

Genealogy and Reform of Islamic Family Law: Study of Islamic Marriage Law Products in Malaysia

Geneologi dan Reformasi Hukum Keluarga Islam: Studi terhadap Hukum Perkawinan Islam di Malaysia

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Abstract: As an Islamic country, Islamic family law reform in Malaysia is experiencing various dynamics. This article aims to examine the genealogy, reform, and products of Islamic family law in the field of marriage (*munakahat*) in Malaysia. The authors find that Malaysia's Islamic law reform is divided into three periods using literature research. In the Malay period, Islamic values were generally embedded in the law in Malaysia. During the British colonial period, English law had dominated and was used as common law, which was absorbed in various legislation and jurisprudence in Malaysia. It was only after independence that efforts to reform and codify Islamic family law began, marked by the stipulation of the jurisdiction of the federal territorial government and the territorial government into thirteen states. The codification of family law began with establishing a committee to amend Islamic law and be guided by other Islamic countries. The authors find four areas of marriage that have been reformed in Malaysia, namely the age limit for marriage, marriage registration, polygamy, and divorce. Among the four areas of marriage law, the authors find slight differences in regulations on the technical and material grounds in each state in Malaysia.

Keywords: Genealogy, Reform, Islamic Family Law, Marriage, Malaysia.

Abstrak: Sebagai negara Islam, reformasi hukum keluarga Islam di Malaysia mengalami berbagai dinamika. Artikel ini bertujuan untuk mengkaji geneologi, reformasi dan produk hukum keluarga Islam pada bidang perkawinan (*munakahat*) di Malaysia. Dengan menggunakan penelitian kepustakaan, para penulis menemukan bahwa reformasi hukum Islam di Malaysia terbagi dalam tiga periode. Pada periode Melayu, nilai-nilai Islam telah disisipkan secara general dalam undang-undang di Malaysia. Pada masa penjajahan Inggris, hukum Inggris telah mendominasi dan dijadikan sebagai *common law* yang diserap dalam berbagai legislasi dan yurisprudensi di Malaysia. Barulah pasca

kemerdekaan, upaya-upaya pembaharuan dan kodifikasi hukum keluarga Islam dimulai yang ditandai dengan penetapan yurisdiksi pemerintah teritorial federal dan pemerintah teritorial menjadi tiga belas negara bagian. Kodifikasi hukum keluarga ini dimulai dengan dibentuknya komite yang mengamandemen hukum Islam dan berpedoman pada negara Islam lainnya. Para penulis menemukan empat bidang perkawinan yang telah direformasi di Malaysia, yaitu batas usia perkawinan, pendaftaran pernikahan, poligami, dan perceraian. Di antara keempat bidang hukum perkawinan tersebut, para penulis menemukan bahwa terdapat sedikit perbedaan aturan pada dataran teknis dan materil pada setiap negara bagian di Malaysia.

Kata Kunci: Geneologi, Reformasi, Hukum Keluarga Islam, Perkawinan, Malaysia.

A. Introduction

Malaysian Islamic family law reform is undergoing several changes. This dynamic is inextricably linked to British colonialism during the colonial period, which attempted to separate religion and state relations in Malaysia. Furthermore, the country has a pluralistic society because of the many non-Muslims who come and live in Malaysia. Simultaneously, the narrative of pluralism and the relationship of religion to national identity became a political debate in Malaysia's efforts to gain independence after World War II.¹

Only after the 1970s did most Muslims, motivated by ethnic Malay nationalism, fight to restore Islamic law in Malaysia. This situation is inextricably linked to the merging of religion with ethnic Malays who share the same language, culture, identity, ideology, and values of nationalist solidarity, supported by young Malaysian Muslims who have finished their college education.² Furthermore, the influence of the Islamic revival in several other Muslim countries and socio-political developments in the 1990s contributed significantly to the Islamic revival. On the other hand, the West has heavily scrutinized Malaysia as a Muslim country active in voicing Islam, anti-colonialism, and democracy in the Southeast Asian region. Malaysia is motivated to reform the laws of the British colonial era and return to Islamic law.³

¹ Ahmad Fathoni, "Sejarah Sosial Hukum Islam di Asia Tenggara; Studi Pemberlakuan dan Pengkodifikasian Hukum Islam di Malaysia," *Al-Syir'ah* 16, no. 3 (2014): 188-193.

² John. Esposito, *Trailblazer of The Islamic Re-Surgence*, (Westport: Greenwood, 1991), 47.

³ *Ibid.*

During the British colonial period, Islamic law was still constrained to be included in state regulations due to the limited family law dominated by civil law. However, Islamic law evolved and entered Malaysia's state regulatory system, including Islamic family law. As a result, Islamic family law has piqued the interest of academics. Muhammad Safiq Imran Bin Samsudin and Muslim Ibrahim⁴ discussed how polygamy in Malaysia was not uniform across the country.

In addition, other studies have examined the comparison of Islamic Family Law between Malaysia and other Islamic countries. Among them is Faida Fidiani⁵, Azizah⁶, Taufik Ismail⁷, Ahmad Khoirul Anam⁸, and Niaz Muhammad⁹. Ahmad Rafii¹⁰ studies globalization and human rights in Islamic family law in Malaysia. Zulkifli¹¹ and Michael G. Peletz¹² consider the impact of Islamic Family Law products on women's human rights. As a result, since the regulation's enactment, women have had greater access to the negotiation space, both in terms of marriage, divorce, child custody, inheritance rights, and the legal implications.

In contrast to some prior studies, the authors' goal here is to investigate the genealogy, reform, and products of Islamic family law in the field of marriage (*munakahat*) in Malaysia. This article is based on library research that included journals, books, research findings, and other library materials related to genealogy and the reform of Islamic family law in Malaysia, focusing on legal products concerning marriage. The writer then conducted a descriptive-analytical analysis of

⁴ Muslim Ibrahim and Muhammad Safiq Imran bin Samsudin, "Prosedur Poligami di Malaysia (Analisis Akta Undang-Undang Keluarga Islam Wilayah-Wilayah Persekutuan)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 1 (2019): 241–66.

⁵ Faida Fidiani, "Penalties for Unregistered Marriage and Polygamy in Indonesia, Pakistan, and Tunisia," *SAKINA: Journal of Family Studies* 5, no. 1 (2021): 1–14.

⁶ Nur Azizah, "The Regulation of Marital Registration in Indonesia and Muslim Countries," *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 5, no. 2 (2019): 301–12.

⁷ T Ismail et al., "Analytical Comparative Study of Application of Islamic Law in Indonesia and Malaysia," *Palarch's Journal of Archaeology of Egypt/Egyptology* 18, no. 9 (2021): 548–60.

⁸ Ahmad Khoirul Anam, "Penerapan Hukum Keluarga Muslim di Asia Tenggara: Sebuah Perbandingan," *Jurnal Bimas Islam* 10, no. 1 (2017): 129–54.

⁹ Niaz Muhammad and Fazle Omer, "Codification of Muslim Family Laws of Pakistan and Malaysia (An Evolutionary Comparative Study)," *Al-Basirah* 4, no. 2 (2020): 1–14.

¹⁰ Abu Yazid Adnan Quthny, "Reformasi Hukum Keluarga Islam Turki (Status Poligami dalam Perspektif Teori Linguistik-Semantik Muhammad Shahrur)," *Asy-Syari'ah* 2, no. 2 (2016): 1–34.

¹¹ Hidayatul Sakinah Mohd Zulkifli, Rafeah Saidon, and Azhar Abd Aziz, "Women's Rights in Long Distance Marriage According to the Perspective of Fiqh and Islamic Family Law," *Perdana: International Journal of Academic Research* 12, no. 1 (2021): 1–11.

¹² Michael G. Peletz, "Are Women Getting (More) Justice? Malaysia's Sharia Courts in Ethnographic and Historical Perspective," *Law and Society Review* 52, no. 3 (2018): 652–684.

the data. This paper serves three functions. To begin with, describe the genealogy and history of Malaysian family law. Second, describe Malaysia's process of codifying Islamic family law. Finally, to examine Malaysia's reform of Islamic marriage law.

B. Genealogy and History of Family Law in Malaysia

Before the arrival of the British in 1786, Malay customary law was the legal basis in the State of Malaya, whether influenced by Islamic teachings or not. Much of Malay customary law is unwritten, and district or ethnic heads learn about adat through tradition. Malay customary law refers to Malay customary practice and tradition that eventually gains legal status. The discovery of documents on old Malay law collected by Western scholars to study the history of law in Malay countries demonstrates the existence of Malay customary law. The Malacca Law, Pahang Law, Kedah Law, 99 Perak Law, and Sungai Ujong Ujong Law are the legal texts describing the old Malay law practised.¹³

Following a careful examination of the texts, the author discovers two completely different customary systems that have been widely used, particularly in the Malay Peninsula. The first is Perpatih customary law (Perpatih custom), only practised in Negeri Sembilan. The second is Temenggong customary law (Temenggong culture), applied on countries' coastlines. Between the two customary laws, Adat Temenggong is thought to have been established in Malacca by the Malaysian community for the first time. Temenggong Customary Law was then modified under Islamic values by its sultans and rulers after converting to Islam. Thus, customary law in Malaysia is divided into three categories: Perpatih custom, Temenggong culture, and Islamic law.¹⁴

Historically, the application of Islamic law in Malaysia can be classified into three periods.¹⁵ First, there was the Malay period (1303-1823). During this period, the implementation of Islamic law can be seen in Malaysian inscriptions and

¹³ Ahmad Khoirul Anam, "Penerapan Hukum Keluarga Muslim di Asia Tenggara : Sebuah Perbandingan", *Bimas Islam* 10, no. 1 (2017): 129-154.

¹⁴ Zanirah Mustafa Busu, Mohd Firdaus Kozako, and Intan Nurul 'Ain, "Malacca Laws : The Effect of Islam and Customs in the Aspect of Family Law," *UiTM Journal : Journal of Contemporary Social Science Research (JCSSR)* 3, no. 1 (2019): 37-47.

¹⁵ Sudirman Tebba, *Perkembangan Mutakhir Hukum Islam di Asia Tenggara*, (Bandung: Mizan, 1993), 92.

manuscripts. This period is demonstrated by the legal books listed in the Terengganu Inscription, written in 1303 AD in Javanese script and this time also demonstrated by the Malacca Brief Law Book, which established four areas of law: Malacca ownership law, maritime law, Islamic family law, and obligatory law for Muslims.¹⁶ These four branches of law convert Malay customary law and court law provisions into Islamic law. However, most Islamic family law order provisions are from the Shafi'i school. It is due to translating Syafi'i fiqh texts with notes into Malay.¹⁷ Furthermore, it is used during this phase, *Mohammad Marriage Ordinance* No. 5 of 1880.¹⁸

Second, there was the British colonial period (1824-1957). Provisions containing Islamic law were changed during this time and were no longer used as the basis for state administration. The application of Islamic law is limited to family law and religious violations. In comparison, the law governing wills and ownership is governed by English law. The Council of Home Affairs and the Federal Council, controlled by British officials, held legislative power during the British colonial period. Although ethnic Malays and others have representatives on the Council, most State Council legal products relating to administration do not use Islamic law. The Sharia courts' jurisdiction was limited during this period. On the other hand, the civil courts' jurisdiction grows more substantial and higher in rank.¹⁹

Third, there is the period of independence (1957 until now). Following independence, applying Islamic law in Malaysia continued the government model before independence. The federal territorial constitution establishes the federal and state territorial governments' respective jurisdictions, and Islamic administration matters are transferred to the jurisdiction of state governments. Therefore, Malaysia is divided into fourteen provinces, each of which has passed Islamic-related legislation. Malaysia's rule of law did not change significantly in 1957, and this is

¹⁶ Ahmad Fathoni, "Sejarah Sosial Hukum Islam di Asia Tenggara; Studi Pemberlakuan dan Pengkodifikasian Hukum Islam di Malaysia," *Al-Syir'ah* 16, no. 3 (2014): 188-193.

¹⁷ Tebba, *Perkembangan Mutakhir...*, 92.

¹⁸ M. Noor Harisudin and Muhammad Choriri, "On The Legal Sanction Against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda's Maqasid Al-Shariah Perspective," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 1 (2021): 471-95.

¹⁹ Engku Muhammad Tajuddin Engku Ali. *Ke Arah Penyeragaman Undang-Undang Islam di Malaysia dalam Perundangan Islam Kontemporari di Malaysia*, (Terengganu: Universiti Sultan Zainal Abidin Kuala Nerus, 2018), 41-42

because British officials and legal experts wield considerable power. Malaysia has made efforts to amend, explain, and codify Islamic law in several states three decades after independence (the 1980s).²⁰

According to the Civil Code of 1956, if no regulation is found, the Civil Court must follow English customary law and other Malaysian regulations. According to these provisions, Islamic law only applies to religious violations and family law. Civil courts retain jurisdiction in family law provisions, such as property rights, inheritance, and childcare. If the authority of the civil court and the authority of the sharia court conflict, the authority of the civil court takes precedence. It demonstrates that Islamic law in Malaysia is not quite fully implemented. One factor is the legal clout of the British colonies that once colonized Malaysia.²¹

Following independence, there is still a lot of unregulated Islamic law in Malaysia, and British law still reigns supreme. Although Islamic law has been regulated (included) in some cases, English law continues to apply in some legislation and jurisprudence.²² Malaysia did not revise all the legal systems long before British law was adopted as the national legal system. Malaysia wishes to keep laws in line with existing values and social life. As a result, cultivating and creating legal perceptions is more straightforward than completely rethinking the old legal culture and replacing it with a new one. The common law tradition exists between the Islamic legal system (Sharia Court) and the indigenous groups' common law.²³

C. The Process of Codification of Islamic Family Law in Malaysia

In the 1980s, a national conference was held in Kedah to form a committee to discuss Islamic law. To consider various amendments, the committee's members include Islamic law experts and members of legal aid organizations. They formed committees are then dispatched to various Islamic countries to study Islamic law and its application in these countries. In addition to family and criminal law, the

²⁰ Ahmad Fathoni, "Sejarah Sosial Hukum Islam di Asia Tenggara; Studi Pemberlakuan dan Pengkodifikasian Hukum Islam di Malaysia," *Al-Syir'ah* 16, no. 3 (2014): 188-193.

²¹ Ahmad Khoirul Anam, "Penerapan Hukum Keluarga Muslim di Asia Tenggara : Sebuah Perbandingan", *Bimas Islam* 10, no. 1 (2017): 129-154.

²² Abdullah A. An-Na'im, *East South Asia, Emory Center for Digital Scholarship Emory University School of Law, 2015.*

²³ Sigit Somadiyono, "Perbandingan Sistem Hukum antara Indonesia dan Malaysia," *Wajah Hukum* 4, no. 2 (2020): 414-420.

committee investigates civil and criminal procedural law. This committee was formed to reform Islamic family law and standardize Malaysian laws.

Furthermore, the federal government has begun to pay attention to Islamic law. To that end, they formed a committee to investigate the Sharia courts' structure, jurisdiction, and powers. This committee comprises Islamic law experts, lawyers, and Civil Court members. The committee then recommended the establishment of a Sharia Court, with Sharia court judges being granted expanded powers and functions.²⁴ The Marriage and Divorce Procedure in 1885 and the Islamic Divorce Rules in 1889 were the first legal products that regulated Islamic family law in Perak. In the state of Selangor, Islamic marriages and divorces were first registered in 1885.²⁵

Malaysia established and amended several new legal products over the next decade. The Kelantan Islamic Family Law 1983, Negeri Sembilan Islamic Family Law 1983, Malacca Islamic Family Law 1983, Selangor Islamic Family Law 1984, Perak Islamic Family Law 1984, Kedah Islamic Family Law 1984, Federal Territory Islamic Family Law 1984, Penang Islamic Family Law 1985, and Terengganu Islamic Family Law 1985 are among the legal products that are enforced in the federal territory and various states.²⁶

D. Marriage Law Reform in Malaysia

Malaysian states develop and implement their laws governing Islamic family law. Marriage and divorce, dowry, the obligation to maintain wife and children, the types of prohibited marriages, marriage procedures, *talāq*, *fasakh*, *khulū'*, *ta'liq*, *'iddah*, additional rights, guardianship, and custody of children are among them.²⁷ Several rules govern the issues of Islamic family law. The Islamic Family Law (Federal Territories) Act 1984 (Act 303) and the 2006 Amendment are two

²⁴ Achmad Ali, *Mengembara di Belantara Hukum*, (Ujung Pandang: Lepas, 1990), 214

²⁵ Ramli Makatungkang, "Penerapan Hukum Islam di Malaysia," *Jurnal Ilmiah Al-Syir'ah* 2 (2016): 1-13.

²⁶ Azizah Mohd and Nadhilah A. Kadir, "Minimum Age of Marriage Under Islamic Law and The Islamic Family Law (Federal Territories) Act 1984: A Preliminary Study on The Ideal Age of Marriage in Malaysia," *Al-Shajarah: Journal of Islamic Thought and Civilization of the International Islamic University Malaysia (IIUM)* 24, no. 1 (2019): 287-307.

²⁷ Azizah binti Mohd, "An Appraisal of the Application of Fiqh Al- Hanafi Under Islamic Family Law (Federal Territories) Act 1984," *IIUMLJ* 27, no. 2 (2019): 317-36.

examples. Enactment 12 of the Islamic Family Law of 2002 (State of Melaka) Islamic Family Law was enacted in 2002. (Kelantan) Islamic Family Law was enacted in 2002. (Negeri Sembilan) Islamic Family Law was enacted in 2003. (Perak) Act of 2004, Act of 1984, 1979 Enactment of the Islamic Family Law in Kedah (State of Penang) Administration of Islamic Family Law Enactment 2004, 12 of 1985 Islamic Family Law in Terengganu, (Selangor) Islamic Family Law Law 1990 (Act No. 5 of 2003) Law 5 of 1991 in Johor Islamic Family Law Regulation 1991 4 of 1992 Administration of Islamic Family Law 1991 Perlis, and Regulation No. 8 of 2004 Islamic Family Law 2004 Sabah.²⁸

Malaysia has reformed four areas of Islamic marriage law in general. The four areas are the marriage age limit, marriage registration, polygamy, and divorce. Among the four areas of marriage law, the authors discover minor differences in regulations on a technical and material level in each Malaysian state. The following discussion will go into greater detail about these four areas:

1. Minimum Marriage Age

In Malaysia, the minimum age for marriage is 18 years old for men and 16 years old for women. These provisions follow all laws in the state of Malaysia. Section 8 of the Islamic Family Law (Federal Territories) 2006 states, "*Undang-undang ini, perkawinan tidak boleh dilangsungkan jika laki-laki kurang dari delapan belas tahun atau perempuan kurang dari enam belas tahun, kecuali jika Hakim Syarie memberikan izin secara tertulis dalam keadaan-keadaan tertentu.*"²⁹ Shari'ah judges are given the authority to grant permission for those under the minimum age to marry for specific reasons, such as the bride or groom having dropped out of school, financial need or family support, illicit sexual relations, and pregnancy out of wedlock.³⁰

²⁸ Daleler, Kaur Randawar. Najibah, Mohd Zin. *The Law on Domestic Violence in Malaysia*. (Gombak: IIUM Press, 2019)

²⁹ Act A1261 Islamic Family Law (Federal Territories) (Amendment) Act 2006.

³⁰ Azizah Mohd and Nadhilah A. Kadir, "Minimum Age of Marriage Under Islamic Law and the Islamic Family Law (Federal Territories) Act 1984: A Preliminary Study on The Ideal Age of Marriage in Malaysia," *Al-Shajarah: Journal of Islamic Thought and Civilization of the International Islamic University Malaysia (IIUM)* 24, no. 1 (2019): 287-307.

In contrast to the Islamic Family Law, the 2001 Children's Law defines a child as a person under 18.³¹ As a result, under the Children's Law 2001, a girl who is 16 years old at the time of marriage is considered a minor. This regulation demonstrates a conflict between Malaysia's two laws regarding the minimum age for minors. Meanwhile, the minimum marriage age in each state and territory of the Malaysian union differs from the marriage age limit established in other Muslim countries. In Bangladesh, for example, the marriage age is 21 for men and 18 for women.³² The age of marriage in Egypt is 18 years for men and 16 years for women.³³ In Indonesia, the legal marriage age for both men and women are 19 years.³⁴

Marriage before the age of 18 is permitted in Islamic literature under certain conditions. As a result, the proposal to outright prohibit underage marriage would undermine the principles of justice and humanity afforded to couples who wish to marry to avoid adultery's stigma and negative aspects and be denied their right to happiness. On the other hand, even if they are under the age of 18, they have the maturity to assume marital responsibilities.³⁵

2. Marriage Registration

Section 25 Registration of the Islamic Family Law (Federal Territory) Act requires marriages to be registered after marriage. "*Perkawinan setelah tanggal yang ditentukan dari setiap orang yang tinggal di Wilayah Federal dan pernikahan setiap orang yang tinggal di luar negeri tetapi tinggal di Wilayah Federal harus didaftarkan sesuai dengan Undang-undang ini.*"³⁶ Furthermore, the Terengganu Law specifies that the due date for marriage registration is the seventh day

³¹ Child Act 2001, Act No. 611, Sect. 2.

³² Ahnaf Tahmid Arnab and Md. Sanwar Siraj, "Child Marriage in Bangladesh: Policy and Ethics," *Bangladesh Journal of Bioethics* 11, no. 1 (2020): 24-34.

³³ Fathul Mu'in and Hendriyadi, "Analisis Perbandingan Batas Usia Perkawinan di Mesir dan Indonesia," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 1, no. 1 (2020): 71-86.

³⁴ Zesty Wulan Ayu Widhi Prameswari and Erni Agustin, "Indonesian Marriage Law Reform: The Way to Strengthen the Protection of Children's Right Against Child Marriage" *Journal of Southeast Asian Human Right* 2 no. 1 (2018): 286-301.

³⁵ Faten Farhanis et al., "The Islamic Family Law Enactment (State of Pahang) 2005 and The Law Reform (Marriage and Divorce) Act 1976: The Study and Position of Underage Marriage" 2, no. 3 (2020): 18-26.

³⁶ *Ibid.*

following the execution of the marriage contract.³⁷ However, this marriage registration has no bearing on the validity or cancellation.³⁸

In contrast to Malaysia, Muslim-majority countries have different legal responses to marriage registration violations. Saudi Arabia, Iran, Indonesia, and Morocco have no such restrictions.³⁹ Fines and imprisonment are sanctioned in some countries, including Malaysia, Brunei Darussalam, Egypt, Pakistan, Bangladesh, Jordan, Syria, Tunisia, Iraq, and Yemen.⁴⁰ According to Islamic law, in the case of divorce, polygamy, or death, the wife is one of the parties who can file a lawsuit for joint property in marriage. Therefore, if a marriage is not legally registered in Malaysia, it has negative consequences, including property, wife rights, and child status.⁴¹ Furthermore, Islam allows the government to require marriage registration if it benefits the community and assists them in avoiding all forms of oppression, harm, and risk.⁴²

3. Polygamy

Malaysian law does not explicitly define the fundamentals of marriage.⁴³ A husband may engage in polygamy under the condition that he obtain a written statement from the judge.⁴⁴ This matter is stated in Law 8 of 2004 Regulations Islamic Family Law 2004 the State of Sabah Part 23 Polygamy. "*Laki-laki selama ada perkawinan tidak boleh, kecuali dengan izin tertulis sebelumnya dari Pengadilan, mengadakan perjanjian perkawinan lain dengan perempuan lain.*"⁴⁵ Regarding the judge's approval of polygamy, the husband is physically and

³⁷ Enactment No. 12 Of 1985 Administration of Islamic Family Law Enactment 1985.

³⁸ Islamic Family Law (Federal Territories) Act 2006.

³⁹ Harisudin and Choriri, "On The Legal Sanction Against Marriage Registration Violation in Southeast Asia Countries: A Jasser Auda's Maqasid Al-Shariah Perspective," 471-95.

⁴⁰ Azizah, "The Regulation of Marital Registration in Indonesia and Muslim Countries." *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 5, no.2 (2019): 301-312

⁴¹ Asiah Bidin et al., "Procedures Noncompliance in Muslim Marriage Application: A Case Study in Syariah Courts in Terengganu, Malaysia," *Atlantis Press* 203 (2019): 425-429.

⁴² Muchammad Ichsan, Urgency in Regulating Marriage Registration From The Perspective of Islamic Law and Indonesian Positive Law (2018).

⁴³ Kholis Bidayati, Muhammad Alwi al Maliki, and Suci Ramadhan, "Dinamika Pembaharuan Hukum Keluarga Islam (Studi atas Negara Malaysia dan Brunei)," *ADHKI: Journal of Islamic Family Law* 3, no. 1 (2021): 51-68.

⁴⁴ Mimi Kamariah Majid, *Undang-Undang Keluarga di Malaysia*, (Malaysia: Butterworths, 1992), 38

⁴⁵ Islamic Family Law Ordinance, 2001.

psychologically ill, making it impossible for him to have sexual relations and can guarantee the fairness of physical and spiritual support for his wives.⁴⁶ This provision is also found in the laws of Sabah, Melaka, Terengganu, and Sabah. Some states' laws differ, particularly regarding registering polygamous marriages without permission. Marriages can be registered in the Federal Territory and the State of Sarawak without the need for a court order. On the other hand, polygamous marriages are not registered under Negeri Sembilan, Perak, Kedah, Penang, Selangor, Johor, and Perlis.

Pakistan, Egypt, Morocco, Indonesia, and Malaysia are among the countries that permit polygamy under strict conditions. Meanwhile, Saudi Arabia, Iran, and Qatar are more tolerant of polygamy.⁴⁷ Although polygamy was legal, the provisions of the Egyptian Ordinance of 1929 gave women the right to seek divorce due to common ailments caused by polygamy.⁴⁸ In contrast to some of these countries, Turkey and Tunisia prohibit polygamy. One of the reasons for the ban on polygamy in Tunisia is the numerous cases of husbands ignoring the welfare of their families and their children and wives.⁴⁹

4. Divorce

The reasons for divorce in Perak and Kelantan are that the husband is impotent, the husband is insane or suffers from leprosy or vitiligo or suffers from a sexually transmitted disease, married under duress, guilt, or mental illness, the husband is mentally ill, and other justifiable reasons. 'Sharia law.' In Kedah, the reasons for divorce are economic factors that cause husbands to not provide for their wives and their sexual disorders.⁵⁰ The Federal Territory Law, the Melaka Law, the Negeri Sembilan Law, the Terengganu Law, the Selangor Law, and the Sabah Law all require that a husband and wife be in good psychological health

⁴⁶ Mohd Zin Najibah et al. *Islamic Family Law in Malaysia*, (Selangor: Thomson Reuter Malaysia Sdn Bhd, 2016), 62-63.

⁴⁷ Muhammad Roy Purwanto et al., "Polygamy in Muslim Countries : A Comparative Study in Tunisia , Saudi Arabia , and Indonesia," in *The 2nd Southeast Asian Academic Forum on Sustainable Development (SEA-AFSID 2018)*, 168, 2018, 435-37.

⁴⁸ Takdir Kripto, Nurrohman, and Koko Adya Winata, "Perkawinan Resmi dan Tidak Resmi Berikut Implikasi Hukumnya di Mesir," *Jurnal Al Amar* 1, no. 4 (2020): 62-72.

⁴⁹ Ahmad Bahauddin AM, "Tinjauan Sosio-Politik terhadap Larangan Poligami (Pembaharuan Hukum Keluarga Tunisia)," *Familia: Jurnal Hukum Keluarga* 1, no. 2 (2020): 163-73.

⁵⁰ Peraturan Keluarga Islam 1 Tahun 1984 Kedah.

and not suffer from contagious physical illness and that the husband disappears without explanation for one year. Years and maintenance are born in three months, the wife is forced to marry, has not been *jimā'* for four months after marriage, and both husband and wife abuse each other.⁵¹

The *fasakh* are the most common divorce cases filed in Malaysian Sharia Courts. Most *fasakh* cases require Sharia Lawyers to act as intermediary parties, requesting more evidence and a judge's judgment than in other cases for marriage termination.⁵² In contrast to Malaysia, the main reason for the breakdown of a marriage in Turkey is *khulu'* proposed by the wife over the conflict, lack of a living, and domestic violence that befell her.⁵³ In Pakistan, the reasons for divorce include family interference, a lack of harmony, financial exploitation, and an abusive environment.⁵⁴

E. Conclusion

Malaysia's renewal of Islamic law is divided into three stages. First, the Malay period saw the incorporation of Islamic law values into legislation. During the British colonial period, the dominance of British law resulted in the incorporation of common law into various pieces of legislation and jurisprudence in Malaysia. Third, following independence, efforts to reform and codify family law began, marked by the federal territorial constitution, which established the jurisdiction of the federal territorial government and the territorial governments of thirteen other states. Furthermore, the codification process began with a national conference in Kedah to discuss Islamic law amendments. Members of the committee are educated through studies in various Islamic countries. The age limit for marriage, marriage registration, polygamy, and divorce are all products

⁵¹ <https://www.esyariah.gov.my/>, accessed on December 27, 2021.

⁵² Farah Safura Muhammad, "The Fast Track Project: The First Step Towards Improving Divorce Cases in Shariah Court, Malaysia," *E-Academia* 9, no. 1 (2020): 62–69.

⁵³ Sibel Coskun and Deniz Sarlak, "Reasons for Divorce in Turkey and the Characteristics of Divorced Families: A Retrospective Analysis," *The Family Journal: Counseling and Therapy and Families* 20, no. 10 (2020): 1–8.

⁵⁴ Azher Hameed Qamar, Hafiza Faiza Faizan, and Azher Hameed Qamar, "Reasons, Impact, and Post-Divorce Adjustment: Lived Experience of Divorced Women in Pakistan," *Journal of Divorce & Remarriage*, (2021): 1–26.

of legal reform in the field of *munakahat* in Malaysia. Each state's four *munakahat* differ slightly from one another.

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