁰

Ijtihad, particularly *istislahi* (teleological) *Ijtihad* which focuses on public interest (*maṣlahah*), is the practical mechanism through which *maqāṣid al-sharī'ah* can be applied to achieve legal harmonization. This means that the reconstruction of IFL is not merely about identifying its higher objectives but actively engaging in legal reasoning to align codified laws with these objectives. This process addresses inconsistencies and promotes justice within complex plural legal systems.

Comparative analysis among Indonesia, Malaysia, and Singapore is employed to identify patterns of convergence (shared approaches or outcomes) and divergence (differing interpretations or implementations) in the application and reconstruction of Islamic family law norms. This comparative lens helps illuminate best practices, areas requiring further attention, and the varying impacts of legal pluralism across the region.

Results and Discussion

Islamic Family Law Norms in Classical Jurisprudence

Classical Islamic jurisprudence (*fiqh*) provides the foundational principles for marriage, divorce, and inheritance, which have profoundly influenced modern codified Islamic family laws in ASEAN.

Marriage

In classical *fiqh*, a valid marriage (*nikah*) hinges on several essential elements. These include the groom's obligatory gift of *mahr* (dowry) to the bride, which symbolizes his serious intent and commitment, paid directly to her, not her guardians. The absence of coercion is paramount, requiring legal consent from both the bride and groom, as well as the bride's guardian (*wali*). The *wali* traditionally

¹⁰ Muhammad Jayus et al., "Policy of Islamic Family Law in Textual and Historical Approach," *KnE Social Sciences*, ahead of print, January 11, 2024, <https://doi.org/10.18502/kss.v9i2.15017>.

holds a significant role, typically being the bride's father or a close male relative.¹¹

However, the degree of a bride's agency in marriage has been a subject of doctrinal diversity among classical schools. For instance, the Hanafi and Hanbali schools of jurisprudence generally require the prospective bride's explicit consent if she has reached the age of puberty. In contrast, the Maliki and Shafi'i schools historically permitted a father to compel a virgin daughter into marriage, reflecting differing interpretations of prophetic traditions and community practices.¹² This internal doctrinal variation within classical *fiqh* itself provides a historical precedent for the diverse interpretations and codifications observed in modern plural legal systems. This inherent flexibility suggests that the reconstruction of IFL can legitimately draw upon this diversity, rather than being perceived as a radical departure from established tradition. The existence of multiple schools of thought within classical *fiqh* offers a legitimate basis for selecting and adapting norms to suit contemporary contexts and evolving societal values.

Divorce

Islamic law recognizes various forms of marriage dissolution, some initiated by the husband and others by the wife. The primary categories include *Ṭalāq* (repudiation by the husband), *Khul'* (mutual divorce), and *fasakh* (judicial annulment).

Ṭalāq is traditionally the husband's prerogative to dissolve the marriage. While classical jurists generally considered *Ṭalāq* forbidden or reprehensible without a compelling cause, they did not typically require the husband to obtain court approval or provide a justification for its pronouncement.¹³ This historical practice reveals a notable gap between the ethical ideal of discouraging arbitrary divorce and the practical legal mechanism, which allowed unilateral male repudiation without external oversight. This tension between ideal principles and practical implementation in classical *fiqh* foreshadows and helps explain many of the challenges faced in modern IFL reforms,

¹¹ "Islamic Marital Jurisprudence - Wikipedia," accessed August 4, 2025, https://en.wikipedia.org/wiki/Islamic_marital_jurisprudence.

¹² "Islamic Marital Jurisprudence - Wikipedia."

¹³ *Wikipedia*, "Divorce in Islam," July 18, 2025, https://en.wikipedia.org/w/index.php?title=Divorce_in_Islam&oldid=1301261603.

particularly concerning women's rights and the push for greater judicial oversight. The initial declaration of *Ṭalāq* is often a revocable repudiation (*Ṭalāq raj'ah*), allowing the husband to revoke it during the *'iddah* (waiting period), typically three full menstrual cycles, thereby providing an opportunity for reconciliation. However, *Ṭalāq al-bid'ah* (irregular divorce), such as uttering the triple *Ṭalāq* in a single pronouncement, irrevocably terminates the marriage but is widely considered against the spirit of Sharia. *Khul'* represents a wife's right to seek divorce from her husband, often by returning part or all of the *mahr* or offering other compensation. *Fasakh* (judicial annulment) allows for the dissolution of marriage by a Religious Court based on specific grounds, often initiated by the wife, such as the husband's failure to provide maintenance, cruelty, or impotence. The *'iddah* (waiting period) is a crucial component of Islamic divorce law, prescribed to discourage hasty divorces and to ascertain paternity, particularly in cases of pregnancy.¹⁴

Inheritance

Islamic inheritance law, known as *faraid*, applies to all types of property, whether movable or immovable, and follows fixed shares assigned to specific categories of heirs. These primary heirs, often referred to as Quranic heirs (*Ashab-ul-Furud* or *dzawil furudh*), include the mother, father, wife, husband, daughter, and son.¹⁵ The precise share inherited by an individual depends on the presence and number of other heirs. A notable principle is that sons typically receive twice the share of daughters, reflecting a theologically grounded notion of proportional justice.¹⁶

After the distribution of fixed shares to the primary heirs, the remaining estate is allocated to secondary or residuary heirs (*Al-Asabat* or *ashabah*). Distant kin (*Dhaw-u'l Arham*) are entitled to inherit only if no primary or residuary heirs survive. Rules of exclusion (*hajib*) also apply, disqualifying certain individuals from inheritance, such as a murderer of the deceased or a non-Muslim inheriting from a Muslim.

¹⁴ Wikipedia, "Divorce in Islam."

¹⁵ Tom Debiase, *Shari'ah, and an Introduction to Islamic Inheritance Law - Wedlake Bell*, May 22, 2025, <https://wedlakebell.com/shariah-and-an-introduction-to-islamic-inheritance-law/>.

¹⁶ Debiase, *Shari'ah, and an Introduction to Islamic Inheritance Law - Wedlake Bell*.

Testamentary freedom under Islamic inheritance law is restricted. A Muslim individual can bequeath only up to one-third of their net estate (after deduction of debts and funeral expenses) through a will (*wasiat*) to non-heirs. The remaining two-thirds must be distributed according to the fixed shares prescribed by *faraid* to the rightful heirs.¹⁷ This limitation ensures that the primary heirs receive their divinely ordained portions.

The Structure of Legal Pluralism in ASEAN States

The legal systems in Indonesia, Malaysia, and Singapore exhibit distinct approaches to legal pluralism, particularly concerning the accommodation and implementation of Islamic family law. These variations are largely shaped by historical colonial legacies, demographic compositions, and state policies, creating a spectrum of state accommodation of IFL. Indonesia, with its strong incorporation of Islamic law, stands distinct from Malaysia's parallel, state-level Syariah court system, and Singapore's more secular system with limited, but constitutionally recognized, space for IFL. This range of configurations demonstrates that "legal pluralism" is not a single model but a diverse set of arrangements, each with unique implications for the autonomy and application of Islamic law.

The following table provides a comparative overview of the jurisdictional frameworks in these three countries:

Table 1. Jurisdictional Frameworks and Legal Pluralism in Indonesia, Malaysia, and Singapore

Feature	Indonesia	Malaysia	Singapore
Overall Legal System	Dual (Civil & Religious Courts)	Parallel (Civil & Syariah Courts)	Secular Muslim Law (AMLA) with Law

¹⁷ "An Overview of Islamic Inheritance Laws – Sedekahsg," accessed August 4, 2025, <https://singaporesedekah.com/pages/an-overview-of-islamic-inheritance-laws>.

Primary Islamic Legal Body/Court	Religious Courts (<i>Pengadilan Agama</i>)	Syariah Courts (<i>Mahkamah Syariah</i>)	Syariah Court (SYC), Registry of Muslim Marriages (ROMM)
Jurisdiction of Islamic Courts	Personal Status (marriage, divorce, inheritance, <i>waqf</i> , <i>zakat</i> , <i>Shadaqah</i> , sharia economics) for Muslims only	Family Law, Religious Observance, Minor Criminal Offenses for Muslims only	Marriage, Divorce, and related personal matters for Muslims only
Interaction with Civil/Customary Law	Strong incorporation of Islamic law; shift from "choice of law" to absolute Religious Court authority for Muslims in inheritance; customary law still practiced informally	Parallel system with jurisdictional limitations; Islamic law is a state matter, leading to variations across states; civil courts retain final authority in constitutional matters	Limited space for Islamic law under AMLA; civil courts retain final authority; English law adopted as basic law with caveats for religious beliefs/customs
Level of Islamic Law Application	National/Unified (KHI applies comprehensively)	State-level/Varied (Islamic Family Law Acts/Enactments differ by state)	Limited/Specific (AMLA governs personal matters for Muslims)

Indonesia

Indonesia operates a dual legal system characterized by a strong incorporation of Islamic law, particularly in personal status matters, through its Religious Courts (*Pengadilan Agama*) and the Compilation of Islamic Law (KHI). The KHI, a codified set of Islamic legal

principles, covers marriage, divorce, and inheritance, aiming to unify Islamic civil law norms across the archipelago.¹⁸ Marriage registration is mandatory under the KHI and Law No. 1 of 1974, primarily to ensure marital order and legal certainty for Indonesian society.¹⁹

A significant development in Indonesia's legal landscape was the abolition of the "choice of law" principle through Law No. 3 of 2006. Previously, Muslims could choose between Islamic, customary, or civil law for inheritance disputes. Now, the Religious Courts have absolute authority over inheritance cases for Muslims, resolving them based on Islamic law.²⁰ This shift demonstrates a move towards greater formalization and centralization of Islamic law within the national legal framework. Divorce proceedings under the KHI require a trial process in a religious court, a measure designed to provide legal protection for both parties, particularly women, against unilateral divorces.²¹ However, challenges persist, such as the KHI's limited regulation of mandatory bequests for heirs of different religions, highlighting areas where further clarity or reform may be needed.²²

Malaysia

Malaysia features a parallel civil and Syariah court system, a distinctive feature of its legal pluralism. Syariah Courts possess limited jurisdiction, exclusively over Muslims, primarily in matters of family law and religious observance, as well as minor criminal offenses.²³ A key characteristic of Malaysia's system is that Islamic law is a state matter, meaning that enactments and interpretations can vary significantly across different states, unlike Indonesia's more uniform

¹⁸ Prabowo et al., "Mandatory Testament for Heirs of Different Religions."

¹⁹ "Kompilasi Hukum Islam | PDF | Marriage | Wife," Scribd, accessed August 4, 2025, <https://www.scribd.com/document/526653760/Kompilasi-Hukum-Islam>.

²⁰ "The Muslim Will (Wasiat) in Singapore: A Legal Guide," *IRB Law Singapore*, n.d., accessed August 4, 2025, <https://irblaw.com.sg/learning-centre/muslim-wills-wasiat/>.

²¹ Sandi Yoga Pradana et al., "Maintenance Rights of Wife and Children After Divorce in Islamic Family Law," *International Journal of Health, Economics, and Social Sciences (IJHESS)* 7, no. 2 (2025): 816–20.

²² Prabowo et al., "Mandatory Testament for Heirs of Different Religions."

²³ "Islamic Legal Systems | Judiciaries Worldwide."

national law.²⁴ The Islamic Family Law (Federal Territories) Act 1984 governs family matters for Muslims residing in the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya.²⁵

This Act sets out detailed provisions for marriage, including minimum age requirements (18 for men, 16 for women, with judicial permission for exceptions), prohibited relationships, and conditions for polygamy, which explicitly requires prior written permission from the Syariah Court. Divorce procedures are also regulated, encompassing *talaq* (repudiation), *Khul'* (divorce by redemption), *fasakh* (judicial dissolution), *ta'liq* (conditional divorce), and *li'an* (oath of imprecation).²⁶ The Act also provides for the maintenance of wives and children and the division of matrimonial property (*harta sepencarian*) upon divorce.²⁷ Inheritance for Muslims is governed by *faraid*, with specific fixed shares for heirs as outlined in classical Islamic law.²⁸ The jurisdictional limitations of the Syariah Courts and the state-level nature of Islamic law create complexities and potential inconsistencies in its application.

Singapore

Singapore, while a secular state, accommodates Islamic law in personal matters for its Muslim citizens through the Administration of Muslim Law Act (AMLA). Under AMLA, the Majlis Ugama Islam Singapura (MUIS), the Syariah Court (SYC), and the Registry of Muslim Marriages (ROMM) were established to administer Muslim religious affairs. The SYC has jurisdiction over marriage, divorce, and other related matters where all parties are Muslims or were married under Muslim law.²⁹

Marriage requirements under AMLA include both parties being Muslim, minimum age (18 for groom, 16 for bride, with *Kadi* permission for those under 18), consent of the *wali*, payment of *mahr*, and solemnization by a *Kadi* or *Naib kadi*, followed by official

²⁴ 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>.

²⁵ "Islamic Family Law (Federal Territories) Act 1984."

²⁶ "Islamic Family Law (Federal Territories) Act 1984."

²⁷ "Islamic Family Law (Federal Territories) Act 1984."

²⁸ "An Overview of Islamic Inheritance Laws – Sedekahsg."

²⁹ "Muslim Divorce in Singapore."

registration with ROMM. Polygamy is permitted but requires prior Syariah Court permission, which considers the husband's financial capacity, ability to treat wives equally, and the existing wife's opinion.³⁰ Divorce forms recognized include *talak*, *khuluk* (divorce by redemption), *Cerai taklik* (conditional divorce), and *fasakh* (annulment). Notably, unlike civil courts, the SYC does not make general maintenance orders but grants *nafkah iddah* (maintenance during the waiting period) and *mutaah* (consolatory gift) to the divorced wife.³¹ Inheritance for deceased Muslims domiciled in Singapore is distributed in accordance with Muslim law (*faraid*) and, where applicable, Malay custom, as stipulated by Section 112 of AMLA.³² Testamentary freedom, similar to other jurisdictions, is generally limited to one-third of the estate.³³

The codification of Islamic family law in these countries, through instruments like the KHI, IFLA, and AMLA, serves as a significant tool for modernization and state control. This process formalizes and standardizes IFL, allowing the state to exert a degree of authority over its interpretation and implementation. This often involves introducing procedural requirements, such as court permission for polygamy or mandatory divorce registration, which were not strictly enforced in classical *fiqh*. This reflects a broader trend of state legal systems asserting authority over personal status laws, aiming to enhance legal certainty and protect individual rights.

Furthermore, the influence of customary law remains a notable aspect in shaping codified IFL. In Indonesia, despite the KHI, customary law (*adat*) continues to influence inheritance practices among many Muslims.³⁴ The historical interaction between Islamic law and *adat* law in Indonesia and Malaysia, where they functioned as "twin

³⁰ Tembusu Law, "Muslim Marriage In Singapore: Your Guide To The Process & Laws," *Tembusu Law*, March 23, 2025, <https://www.tembusulaw.com/insights/muslim-marriage-singapore/>.

³¹ "Muslim Divorce in Singapore."

³² Syariah Law, "Muslim Inheritance Law - Faraid," *IRB Law Singapore*, n.d., accessed August 4, 2025, <https://irblaw.com.sg/learning-centre/muslim-inheritance-law-faraid/>.

³³ "The Muslim Will (Wasiat) in Singapore."

³⁴ Prabowo et al., "Mandatory Testament for Heirs of Different Religions."

legal pillars," has led to unique hybrid legal norms.³⁵ For instance, the concept of *harta sepencarian* (jointly acquired assets) in Malaysia and Singapore, which is recognized in divorce and inheritance matters, has its origins in Malay custom.³⁶ This interplay between formal Islamic legal codes and informal customary practices adds another layer of complexity to the legal pluralism observed in the region.

Table 2. Comparative Overview of Key Islamic Family Law Provisions (Marriage, Divorce, Inheritance) in Indonesia, Malaysia, and Singapore

Feature	Indonesia (KHI, Law No. 1/1974)	Malaysia (IFLA 1984, State Enactments)	Singapore (AMLA)
Marriage: Minimum Age	Male: 19, Female: 19 (previously 16)	Male: 18, Female: 16 (Syariah Judge can permit lower)	Male: 18, Female: 16 (<i>Kadi</i> permission for under 18)
Marriage: Consent Requirements	Bride, groom, and <i>wali</i> consent required; no coercion	Both parties consent; <i>wali</i> consent (or Raja/Syariah Judge)	Bride, groom, and <i>wali</i> consent required
Marriage: Polygamy Conditions	Court permission required; conditions: wife consent, financial	Court permission required; conditions: just and necessary (e.g., sterility), financial	Syariah Court permission required; conditions: financial/emotiona

³⁵ Mawardi, "The Infuence of Colonial Laws on Islamic Legal Developments in Indonesia, Malaysia and Singapore: A Comperative Study."

³⁶ Musawah | A. Global Movement For Equality and Justice in the Muslim Family, *Women's Financial Rights After Divorce - Campaign for Justice in Muslim Family Laws*, n.d., accessed August 4, 2025, <https://campaignforjustice.musawah.org/developments/womens-financial-rights-after-divorce/>.

	ability, fair treatment	ability, equal treatment, no <i>darar syarie</i> to existing wives	l support, equal treatment, existing wife's opinion, genuine reasons
Marriage: Registration	Mandatory, aims to ensure marital order; performed by Marriage Registrar	Mandatory, ensures legal validity and safeguards rights	Mandatory, solemnized by <i>Kadi/Naib kadi</i> , registered with ROMM
Divorce: Types of Divorce	<i>Talāq, Khul‘, Fasakh</i> (annulment), <i>Taklik</i>	<i>Talāq, Khul‘, Fasakh, Ta‘liq, Li‘an</i>	<i>Talak, Khuluk, Cerai taklik, Fasakh</i>
Divorce: Judicial Oversight	Requires trial process in Religious Court for validity	Court can order divorce/permit <i>talaq</i> if marriage registered/contracted according to <i>Hukum Syarak</i>	Syariah Court has jurisdiction for divorce applications
Divorce: Post-Divorce Financial Provisions	<i>Nafaqah iddah, mut‘ah</i> , child support, division of joint property (<i>harta gono-gini</i>)	Maintenance for wife/children, <i>mut‘ah</i> , division of <i>harta sepencarian</i>	<i>Nafkah iddah, mutaah</i> (consolatory gift); no general maintenance order like civil courts
Inheritance: Governing Law	Islamic law (KHI) is absolute authority for Muslims	Islamic law (<i>faraid</i>)	Muslim law (<i>faraid</i>) and Malay custom under AMLA
Inheritance: Fixed Shares	Quranic heirs (<i>dzawil furudh</i>), residuary heirs	Quranic heirs (<i>Ashab-ul-Furud</i>), residuary heirs (<i>Al-</i>	<i>Dhaw-u’l-Fara’id</i> (Quranic Heirs), <i>Asaba</i> (Residual

	(<i>ashabah</i>); son receives twice daughter's share	<i>Asabat</i>); son receives twice daughter's share	Heirs), <i>Dhaw-u'l Arham</i> (Distant Kin); son receives twice daughter's share
Inheritance: Testamentary Freedom Limit	Max 1/3 of inherited assets (without unanimous heir agreement)	Up to 1/3 of net estate (after debts/funeral expenses)	Up to 1/3 of assets
Inheritance: Disqualifications	Murderer, non-Muslim relative	Fugitive slave, murderer, non-Muslim	Fugitive slave, murderer, non-Muslim relative

Comparative Challenges and Opportunities

The plural legal systems in Indonesia, Malaysia, and Singapore, while offering distinct frameworks for Islamic family law, also present a unique set of challenges and opportunities for its reconstruction.

Inconsistencies in Application and Jurisdictional Conflicts

A primary challenge stems from inconsistencies in the application of Islamic family law across these diverse jurisdictions. In Malaysia, the federal system dictates that Islamic law is a state matter, leading to variations in enactments and interpretations across different states. This contrasts sharply with Indonesia's more unified national KHI, which applies comprehensively across the country.³⁷ These disparities can lead to legal fragmentation, where different legal systems apply to different groups or even to the same individuals in varying contexts.

Furthermore, jurisdictional overlaps and conflicts between Syariah and civil courts are a persistent issue, particularly in Malaysia, where the two court systems operate in parallel with defined, yet

³⁷ Ade Khoirunnisa et al., "Comparison of Islamic Family Law in Malaysia and Indonesia."

sometimes contested, boundaries.³⁸ This structural complexity can give rise to "forum shopping," a practice where parties choose the most favorable jurisdiction or court to resolve a dispute, exploiting differences in laws or procedures across various legal forums.³⁹ This can result in inconsistent judicial outcomes and undermine legal certainty, creating a paradox where legal pluralism, while a source of legal innovation, also contributes to fragmentation.

Challenges in Integrating Sharia Principles with Constitutional Guarantees

The integration of Sharia principles with national constitutional guarantees, particularly those related to gender equality and human rights, remains a significant challenge. While reforms in Indonesia and Malaysia have aimed to provide a more equal position for women in marriage and divorce, full protection consistent with broader human rights and gender equality principles is still an ongoing endeavor.

Specific areas such as child marriage and polygamy vividly illustrate this tension. Classical *fiqh* historically allowed for child marriage, but contemporary reforms in Malaysia and Indonesia have progressively raised minimum marriage ages.⁴⁰ Despite these legislative changes, exceptions and the persistence of unregistered marriages continue to pose challenges, with data indicating thousands of child marriages still occurring. Similarly, polygamy, while permitted under strict conditions in Islam, is now regulated by state laws requiring court permission, aiming to protect the rights of existing wives and ensure justice.⁴¹ However, unauthorized polygamous marriages, often conducted outside the legal system, remain a concern, highlighting the interplay between formal codification and informal practices.⁴² This

³⁸ *Wikipedia*, "Syariah Court," March 22, 2025, https://en.wikipedia.org/w/index.php?title=Syariah_Court&oldid=1281784358.

³⁹ Anantdeep Singh, "Forum Shopping in the Middle East and South Asia: Its Impact on Women and the Evolution of Inheritance Codes," *The Journal of Legal Pluralism and Unofficial Law* 46, no. 3 (2014): 289–319, <https://doi.org/10.1080/07329113.2015.958913>.

⁴⁰ "Islamic Marital Jurisprudence - Wikipedia."

⁴¹ Ade Khoirunnisa et al., "Comparison of Islamic Family Law in Malaysia and Indonesia."

⁴² Abubaker Chiagozie and Akpofure Akpofure, "An Analysis of Islamic Law on Polygamy Without Court Permission: Legal, Ethical, and Social Perspectives,"

persistence of informal practices, such as unregistered marriages or adherence to customary law in inheritance despite codified Islamic law, can often be detrimental to vulnerable parties, particularly women and children, affecting their access to legal rights and social services.⁴³

Opportunities for Harmonizing Religious Law with National Law

Despite these challenges, significant opportunities exist for harmonizing religious law with national legal frameworks. A *maqāṣid*-oriented reinterpretation offers a viable pathway for reform, ensuring that legal provisions maintain substantive justice and align with the higher objectives of Sharia.⁴⁴ This approach allows for a dynamic adaptation of Islamic law, making it relevant to contemporary needs.

Crucially, women's organizations and civil society actors have emerged as powerful forces in advocating for reforms based on principles of equality and justice within Islamic frameworks.⁴⁵ Their advocacy has directly influenced legislative changes and judicial practices, pushing for a reinterpretation of Islamic principles through a lens of equality and justice. This demonstrates that legal reconstruction is often a bottom-up process driven by social movements, transforming academic debates on *maqāṣid al-sharī'ah* into concrete legal and social reforms. This active engagement highlights the transformative potential within legal pluralism, where diverse actors can leverage existing legal and religious frameworks to drive progressive change.

Toward a Normative Framework for Reconstruction

The reconstruction of Islamic family law in ASEAN's plural legal systems necessitates a multifaceted normative framework that

SYARIAT: Akhwal Syaksyah, Jinayah, Siyasaḥ and Muamalah 1, no. 3 (2024): 156–64, <https://doi.org/10.35335/wh2zd103>.

⁴³ Ella Safitri and Ahmat Saiful, "Islamic Inheritance Law in Indonesia: Analysis of Legal Implementation and Compliance Among Muslim Communities," *RESPONSIVE LAW JOURNAL* 2, no. 1 (2025): 53–61, <https://doi.org/10.59923/rlj.v2i1.460>.

⁴⁴ Wahid et al., "Ibn Asyur's Concept of Maqashid Al-Shariah and Its Urgency as a Basis for Contemporary Ijtihad."

⁴⁵ Zainah Anwar and Jana S Rumminger, "Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform," *Wash. & Lee L. Rev.* 64 (2007): 1529.

draws upon the inherent flexibility of Islamic jurisprudence while responding to contemporary social and legal demands.

Emphasis on *Maqāṣid al-sharī'ah*

A foundational element of this framework is a strong emphasis on *maqāṣid al-sharī'ah*, the higher objectives of Islamic law. These objectives—the preservation of religion, life, intellect, lineage, and property—provide a teleological lens through which *fiqh* norms can be reinterpreted and adapted to contemporary contexts.⁴⁶ This approach allows for flexible interpretation, moving beyond rigid literalism to discern the underlying wisdom and purpose of legal injunctions.⁴⁷

For instance, the regulation of polygamy through mandatory court permission, requiring proof of financial capacity and the ability to treat wives justly, aligns directly with the *maqāṣid* of protecting family, dignity, and preventing harm.⁴⁸ Similarly, the progressive increase in the minimum marriage age in Indonesia and Malaysia serves to preserve lineage and intellect by ensuring the maturity and well-being of young couples and their future families.⁴⁹ In judicial practice, the granting of *fasakh* (annulment) due to a spouse's severe mental illness demonstrates the application of *maqāṣid* to preserve life and family welfare by preventing prolonged harm within the household.⁵⁰ This demonstrates that *maqāṣid al-sharī'ah* is not merely a theoretical justification but a normative lens that enables a re-evaluation of traditional norms to achieve more equitable outcomes, thereby addressing historical gender imbalances within the framework of Islamic law itself. It shifts the discourse from rigid adherence to textual literalism to a more dynamic, purpose-driven interpretation.

⁴⁶ Phuoc, “Sharī'ah Law in South East Asian (ASEAN) Region.”

⁴⁷ Wahid et al., “Ibn Asyur’s Concept of Maqashid Al-Shariah and Its Urgency as a Basis for Contemporary Ijtihad.”

⁴⁸ Chiagozie and Akpofure, “An Analysis of Islamic Law on Polygamy Without Court Permission.”

⁴⁹ Ade Khoirunnisa et al., “Comparison of Islamic Family Law in Malaysia and Indonesia.”

⁵⁰ Nur Iwana Safi Muhamad Hanizad et al., “A Maqasid Al-Shariah Approach to Divorce Due to a Spouse’s Mental Illness: Legal and Rights-Based Insights from Islamic Family Law,” *International Journal of Research and Innovation in Social Science* IX, no. VI (2025): 5496–505, <https://doi.org/10.47772/IJRISS.2025.906000419>.

Legal Reforms Must Maintain Substantive Justice, Not Just Formal Compliance

Effective reconstruction requires that legal reforms go beyond mere procedural adjustments to ensure that the underlying principles of justice and equity are genuinely upheld in practice. This involves addressing critical issues such as women's financial rights post-divorce, including maintenance (*nafkah iddah*), consolatory gifts (*mut'ah*), and the equitable division of matrimonial assets (*harta sepencarian* or *harta gono-gini*). Ensuring the effective enforcement of court orders related to these provisions is equally vital, as procedural mechanisms alone are insufficient if compliance is weak.⁵¹ The recognition and division of jointly acquired property, such as *harta sepencarian* in Malaysia and Indonesia, exemplify an effort towards achieving substantive justice by acknowledging and valuing women's contributions to the marital estate, whether financial or non-financial.⁵²

Principles of Flexibility (*Taysir*), Public Interest (*Maṣlahah*), and Contextual *Ijtihad* as Drivers of Reform

The principles of *Taysir* (facilitation or ease) and *maṣlahah* (public interest) are crucial for adapting Islamic law to changing societal needs and minimizing hardship for Muslims in their daily affairs.⁵³ These principles provide the ethical and legal justification for reinterpreting existing norms.

Contextual *Ijtihad* (independent legal reasoning) is indispensable for addressing new issues and socio-cultural problems that were not explicitly covered in classical *fiqh*. This includes, for instance, the legal protection of children born outside marriage or the application of DNA evidence for genealogy in contemporary legal disputes. This approach advocates for an integration of textual (normative) and contextual (historical-empirical) analyses, allowing for a dynamic and adaptive formulation of Islamic law.⁵⁴ Judicial decisions play a significant role in this process. In Indonesia, the Supreme Court's

⁵¹ Ridmajayanti et al., "Inequality of Rights in Verstek Divorce: Islamic Law Perspective and Practices in Religious Courts," *Journal of Indonesian Scholars for Social Research* 5, no. 1 (2025): 73–82, <https://doi.org/10.59065/jissr.v5i1.175>.

⁵² Equality and Family, *Women's Financial Rights After Divorce - Campaign for Justice in Muslim Family Laws*.

⁵³ Phuoc, "Sharī'ah Law in South East Asian (ASEAN) Region."

⁵⁴ Jayus et al., "Policy of Islamic Family Law in Textual and Historical Approach."

Circulars (SEMAs) have served as instruments of reform, adapting Islamic family law regulations to contemporary needs. These circulars, which address issues like reasons for divorce, joint property, and women's financial rights, are explicitly described as being "integrative with maqasid sharia" and promoting "human rights, freedom, equality, justice, and women's rights" This highlights how judicial bodies, through their interpretive authority and policy-making, can act as significant drivers of IFL reform, demonstrating a form of "judicial *Ijtihad*" that adapts the law to social developments.

The following table provides specific examples of how *maqāṣid al-sharī'ah* has been applied in contemporary reforms across the three countries:

Table 3. Application of *Maqāṣid al-sharī'ah* in Contemporary Reforms: Case Examples

Area of Law/ Reform	Traditional Norm/ Challenge	Reform/Codified Law (Country Example)	Relevant <i>Maqāṣid</i> Addressed	Substantive Justice Outcome/Implication
Child Marriage	Lower marriage age (e.g., 9 for girls in some classical views)	Increased minimum marriage age (Indonesia: 19 for both; Malaysia: 18M/16F with judicial permission)	Preservation of Lineage (<i>hifz al-nasl</i>), Preservation of Intellect (<i>hifz al-aql</i>)	Greater protection for children's physical/mental maturity, education, and well-being; reduced vulnerability
Polygamy Regulation	Unilateral male right to polygamy without strict oversight	Court permission required for polygamy (Indonesia, Malaysia, Singapore); conditions	Preservation of Lineage (<i>hifz al-nasl</i>), Preservation of Dignity (<i>hifz al-nafs</i>),	Enhanced rights and protection for existing wives; ensures husband's responsibility and fairness;

		include financial capacity, equal treatment, no harm to existing wife	Prevention of Harm (darar)	promotes family stability
Women's Financial Rights Post-Divorce	Limited or inconsistent financial recourse for women post-divorce in some interpretations	Mandated <i>nafkah iddah</i> , mut'ah, and division of matrimonial assets (<i>harta sepencarian</i> / gono-gini) (Indonesia, Malaysia, Singapore)	Preservation of Property (<i>hifz al-mal</i>), Prevention of Harm (darar), Promotion of Justice	Equitable distribution of assets recognizing women's contributions; provides financial security for divorced women and children; reduces post-divorce hardship
Judicial Annulment (<i>Fasakh</i>)	Limited grounds for wife to seek divorce; emphasis on husband's <i>talaq</i>	Expanded grounds for <i>fasakh</i> (e.g., husband's mental illness, cruelty, neglect of maintenance) (Malaysia, Singapore)	Preservation of Life (<i>hifz al-nafs</i>), Preservation of Lineage (<i>hifz al-nasl</i>), Prevention of Harm (darar)	Provides legal recourse for wives in harmful marriages; safeguards well-being of spouses and children; aligns with principles of justice and welfare

Need for Inclusive Dialogue Among Jurists, Legislators, and Civil Society

For the reconstruction of Islamic family law to be effective and sustainable, it requires a collaborative and inclusive approach involving various stakeholders. Jurists play a critical role in providing religious legitimacy through reinterpretation and *fatwas*, grounding reforms within Islamic legal tradition.⁵⁵ Legislators are essential for codifying these reforms into state law, translating religious principles into enforceable legal provisions. Civil society organizations, particularly women's groups, are crucial advocates for the rights and needs of the community, often pushing for reforms based on principles of equality and justice within Islamic frameworks.⁵⁶

This multi-stakeholder approach is vital for building consensus and ensuring broad acceptance of reforms. Reforms imposed solely from the top down or lacking religious legitimacy are likely to face resistance and limited impact. Conversely, a synergistic collaboration that integrates diverse perspectives helps bridge the gap between traditional interpretations and modern aspirations for justice and equality, ensuring reforms are both religiously legitimate and socially impactful. This inclusive dialogue is not merely a procedural step but a critical component for fostering a dynamic legal adaptation that resonates with the lived realities of Muslim communities in ASEAN.⁵⁷

Conclusion

Islamic family law in ASEAN nations, particularly Indonesia, Malaysia, and Singapore, is characterized by a complex interplay of classical Islamic jurisprudence, diverse state accommodations, and the dynamic realities of plural legal systems. While classical *fiqh* provides the foundational norms for marriage, divorce, and inheritance, their contemporary application demonstrates significant divergence and

⁵⁵ Kristen Stilt et al., "The Ambitions of Muslim Family Law Reform," *Harv. Women's LJ* 41 (2018): 301.

⁵⁶ Anwar and Rumminger, "Justice and Equity in Muslim Family Laws: Challenges, Possibilities, and Strategies for Reform."

⁵⁷ Lynn Welchman et al., "Muslim Family Laws: Trajectories of Reform," SOAS University of London, 2023, https://www.soas.ac.uk/sites/default/files/2023-08/Muslim%20Family%20Laws_Trajectories%20of%20Reform.pdf.

ongoing challenges, particularly concerning gender equality, judicial consistency, and the persistence of informal practices.

The study underscores that classical *fiqh*, while foundational, must be critically revisited and reinterpreted to remain relevant and just in modern contexts. The inherent doctrinal flexibility within classical jurisprudence itself, as evidenced by differing scholarly opinions on matters like a bride's consent, provides a legitimate basis for this re-evaluation. The historical tension between ideal Islamic principles (e.g., discouraging arbitrary *talaq*) and their historical implementation (e.g., unilateral male repudiation without strict oversight) further necessitates a dynamic approach to bridge this gap and ensure substantive justice.

A *maqāṣid*-based normative reconstruction offers a viable and internally legitimate path for reforming marriage, divorce, and inheritance laws. By focusing on the higher objectives of Islamic law—the preservation of religion, life, intellect, lineage, and property—reforms can achieve substantive justice, address gender inequities, and adapt to evolving socio-economic realities. Concrete examples, such as the regulation of child marriage and polygamy, the enhancement of women's financial rights post-divorce, and the expansion of *fasakh* grounds, illustrate how this teleological approach aligns Islamic law with contemporary human rights discourse while remaining rooted in its core principles. This transformative potential of *maqāṣid al-sharī'ah* allows for a purpose-driven interpretation that moves beyond rigid textual literalism.

Legal pluralism, while presenting challenges such as fragmentation and forum shopping, should be viewed not merely as an impediment but as a dynamic framework that fosters legal adaptation and integration. The diverse approaches adopted by Indonesia, Malaysia, and Singapore demonstrate how different states navigate this complexity, with judicial activism (e.g., Indonesia's Supreme Court Circulars) and multi-stakeholder dialogues playing crucial roles in driving progressive reforms. Ultimately, successful reconstruction hinges on continuous *Ijtihad* that is contextual, public-interest oriented, and inclusive of diverse voices from jurists, legislators, and civil society. This collaborative effort is essential to ensure that Islamic family law remains a source of justice, welfare, and social harmony for Muslim communities in ASEAN.

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