

## Comparison of Islamic Family Law in Malaysia and Indonesia

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### Abstract

*Islamic family law in Malaysia and Indonesia has the same sharia basis but differs in its application due to the influence of the legal system, culture, and state policies. This comparison is important to understand the variation of regulations and their implications for Muslim communities in both countries. This study aims to analyze the similarities and differences of Islamic family law in Malaysia and Indonesia, especially in the aspects of marriage, polygamy, and inheritance, and to examine the effectiveness of its implementation. This study uses a normative juridical method with a comparative approach. Primary data sources include the Enakmen of the Melaka State Law Number 12 of 2002, the Selangor State Law Draft, the Islamic Family Law Enakmen Number 17 of 2003 (Malaysia), and Law Number 1 of 1974, Law Number 16 of 2019, and the Compilation of Islamic Law (Indonesia). Data collection techniques were carried out through library research, with data analysis using descriptive analysis and content analysis of applicable legal provisions. Research shows that although Malaysia and Indonesia are both based on sharia, Malaysia tends to be more structured in regulating polygamy and inheritance, while Indonesia is more flexible by considering customary law. Differences are also seen in the authority of the judicial institution, where Malaysia has autonomous Sharia Courts per state, while Indonesia implements a centralized system through the Religious Courts.*

**Keywords:** Islamic Family Law, Comparison, Malaysia, Indonesia.

### Abstrak

Hukum keluarga Islam di Malaysia dan Indonesia memiliki dasar syariah yang sama namun berbeda dalam penerapan karena pengaruh sistem hukum, budaya, dan kebijakan negara. Perbandingan ini penting untuk memahami variasi regulasi dan implikasinya terhadap masyarakat Muslim di kedua negara. Penelitian ini bertujuan menganalisis persamaan dan perbedaan hukum keluarga Islam di Malaysia dan Indonesia, khususnya dalam aspek perkawinan, poligami, dan warisan, serta mengkaji efektivitas penerapannya. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan komparatif. Sumber data primer meliputi Enakmen Undang-Undang Negeri Melaka Nomor 12 Tahun 2002, Rang Undang-Undang Negeri Selangor, Undang-Undang Keluarga Islam Enakmen Nomor 17 Tahun 2003 (Malaysia), serta Undang-Undang Nomor 1 Tahun 1974, Undang-Undang Nomor 16 Tahun 2019, dan Kompilasi Hukum Islam (Indonesia). Teknik pengumpulan data dilakukan melalui library research, dengan analisis data menggunakan analisis deskriptif dan analisis isi terhadap ketentuan hukum yang berlaku. Penelitian menunjukkan bahwa meskipun Malaysia dan Indonesia sama-sama berlandaskan syariah, Malaysia cenderung lebih terstruktur dalam pengaturan poligami dan pembagian warisan, sementara Indonesia lebih fleksibel dengan mempertimbangkan hukum adat. Perbedaan juga terlihat dalam kewenangan lembaga peradilan, di mana Malaysia memiliki Mahkamah Syariah yang otonom per negara bagian, sedangkan Indonesia menerapkan sistem terpusat melalui Pengadilan Agama.

**Kata Kunci:** Hukum Keluarga Islam, Perbandingan, Malaysia, Indonesia.

## INTRODUCTION

The reform of Islamic law is one of the important solutions in answering various problems faced by society, especially in the context of family law in Muslim countries. Along with the times, the challenges that arise are increasingly complex and comprehensive, prompting the need for more equitable and relevant legal adjustments for Muslims around the world.<sup>1</sup> Islam as a religion not only provides spiritual guidance, but also gives direction of thinking for its people to develop their teachings to the realm of taqiniyyah (laws and regulations). The development of family law reform in the Islamic world began in the early 20th century. It began with Turkey which in 1917 introduced family law reform through the Ottoman Law of Family Rights (Qanun Qarar al-Huquq al-'Ailah al-'Otmaniyah), which included rules on marriage, divorce, and inheritance. This reform was then followed by various other Muslim countries, such as Egypt in 1920, Iran in 1931, Syria in 1953, Tunisia in 1956, Pakistan in 1961, and Indonesia in 1974.<sup>2</sup>

In Southeast Asia, Malaysia is recorded as the first country to reform Islamic family law through the Mohammedan Marriage Ordinance, No. V of 1880 in the Straits Settlements (Penang, Malacca, and Singapore). This regulation, which appeared before independence, is considered the first step in family law reform in the region. One of the important provisions in this regulation is the obligation to register marriages and divorces for Muslims. Thus, the Mohammedan Marriage Ordinance not only became the basis for Muslim marriage law in the region, but also marked the beginning of the modernization of Islamic family law in Southeast Asia.

In Indonesia, efforts to reform family law began with the birth of Law No. 22 of 1946 concerning marriage and divorce, which became the first step in the modernization of marriage law in the country. Initially, this law only applied to the Java Island area. However, after Indonesia's independence, its scope was expanded to all regions of Indonesia through Law No. 32 of 1954 concerning Marriage Registration, Talak, and Referral. The existence of Law No. 22 of 1946 is inseparable from previous legal developments, namely as a continuation of Staatsblad (Stbl.) No. 198 of 1895 as well as the successor of the Huwelijks Ordonantie (Stbl. No. 348 of 1929 jo. Stbl. No. 467 of 1931) and the Vorstenlandse Huwelijks Ordonantie (Stbl. No. 98 of 1933). Thus, this law marks an important phase in the history of Indonesian family law, as well as the basis for the development of marriage regulations in the future.<sup>3</sup>

Research on the comparison of Islamic family law in Indonesia and Malaysia has actually not discussed this problem in its entirety, some studies only discuss one of the main subjects of Islamic family law between Indonesia and Malaysia, for example a thesis written by Annisa Sabira entitled "Comparative Study of Marriage Registration Law between Indonesia and Malaysia." This research only focuses on how Islamic family law is compared to marriage registration legal material without discussing other Islamic family law materials. The research was written by Refo Afdhal, et al with the title "Comparison of Polygamy Regulations in Indonesia and Malaysia." This study only focuses on a comparison of the polygamy regulatory system in Indonesia and Malaysia

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<sup>1</sup> Mohamad Faisal Aulia, "Comparative Analysis of the Application of Family Law in Egypt and in Indonesia," *Al-Ahwal Al-Syakhsiyyah: Journal of Family Law and Islamic Justice* vol. 2, no. 2, 2022, p. 125.

<sup>2</sup> Ahmad Rajafi, "The History of the Establishment and Renewal of Islamic Family Law in the Archipelago," *Aqlam: Journal of Islam and Plurality* vol. 2, no. 1, 2018, p. 2.

<sup>3</sup> Rahmawati, *Comparative Islamic Family Law* (South Sulawesi: IAIN Parepare Nusantara Press, 2020), p. 13.

without discussing other Islamic family law materials. Therefore, this study aims to further examine how Islamic family law in Indonesia and Malaysia as a whole compares to Islamic family law materials that include marriage, divorce and inheritance.

## RESEARCH METHODS

This research is a type of normative juridical analysis approach with a comparative approach (*comparative approach*) to see the comparison of Islamic family law materials in Malaysia and Indonesia. The data sources in this study consist of primary data sources and secondary data sources. Primary data sources based on Islamic family law laws and regulations in Malaysia include the Melaka State Law Enactment Number 12 of 2002, the Selangor State Bill, the Islamic Family Law Enactment Number 17 of 2003 and other Islamic family laws. Meanwhile, Indonesia is based on Law Number 1 of 1974, Law Number 16 of 2019, Compilation of Islamic Law and other regulations. Secondary data sources are books, articles on Islamic family law and other relevant literature. The data collection technique uses *library research* and the data obtained is analyzed by analytical descriptive method.

## RESULTS AND DISCUSSION

### Country Profile of Malaysia and Indonesia

Malaysia is a federal state with a parliamentary system of government. The country, which is dubbed as a neighboring country, has an area of 329,847 square km and is one of the ASEAN countries. Malaysia consists of thirteen states and three federal territories in Southeast Asia namely Johor, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Perak, Perlis, Penang, Sabah, Sarawak, Selangor and Trengganu, there are also three federal territories including Kuala Lumpur, Labuan and Putra Jaya.<sup>4</sup> The state of Malaysia is led by the Yang di-Pertuan Agong as the head of state and the Prime Minister who is the head of government. One of the characteristics of this country is the division of legal authority between the federal and state governments. In this case, the religion of Islam is under the jurisdiction of the state, which causes each state to have its own authority to draft and implement legal enactments in each country.

Likewise, in the enactment of the Islamic Family Law Enactment where each country has its own Enactment which contains different policies in regulating marriage or Islamic family law. Malaysia became the first Muslim country to reform family law through Mohammedan and Ordinance No. V (five) 1880 in parts of the Straits (Penang, Negeri Sembilan, and Malacca). In the Malaysian system of government as stated in the Malaysian constitution in part 1 Article 3 it is stated that "Islam is the religion of the Federation" but other religions are still accepted and welcome to settle. The Malaysian constitution also stipulates that the head of state is a Muslim. Then in article 11 it is also stated that Malaysia accepts the principle of freedom of religion.<sup>5</sup>

Indonesia is a country whose system of government is presidential whose leadership is held by a president, while Malaysia has a parliamentary system of government.<sup>6</sup> If in Malaysia the regulations governing its citizens are in the form of different enactments in each country, then in Indonesia there are rules called Laws, Government Regulations, and

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<sup>4</sup> Hamdani, "Ahwal Al-Syakhsiyyah (Family Law) Islam in Malaysia," Unpublished dissertation (Banda Aceh: IAIN Ar-Raniry, 2012), p. 3.

<sup>5</sup> Hamdani, "Ahwal Al-Syakhsiyyah (Family Law) Islam in Malaysia," p. 4.

<sup>6</sup> Salsabilla Putri, et al., "Comparison of Governments Between Indonesia and Malaysia in an Effort to Improve Literacy (Study on the Indonesian Ministry of Education, Culture, Research, and Technology with the Ministry of Education Malaysia)," *Muqaddimah Scientific Journal: Journal of Social, Political, and Humanities Sciences*, Vol. 9 No. 1 of 2025, p. 288.

other regulations. Generally, the laws in Indonesia apply comprehensively to all the people of the country. Arrangements regarding marriage or Islamic family law rules. The embodiment of the rules regarding marriage or family is contained in Law No. 1 of 1974 concerning Marriage, in addition to Law No. 1 of 1974 there is also another rule, namely Official Guidelines Number 1 of 1991 concerning the Compilation of Islamic Law (KHI),<sup>7</sup> which specifically explains how marriage should apply and must be followed by the Muslim community. Meanwhile, Law Number 1 of 1974 concerning Marriage above applies comprehensively to all Indonesian people regardless of their religion.

At first glance, the two countries above have similarities, namely on the side of a main leader must be someone who is Muslim, besides that the two countries both regulate Islamic family law. However, the difference between the two is from the system of government if Indonesia has a presidential government system while the Malaysian system of government is parliamentary, besides that in Malaysia there is the enactment of different laws in each country, while in Indonesia it applies comprehensively without any difference in each region.

### **Islamic Family Law Materials**

#### **Age Limit for Marriage**

In Malaysia, especially in Selangor, in the Selangor State Bill, it is said that the age limit for marriage for men and women is the same, which is 18 years old. Initially, the age limit for marriage in the Selangor State Enactment (Enactment No.2 of 2003) stated that the age limit for marriage for men was 18 years while for women was 16 years. However, the reality is that at that age, men and women have not reached the ideal age because they are considered not yet able to realize a comprehensive narration.<sup>8</sup>

Indonesia has also experienced changes in the rules regarding the age limit for marriage. In Law No. 1 of 1974 in article 7 (1) it reads "marriage is only allowed if the man has reached the age of 19 years and the woman is 16 years old. However, the provisions of the regulation are contrary to Law No. 23 of 2002 concerning Child Protection which states that the age that can be categorized as a child is a person who is still 18 years old. Due to the confusion of the provisions of the rule, the rule was finally changed based on the Constitutional Court Decision No.22/ PUU-XV/2017 which is now amended to "Marriage is only allowed when a man and woman have reached the age of 19" contained in Law No. 16 of 2019.<sup>9</sup>

#### **Marriage Registration**

The Islamic Family Law of the Federal Territories of 1984 stipulates that every marriage must be officially registered. This provision is contained in Section 25 of the Islamic Family (Federal Territories) Law of 1984, which affirms the importance of marriage registration as part of the fulfillment of legal requirements.<sup>10</sup> Marriage registration in Malaysia which is carried out in the respective state can be done after the marriage contract. However, in the state of Kelantan, marriage registration can be done within 7 days after the marriage contract is carried out, which is witnessed by guardians, married couples and witnesses. Unlike marriages carried out abroad, marriage registration

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<sup>7</sup> Faisar Ananda, et al., "The History of Islamic Family Law in Various Eras in Indonesia," *Dewaruci: Journal of History and Its Teaching*, Vol. 3 No. 1, 2024, p. 1.

<sup>8</sup> Badrul Munir, "The Age Limit of Marriage in the Selangor State Islamic Family Law in 2003: An Analysis of the Perspective of Maqashid Al-Syari'ah," *Samarah*, Vol. 3 No. 2, 2019, pp. 284-285.

<sup>9</sup> Ali Supyan, "The Age Limit for Marriage Based on Islamic Law and Legislation in Indonesia," *MIM Journal: Journal of Islamic Law Studies*, Vol. 01 No. 01, 2023, pp. 91-92.

<sup>10</sup> Hendri. K, "Problems of Marriage Law (Analysis of Marriage Registration Provisions in Indonesian and Malaysian Islamic Laws," *Islamic Law* Vol. 20. No.1, no. 1, 2020, p. 29.

is carried out through a registration officer appointed by the Malaysian embassy in the country.<sup>11</sup>

In Indonesia, marriage registration is a must that is clearly regulated in laws and regulations. This marriage registration procedure is further explained in the Regulation of the Minister of Religion Number 20 of 2019 concerning Marriage Registration.<sup>12</sup> Indonesia's rules regarding marriage registration are regulated in the Compilation of Islamic Law (KHI) and Law No. 1 of 1974. In the KHI in article 5, it is said that marriage registration aims to ensure marital order for Indonesian society. Therefore, every marriage must be held in front of a Marriage Registrar. Marriages carried out under the supervision of the Marriage Registrar have no legal force and can be said to be *nikah sirri*. In Indonesia, marriages performed abroad must be registered with the competent authorities. According to the applicable provisions, the registration must be carried out no later than one year after the married couple returns to the country. This is intended to ensure that marriages performed abroad remain legally valid in Indonesia.<sup>13</sup>

### **Polygamy**

Section 23 on polygamy in the Islamic Family Law Act of the Federal Territories 1984 states that:

- a) Unless he has written permission from the court, a married man may not marry another woman.
- b) In deciding on the polygamy permit, the court will summon the applicant, wife and relevant parties such as the prospective wife, the guardian of the prospective wife.
- c) The reasons for allowing polygamy are infertility, physical disability, inability to have conjugal relations, deliberately refusing to have conjugal relations, crazy wives.
- d) In granting the application, the court must follow the prescribed manner and must be accompanied by an *iqrar* stating the reasons why polygamy was committed, the applicant's opinion, his commitment and obligations regarding his dependents, and the consent of the wife.<sup>14</sup>

One of the principles of marriage in Indonesia is the principle of monogamy, which is regulated in Article 3 Paragraph (1) of Law No. 1 of 1974 concerning Marriage. In the article it is stated, "In principle, a man may have a wife, and a woman may have only one husband." However, the principle of monogamy in the Marriage Law is not absolute monogamy, but relative monogamy. This is emphasized in Article 3 Paragraph (2) which states that "The Court may give permission to a husband to have more than one wife if desired by the parties concerned." Thus, polygamy in Indonesia is allowed as long as it meets the conditions that have been regulated in the applicable laws and regulations.<sup>15</sup> In Law No. 1 of 1974 which regulates polygamy in Indonesia, it is contained in article 4 paragraph (2) and article 5 paragraph (1). Article 4 paragraph (2) regulates the reasons

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<sup>11</sup> Kholis Bidayati, "The Dynamics of Islamic Family Law Reform in Muslim Countries (Studies on Malaysia and Brunei Darussalam)," *Journal Of Islamic Family Law*, Vol. 3 No. 1 2021, p. 57.

<sup>12</sup> Cahyani, et al., "A Comparative Study of Marriage Registration Procedures in Indonesia and Malaysia," *Ma'mal: Journal of Sharia and Law Laboratory* vol. 4, no. 3, 2023, 219.

<sup>13</sup> Annisa Sabira, "A Comparative Study of Marriage Registration Law Between Indonesia and Malaysia," Thesis (Pekalongan: K.H. Abdurrahman Wahid, 2023), p. 64.

<sup>14</sup> Muslim Ibrahim, "Prosedur Poligami di Malaysia (Analisis Akta Undang-Undang Keluarga Islam Wilayah-Wilayah Persekutuan)," *Samarah*, Vol. 2 No. 1, 2018, hlm. 1-2.

<sup>15</sup> Refo Afdhal, et al, "Comparison of Polygamy Regulations in Indonesia and Malaysia," *Zaaken: Journal of Civil and Business Law* vol. 2, no. 3, 2021, pp. 413-414.

why a husband can be given a license to practice polygamy if the wife does not carry out her obligations as a wife, has a physical disability or disease that cannot be cured, and the wife is barren.

Article 5 paragraph (1) regulates the conditions that must be met by the husband in submitting a polygamy application, namely:

- a) Consent from the wife/wife.
- b) There is certainty that husbands are able to guarantee the living needs of their wives and children.
- c) There is a guarantee that the husband will act fairly towards his wives and children.<sup>16</sup>

### **Divorce**

In the Malaysian Islamic Family Law, divorce is generally regulated based on four main grounds with different mechanisms, namely:

- a) Divorce through talaq or mental order.
- b) Redeem talak (khulu').
- c) Syiqaq (irreconcilable dispute).

However, only the Sarawak Islamic Family Law specifically lists li'an as one of the grounds for divorce. The divorce process through talaq generally follows the following stages: First, filing a divorce application with the court along with the underlying reasons. Second, the examination stage, including summoning both parties by the court and peace efforts. Third, the court issued a decision based on the results of the examination.<sup>17</sup> When there is an out-of-court talaq under Section 125 of the Islamic Family Law (State of Selangor) Enactment 2003, it is punishable by a maximum fine of RM1,000 or imprisonment of not more than 6 months, or both. Similar provisions also apply under the Islamic Family Law (Federal Territories) Act 1984, which covers states such as Kelantan, Negeri Sembilan, and Johor.

In Indonesia, divorce is regulated in Law Number 1 of 1974, especially in Chapter VIII Articles 38 to 41. The rules for its implementation are described in Articles 14 to 36 of the Government Regulation of 1975, and other technical details are regulated in the Regulation of the Minister of Religion Number 3 of 1975. Based on Article 38 of Law No. 1 of 1974, a marriage can end for three reasons, namely the death of one of the partners, divorce, or a decision from a judge. Then, Article 39 paragraphs (1), (2), and (3) explain that divorce can only be carried out before the court after mediation efforts by the panel of judges have been unsuccessful, and there are strong enough reasons that domestic life cannot continue because there is no longer any hope of living in harmony. A divorce lawsuit can be filed by a husband or wife with the basics that have been regulated in the applicable laws and regulations. Law Number 1 of 1974 concerning Marriage is the basis of a comprehensive and modern law governing marriage and family law for Muslims, which is derived from the principles of Islamic teachings. In Islam, divorce or dissolution of marriage is still allowed if there is an acceptable reason, apart from the death of one of the spouses. The dissolution of this marriage can occur due to two things:

- 1) The death of one of the couples
- 2) Divorce, which can occur for the following reasons:
  - a) Talak, which is a divorce filed by the husband.

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<sup>16</sup> Reza Fitra Ardhian, dkk, "Poligami dalam Hukum Islam dan Hukum Positif Indonesia Serta Urgensi Pemberian Izin Poligami di Pengadilan Agama," *Privat Law*, Vol. III No. 2, 2015, hlm. 103.

<sup>17</sup> Hamdani, "Ahwal Al-Syakhsiyyah (Family Law) Islam in Malaysia," p. 10.

- b) Khuluk, which is a request for divorce from the wife by providing compensation or ransom (iwadh) so that the husband is willing to divorce amicably.
- c) Fasakh, which is the annulment of a marriage by a decision of the Religious Court because the marriage is considered unqualified or harmonious, either intentionally or unintentionally.
- d) Syiqaq, which is a serious dispute between husband and wife that cannot be resolved peacefully.
- e) Violation of taklik talak, which is when the husband violates the promise made after the marriage contract.

According to Law Number 1 of 1974, marriages can end due to three things, namely the death of one of the spouses, divorce, and court decisions, as stated in Article 38 letters a, b, and c. Meanwhile, Government Regulation Number 9 of 1975 distinguishes the term divorce into two forms, namely talaq divorce and lawsuit divorce. The term talaq divorce refers to a divorce that occurs on the statement or pledge of the husband in front of a court hearing. Meanwhile, a lawsuit divorce, which is in accordance with Article 38 letter c, refers to a divorce decided by the court on a lawsuit from one of the parties, both husband and wife. So, the main difference lies in who initiates and how the divorce process takes place whether through a husband's pledge or through a judge's decision on the basis of a lawsuit. Divorce can only be carried out before the Religious Court after the judge has tried but failed to reconcile the two parties, as stipulated in Article 115 of the Compilation of Islamic Law (KHI). Furthermore, Article 123 of the KHI states that divorce is considered valid since it is declared in a court hearing. Meanwhile, according to Article 129, a husband who intends to impose talaq on his wife must submit an application, either orally or in writing, to the Religious Court that has authority in the area where the wife lives. The application must be accompanied by clear reasons and a request that the court hold a hearing for that purpose.<sup>18</sup>

### **Hadhanah**

The concept of child custody protection in Malaysia, known as hadhanah, is regulated in the Islamic Family Law Enactment of each country. Although each country has its own enactments, the substance of the rules regarding hadhanah is generally similar. The difference lies only in the numbering or location of the section in the enactment. As in the State of Kedah Darul Aman, hadhanah is regulated in Enactment 7 of 2008 concerning the Islamic Family, which is contained in part VII-Custody. Child maintenance (hadhanah) is listed in a number of certain articles. In section 82, it is stated that the person who has the right to take care of a child, namely by referring to the provisions of Article 83, a mother has the main right to take care of her young child, both during the marriage period and after the marriage ends. However, if the court decides that the mother is no longer eligible under Sharia Law to obtain hadhanah or custody rights, then the right, in accordance with the provisions of paragraph (3), will be transferred to another party based on the following order of priority: maternal grandmother to above, then father, followed by maternal grandmother to above, Then the brother or sister of the same mother, the brother or sister of the same mother, the brother or sister of the father, the daughter of the brother or sister of the same mother, the daughter of the brother or sister of the same mother, the daughter of the brother or sister of the father, the mother of the mother's brother, the mother of the father's brother, the male heir who may be his heir

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<sup>18</sup> Dahwadin, et al., "The Essence of Divorce Based on the Provisions of Islamic Law in Indonesia," *Journal of Islamic Legal and Legal Thought*, Vol. 11, No. 1, 2020, pp. 93-95.

as 'asabah or residuary. This transfer of custody can only be done as long as it does not endanger or harm the welfare of the child.

Section 83 further explains the qualifications necessary for custody which states that a person who has the right to educate a child, is entitled to exercise the right to hadhanah if:

- a) The person is a Muslim
- b) That person is perfectly sensible
- c) The person is of the age that qualifies him or she to give the child the care and affection that the child may need
- d) The person behaves well in terms of Islamic morals
- e) The person lives in a place where the child is unlikely to face any adverse consequences morally or physically.

People who previously had custody of children, especially women like their biological mothers, were not always able to maintain those rights. In certain situations, such custody may be revoked. Loss of custody by a woman to her children is regulated in section 84 i.e. First, if the woman is married to a person who has no relationship with the child and the person is prohibited from marrying the child, and if such marriage is likely to endanger the welfare of the child. However, custody can be restored if the marriage ends. Second, if the woman behaves badly openly and excessively (*fahisyah*). Third, if the woman moves residence with the aim of preventing the biological father of the child from carrying out proper supervision of the child, unless the divorced wife brings the child to her own hometown. Fourth, if the woman apostatizes or quits Islam. Finally, custody can also be revoked if the woman neglects or harms her child.<sup>19</sup>

It is further explained related to the custody period contained in section 85 that a mother's hadhanah or custody of her child will end when the boy reaches the age of seven and the girl reaches the age of nine. However, the Court can extend the custody period if there is a request from the mother, namely up to a nine-year-old boy and an eleven-year-old girl. After this custody period ends, custody of the child automatically passes to the father. If the child has reached the age of *mumayyiz*, which is the age at which the child is able to distinguish between good and bad, then the child is given the right to choose to live with his father or mother. Nevertheless, the Court still has the authority to decide on a different option if it is deemed more appropriate in the best interests of the child.<sup>20</sup>

When compared to the legal order in Indonesia, there are several similarities and differences. In Indonesia, child custody or hadhanah is regulated in Law No. 1 of 1974 Article 41 and the Compilation of Islamic Law (KHI) Article 105. Just like in Malaysia, the custody of a child who is not yet *mumayyiz* or has not yet reached the age of 12 years is the right of the mother and the custody of a child who is already *mumayyiz* is left to the child to choose between the father and mother as the holder of the custody right. However, unlike in Malaysia which regulates in detail the age limit and order of custody, the regulations in Indonesia are more left to the courts, as contained in article 41 which states that the consequences of the breakdown of a marriage due to divorce are:

- a) The mother or father is still obliged to maintain and educate her children, solely based on the interests of the child, if there is a dispute regarding the custody of the children, the Court gives its decision

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<sup>19</sup> Aji Sutrisna, "Hadhanah is reviewed from Law Number 1 of 1974 concerning Marriage and Enactment Number 11 of 2008 concerning the Islamic Family of the State of Kedah Malaysia," thesis (UIN: Raden Fatah Palembang, 2017), p. 46.

<sup>20</sup> Islamic Family Law (Kedah Darul Aman) Enactment 2008.

- b) The father is responsible for all the costs of the child's maintenance and education, if the father is in fact unable to fulfill the obligation, the Court may determine that the mother is also responsible for the costs
- c) The court may require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife.

Although the married couple has officially divorced, it does not end their responsibility as parents to the children born of the marriage. The obligation to raise, maintain, and educate children remains attached to both parties. In comparison, Article 105 in the Compilation of Islamic Law expressly states that the custody of children who have not been mumayyiz lies with the mother, while children who are able to distinguish between good and bad are given the freedom to choose to live with their father or mother. Meanwhile, Article 41 of the Marriage Law (UUP) does not explain in detail who has more rights in child custody after divorce. However, the article still emphasizes that both fathers and mothers still have equal responsibilities in educating, caring for, and meeting the needs of children, including the needs of education and maintenance costs. Thus, although it does not mention the more dominant party, the UUP emphasizes the principles of justice and equality in carrying out the role of parents after divorce occurs.

### **Waris**

Regarding Islamic inheritance law in Malaysia, its implementation was first carried out in Malaya through the states of Selangor, Perak, and Pahang, which are under the jurisdiction of the Civil High Court. Meanwhile, in Negeri Sembilan, the application of Islamic heritage law rules varies depending on certain regions. Inheritance cases there are handled by the Civil High Court and the Customary Court, without involving the Sharia Court. Residents in the Sungai Ujong and Jelebu areas stated that local leaders would refer to customary law in resolving inheritance issues. The process of completing the distribution of inheritance consists of two stages, which need to be considered is whether the heirs leave a will or not. If the heir leaves a valid will, then the inheritance can be directly distributed to the heirs according to the content of the will. However, if there is no will, the management of the distribution of assets will be handed over to the authorities. For heirs who are not Muslims, the contents of the will must follow the provisions in the Deed or Ordinance of the Will. Meanwhile, for Muslim heirs, a will is only allowed for a maximum of one-third of the total inheritance.<sup>21</sup>

In Malaysia, the system of distributing inheritance for Muslims is based on Faraid law which is sourced from the Qur'an and reinforced by state sharia law. The process of dividing the inheritance begins with before the inheritance is divided, all the obligations of the deceased must be paid, including debts, funeral expenses, and claims from the spouse for the joint property if any. After that, one third of the remaining property can be bequeathed to parties who are not faraid heirs, according to the will of the deceased, but only if it does not violate the provisions of Islamic law and has the consent of the heirs. The rest is then distributed to faraid heirs, i.e. people who have a definite right to inheritance as specified in the Qur'an.

The primary heirs in Islam usually include the deceased's parents, spouse, and children. The provisions of their share are set in detail, i.e., the husband gets half of the wife's property if there are no children, or a quarter if there are children. On the other hand, the wife gets a quarter of her husband's property if there are no children, or one-eighth if there are children. The father gets the entire property if there are no children, or

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<sup>21</sup> Suropto Bero, et al. "Comparison of the System of Distribution of Inheritance in Indonesian and Malaysian Law," *Usrah: Journal of Islamic Family Law*, Vol. 6 No. 1, 2025, pp. 61-62.

a certain part if there are children, one-sixth if there is a boy, half if there is only one daughter, and one-third if there are two or more daughters. The mother gets one-third if the deceased has no children and no other heirs, or only one-sixth if there are children. A boy who is alone is entitled to the entire inheritance, while an only girl gets half. If there are boys and girls, then the boys' share is double that of girls. If there is a remnant of wealth and there is no male heir, then the rest is handed over to Baitulmal, an institution that manages the wealth of the ummah to be distributed to those in need. A Muslim's will may include the appointment of executors and guardians for minors, but must still be subject to Islamic inheritance principles. If there is any deviation from this rule, then explicit consent from all heirs is required after the heir's death.<sup>22</sup>

Meanwhile, in Indonesia, the inheritance law system refers to two different systems, namely customary inheritance law and civil inheritance law. Customary inheritance law is derived from the traditions and habits of the local community, while civil inheritance law is based on the provisions of the laws and regulations that apply nationally. The customary inheritance legal system is regulated in Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA). In this system, the transfer of property, rights, and obligations from a deceased person to his or her heirs is carried out based on the customs and traditions that apply in the local community. In addition to customary inheritance law, Indonesia also implements a civil inheritance law system that refers to national laws and regulations. This civil inheritance law is regulated in the Civil Code (KUHPerdata). This system regulates the process of transferring property, rights, and obligations from a deceased person to his or her heirs in accordance with the rules listed in the Civil Code.<sup>23</sup>

## CONCLUSION

Islamic family law in Malaysia and Indonesia has several similarities and differences that reflect the influence of each country's history, culture, and legal system. In general, both countries base Islamic family law on sharia principles sourced from the Qur'an, Hadith, and the opinions of scholars of the Shafi'i madhhab. However, the application is different due to differences in socio-legal context. In Malaysia, Islamic family law is centrally regulated under the jurisdiction of the Sharia Courts, although each state has the authority to make its own laws. Meanwhile, in Indonesia, Islamic family law is regulated in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) which applies nationally.

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<sup>22</sup> Meydina Dwi Aripia, et al., "Comparison of Inheritance Arrangements for Non-Muslim Heirs in Indonesia and Malaysia," *Otarius*, Volume 12 Number 2, 2019, p. 890.

<sup>23</sup> Muhammad Husni Abdullah and Diana Farid, "The Implementation of Inheritance Law in Islam: A Comparative Study of the Practice of Inheritance in Muslim Countries," *El-Ahli: Journal of Islamic Family Law*, Vol. 4 No. 2, 2023, pp. 52-53..

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