

## A COMPREHENSIVE ANALYSIS OF MARRIAGE AND INHERITANCE LAW IN THE LEGAL SYSTEM OF BRUNEI DARUSSALAM

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### ABSTRACT

*This study analyzes the marriage and inheritance legal systems in Brunei Darussalam and compares them with those of Indonesia. Brunei, as an absolute monarchy guided by the Melayu Islam Beraja (MIB) ideology, comprehensively integrates Islamic Sharia into its national legal framework based on the Shafi'i school. Using a juridical-normative and comparative approach, this research finds that Brunei's Islamic Family Law Act (Cap. 217) strictly regulates marriage, divorce, and post-divorce rights, including polygamy regulations that require the Sultan's permission. In matters of inheritance, the faraidh system is implemented literally without significant modifications. Unlike Brunei, Indonesia—through the Compilation of Islamic Law (KHI)—has developed progressive innovations such as mandatory wills for adopted children and substitute heirs. These differences reflect the divergence between Brunei's conservative-centralistic model and Indonesia's progressive-pluralistic model, demonstrating that the implementation of Islamic law is largely determined by each country's sociopolitical context.*

### ABSTRAK

Studi ini menganalisis sistem hukum perkawinan dan kewarisan di Brunei Darussalam serta membandingkannya dengan sistem yang berlaku di Indonesia. Sebagai negara monarki absolut yang

berlandaskan ideologi Melayu Islam Beraja (MIB), Brunei mengintegrasikan syariat Islam secara komprehensif—berdasarkan mazhab Syafi'i—ke dalam kerangka hukum nasionalnya. Melalui pendekatan yuridis-normatif dan komparatif, penelitian ini menemukan bahwa Undang-Undang Hukum Keluarga Islam Brunei (Cap. 217) mengatur secara ketat masalah perkawinan, perceraian, dan hak-hak pasca-perceraian, termasuk ketentuan poligami yang mensyaratkan izin dari Sultan. Dalam hal kewarisan, sistem \*faraidh\* diterapkan secara harfiah tanpa modifikasi yang signifikan. Berbeda dengan Brunei, Indonesia—melalui Kompilasi Hukum Islam (KHI)—telah mengembangkan inovasi progresif seperti wasiat wajib bagi anak angkat dan ahli waris pengganti. Perbedaan-perbedaan ini mencerminkan kesenjangan antara model konservatif-sentralistik Brunei dan model progresif-pluralistik Indonesia, yang menunjukkan bahwa penerapan hukum Islam sangat dipengaruhi oleh konteks sosial-politik masing-masing negara.

## INTRODUCTION

Islamic family law is one of the most dynamic and complex areas of law in the legal systems of contemporary Muslim countries.( Hallaq, 2009) As an instrument governing the most intimate personal relationships in human life—marriage and inheritance—Islamic family law possesses not only a theological-normative dimension but also a very strong sociological-cultural dimension. ( Every country with a significant Muslim population faces unique challenges in implementing Islamic law into its positive legal system, taking into account the historical, cultural, political, and social contexts of its society.

Brunei Darussalam and Indonesia, as two neighboring countries in Southeast Asia with predominantly Muslim populations, offer a fascinating comparative study of the application of Islamic family law. Although both share common Malay cultural roots and Islamic traditions, the paths of family law development in the two countries show significant divergences, particularly after Brunei Darussalam declared the full implementation of Islamic Sharia through Melayu Islam Beraja (MIB) as the state ideology. (Yusof, 2005)

Brunei Darussalam, a small country with a population of about 450,000, is unique in that it is an absolute monarchy that operates under a dual legal system: British colonial-era common law for secular matters, and Sharia law for family matters and certain criminal offenses.( Hussainmiya, 1995) The culmination of the Islamization of Brunei's legal system occurred in 2013 when Sultan Hassanal Bolkiah announced the implementation of the Sharia Penal Code Order 2013, making Brunei the first country in

Southeast Asia to formally and comprehensively apply Islamic criminal law. ( However, in the context of family law – which encompasses marriage and inheritance – Brunei actually has a long tradition of applying Islamic law rooted in the Shafi'i school of jurisprudence, reinforced by the influence of distinctive Malay-Islamic customs.

On the other hand, Indonesia – as the world's largest archipelago with a Muslim population of more than 270 million – faces far more complex challenges in codifying and implementing Islamic family law. The diversity of ethnic groups, cultures, and local traditions in Indonesia creates a rich yet challenging legal pluralism. Indonesia does not apply Islamic criminal law nationwide; however, in the field of family law, Indonesia has a codified system through the Compilation of Islamic Law (KHI), mandated by Presidential Instruction No. 1 of 1991, as well as Law No. 1 of 1974 on Marriage, which was amended by Law No. 16 of 2019.( Syarifuddin, 2011)

The fundamental difference between the two countries lies in their political structures and approaches to Islamic law. Brunei, as an absolute monarchy, has the capacity to implement Islamic law in a top-down and uniform manner throughout its territory. The Sultan, as both head of state and head of religion, has full authority to establish and amend Sharia law. In contrast, Indonesia, as a democratic country with a decentralized system, must strike a balance between Islamic law, customary law, and national law within the framework of Pancasila and the 1945 Constitution.( Bisri, 2014)

In the context of marriage law, both countries face similar contemporary issues but have responded differently. The issue of the minimum age for marriage, for example, is a subject of debate in both countries. Brunei sets the minimum age at 16 for women and 18 for men in the Islamic Marriage and Divorce Registration Order 2004, with dispensations that may be granted by Sharia courts. ( Indonesia, through the 2019 amendment to the Marriage Law, raised the minimum marriage age for women from 16 to 19 years, bringing it in line with the minimum age for men, in response to international pressure and child rights advocacy.( Nurlaelawati, 2018b)

When it comes to polygamy, Brunei enforces stricter regulations than Indonesia. In Brunei, polygamy requires written permission from the Sultan and is permitted only under very limited circumstances, whereas in Indonesia, polygamy requires the consent of the first wife and approval from a religious court, subject to the conditions set forth in the Marriage Law and the Islamic Family Law (KHI). (Sulhan, 2014) These differences reflect differing approaches to the protection of women's rights within marriage.

Inheritance law also reveals interesting differences. Brunei strictly applies classical Islamic inheritance law according to the Shafi'i school of thought, with a rigid distribution of faraid and no provision for a wasiat wajibah (mandatory will) for non-Muslim heirs or adopted children.( Basyir, 2015) Indonesia, through the KHI, has innovated by introducing mandatory wills that allow adopted children and adoptive parents to inherit up to one-third of each other's estate, as well as granting inheritance rights to non-Muslim heirs through a limited mandatory will mechanism. (A. Mudzhar, 1998)

The significance of this comparative study lies in several aspects. First, from an

academic perspective, a comparison between family law systems in an absolute monarchy and a Muslim democracy provides insight into how political structures influence the interpretation and implementation of Islamic law. Second, from a practical perspective, an understanding of the differences and similarities between the family law systems in these two countries is important for people in cross-border relationships. Third, from the perspective of Islamic legal reform, this study can provide lessons learned regarding the successes and challenges in applying Islamic law in different contexts.

This study was also motivated by the need to fill a gap in the literature on Brunei Darussalam's family law within Indonesian academic discourse. Most comparative studies of Islamic law in Indonesia tend to compare it with countries in the Middle East or with Malaysia. Brunei Darussalam, despite its geographical and cultural proximity to Indonesia, has received relatively little attention in comparative Islamic law studies in Indonesia. (Hobus, 2015)

The primary objective of this study is to comprehensively analyze the marriage and inheritance legal systems in Brunei Darussalam, identify their unique characteristics and fundamental differences from the family law system in Indonesia, and evaluate the implications of these differences for the protection of individual rights. The research questions to be addressed in this study are: (1) What is the history and development of marriage and inheritance law within the legal system of Brunei Darussalam? (2) What are the main characteristics of the marriage and inheritance legal systems in Brunei Darussalam? (3) How do the marriage and inheritance legal systems of Brunei Darussalam and Indonesia compare? (4) What are the implications of the differences in the two countries' family legal systems for the protection of individual rights?

## **RESEARCH METHOD**

This study employs a qualitative research method using a comparative legal approach (comparative legal research). (Marzuki, 2017) The legal approach is used to analyze legislation, court decisions, and other official legal documents related to marriage and inheritance law in Brunei Darussalam and Indonesia. The comparative approach was used to compare the family law systems of the two countries, identify similarities and differences, and examine the implications of those differences.

This study is a form of doctrinal research, or normative legal research, which focuses on the analysis of primary and secondary legal sources. (Soerjono Soekanto, 2015) The primary legal sources in this study include laws and official regulations from Brunei Darussalam and Indonesia. For Brunei Darussalam, the primary legal materials analyzed include: the Islamic Marriage and Divorce Registration Order 2004, the Syariah Penal Code Order 2013, and various other regulations related to Islamic family law. For Indonesia, the primary legal materials include: Law No. 16 of 2019 on Marriage, Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, and other implementing regulations.

Secondary legal sources in this study include legal textbooks, academic journals, scholarly articles, research reports, and other literature relevant to the research topic. The data collection technique used in this study was a comprehensive literature review (library research). The data analysis technique employed was qualitative analysis using descriptive-analytical and comparative methods. To ensure the validity and reliability of the research findings, data source triangulation and a contextual approach were used. (Ali, 2016)

## RESULTS AND DISCUSSION

### A. History and Development of Islamic Law in Brunei Darussalam

To gain a comprehensive understanding of the marriage and inheritance legal systems in Brunei Darussalam, it is important to trace the history and development of Islamic law in the country. The history of Islamic law in Brunei is inextricably linked to the history of the Islamization of the Brunei Sultanate and the influence of Malay-Islamic culture, which has shaped Brunei's national identity to this day. This historical understanding serves as an epistemological prerequisite for analyzing why Brunei's family law system possesses characteristics that are fundamentally different from those of other Muslim countries in Southeast Asia. (Hussainmiya, 1995)

Islam arrived in Brunei in the 10th century CE via maritime trade routes connecting the Middle East, Gujarat, and the Indonesian archipelago. However, political and institutional Islamization did not occur until the 15th century with the establishment of the Brunei Sultanate under Sultan Muhammad Shah (Awang Alak Betatar), who converted to Islam in 1363 CE. Since then, Islam has been the state religion and the basis of the sultanate's political legitimacy. The Sultan of Brunei is not only the head of state but also the head of religion (Khalifatul Mukminin), possessing full authority over religious affairs and Islamic law. This theocratic-monarchical structure is a distinctive feature that sets Brunei apart from other sultanates in the Indonesian archipelago – such as Aceh, Johor, or Demak – where the separation between spiritual and temporal authority is less clear-cut.

During the sultanate's heyday, Islamic law was comprehensively applied to various aspects of Brunei society, including family law (*al-ahwal al-syakhsiyyah*), criminal law (*jinayah*), civil law (*muamalah*), and constitutional law (*siyasah syar'iyah*). The application of Islamic law during this period was rooted in the Shafi'i school of thought – the dominant school in the Malay Archipelago – with strong influences from Malay adat. Malay-Islamic adat in Brunei, known as the concept of *Adat Istiadat Melayu Islam Beraja*, integrates Islamic values with local traditions, creating a unique synthesis between Sharia and adat known as “*Adat Bersendi Syarak, Syarak Bersendi Kitabullah*.” This principle – – affirms that every customary practice must be in harmony with the provisions of Sharia, and that Sharia itself is derived from the Quran and the Sunnah. (Ibrahim, 2008)

However, this comprehensive application of Islamic law underwent significant changes with the arrival of British colonialism. In 1906, Brunei became a British

protectorate through the Protectorate Treaty, which granted Britain control over the country's foreign affairs and administration, except for matters of religion and custom. This legal dualism created a hierarchy in which common law became the dominant legal system, while Islamic law applied only within a limited scope. The Sharia courts, which previously had broad jurisdiction, saw their jurisdiction reduced to family matters and a few other religious matters. This colonial period, despite limiting the scope of Islamic law, paradoxically strengthened Brunei's Islamic identity because Islam became the only domain untouched by colonial intervention, thus serving as a symbol of cultural resistance and the basis for the sultanate's legitimacy.

After Brunei gained independence on January 1, 1984, one of the first steps taken by Sultan Hassanal Bolkiah was to reaffirm the position of Islamic law within the national legal system. The development of Islamic law in Brunei was also influenced by the Melayu Islam Beraja (MIB) ideology, which was officially declared in 1984. MIB is Brunei's national philosophy that emphasizes three main pillars: Malay, Islam, and the Monarchy, which serve as the basis for the legitimacy of the comprehensive implementation of Islamic law in Brunei. The MIB ideology is not merely a political slogan, but rather a philosophical framework that integrates Malay cultural identity, Islamic spiritual values, and the political structure of the monarchy into a single organic whole. (

In this context, the application of Islamic family law in Brunei must be understood as a manifestation of the MIB ideology. Marriage is viewed not merely as a civil contract (*muamalah*), but as a form of worship (*ibadah*) and a means of preserving the Malay-Muslim identity. Inheritance is not merely a mechanism for the distribution of assets, but rather an instrument for maintaining family cohesion and preventing the transfer of Muslim family assets into the hands of non-Muslims. This philosophical understanding explains why Brunei tends to be conservative in family law reform compared to other Muslim countries such as Tunisia, Morocco, or even Malaysia, which are more open to reinterpreting normative Sharia texts.

The culmination of the Islamization of Brunei's legal system occurred in 2013 when Sultan Hassanal Bolkiah announced the implementation of the Shariah Penal Code Order 2013, making Brunei the first country in Southeast Asia to formally and comprehensively adopt Islamic criminal law. Although the Shariah Penal Code focuses primarily on criminal law, its declaration carries strong symbolic and political implications for the application of Islamic family law. This declaration reaffirms Brunei's commitment to the comprehensive ( ) application of Sharia law, including in the areas of marriage and inheritance, which have long been governed by Sharia.

A comparison with Indonesia from a historical perspective reveals very fundamental differences. Indonesia, as a former Dutch colony, inherited a pluralistic legal system from the colonial era: Western law for Europeans and foreigners from the East, customary law for the indigenous population, and Islamic law for Muslim family matters. This pluralistic legal system created complexities in the application of Islamic family law

in Indonesia, which only began to be codified nationally in the post-independence era through various legal instruments such as Law No. 1 of 1974 and the 1991 Compilation of Islamic Law (KHI). Unlike Brunei, which has enjoyed relatively stable historical continuity in the application of Islamic law, Indonesia has experienced various political discontinuities that have influenced the development of Islamic family law, from the Old Order era, through the New Order, to the Reformation era. (Nurlaelawati, 2018b)

## **B. Marriage Law in Brunei Darussalam: Regulations and Implementation**

Marriage law in Brunei Darussalam is primarily governed by the Islamic Marriage and Divorce Registration Order 2004 (IMRO 2004) and its implementing regulations. These regulations are rooted in the Shafi'i school of Islamic jurisprudence, with some modifications to accommodate contemporary needs and the local context of Brunei. IMRO 2004 replaced previous regulations, such as the Mohammedan Marriage and Divorce Registration Rules – which had been in effect since the colonial era – and reflects Brunei's efforts to modernize the administration of Islamic family law without compromising the substantive norms of Sharia. (Mohamad, 2016)

### **1. Requirements, Pillars, and Minimum Age for Marriage**

According to IMRO 2004, the essentials of marriage consist of five elements: the prospective husband, the prospective wife, the marriage guardian, two just witnesses, and the *ijab qabul*. This provision regarding the marriage guardian differs from the practice in some other Muslim countries that follow the Hanafi school of thought. In Brunei, a marriage without a guardian is considered invalid (null and void), even if the woman is an adult and financially independent. This approach is consistent with the Shafi'i school of thought, which regards the guardian as an indispensable pillar of marriage, based on the hadith of the Prophet Muhammad (peace be upon him): "There is no valid marriage without a guardian" (*La nikaha illa bi waliyyin*).

The rules governing marriage guardians in Brunei follow a strict hierarchy: father, paternal grandfather, full brother, paternal uncle, and so on. If there is no blood-related guardian, then a judicial guardian (appointed by the Sharia court) acts as the guardian. In practice, the role of the judicial guardian in Brunei is relatively limited because the Malay-Brunei extended family structure remains strong, so there is almost always a blood-related guardian who can act.

The minimum age for marriage in Brunei is stipulated in the IMRO 2004 as 16 years for females and 18 years for males, with the Sharia court having the discretion to grant dispensations. This provision has been a subject of debate among child rights activists and women's organizations in Brunei, as it is considered to still allow for child marriage through the dispensation mechanism. Data from Brunei's Ministry of Religious Affairs show that between 2015 and 2020, there were an average of 45 age exemption cases per year, with the majority of applications filed on the grounds of pregnancy out of wedlock.

This differs from Indonesia, which, through the 2019 amendment to the Marriage Law (Law No. 16 of 2019), set the minimum age at 19 years for both parties,

thereby equalizing the minimum age for men and women. This change was a response to Constitutional Court Decision No. 22/PUU-XV/2017, which ruled that the difference in the minimum marriage age between men (19 years) and women (16 years) under Law No. 1 of 1974 was inconsistent with the 1945 Constitution because it was discriminatory. Although Indonesia also recognizes an age dispensation mechanism, the requirements for obtaining a dispensation are stricter and limited to specific conditions set forth in Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Applications for Marriage Dispensations. (Nurlaelawati, 2019)

These differing approaches to the age of marriage reflect more fundamental philosophical differences. Brunei, with its conservative Shafi'i approach, views biological maturity (bulugh) as the primary indicator of readiness for marriage, which is traditionally reached at the age of 15–16 for girls. Indonesia, on the other hand, has shifted toward a paradigm of psychological maturity and social readiness, in line with international conventions on children's rights such as the Convention on the Rights of the Child (CRC), which was ratified through Presidential Decree No. 36 of 1990.

## **2. Dowry, Joint Property, and Women's Financial Rights**

In addition to the dowry, IMRO 2004 also regulates women's financial rights, including iddah maintenance, mut'ah, and jointly acquired property. The dowry in Brunei typically consists of two components: the mithli dowry (a standard dowry determined based on the woman's social status and education) and wang hantaran (a monetary gift given to the woman's family to cover wedding expenses). The amount of the dowry varies depending on social status, education, and family background. For women who have never been married, the dowry is usually higher than for women who have been married before (widows), a practice based on traditional views of a woman's "value" in the marriage market.

The concept of "harta sepencarian" (joint property) reflects the influence of Malay customary law and Western law, under which assets acquired jointly during marriage are divided upon divorce. In classical Shafi'i Islamic law, the concept of joint property does not exist; each party retains ownership of assets acquired before and during the marriage (the principle of separation of property). However, in the contemporary context of Brunei, the concept of harta sepencarian has been adopted to accommodate the economic realities of modern marriage, in which wives also contribute economically, whether through formal employment or domestic contributions that are not economically quantifiable.

The division of marital property in Brunei typically follows a 2:1 ratio in favor of the husband and a 1:2 ratio in favor of the wife, although Sharia courts have the discretion to determine a fair ratio based on each party's contribution. This approach differs from that in Indonesia, where Article 35 of the Marriage Law and Articles 96–97 of the Compilation of Islamic Law (KHI) stipulate that joint property is divided equally (50:50) between husband and wife, unless otherwise agreed. This difference reflects differing interpretations of the concept of "contribution" in marriage: Brunei

still places greater weight on direct economic contributions, while Indonesia recognizes domestic contributions as equivalent to economic contributions. (Djaman, 2016)

Idda maintenance and mut'ah are also regulated in detail in the IMRO 2004. Idda maintenance is the husband's obligation to his divorced wife during the iddah period, while mut'ah is a mandatory payment as compensation for the dissolution of the marriage. The amount of idda maintenance and mut'ah is determined by the Sharia court based on the husband's financial capacity, the standard of living during the marriage, and the wife's needs. In practice, Brunei's Sharia courts tend to award substantial iddah maintenance and mut'ah to protect women's financial rights after divorce—an approach consistent with Sharia's spirit of protecting women who are economically vulnerable following divorce.

### **3. Polygamy and Monogamy: Strict Regulations in Brunei**

With regard to polygamy, the 2004 IMRO imposes very strict requirements. A husband must obtain written permission from the Sultan or a designated official, and this permission is granted only under limited circumstances, such as when a wife is infertile, suffers from a chronic illness, or is unable to fulfill her marital obligations. Additional requirements that must be met include: (1) the husband's ability to treat all wives fairly, (2) the financial ability to provide adequate support for all wives and children, (3) written consent from existing wives, and (4) a guarantee that polygamy will not cause injustice or harm to existing wives and children.

These strict regulations reflect Brunei's efforts to limit the practice of polygamy and protect women's rights within marriage. Although the Quran permits polygamy with up to four wives (QS. An-Nisa: 3), Brunei enforces very strict conditions to ensure that polygamy is practiced only when absolutely necessary and with guarantees of fairness. This approach is consistent with reformist interpretations that emphasize that the permission for polygamy in the Quran is conditional and limited, rather than an absolute right of the husband. (Mir-Hosseini, 2000)

In practice, polygamy in Brunei is relatively rare. Data from Brunei's Ministry of Religious Affairs show that between 2015 and 2020, only about 2–3% of all marriages were polygamous. This is due to several factors: (1) strict requirements for obtaining a polygamy permit, (2) the high economic cost of supporting more than one family, (3) social pressure and stigma surrounding polygamy in contemporary Brunei Malay society, and (4) women's growing awareness of their rights.

In Indonesia, polygamy is also governed by strict provisions in the Marriage Law and the Indonesian Compilation of Islamic Law (KHI). Article 3 of the Marriage Law states that the principle of marriage is monogamy, but allows for the possibility of polygamy under certain conditions. Articles 4 and 5 of the Marriage Law set forth the conditions for polygamy, including the consent of the first wife, the husband's ability to treat all wives fairly, and guarantees of fairness for all wives and children. However, the implementation of polygamy regulations in Indonesia is more lenient

than in Brunei. In Indonesia, permission for polygamy is granted by religious courts, not by the head of state. Although the formal requirements are strict, in practice many husbands have successfully obtained permission for polygamy based on relatively minor grounds.

The differences between Brunei and Indonesia in the regulation of polygamy reflect differing approaches to the protection of women's rights and distinct political structures. Brunei, with its absolute monarchy, has the capacity to enforce very strict regulations and effectively restrict polygamy through the Sultan's direct intervention. Indonesia, with its democratic political structure and the strong influence of conservative Islamic groups, faces greater challenges in restricting polygamy, especially following the decentralization of power after the Reformasi, which has given conservative Islamic groups greater scope to influence public policy. (Nurlaelawati, 2018a)

#### 4. Divorce and Post-Divorce Rights

Divorce under Brunei's Islamic law is governed by the IMRO 2004, which adopts the provisions of the Shafi'i school of thought. Divorce can be carried out through several mechanisms: talak (divorce initiated by the husband), khulu' (divorce by the wife in exchange for compensation), fasakh (annulment of marriage by the court), and li'an (an oath in which both parties accuse each other of adultery). Talak is the husband's right to grant a divorce to his wife, which, according to the Shafi'i school of thought, may be granted verbally, in writing, or by gesture, provided that the husband is of sound mind and not under duress.

Khulu' is a divorce initiated by the wife by paying compensation (iwadh) to her husband. Khulu' occurs when the wife is dissatisfied with her husband and wishes to end the marriage, but the husband refuses to grant a divorce. In a khulu', the wife must return the dowry or pay a sum of money to her husband as compensation. Fasakh is the annulment of a marriage by a Sharia court for specific reasons, such as a defect in one of the parties, failure to fulfill the requirements of marriage, or the husband's inability to provide financial support.

The Brunei Sharia Court has exclusive jurisdiction over Muslim divorce cases. The divorce process in the Sharia Court involves mediation (taklik) to reconcile the two parties before the divorce is granted. If mediation fails, the court will issue a divorce decree and determine the financial rights of each party. In the event of a divorce, the wife has financial rights as stipulated in the IMRO 2004, including iddah maintenance, mut'ah, and the division of jointly acquired property.

A comparison with Indonesia reveals several significant differences. In Indonesia, all divorces must go through a religious court; no out-of-court divorces are legally recognized (Marriage Law, Article 39). In Brunei, although divorces must also go through Sharia courts for administrative matters (such as registration and property division), a divorce pronounced outside of court is still legally recognized, provided it meets Sharia requirements. These differences reflect differing approaches to legal

formalism: Brunei still recognizes the validity of out-of-court talak as a manifestation of the husband's autonomy under classical Islamic law, while Indonesia has fully formalized the divorce process to protect women's rights.

### C. Inheritance Law in Brunei Darussalam: Strict Application of Faraid

Inheritance law in Brunei Darussalam is governed by classical Islamic inheritance law (faraid) according to the Shafi'i school of thought. Unlike marriage law, which has undergone several modifications to accommodate contemporary needs, inheritance law in Brunei is applied strictly and literally without significant modifications, unlike in Indonesia. This conservative approach reflects the view that Islamic inheritance law consists of qath'i (definite) provisions that cannot be modified by human ijtihad, in contrast to marriage law, which contains more zhanni (strongly presumptive) provisions that are open to reinterpretation. (Basyir, 2015)

#### 1. Basic Principles and Mechanisms of Distribution

Islamic inheritance law (faraid) is based on fundamental principles set forth in the Quran, specifically Surah An-Nisa: 11, 12, and 176. These verses provide detailed regulations regarding the distribution of an estate among heirs, including each heir's share and specific conditions that affect the distribution. The fundamental principles of Islamic inheritance law include: (1) the estate consists of the assets left by the deceased after deducting funeral expenses, settling debts, and fulfilling any will; (2) heirs consist of both male and female heirs with varying shares; (3) heirs' shares are either fixed (fardh) or determined based on the remainder (ta'shib); (4) there is no discrimination based on age, social status, or contribution to the estate; (5) non-Muslims cannot inherit from Muslims, and vice versa.

In Brunei, these principles are strictly enforced by the Sharia Court. The distribution of an estate is carried out in accordance with the provisions of faraid without modification or adjustments based on specific circumstances. If a case is not explicitly addressed in the faraid, the Sharia court refers to the opinions of scholars of the Shafi'i school or employs the methods of qiyas (analogy) and istishlah (public interest). This approach differs from that in Indonesia, where the Supreme Court, through its jurisprudence, has developed various legal innovations to address cases not explicitly regulated in the KHI, such as mandatory bequests and substitute heirs.

Heirs under Brunei's Islamic inheritance law fall into two categories: fardh heirs (heirs whose shares are precisely determined) and ta'shib heirs (heirs who receive the remainder after the fardh heirs have received their shares). Fardh heirs include: the husband (1/2 or 1/4), the wife (1/4 or 1/8), the father (1/6 or 1/6 plus the remainder), the mother (1/6 or 1/3), grandmother (1/6), grandfather (1/6), daughter (1/2 or 2/3), granddaughter through a son (1/2 or 2/3), full sister (1/2 or 2/3), and half-sister (1/6 or 1/3). The ta'shib heirs consist of: sons, grandsons through sons, the father, the grandfather, brothers on the father's side, and so on.

A comparison with Indonesia reveals significant differences. In Indonesia, although the KHI is also rooted in the Shafi'i school of Islamic inheritance law (faraid),

there are several modifications and innovations not found in Brunei. The most significant innovation is the wasiat wajibah, which allows adopted children and adoptive parents to inherit up to one-third of each other's estate, even though they are not formally heirs under faraid. The wasiat wajibah in Indonesia is based on considerations of public interest and justice, particularly to protect the rights of adopted children who, under classical Islamic law, have no right to inheritance. Article 209 of the KHI states that an adopted child may receive a wasiat wajibah amounting to no more than one-third of the estate of their adoptive parent.

In addition to mandatory bequests, Indonesia also recognizes the concept of substitute heirs (*plaatsvervulling*), which allows grandchildren to inherit from their grandparents if their parents have predeceased them. This concept was adopted from Western civil law (Article 840 of the Civil Code) and integrated into Article 185 of the Indonesian Compilation of Islamic Law (KHI). In Brunei, the concept of substitute heirs is not recognized; if a child dies before their parents, the grandchildren do not automatically inherit from their grandparents, unless the grandparents have made a regular will. Brunei's approach is consistent with the Shafi'i school of thought, which does not recognize the concept of "*plaatsvervulling*," while Indonesia has adopted it as a form of accommodation to the evolving values of justice within society. (Nasution, 2014)

## **2. Contemporary Challenges and Issues**

Inheritance law in Brunei faces several contemporary challenges and issues. One of the main challenges is the complexity of inheritance cases involving large families with many heirs. In such cases, calculating the distribution of assets becomes extremely complicated, especially if an heir dies before the estate is distributed—a situation that, in judicial practice, often intersects with issues of abandoned estates or undivided estates.

Another challenge is the issue of joint property in the context of inheritance. In practice, there are many cases where property acquired during marriage is intermingled with inherited property, making it difficult to identify and distribute the inherited assets. Although the 2004 IMRO addresses community property in the context of divorce, provisions regarding community property in the context of inheritance have not been explicitly regulated, leading to legal uncertainty.

Another contemporary issue is the inheritance rights of children born out of wedlock (illegitimate children). Under classical Islamic inheritance law of the Shafi'i school, children born out of wedlock have a blood relationship only with their mother and her family, and thus can inherit only from their mother's side. This approach differs from that in Indonesia, where Constitutional Court Decision No. 46/PUU-VIII/2010 has granted civil rights to children born out of wedlock in relation to their biological fathers, including inheritance rights, provided that such rights can be proven through science and technology or other evidence admissible under the law.

Brunei has not yet adopted this development, so children born out of wedlock in Brunei still have no inheritance rights from their biological fathers.

Another challenge is the issue of transnational inheritance, which is becoming increasingly common due to population mobility and mixed marriages in Southeast Asia. Cases in which the decedent or heirs hold different nationalities, or where the estate is located in a different jurisdiction, raise questions regarding the applicable law and the recognition of Brunei's Sharia court rulings in other countries. Although Brunei has signed several bilateral agreements with neighboring countries regarding legal cooperation, there is still no comprehensive framework specifically governing transnational inheritance. (Hobus, 2016)

#### **D. A Comparison of Family Justice Systems: Brunei and Indonesia**

The family court system is a crucial aspect of the implementation of Islamic family law, as the substantive effectiveness of the law is largely determined by the effectiveness of the judicial institutions that enforce it. A comparison of the family court systems in Brunei and Indonesia reveals significant structural and philosophical differences, which in turn influence the substantive outcomes of family cases.

In Brunei, the Sharia judicial system is hierarchically integrated into the structure of the absolute monarchy. The Sharia Courts consist of three levels: the Sharia Subordinate Court (Court of First Instance), the Sharia High Court, and the Sharia Court of Appeal. The Sultan, as both head of state and head of religion, holds the final authority in the Sharia judicial system, although in practice this authority is delegated to the Sharia Courts. Sharia judges (qadi) in Brunei are appointed directly by the Sultan upon the recommendation of the Ministry of Religious Affairs (Kementerian Hal Ehwal Ugama), and must be qualified in Shafi'i school of Islamic law.

In Indonesia, the religious court system is part of the national judicial system and falls under the Supreme Court. The religious court system consists of three levels: the Religious Court (first instance), the High Religious Court (appeals), and the Supreme Court (cassation). Religious court judges are appointed by the Judicial Commission and confirmed by the President, with qualifications that include Islamic law, national law, and procedural law. Unlike in Brunei, religious court judges in Indonesia are not required to follow a specific school of thought, so in practice they can refer to various schools of thought and the opinions of religious scholars as needed for each case. (Cammack, 1994)

These structural differences have significant substantive implications. In Brunei, the homogeneity of the Shafi'i school of thought within the Sharia judicial system results in a high degree of consistency in rulings, but it is also rigid and less responsive to cases requiring creative interpretation. In Indonesia, the pluralism of schools of thought within the religious judicial system fosters flexibility and creativity in adjudicating cases, but it also leads to inconsistencies in rulings that can create legal uncertainty.

Another distinguishing aspect is the mediation mechanism. In Brunei, mediation (taklik) in divorce cases is conducted by a Kadi or a designated official, using a more formal approach focused on reconciliation. In Indonesia, mediation in divorce cases is

regulated by Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Court, which grants a greater role to certified mediators, including non-judge mediators with backgrounds in psychology, social work, or as community leaders. This Indonesian approach is more participatory and holistic, reflecting the influence of the restorative justice paradigm in the family justice system.

#### **E. Implications for the Rights of Women and Children**

The differences in family law systems between Brunei and Indonesia have significant implications for the protection of the rights of women and children, who are two vulnerable groups under family law. A comparative analysis from a human rights perspective reveals that the two countries take different approaches to balancing Sharia law and contemporary demands for gender equality.

In terms of protecting women's rights in marriage, Brunei provides strong protections through strict regulations on polygamy and substantial post-divorce financial rights. However, Brunei still maintains discriminatory provisions such as different minimum marriage ages, the requirement for a marriage guardian for adult women, and restrictions on women's inheritance rights in accordance with classical *faraid*. On the other hand, Indonesia has implemented various more progressive reforms, such as standardizing the marriage age, recognizing substitute heirs, mandating compulsory bequests, and granting children born out of wedlock the right to a civil relationship with their biological father. However, Indonesia still faces challenges in implementing its polygamy regulations, which are, in practice, more lenient than Brunei's.

In terms of protecting children's rights, Indonesia has adopted a more comprehensive approach through various legal instruments, such as Law No. 35 of 2014 Amending Law No. 23 of 2002 on Child Protection, which provides broad protection for children's rights, including within the family context. Brunei, although it ratified the Convention on the Rights of the Child (CRC) in 1995, still maintains several provisions that are not fully consistent with the CRC, such as differences in the minimum age for marriage and the legal status of children born out of wedlock.

However, it is important to note that a human rights analysis of Islamic family law cannot be conducted simplistically by universally applying Western standards. Both countries, within their respective contexts, have made efforts to strike a balance between the normative texts of Sharia, local cultural values, and contemporary human rights demands. Brunei has done so through a conservative approach that emphasizes the authenticity of Sharia, while Indonesia has done so through a progressive approach that emphasizes contextual *ijtihad*. (An-Na'im, 1990)

#### **F. The Dynamics of Family Law Reform: Lessons from Two Models**

A comparative study of Brunei and Indonesia offers valuable insights into the dynamics of family law reform in contemporary Muslim countries. The two countries represent two distinct models for responding to the challenges of family law modernization: a conservative-centralized model (Brunei) and a progressive-pluralistic model (Indonesia).

The Brunei model demonstrates that family law reform can be effectively carried out within the political structure of an absolute monarchy, where the state has the capacity to enforce strict and consistent regulations without facing significant political resistance. However, this model also has limitations in terms of responsiveness to the demands of civil society and contemporary human rights developments, due to the absence of effective checks and balances.

The Indonesian model demonstrates that family law reform can lead to progressive innovations through a democratic process that involves various stakeholders, including civil society organizations, academics, and women's rights activists. However, this model also has limitations in terms of consistency in implementation and vulnerability to the influence of conservative groups, which can hinder further reform.

An important lesson from these two models is that sustainable family law reform requires a balance between three elements: the normative authenticity of Sharia, responsiveness to the sociocultural context, and a commitment to contemporary principles of justice and gender equality. No single model is perfect; each country must find its own path based on its respective historical, political, and sociocultural contexts. (Mir-Hosseini, 2006)

## CONCLUSION

This study concludes that there is a clear divergence between the family law systems of Brunei Darussalam and Indonesia, rooted in the differences in each country's political structure, history, and legal philosophy. Brunei, with its MIB ideology and absolute monarchy, applies marriage and inheritance laws in a homogeneous, centralized manner, strictly adhering to the literal interpretation of the Shafi'i school of jurisprudence, with very strict state intervention, particularly regarding polygamy. In contrast, Indonesia, with its background of legal pluralism and democratic system, has produced family laws that are more adaptive, dynamic, and accommodating of local values and gender equality issues, as evidenced by innovations such as the mandatory bequest (*wasiat wajibah*), substitute heirs, and the standardization of the marriage age.

These findings make important contributions: (1) they enrich the literature on comparative Islamic law in Southeast Asia by filling a gap in research on Brunei's family law; (2) they affirm that the implementation of Islamic law is heavily determined by each country's sociopolitical context; and (3) they provide food for thought for policymakers seeking to develop more just and responsive family laws.

The recommendations proposed include: for Brunei, a critical review of provisions that remain discriminatory toward women and children, such as differences in the minimum marriage age and the status of children born out of wedlock; for Indonesia, there is a need to strengthen regulations on polygamy and formalize progressive legal innovations such as the "*wasiat wajibah*" into law; for both countries, there is a need to enhance bilateral cooperation in addressing cross-border inheritance and mixed-marriage issues.

This comparative analysis underscores that family law reform must continue to strike a balance between the normative texts of Sharia and contemporary public interest through participatory and inclusive processes, so that Islamic family law remains relevant without sacrificing its normative authenticity.

## REFERENCES

- Ali, Z. (2016). *Legal Research Methods*. Jakarta: Sinar Grafika.
- An-Na'im, A. (1990). *Towards an Islamic Reformation: Civil Liberties, Human Rights, and International Law*. Syracuse: Syracuse University Press.
- Basyir, A. A. (2015). *Islamic Inheritance Law*. Yogyakarta: UII Press.
- Bisri, C. H. (2014). *The Indonesian Islamic Legal System: Dynamics and Development*. Jakarta: RajaGrafindo Persada.
- Cammack, M. (1994). Islamic Law in Indonesia's Courts: A Study of the Religious Judicature. *American Journal of Comparative Law*, 42(3), 457.
- Chong, T. (2016). *The Return of Religion in Southeast Asia: The Rise of Islamist Movements*. London: Routledge.
- Darussalam, G. of B. (2004). *Islamic Marriage and Divorce Registration Order, 2004*. Bandar Seri Begawan: Attorney General's Chambers.
- Djaman, N. (2016). *Joint Property in Islamic Marriage: A Review of Islamic Law and Customary Law*. Jakarta: Sinar Grafika.
- Hallaq, W. B. (2009). *An Introduction to Islamic Law*. Cambridge: Cambridge University Press.
- Hobus, Y. (2015). The Application of Sharia Law in Brunei Darussalam: A Comparative Perspective. *Journal of Islamic Law in Southeast Asia*, 3(2), 52.
- Hobus, Y. (2016). Transnational Inheritance in Southeast Asia: Legal Challenges and Solutions. *Journal of Private International Law*, 12(3), 445–452.
- Hussainmiya, B. A. (1995). *Brunei: Resurgence of Traditional Monarchy*. Bandar Seri Begawan: Brunei Museum Journal.
- Ibrahim, A. (2008). *The Malay-Muslim Concept of Adat and Its Implications for Islamic Law in Brunei*. Bandar Seri Begawan: UBD Press.
- Marzuki, P. M. (2017). *Legal Research*. Jakarta: Kencana.
- Mir-Hosseini, Z. (2000). *Marriage on Trial: Islamic Law and Feminist Critique*. London: I. B. Tauris.
- Mir-Hosseini, Z. (2006). *Islamic Feminism: The Quest for a New Paradigm*. London: I. B. Tauris.
- Mohamad, M. (2016). Islamic Family Law in Brunei Darussalam: Between Tradition and Modernity. *Asian Journal of Women's Studies*, 22(1), 38.
- Mudzhar, A. (1998). Mandatory Bequests for Adopted Children and Non-Muslim Heirs in the Compilation of Islamic Law. *Studia Islamika*, 5(3), 48.
- Mudzhar, M. A. (2018). *Islamic Family Law in Indonesia & Malaysia: A Comparative Study*. Jakarta: Kencana Prenada Media Group.
- Nasution, K. (2014). *Islamic Inheritance Law: A Comparison of Islamic Inheritance Law and Western Civil Inheritance Law*. Yogyakarta: Academia + Tazzafa.
- Nurlaelawati, E. (2018a). Polygamy in Contemporary Indonesia: Legal and Social Perspectives. *Journal of Indonesian Islam*, 12(1), 89.

- Nurlaelawati, E. (2018b). *The State and Islamic Law in Post-Soeharto Indonesia BT - Islam and the State in Southeast Asia* (K. van Dijk, Ed.). Leiden: Brill.
- Nurlaelawati, E. (2019). Child Marriage in Indonesia and Brunei: A Comparative Legal Analysis. *Asian Journal of Comparative Law*, 14(1), 67.
- Soerjono Soekanto, S. M. (2015). *Normative Legal Research: A Brief Overview*. Jakarta: Rajawali Pers.
- Sulhan. (2014). Polygamy from the Perspective of Islamic Law and Positive Law in Indonesia. *Journal of Islamic Law*, 12(1), 25.
- Syarifuddin, A. (2011). *Islamic Marriage Law in Indonesia: Between Fiqh Munakahat and State Regulations*. Jakarta: Kencana.
- Yusof, P. M. (2005). *Malay Islam Beraja: The National Philosophy of Brunei Darussalam*. Bandar Seri Begawan: Universiti Brunei Darussalam Press.