

The Evolution of Marriage and Inheritance Law in Brunei Darussalam: A Comparative and Historical Study

Opik Rozikin^{1*}, Ah. Fathonih²

UIN Sunan Gunung Djati Bandung

Corresponding Author: Opik Rozikin opikrozikin@uinsgd.ac.id

ARTICLE INFO

Keywords: Islam Family Law, Law Codification, Legal Reform

Received : 5, September

Revised : 25, October

Accepted: 23, November

©2024 Rozikin, Fathonih: This is an open-access article distributed under the terms of the [Creative Commons Attribution 4.0 International](https://creativecommons.org/licenses/by/4.0/).



ABSTRACT

This study examines the dynamics and comparisons of Islamic family law in Brunei Darussalam and Indonesia, particularly in terms of codification, regulation, and the adaptation of Shariah principles. Using a qualitative descriptive-analytical method, this research explores the differences between the two countries in marriage registration, divorce rights, guardianship obligations, and the role of mediation in divorce cases. The findings indicate that Brunei applies a centralized Islamic family law system under royal control, while Indonesia adopts a pluralist system that accommodates customary and Shariah laws. The codification in Brunei and the adaptation of Islamic law in Indonesia demonstrate that both countries are able to uphold Shariah principles while adjusting to the needs of modern society. This research emphasizes the importance of balancing traditional values with contemporary legal needs.

INTRODUCTION

Islamic family law has long been a fundamental element in the lives of Muslims across various countries, including Brunei Darussalam. As a nation with a majority Muslim population and a strong adherence to Islamic law, Brunei Darussalam implements principles of Islamic family law that encompass marriage and inheritance laws as an integral part of its legal system. Over time, Islamic family law in Brunei has not only been influenced by Islam's values rooted in the Shafi'i school of thought but also evolved through interactions with local customs and British colonial influence from the 19th century to the mid-20th century (Apeldoorn, 1990; Ali, 1997).

Legal reforms in Brunei Darussalam began as an effort to preserve traditional values while responding to social and political changes. Before British arrival, marriage laws in Brunei were based on Islamic law combined with local customs, known as the Brunei Kanun Law. During this time, Sultan Hasan (1605-1619) formulated marriage and inheritance rules based on Islamic law, which were later strengthened by his successor, Sultan Jalilul Jabbar. However, British influence, particularly after Brunei became a protectorate in 1888, led to significant changes in the application of Islamic law in the country. The British introduced a dual legal system that limited Islamic law's jurisdiction to civil law, while criminal law followed British norms. This change caused Islamic marriage and inheritance laws in Brunei to undergo significant adaptation within a more modern legal framework (Ali, 1997; Cahyani, 2015).

The legal evolution of family law in Brunei can be categorized into several forms of reform: intradoctrinal reform, extradoctrinal reform, regulatory reform, and codification. Intradocrtinal reforms involved adapting the norms of Islamic law within the Shafi'i school to better align with societal needs, such as setting a minimum marriage age. Meanwhile, extradoctrinal reforms adopted principles from other schools of thought to accommodate special situations, such as provisions for divorce or women's inheritance rights. Regulatory reforms and codification integrated customary law and Islamic Shariah into the national legal framework, making Islamic family law more structured and administratively organized within Brunei's national regulations (Mahmood, 1972; Ali, 1997).

Since gaining independence from the United Kingdom in 1984, Brunei Darussalam has undertaken significant reforms to its Islamic family law system. This effort was marked by the implementation of Islamic Family Law, regulated under the Laws of Brunei, Chapter 217, governing aspects of marriage, divorce, and inheritance while adhering to the principles of the Shafi'i school. Over time, these regulations have undergone revisions to keep pace with evolving social and legal needs, most recently in 2012. A notable aspect of this reform is the application of "wasiat wajibah," which allows bequeathing assets to non-heirs through a mandatory bequest. This concept represents an innovation within Islamic family law in Brunei, reflecting the adaptation of Islamic law to meet the needs of modern society.

In terms of inheritance, Brunei Darussalam applies the principles of Islamic inheritance law, accommodating gender disparities in inheritance allocation. For instance, Muslim women are entitled to half the share of men,

following Shariah. However, this practice is viewed by some as discriminatory towards women. Brunei's government has thus encouraged the use of wills and gifts that offer greater flexibility in asset distribution, allowing women broader access to inheritance assets. This practice aligns with the state's policy of emphasizing justice and welfare in asset distribution (Cahyani, 2015; Dairuzzabady, 2014).

Additionally, marriage law in Brunei Darussalam retains some traditional aspects, such as the requirement for a guardian in marriage, considered essential in the Shafi'i school. However, this requirement may be negotiated under certain conditions with permission from the Kadi or Syariah Judge if the guardian unreasonably refuses consent. Polygamy is permitted but requires strict conditions, including written consent from the first wife and approval from the Syariah judge. These conditions aim to protect women's rights in marriage and minimize misuse of polygamy. The regulations on polygamy in Brunei demonstrate an effort to integrate traditional values with principles of justice that align with Islamic Shariah and modern societal needs (Mughniyah, 1999).

The evolution of Islamic family law in Brunei Darussalam is also influenced by government policy in preserving Islamic identity as part of the nation's legal framework. In 2014, Brunei enacted the Syariah Penal Code Order (SPCO), which incorporated Islamic law as part of the nation's positive legal system. This enactment underscores the position of Islamic law as a primary instrument in governance, strengthening the role of marriage and inheritance law as foundational pillars of family law (Muller, 2023; Zainal, 2014).

From a comparative perspective, the Islamic family law system in Brunei has similarities with that of Indonesia, particularly regarding marriage registration and divorce arrangements. Both countries mandate marriage registration as legal proof to protect family rights and ensure clear legal status for spouses. However, Brunei manages marriage registration through a Kadi appointed directly by the Sultan, whereas Indonesia establishes the Office of Religious Affairs (KUA) as the official agency under the Ministry of Religious Affairs. Regarding divorce, Brunei applies the tahkim or arbitration method involving hakam or arbitrators appointed by the Kadi to mediate marital conflicts. This approach differs from the mediation implemented in Indonesia but serves a similar purpose, aiming to maintain household stability and resolve conflicts justly and peacefully (Sugitanata, 2021; Cahyani, 2015).

Overall, the evolution of Islamic family law in Brunei Darussalam illustrates the dynamics between traditional values and modern reforms within a Shariah legal framework. This legal development reflects adaptation to changing times and societal needs while upholding the fundamental principles of Islamic Shariah oriented towards public welfare and justice. This comparative study explores in greater depth how marriage and inheritance laws are regulated in Brunei, how reforms are implemented, and compares them with similar practices in other countries, especially Indonesia, to highlight the role of Islamic law in maintaining social stability and justice amid global change.

LITERATURE REVIEW

Islamic Legal Codification Theory

The theory of Islamic legal codification highlights how Islamic law, originally rooted in oral traditions and scholars' interpretations, has been transformed into written legal systems to meet the needs of modern societies. Codification aims to establish rules that are clear, systematic, and consistently applicable at the national level (Kamali, 2021). In Brunei, this is exemplified by the Syariah Penal Code Order 2014, which consolidates Islamic family law as an integral part of the national legal framework. This approach enables a centralized application of the law in alignment with the state's vision of ensuring all aspects of family life adhere to Shariah principles. In contrast, Indonesia adopts a pluralistic approach through the Compilation of Islamic Law (KHI), which integrates Islamic, customary, and state law, reflecting the diversity of its society. Codification in both countries provides an essential tool for minimizing interpretive conflicts and ensuring legal stability in the practice of family law. Within the scope of this study, the codification theory serves as a foundational framework for analyzing how differing legal structures influence the implementation of Islamic family law, whether in Brunei's centralized system or Indonesia's more flexible framework. This demonstrates that codification is not merely an administrative instrument but a means of upholding Shariah principles in contemporary contexts.

Islamic Gender Justice Theory

The theory of Islamic gender justice emphasizes the importance of balancing Shariah rules with women's rights within family law. In Islam, the principle of gender justice seeks to accommodate societal and cultural needs without compromising fundamental Shariah tenets (Mernissi, 2020). In Brunei, this principle is evident in the application of wasiat wajibah (mandatory bequest), which allows women to receive inheritance shares even when they are not primary heirs. This progressive measure aims to address gender disparities in the distribution of family assets. Conversely, in Indonesia, mechanisms such as hibah (gifts) and consensus among heirs provide greater flexibility to ensure women receive equitable shares, even as faraid principles remain the primary framework. This theory is crucial for evaluating how Islamic family law adapts to enhance women's economic and social rights. This study demonstrates that both Brunei and Indonesia incorporate elements of gender justice to strengthen the protection of women's rights within their family law frameworks, reflecting a dynamic interplay between tradition and reform.

Legal Pluralism Theory

The theory of legal pluralism provides a framework for understanding how multiple legal systems interact and coexist within a single nation. In countries like Brunei and Indonesia, Islamic family law does not operate in isolation but is influenced by customary law, colonial legacies, and state law (Hooker, 2022). In Brunei, the family law system is centralized, with the monarchy exercising full control over the development and implementation of Islamic law. This system ensures that Islamic law serves as the cornerstone of

family life, leaving little room for other legal influences. In contrast, Indonesia exemplifies a pluralistic legal model, where Islamic family law interacts with local customs and state laws through institutions such as the Religious Affairs Office (KUA) and religious courts. While this pluralism offers flexibility in addressing the diverse needs of its population, it also poses challenges for harmonizing laws. Within this study, the legal pluralism theory is applied to explore how historical and social contexts shape the evolution of family law in both nations. This insight underscores how Brunei and Indonesia have successfully adapted their Islamic family law systems to meet modern societal needs without compromising Shariah principles.

METHODOLOGY

This research uses a qualitative descriptive-analytical approach with a normative study design, employing historical and comparative methods to illustrate the evolution of marriage and inheritance laws in Brunei Darussalam. The primary data sources include a literature review comprising primary legal materials, such as Laws of Brunei Chapter 217 Islamic Family Law, as well as secondary legal materials from academic journals and books related to Islamic family law. Additional tertiary legal materials are used to enrich the historical context. Data collection was conducted through literature reviews, with source triangulation to ensure data validity, covering legislative regulations, academic articles, and other scholarly studies. The data were analyzed descriptively, analytically, and comparatively, with the descriptive method detailing the characteristics of family law in Brunei in terms of marriage and inheritance, while comparative analysis highlights differences with regulations in Indonesia to understand the variation in Islamic family law applications. This approach is expected to objectively convey the dynamics of legal changes in Brunei and provide contextual insights into comparing the roles of custom, colonial law, and Islamic Shariah in shaping Islamic family law regulations in Southeast Asia.

RESEARCH RESULT

Historical Development of Marriage Law in Brunei Darussalam

The history of marriage law in Brunei Darussalam reflects the social and cultural dynamics rooted in Islamic values and local customs. During the pre-colonial period, marriage law in Brunei was governed by the Brunei Kanun Law, initiated by Sultan Hasan in the early 17th century. During his reign, Sultan Hasan codified various rules adapted to local customs and Islamic values in Brunei's Malay society, later strengthened by Sultan Jalilul Jabbar (Dairuzzabady, 2014). The Brunei Kanun Law provided a legal framework governing marriage and inheritance based on Shariah principles accepted within the local community, with strict regulations on guardianship and the validity of marriage contracts.

With British colonization in the 19th century, significant changes occurred in marriage law structure. The British introduced a dual legal system, incorporating civil law influenced by Shariah for marriage and inheritance while adopting British norms for criminal law. This shift constrained Islamic law's role

in marriage and inheritance jurisdiction and shaped the Brunei society's view of marriage law as part of national law (Hamid, 2018). A treaty between the Sultanate of Brunei and the British in 1888, which established Brunei as a British protectorate, further reinforced British law's position in Brunei's governance. Consequently, many traditional marriage law provisions underwent modifications and integration with Western law, such as divorce procedures and age restrictions for marriage that conformed to British norms (Wahyu, 2016).

After gaining independence in 1984, Brunei Darussalam began formally reconstructing its Islamic identity within the legal system. A significant milestone in the modern era was implementing the Islamic Family Law within the Laws of Brunei, Chapter 217, which reflects the Shafi'i school as the primary guide for family law (Zainal, 2014). Chapter 217 encompasses various aspects of marriage law, such as minimum marriage age, guardianship requirements, and marriage registration, which are strictly regulated by the government. These regulations ensure that every marriage meets Shariah criteria and the country's administrative order, where guardians have an essential role in protecting women's rights within marriage. In 2012, this law was revised to better align with contemporary developments, including clarifying polygamy procedures that require the first wife's consent and official approval (Rosidi, 2020).

Polygamy within Brunei's marriage law is cautiously regulated. Although polygamy is permitted under Islamic law, Brunei imposes strict additional conditions for polygamy approval. A man who wishes to engage in polygamy must obtain consent from his first wife and permission from the Kadi, emphasizing justice and welfare principles in polygamous marriage (Musa, 2019). This aligns with the Shafi'i jurisprudential perspective that respects women's rights in marriage and minimizes injustice. As a country that adheres firmly to Shariah principles, Brunei applies stringent rules for polygamy to prevent abuse and ensure that this practice does not harm the existing wife.

Marriage registration is also clearly regulated in Brunei under the Laws of Brunei, which mandates that all marriages must be registered with a Kadi or authorized religious official. This registration aims to provide legal certainty for spouses and prevent disputes that may arise later, especially concerning children's rights and the validity of marriage status (Mazlan, 2017). This registration system represents Brunei's proactive approach to safeguarding family rights under Islamic law and enhancing marriage oversight and legitimacy within the national administrative framework.

The development of marriage law in Brunei Darussalam reflects the nation's efforts to balance traditional values and Shariah principles in family law while considering modern societal demands. This marriage law structure demonstrates a significant transformation from the pre-colonial era to the modern era, driven by various factors such as British colonial influence and society's need for responsive legal structures. The revision of Chapter 217 represents the adaptation of Shariah law in maintaining social stability in Brunei Darussalam, as well as solidifying Islamic identity within the nation's family law system.

Inheritance Law Development in Brunei Darussalam

Inheritance law in Brunei Darussalam plays a crucial role in maintaining social stability and ensuring the distribution of assets in accordance with Shariah principles. As a nation with a majority Muslim population, Brunei applies inheritance laws based on faraid or Islamic inheritance law, primarily following the Shafi'i school. The principles of faraid determine inheritance distribution by differentiating between male and female heirs, with males generally receiving a larger share due to their financial responsibilities. However, in response to social progress and demands for equality, the Brunei government has implemented several reforms, including the concept of wasiat wajibah (mandatory bequest) (Azhar, 2021).

The concept of wasiat wajibah marks a significant innovation within inheritance law in Brunei Darussalam. Wasiat wajibah is an instrument that allows non-direct heirs, who would not typically inherit under Shariah law, to receive a portion of the estate. For example, in cases where a daughter is not a direct heir due to the presence of male heirs, she may still inherit a share through a mandatory bequest approved by the Syariah court. The implementation of this concept demonstrates Brunei's effort to provide a more equitable approach to inheritance distribution, aligning with the nation's goal to promote justice and welfare for women and other close relatives (Hassan & Rahman, 2018). Moreover, wasiat wajibah is regulated under the Islamic Family Law Order, allowing Muslims to allocate assets to specific individuals who are not covered by the faraid system, with a maximum limit of one-third of the total estate.

The distribution of inheritance for women in Brunei has also seen significant developments. According to faraid principles, women typically receive half of what men inherit due to men's financial responsibilities towards the family. Although this rule is widely accepted, debates surrounding gender equality and women's access to inheritance assets have arisen. To address these imbalances, Brunei encourages the use of hibah (gifts) and wills, enabling women to access a broader share of inheritance assets without strictly adhering to the faraid system. For instance, hibah provides the opportunity for the deceased to allocate assets to women as a recognition of their contributions to the family, supplementing their rights under faraid (Nasir, 2020).

Alongside faraid and wasiat wajibah, consensus among heirs is an essential mechanism within Brunei's inheritance system. This consensus is often applied in cases where faraid does not explicitly cover certain asset distribution scenarios, or in situations where heirs agree to divide the inheritance fairly without strict adherence to Shariah allocations. In Brunei society, the practice of mutual agreement among heirs reflects values of solidarity and family harmony, where inheritance decisions can be adjusted based on a collective agreement without disregarding Shariah principles (Fatin, 2017). This consensus approach also receives support from Syariah courts, which facilitate mediation processes to ensure that such agreements remain within the bounds of Islamic law.

Brunei's inheritance law has continued to evolve alongside inclusive policy changes. Recent government policies have accommodated asset distribution for non-Muslim family members within mixed-faith families,

demonstrating respect for diversity. This policy exemplifies the flexibility of Islamic law in Brunei to address modern social challenges. However, despite its flexibility, Brunei maintains faraid as the foundation of all inheritance decisions, with additional provisions like hibah and wasiat wajibah providing alternative options for families to customize inheritance distribution according to their needs (Rashid & Abdillah, 2019).

In summary, Brunei Darussalam's inheritance law reflects the government's commitment to integrating Shariah principles with societal needs. The application of faraid, wasiat wajibah, hibah, and consensus among heirs illustrates the adaptability of Islamic law to uphold justice and welfare for all family members, including women. With this flexible approach, Brunei successfully facilitates inheritance distribution that aligns with Shariah while also meeting the modern social needs of its citizens.

Regulation and Codification of Islamic Family Law in Brunei Darussalam

The process of codifying and regulating Islamic law in Brunei Darussalam represents a strategic government effort to establish Islamic values within the national legal framework, particularly in family law. As a country with a dual legal system that combines Islamic and civil law, Brunei has taken comprehensive codification measures to ensure that Islamic family law serves as a pillar within the nation's legal structure. This codification began with the establishment of the Islamic Family Law Order, which governs various aspects of family law, including marriage, divorce, and inheritance. This order provides a structured foundation for applying Islamic family law consistently, where family law is reinforced by national regulations to maintain social stability and systematically enforce Shariah principles (Said, 2016).

One of the significant regulations within this codification effort is the Syariah Penal Code Order (SPCO), implemented in 2014 as part of a comprehensive reform of Islamic law in Brunei. The SPCO extends beyond criminal law to include family law aspects, such as divorce provisions, asset division, and the role of guardians in marriage. With the SPCO's enactment, Brunei reinforced its commitment to making Islamic law the primary basis of governance. The SPCO significantly influences Islamic family law by empowering Syariah courts to adjudicate family disputes under Islamic principles (Kasim & Rashid, 2018). The SPCO's role in integrating Shariah into the nation's identity highlights Brunei's unique position as one of the few countries in Southeast Asia that fully implements Islamic law on a national scale.

Unlike Malaysia or Indonesia, which apply Islamic family law in a limited capacity, Brunei has succeeded in making Islamic family law a central part of the national legal system through the SPCO. In this context, Islamic family law in Brunei is not merely an alternative legal system but a comprehensive framework that governs family relationships, women's rights in divorce, and children's rights in inheritance. This commitment positions Brunei as a nation dedicated to maintaining Shariah law as a fundamental component of its legal identity (Majid, 2019).

Brunei's family law codification and regulation also demonstrate the government's aim to provide legal certainty for the Muslim community. Through the Islamic Family Law Order, citizens have clear legal guidance for fulfilling family obligations according to Shariah principles. Administrative requirements for marriage registration and divorce procedures are explicitly outlined to reduce potential conflicts and disputes in court. This implementation also seeks to protect individual rights within the family, viewing Islamic law as a means to regulate social relationships and maintain household harmony (Zulkifli, 2017). Consequently, this codification has significantly impacted strengthening Islamic law's position as an integral part of Brunei's national legal structure.

Despite facing challenges, particularly from the international community regarding aspects perceived as conflicting with human rights, Brunei remains steadfast in upholding Shariah principles within the SPCO. The government views this regulation as a sovereign legal policy reflecting the nation's values and traditions. Authorities emphasize that Shariah law in Brunei, particularly family law, is enforced to preserve religious and moral values, believed to support social order and stability (Farid, 2020).

Overall, the regulation and codification of Islamic family law in Brunei Darussalam, through the Syariah Penal Code Order and Islamic Family Law Order, manifest the government's policy of establishing Islamic law as a foundational element of the national legal framework. This approach has created a legal system relevant to Muslim society's needs while upholding Brunei's commitment to Shariah values as a fundamental social governance principle. This codification represents Brunei's proactive role in forming a consistent and structured family law that aligns with Shariah principles and local values, establishing a unique and authentic legal identity in Southeast Asia.

DISCUSSION

Analyzing the Dynamics of Islamic Marriage Law in Brunei Darussalam

The dynamics of Islamic marriage law in Brunei Darussalam reflect an adaptive process that seeks to balance Shariah principles with modern societal needs. As a country that formally adheres to the Shafi'i school within family law, Brunei consistently undertakes intradoctrinal reform, an internal reform that stays within the framework of Shafi'i teachings but is tailored to societal conditions. One form of this reform is establishing a minimum marriage age. According to the latest legal regulations, this minimum age has been raised to ensure that individuals are physically and mentally prepared for marriage, a measure that is rarely found in traditional Shafi'i practices. This increase in marriage age is a state effort to reduce child marriages, which are considered potentially harmful to family health and welfare (Ibrahim, 2017). Through this approach, Brunei demonstrates flexibility in applying Shafi'i law, adapting it to social developments while retaining its foundational principles.

Beyond intradoctrinal reform, Brunei also implements extradoctrinal reform, a reform involving the adaptation of ideas from other schools or external legal perspectives in applying Islamic marriage law. A clear example of extradoctrinal reform is the stringent marriage registration process, which is not

comprehensively regulated within traditional Shafi'i law. This process requires couples intending to marry to register their marriage with a government office or official religious institution, ensuring the marriage's legitimacy and facilitating legal documentation. This policy illustrates the state's response to modern administrative needs and legal protection for couples, especially for women who often suffer losses in divorce cases without solid legal documentation (Sulaiman, 2020). Thus, Brunei has successfully integrated modern administrative elements into its Islamic marriage law system without compromising the essence of Shariah.

Regulation within Islamic marriage law in Brunei has also seen significant development. The country has enacted various additional regulations to supplement Shafi'i law provisions. These regulations address the role of guardians, family consent, and judicial approval in specific marriage cases. For instance, the guardian's consent is essential in a woman's marriage according to Shafi'i law, yet Brunei provides an exception when a guardian refuses without a valid reason. In such cases, the Syariah court is authorized to approve the marriage without the guardian's consent. This policy reflects Brunei's commitment to ensuring justice and women's rights in marriage while upholding Shafi'i legal integrity (Rahim & Abdullah, 2018). Through this approach, Brunei's marriage law offers women the opportunity to assert their rights under fair judicial oversight.

Marriage law codification is also a central aspect of Islamic marriage law reform in Brunei Darussalam. This codification includes the issuance of the Islamic Family Law Order, the legal basis for all rules related to marriage, divorce, and spouses' rights in Brunei. Codification aims to provide greater legal certainty and make it easier for the public to understand their rights and obligations within marriage. Additionally, codification prevents varied interpretations of Shafi'i law, as all regulations are formally drafted and issued by the government. This codification has increased the number of couples registering their marriages and raised awareness of the importance of legal protection within marriage (Zainal, 2019). Through codification, Brunei's marriage law has become more organized and transparent, offering substantial benefits in protecting family rights.

The dynamics of marriage law reform in Brunei Darussalam demonstrate the state's success in implementing legal reforms that maintain a balance between Islamic teachings and modern societal needs. Innovations through intradoctrinal and extradoctrinal reforms, as well as regulatory and codification measures, reflect progressive legal adaptation without disregarding the fundamental Shariah principles. This approach renders Brunei's marriage law both relevant in Islamic contexts and responsive to contemporary social issues that impact family stability and justice.

Inheritance Law Reform and Its Impact on Societ

The inheritance law reform in Brunei Darussalam has significantly changed efforts to achieve equity in asset distribution, especially for women. As a nation adhering to Islamic law, primarily based on faraid principles, Brunei mandates a strict division of inheritance according to Shariah, where males typically inherit more due to their financial obligations. However, to promote justice, the Brunei government introduced the wasiat wajibah (mandatory bequest) concept as a

supplement to faraid principles. This concept allows heirs outside the main category, such as daughters or other female relatives in need, to receive a portion of the inheritance. Implementing the wasiat wajibah demonstrates a progressive policy that accommodates social needs and broadens women's access to inheritance assets (Halim & Basri, 2018).

The policy of inheritance distribution through wasiat wajibah shows that inheritance law in Brunei is not only about following Shariah rules but also responds to issues of gender equality and social justice. With wasiat wajibah, female heirs not considered primary inheritors can still inherit a portion of the estate. This measure is crucial, as in traditional faraid, women generally receive half of the male share. This policy helps address inequality within the inheritance system and provides financial security for women, especially those who serve as family breadwinners (Naim, 2020). The Syariah court encourages wasiat wajibah, offering flexibility in interpreting faraid to achieve greater social welfare.

Despite this flexibility, Brunei remains committed to faraid as the primary basis of its inheritance system, reflecting the state's dedication to Islamic legal tradition, where inheritance is distributed hierarchically, with family members assuming social responsibilities. The faraid system allocates larger shares to males based on their financial roles. However, wasiat wajibah demonstrates Brunei's balance between maintaining Islamic tradition and addressing modern demands for equity. This development shows that inheritance law in Brunei is dynamic, with continued reinterpretation of faraid principles in a way that includes a broader concept of justice (Aziz, 2019).

Moreover, Brunei's inheritance law reform has changed public perception of women's rights in family law. The inclusion of wasiat wajibah and fairer inheritance distribution policies have raised public awareness of gender equality in Islamic law. Brunei's society, which may have previously viewed inheritance as a male-dominated area, now recognizes women's significant role as inheritors. The social impact of this change is evident in women's increased participation in managing family assets and making economic decisions, previously often dominated by men. This reform has also reduced family conflicts over inheritance by expanding women's access to family resources (Ismail & Abdullah, 2021).

In conclusion, Brunei Darussalam's inheritance law reform, through wasiat wajibah and adjustments to faraid principles, reflects the state's commitment to accommodating modern societal needs while adhering to Shariah. These changes enhance women's rights protection and cultivate a more inclusive social awareness of women's roles within families and society. Brunei successfully implements inheritance policies that balance traditional Islamic values and gender equality, setting an example for other nations in applying adaptable Islamic law to meet contemporary needs.

Comparative Analysis with Family Law in Other Countries, Particularly Indonesia

The Islamic family law systems in Brunei Darussalam and Indonesia share several similarities, especially as both countries base family law on Islamic principles. However, there are significant differences in how each country

applies these Shariah principles, particularly in marriage registration. In Brunei, marriage registration is overseen by religious authorities under royal oversight, where each marriage must be registered by a state-appointed Kadi. This centralized religious authority reflects state control over religious matters. Conversely, in Indonesia, marriage registration is managed by the Office of Religious Affairs (KUA) under the Ministry of Religious Affairs, providing broader public access through a more decentralized state administrative system. Marriage registration in Indonesia is required to provide legal protection for couples and children, adjusting to the country's complex legal framework (Effendi, 2018).

Another distinction is in divorce rights, where Brunei has a stricter approach to divorce rights to prevent misuse by husbands. In Brunei, a husband seeking divorce must obtain permission from the Syariah court and undergo a mediation process to ensure divorce is a last resort. This process positions the court as an authority to ensure fair divorce proceedings, and if divorce is granted, it must be equitable for both parties. In Indonesia, although divorce still goes through religious courts, the process is more accessible for husbands with lighter administrative requirements, though mediation is also encouraged to prevent unjustified divorces (Azhari, 2019).

The obligation of guardianship in marriage is also regulated differently between Brunei and Indonesia. In Brunei, adhering to the formal Shafi'i school, a guardian's presence in a marriage contract is an irreplaceable requirement. Guardians play a key role in marriage approval, ensuring female protection. However, in cases where the guardian unreasonably refuses, the Syariah court may authorize the marriage with the Kadi's approval as a substitute guardian. In Indonesia, while the requirement for a guardian is recognized, it is more flexible. A court-appointed guardian may replace an absent or unreasonably refusing guardian, demonstrating broader flexibility to meet public needs and secure marriage continuity without disregarding women's rights (Sari & Rahman, 2020).

Mediation in divorce proceedings also differs between the two countries. In Brunei, mediation by the Syariah court is essential to resolve conflicts without leading to divorce. Brunei's mediation body is authoritative and actively involved in resolving family disputes, primarily aiming to restore marital harmony. In Indonesia, while religious courts also mandate mediation, it often serves as a formal procedure rather than in-depth intervention by the mediator. Although mediation seeks to minimize divorces, it tends to be less effective than in Brunei, as Indonesia's approach is more procedural rather than deeply addressing core issues within family relationships (Yusuf, 2021).

These comparisons show that while Brunei and Indonesia both apply Islamic family law, they adopt different approaches to meet societal needs and Shariah values. Brunei's family law is highly centralized under royal control, while Indonesia offers greater flexibility through decentralized institutions. Despite differing approaches, both nations aim to preserve Shariah principles within family law while adapting to evolving societal demands.

CONCLUSIONS AND RECOMMENDATIONS

This research illustrates that although Brunei Darussalam and Indonesia both adopt Islamic family law, they differ in implementation and adjustments to modern societal needs. In Brunei, the Islamic family law system is centralized and strictly controlled by the monarchy, positioning Shariah as the primary basis not only for religious life but also as the nation's legal identity. Policies like wasiat wajibah and strict regulations in marriage registration, divorce rights, and guardianship obligations highlight Brunei's approach in balancing Islamic traditions with contemporary needs without compromising Shariah. In contrast, Indonesia's pluralistic, decentralized legal system allows for the coexistence of customary and state laws alongside Shariah in family law. The flexibility in marriage registration, divorce procedures, and mediation reflects Indonesia's attempt to align Islamic law with the needs of a diverse society. With differing approaches rooted in Shariah, both countries demonstrate that Islamic family law can remain relevant in diverse national contexts. This study underscores the importance of balancing traditional values with modern needs, with Brunei and Indonesia exemplifying how Islamic law can adapt within varied national frameworks.

ADVANCED RESEARCH

Every research certainly has limitations. Limitations in the sense of research limitations that affect the researcher's ability to explore the data being studied, the limitations of available data, or external factors of the research such as time and resource limitations. So that further research is needed for the perfection of this research.

REFERENCES

- Ali, Mohammad Daud. *Hukum Islam dan Peradilan Agama (Kumpulan Tulisan)*. Jakarta: Rajawali Pers, 1997.
- Azhar, S. (2021). *Reformasi Hukum Waris Islam di Brunei Darussalam: Kajian atas Konsep Wasiat Wajibah*. *Journal of Islamic Law and Society*, 15(3), 102-115.
- Azhari, M. (2019). *Talak in Islamic Law: A Comparative Analysis between Indonesia and Brunei*. *Journal of Islamic Family Law*, 14(3), 121-137.
- Cahyani, A. (2015). *Hukum Keluarga Islam di Dunia Islam*. *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam*, 2(2).
- Dairuzzabady, M. (2014). *Sejarah Hukum Keluarga Islam di Brunei Darussalam*. *Jurnal Sejarah Islam*, 6(2), 101-115.
- Effendi, A. (2018). *Islamic Family Law Administration in Indonesia and Brunei: Comparative Perspectives*. *Journal of Islamic Legal Studies*, 12(1), 89-102.
- Fatin, R. (2017). *Kesepakatan Ahli Waris dalam Pembagian Harta Pusaka di Brunei Darussalam*. *Southeast Asian Islamic Studies*, 9(4), 98-110.
- Farid, M. (2020). *Syariah Law in Brunei: Its Challenges and Integration into the National Legal System*. *Journal of Islamic Legal Studies*, 12(3), 145-158.
- Halim, R., & Bastri, A. (2018). *Inheritance Reform in Islamic Law in Brunei Darussalam: The Role of Wasiat Wajibah*. *Journal of Islamic Family Studies*, 13(2), 89-103.

- Hassan, A., & Rahman, K. (2018). *Gender Equality in Islamic Inheritance Law: The Case of Brunei Darussalam*. *Journal of Muslim Societies*, 6(2), 123-136.
- Ibrahim, R. (2017). *Legal Reform in Islamic Family Law in Brunei Darussalam: A Case Study on Marriage Age*. *Journal of Islamic Family Law*, 12(1), 67-79.
- Ismail, H., & Abdullah, S. (2021). *Social Impacts of Inheritance Law Reform in Brunei Darussalam: Empowering Women through Wasiat Wajibah*. *Asian Journal of Islamic and Social Studies*, 10(1), 97-115.
- Kasim, Z., & Rashid, A. (2018). *The Role of Syariah Penal Code Order in Strengthening Islamic Family Law in Brunei Darussalam*. *International Journal of Islamic Law*, 10(2), 89-102.
- Majid, N. (2019). *Comparative Study of Islamic Family Law Enforcement in Southeast Asia: Brunei and Malaysia*. *Asian Journal of Law and Society*, 7(1), 110-125.
- Mazlan, S. (2017). *Modernization of Marriage Registration in Brunei Darussalam*. *Southeast Asian Legal Studies*, 9(3), 90-102.
- Musa, N. (2019). *Polygamy and Legal Reform in Brunei Darussalam: A Shafi'i Perspective*. *Islamic Family Law Review*, 7(2), 76-89.
- Naim, M. (2020). *Gender Equity in Islamic Inheritance Law: Case Study of Brunei Darussalam's Reforms*. *Southeast Asian Journal of Law and Society*, 9(3), 55-72.
- Rahim, A., & Abdullah, M. (2018). *Female Guardianship and Marriage: Comparative Study on Brunei and Other Southeast Asian Nations*. *Asian Journal of Islamic Law*, 10(3), 90-105.
- Rashid, M., & Abdillah, S. (2019). *Prinsip Faraid dan Inovasi Pembagian Warisan di Brunei*. *International Journal of Islamic Law*, 7(1), 78-89.
- Rosidi, I. (2020). *Revisi Undang-Undang Keluarga Islam di Brunei: Tinjauan Terhadap Chapter 217*. *Jurnal Hukum Islam dan Masyarakat*, 12(1), 130-145.
- Said, M. (2016). *Islamic Family Law in Brunei: Codification and Implementation*. *Brunei Journal of Islamic Studies*, 5(1), 70-82.
- Sari, R., & Rahman, I. (2020). *Wali in Islamic Marriage Law: Comparison of Indonesian and Brunei Regulations*. *Asian Journal of Islamic Law*, 8(2), 103-117.
- Sugitanata, A. (2021). *Hukum Keluarga Islam di Brunei Darussalam (Studi Analisis terhadap Pembaharuan Hukum)*.
- Sulaiman, F. (2020). *Administrative Reforms in Islamic Marriage Law in Brunei: Historical and Contemporary Perspectives*. *International Journal of Islamic Law*, 15(4), 120-132.
- Yusuf, M. (2021). *Mediation in Islamic Family Disputes: An Analysis of Brunei and Indonesia Practices*. *Southeast Asian Journal of Family Law*, 13(4), 98-110.
- Zainal, H. (2019). *Codification of Islamic Family Law in Brunei Darussalam and Its Impact on Legal Practices*. *Brunei Journal of Islamic and Legal Studies*, 8(2), 145-158.
- Zulkifli, I. (2017). *Legal Framework and Codification of Syariah Law in Brunei Darussalam*. *Journal of Southeast Asian Legal Studies*, 8(4), 90-101.
- Kamali, M. H. (2021). *Shari'ah law: An introduction*. Islamic Texts Society
- Mernissi, F. (2020). *The veil and the male elite: A feminist interpretation of women's rights in Islam*. Perseus Books Group.