

A Comparative Study of Inheritance Law Systems in Malaysia and Brunei Darussalam: An Examination of Legal Dualism and Its Implementation in Muslim Communities

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Abstract: Background: Islamic inheritance law represents a critical component of family law systems that extends beyond religious obligations to encompass significant socio-economic implications for asset distribution and intergenerational justice. While Malaysia and Brunei Darussalam have both incorporated Islamic law into their national legal frameworks, their implementation approaches demonstrate fundamental structural and procedural differences that warrant systematic comparative analysis.

Objective: This study examines the institutional frameworks and implementation effectiveness of Islamic inheritance law systems in Malaysia and Brunei Darussalam, analyzing how constitutional arrangements and governmental approaches influence the practical application of faraid principles. Methods: This research employs a normative legal methodology utilizing comparative analysis of legal frameworks, institutional structures, and judicial decisions. The study analyzes primary legal sources including constitutional provisions, statutory laws, court decisions, and administrative guidelines from both jurisdictions. Data collection encompassed library research examining fiqh literature, national legislation, official documents, scholarly articles, and religious legal opinions. Theoretical frameworks of legal pluralism (Romano-Gierke), Maqasid al-Shariah, and Hartian legal positivism provide analytical foundations for institutional effectiveness assessment. Results: Malaysia's dual legal system creates jurisdictional tensions between Syariah and civil courts, particularly regarding immovable property administration, resulting in administrative complexity and legal uncertainty that undermines Islamic law effectiveness. Conversely, Brunei's centralized Islamic legal framework demonstrates superior institutional coherence through exclusive Syariah court jurisdiction, enabling direct faraid implementation without inter-court conflicts. The study reveals that approximately RM42 billion in Muslim inheritance remains undistributed in Malaysia due to systematic administrative failures, while Brunei's unified approach achieves greater legal certainty and administrative efficiency. Conclusions: Institutional structures fundamentally determine Islamic inheritance law implementation effectiveness in contemporary Muslim societies. Successful Islamic law implementation requires comprehensive institutional support aligning legal structures with religious objectives rather than mere constitutional recognition. Malaysia's fragmented system inadvertently undermines Islamic law's divine authority through secular intervention, while Brunei's unified approach enhances religious legitimacy and community compliance.

Keywords: Islamic Inheritance Law; Faraid; Comparative Jurisdictional Study of Malaysia and Brunei.

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1. Introduction

Islamic succession law is an important part of the family law system and not only has social and normative legal aspects, but also has significant value in maintaining the economic continuity of the family. It serves as a legal tool to ensure the redistribution of assets within the framework of intergenerational justice as well as to maintain the economic stability of the family after the death of the testator. The Qur'an regulates the distribution of inheritance in detail in Surah An-Nisa verses 11, 12, and 176, while the Hadith of the Prophet provides instructions for implementing the inheritance process as well as the principle of caution in its implementation [1]. Therefore, Islamic inheritance law is considered the law of Allah (*al-Hukm al-Ilahi*), which can only be interpreted in the context of technical *ijtihad*.

In Southeast Asia, Malaysia and Brunei Darussalam have become two countries that have officially incorporated Islamic law into their national legal systems, particularly in family matters such as marriage, divorce and inheritance. [2] However, the approaches used in these two countries show significant conceptual and structural differences. As a federal state that adheres to a dualistic legal system, Malaysia has a legal structure that separates Islamic law from civil law. The Syariah Courts in each state have limited jurisdiction that only applies to Muslims, while civil courts have broader powers in the context of common law [3]. The administration of inheritance for Muslim heirs is carried out through the Amanah Raya and the Pejabat Pentadbiran Agama Islam Negeri (PAIN), while for non-Muslims it is regulated in *the Distribution Act 1958 (Revised 1983)* [4]. However, there are challenges in enforcing Syariah Court decisions, particularly those relating to non-transferable assets such as property, as their implementation often requires intervention from the civil courts. This shows the limited authority of the Syariah Court in the Malaysian legal structure [5].

In contrast, Brunei Darussalam adopts a more integrated approach to Islamic law. The country is an absolute monarchy under Sultan Hassanal Bolkiah, who has made Sharia a central pillar of its legal system. The implementation of *the Sharia Penal Code Order (SPCO) 2013* was a significant milestone in strengthening Brunei's national law, consolidating Islamic criminal provisions and strengthening the implementation of family and inheritance law through the Sharia Court [6]. Brunei's Sharia judicial structure includes the Sharia Court of Appeal and the Majlis Ugama Islam Brunei, which has exclusive jurisdiction over Muslim religious affairs. This system allows for the direct implementation of Islamic inheritance decisions without the need for intervention by civil courts, thus being more consistent with the principles of fiqh [7].

These two countries, although both apply Islamic inheritance law normatively, show that the political context and institutional structure of the country greatly influence how the law is implemented. Malaysia with its pluralistic approach shows challenges in the consistency of the implementation of Islamic inheritance law, while Brunei, through its absolute monarchy system, is able to uphold Islamic law as the main basis of its legal system. This comparison is important to understand how Islamic inheritance law can adapt within the framework of a diverse modern legal system, and shows that the supremacy of Islamic law requires strong institutional support in order to be implemented effectively.

2. Literature Review

2.1. Legal Pluralism Theory: The Romano-Gierke Framework

The theoretical foundation of legal pluralism as articulated by Santi Romano and Otto von Gierke provides crucial insights for analyzing the coexistence of multiple legal orders within single jurisdictional frameworks. Romano's institutional theory of law, as established in "L'ordinamento giuridico" (1917-1918), posits that law exists wherever there is an organized social entity, regardless of state recognition or formal validation [8][9]. This theoretical perspective fundamentally challenges the monopolistic conception of state law by recognizing that "all that is organized is an institution; all institutions are legal entities" [10]. Romano's pluralistic framework demonstrates particular relevance to the Malaysian context, where dual legal systems operate with overlapping jurisdictions between Syariah and civil courts. The theory's recognition of multiple legal orders coexisting within a single social field directly corresponds to Malaysia's complex arrangement where Islamic law governs Muslim personal matters while civil law maintains broader jurisdictional authority [11][12]. Von Gierke's Germanic school contribution emphasizes the organic nature of legal pluralism, arguing that spontaneous groupings of individuals "gained their legal existence by the very fact of being in existence" [13][14]. This theoretical foundation provides analytical tools for understanding

how Islamic inheritance law operates as a legitimate legal order alongside state civil law, particularly in addressing jurisdictional conflicts that arise in property inheritance cases. The Romano-Gierke framework offers critical insights into managing normative diversity in post-colonial legal systems, demonstrating how pluralistic legal arrangements can accommodate religious law without undermining state sovereignty [15][11].

2.2. Maqasid al-Shariah and Ijtihad: Islamic Jurisprudential Methodology

The theoretical framework of Maqasid al-Shariah (objectives of Islamic law) combined with Ijtihad (legal reasoning) provides essential analytical foundations for understanding how Islamic inheritance law adapts to contemporary legal contexts while maintaining doctrinal integrity. Al-Ghazali's foundational articulation of Maqasid emphasizes the preservation of five essential elements of human well-being: religion, life, intellect, lineage, and property, which directly relate to inheritance law's fundamental purposes. This theoretical approach recognizes that Islamic legal reasoning must balance textual fidelity with practical application through Ijtihad, enabling adaptive legal interpretation that responds to contemporary challenges [16][17]. The integration of Maqasid principles with Ijtihad methodology offers a sophisticated framework for analyzing how Islamic inheritance law can maintain authenticity while adapting to modern legal environments. Al-Shatibi's development of this theory in "Al-Muwafaqat fi Usool al-Sharia" defines Maqasid as "the attainment of good, welfare, advantage, benefits and warding off evil, injury, loss of the creatures". This theoretical foundation provides analytical tools for evaluating the effectiveness of Islamic inheritance law implementation in both Malaysia and Brunei contexts. The theory's emphasis on public interest (maslahah) over individual benefit equips researchers with methodological approaches for assessing how contemporary Islamic legal systems balance traditional principles with modern governance requirements. The Maqasid-Ijtihad framework enables analysis of how religious courts navigate between strict textual interpretation and contextual application, particularly relevant for understanding Brunei's centralized Islamic legal system versus Malaysia's pluralistic approach [18][19].

2.3. Hartian Legal Positivism and Institutional Recognition Theory

H.L.A. Hart's sophisticated legal positivism, as articulated in "The Concept of Law" (1961), provides crucial theoretical foundations for analyzing how Islamic inheritance law gains validity and recognition within modern state structures. Hart's distinction between primary rules (which impose duties) and secondary rules (which provide mechanisms for creating, modifying, and interpreting primary rules) offers analytical framework for understanding how Islamic inheritance law operates within broader legal systems [20]. Hart's concept of the "rule of recognition" serves as the theoretical foundation for examining how societies determine what constitutes valid law, particularly relevant for understanding how Islamic inheritance law achieves legitimacy in both Malaysia and Brunei. The rule of recognition "serves as the ultimate benchmark for deciding what constitutes 'law,' accepted by the society and its officials"¹⁶. This theoretical approach provides analytical tools for examining how Islamic legal principles gain acceptance and implementation through institutional recognition and social practice. Hart's distinction between internal and external perspectives on law offers crucial insights for understanding how Muslim communities perceive Islamic inheritance law as binding moral obligation rather than mere state enforcement [20]. The internal perspective recognizes rules as "binding standards that they feel obliged to follow," which directly relates to how religious communities view Islamic inheritance law as divine command rather than state-imposed regulation¹⁶. Hart's institutional theory, as developed in "Institutions of Law," defines law as "institutional normative order," providing analytical framework for understanding how Islamic legal institutions function within broader governmental structures. This theoretical foundation enables analysis of how Islamic inheritance law operates through institutional mechanisms, particularly relevant for comparing Malaysia's limited Syariah court authority with Brunei's comprehensive Islamic judicial system [21].

3. Proposed Method

This study uses a normative legal approach, an approach based on legal norms that apply to legal provisions, documents, and other legal sources. The purpose of this approach is to examine the principles, rules, and principles of Malaysia and the Islamic heritage of Brunei Darsalam, both theoretically and conceptually. The method used in this study is a comparative

method by comparing the Islamic inheritance law system between the two countries to examine the similarities and differences in legal substance, institutional structure, and application of law regarding their adoption in this field. This approach is expected to allow factors to determine which factors influence the success or obstacles in implementing inheritance laws in all countries [22].

The research data obtained from library research includes records and analysis of various legal literature, including FIQH books, national laws, official documents, court decisions, scientific journals, academic articles, and related religious fats. The researchers also analyzed various legal policies imposed on both countries in relation to the management and distribution of inherited property in the Muslim community. All data obtained were then analyzed qualitatively, by interpreting and assessing the extent to which the legal theories and norms are effectively applied in the social, cultural, and political contexts of each country. Thus, the results of this study are expected to contribute to the development of more responsive and applicable Islamic inheritance law in the Southeast Asia region.

4. Results

4.1. Inheritance Legal Framework in Malaysia

Malaysia has adopted a dual inheritance law system, which separates Islamic inheritance law from civil inheritance law. This system is a legacy of British colonialism and is adapted to the multi-ethnic social structure of the country [8]. For Muslims, the distribution of inheritance is regulated by the principle of faraid, namely a system of dividing property based on the provisions of the Qur'an, Hadith, and the consensus of scholars [24].

The Syariah Courts in each country have the authority to issue Sijil Faraid, which details the names of the heirs and the proportion of their rights. However, for administrative matters such as property registration, validation of powers of attorney, or division of land, the process must be carried out through the Civil Court because the Syariah Court does not have jurisdiction over immovable property such as land and buildings. This jurisdictional inconsistency often triggers conflicts between the two judicial systems. For example, in the case of *Latifah Tangle Zin v Rosmawati Sharibun & Anor* [2007] 5 MLJ 101, the Federal Court ruled that the administration of inheritance matters fell within the jurisdiction of the Civil Court, even though the determination of Muslim heirs was determined by the Syariah Court [25].

Meanwhile, inheritance law for non-Muslims is regulated by the Conveyance Act 1958 and the Probate and Organization Act 1959, which provide flexibility in making wills without being bound by the principle of faraid. However, some indigenous communities such as the Bumiputera in Sabah and Sarawak still maintain their traditional inheritance systems [11]. As a solution to this complexity, Muslim communities are increasingly adopting hibah (gifts during life) and Islamic wills as instruments of wealth distribution, with a maximum limit of one-third of the add up to the testator's wealth unless agreed by all heirs. On the other hand, institutions such as Amanah Raya Berhad also play an important role in managing inherited assets professionally and legally [27].

Thus, the Malaysian inheritance law system exhibits a flexible yet challenging dynamic of legal pluralism, particularly in terms of interjurisdictional coordination and protection of the rights of all parties. More integrative structural reforms are needed to create a fairer and more efficient inheritance system.

4.2. Inheritance Legal Framework in Brunei Darussalam

Brunei Darussalam is one of the countries in Southeast Asia that makes Islamic law an explicit basis in its legal system. This country places Islamic law not only as an ethical and otherworldly guideline, but also as the main source of national law, including in the context of inheritance law [13]. This policy is reflected in various regulations and judicial structures that regulate the lives of Brunei citizens. Unlike Malaysia which uses a dual legal system between Islamic and civil law, Brunei Darussalam operates a more consistent monolithic legal system, in which Islamic law is applied comprehensively to the Muslim community, including in matters of succession [29].

The two main laws governing Muslim inheritance in Brunei are the Islamic Family Law Arrangement 1999 and the Islamic Legacy Law (Faraid). These two regulations are the legal basis for implementing Islamic inheritance distribution that refers to the provisions of the Qur'an and Hadith [15]. The Faraid Law stipulates the distribution of property proportionally

based on the degree of relationship and gender of the heirs, in accordance with the verses in Surah An-Nisa (4:11–12, 176). In fact, the implementation of the Falaid Law in Brunei from the Syrian court with one authority over Muslim inheritance matters has been fully implemented. In this case, the Civil Court will not be responsible for any responsibility, because all Muslim inheritance disputes in the Sharia Court are fully covered [7]. This Court of Justice not only accepts legal justification, but also the state ideology as the implementer of God's law based on the Makashid Sharia.

One of the most important developments in strengthening the status of Islamic law in Brunei is the implementation of the SPCO Schaharia (Criminal Code) 2013. Although known as a criminal code, the SPCO implicitly strengthens the existence of the Syariah courts as a major actor in the national legal system, as it integrates Islamic criminal law into the national system. The Syariah Judicial Bureau plays a key role in the administration and supervision of the Syariah courts, including the training and confirmation of judges who are members of the family law [6].

4.3. Comparison and Analysis

The main difference between Malaysia and Brunei Darussalam in the context of Islamic heritage lies in the legal structure and political influence on implementation. Malaysia adheres to a dual legal system (dual legal system) that separates the responsibilities of Muslims and non-Muslims. This system stems from a federalist legal structure that gives each state the enforcement of Islamic law, including inheritance authority and law, through the local Islamic religious system. This is distinguished from the implementation of interstate falaid laws, depending on the guidelines and capabilities of the local religious system. On the other hand, this system gives you flexibility. However, on the other hand, disputes for coordination between the Syariah Courts and the Civil Courts can lead to jurisdictional disputes [31].

In contrast, Brunei Darussalam uses a more central and consistent approach to the implementation of Islamic law as an absolute monarchy. According to the Falaid Law of 1999 and the Islamic Family Law of 1999, the Syariah courts make exclusive additions to inheritance for Muslims without intervention by the civil courts. The advantage of this system is the creation of greater legal certainty due to the lack of dualism of the true GNA wings. This makes the inheritance process faster, more uniform and more efficient [17]. However, this exclusive system also has disadvantages, especially regarding access to justice for non-Muslims and mixed families. The lack of alternative legal channels creates the possibility of legal discrimination against minority groups [18]. The Malaysian system is more complicated, but offers greater openness through the Civil Courts, including the possibility of appealing to Sharia court decisions in certain cases [11]. However, this system has various problems, including frequent jurisdictional conflicts, especially in cases of marriage, religious conversion, or inheritance involving the religious situation of the heirs. In addition, the limitations of the Sharia courts' obligations, where Muslims are alone and resource constraints, operating in some countries, hamper the effective implementation of falaid laws.

Therefore, we can conclude that there is no such thing as an ideal system. Brunei has demonstrated stability and legal certainty in the implementation of Islamic law, but it is not comprehensive. Malaysia offers a more open system, but is exposed to the complexity of coordination and inconsistencies between states. Both countries have an opportunity to learn from each other. While Brunei may consider providing alternative right-wing channels for non-Muslims, Malaysia needs to strengthen inter-agency coordination and improve the capacity of the Sharia Courts to handle Islamic disputes [34].

5. Discussion

The comparative analysis of Islamic inheritance law systems between Malaysia and Brunei Darussalam presented in this study reveals significant insights into how institutional structures and political frameworks fundamentally shape the implementation of religious law in modern nation-states. Building upon the Romano-Gierke framework of legal pluralism established in the literature review, this discussion examines the practical implications of theoretical approaches when applied to concrete legal systems in Southeast Asian contexts.

The study's application of normative legal methodology combined with comparative analysis has successfully demonstrated how Maqasid al-Shariah principles manifest differently under varying institutional arrangements. While both countries ostensibly adhere to Islamic

inheritance law principles derived from the Qur'an and Hadith, the effectiveness and consistency of implementation diverge substantially based on constitutional structures and governmental approaches.

5.1. Institutional Framework Analysis

5.1.1. Malaysia's Dual Legal System Challenges

The findings confirm that Malaysia's federal structure creates inherent tensions between Syariah and civil court jurisdictions, particularly in inheritance matters involving immovable property. The research evidence demonstrates that the constitutional limitation of Syariah courts' executive powers significantly undermines the effectiveness of faraid implementation. This jurisdictional fragmentation manifests in several critical areas:

- **Administrative Complexity:** The involvement of multiple agencies Amanah Raya Berhad, Small Estate Distribution Sections, High Courts, and Syariah Courts creates bureaucratic inefficiencies that delay inheritance distribution processes. The study's findings align with existing literature indicating that approximately RM42 billion in Muslim inheritance remains undistributed due to administrative systemic failures.
- **Jurisdictional Conflicts:** The landmark case of *Latifah Tangle Zin v Rosmawati Sharibun & Anor* exemplifies the fundamental structural problem where Syariah courts determine heirs but lack authority to execute property transfers. This separation of determination and execution authority creates legal uncertainty and prolongs estate settlement processes.
- **Constitutional Limitations:** Despite Article 121(1A) of the Federal Constitution establishing exclusive Syariah court jurisdiction, the practical implementation remains constrained by federal-state power distribution and civil court intervention in property matters. The *Iki Putra* case further illustrates how federal-state jurisdictional boundaries continue to challenge Syariah law supremacy.

5.1.2. Brunei's Centralized Islamic Legal System

In contrast, Brunei Darussalam's implementation of Islamic inheritance law through centralized institutional structures demonstrates greater consistency and efficiency. The study findings indicate that the Syariah Penal Code Order (SPCO) 2013 has strengthened institutional capacity for Islamic law implementation by creating unified judicial authority.

- **Unified Jurisdiction:** The exclusive authority of Syariah courts over Muslim inheritance matters eliminates inter-court jurisdictional conflicts that plague Malaysia's system. This centralized approach enables direct implementation of faraid decisions without civil court intervention, creating more predictable legal outcomes.
- **Political Support:** Sultan Hassanal Bolkiah's absolute monarchy provides unwavering political backing for Islamic law implementation, contrasting with Malaysia's federal political constraints. The Melayu Islam Beraja (MIB) ideology reinforces state commitment to Islamic law supremacy across all governmental institutions.
- **Institutional Integration:** The comprehensive legal framework encompassing the Islamic Family Law Order 1999 and Islamic Inheritance Law (Faraid) creates coherent regulatory structure supporting effective law implementation.

5.2. Comparative Effectiveness and Implementation Challenges

5.2.1. Legal Certainty and Predictability

The comparative analysis reveals that Brunei's centralized system provides superior legal certainty compared to Malaysia's pluralistic approach. While Malaysia's dual system offers flexibility and accommodation for diverse communities, it sacrifices legal predictability and administrative efficiency. The research demonstrates that legal pluralism, while theoretically accommodating diversity, creates practical implementation challenges that undermine Islamic law effectiveness.

5.2.1. Access to Justice Considerations

Malaysia's system, despite its complexities, provides broader access to justice through multiple legal channels and appeal mechanisms. Non-Muslims and mixed families benefit from civil court alternatives when Syariah court decisions prove inadequate. Conversely, Brunei's exclusive Islamic legal system may limit access to justice for minority communities, though the research indicates that comprehensive social services mitigate potential discrimination concerns.

5.2.2. Cultural and Religious Legitimacy

Both systems demonstrate strong cultural and religious legitimacy within their respective Muslim communities. However, the study findings suggest that institutional support significantly influences community acceptance and compliance. Brunei's unified approach enhances religious authority perception, while Malaysia's fragmented system may undermine Islamic law's divine authority through secular court intervention.

5.2.3. Theoretical Implications for Legal Pluralism

The comparative findings challenge conventional assumptions about legal pluralism's effectiveness in accommodating religious diversity. While Romano-Gierke framework suggests that multiple legal orders can coexist harmoniously, the practical evidence from Malaysia demonstrates that jurisdictional overlap creates systemic inefficiencies that may undermine rather than strengthen minority legal traditions.

The study's application of Maqasid al-Shariah analysis reveals that institutional structures significantly influence the achievement of Islamic law's fundamental objectives. Brunei's centralized system better achieves the preservation of property (hifz al-mal) and lineage (hifz al-nasl) through efficient inheritance distribution, while Malaysia's complex system may inadvertently undermine these objectives through administrative delays and jurisdictional uncertainties.

5.3. Policy Implications and Reform Recommendations

For Malaysia: The research findings suggest several structural reforms could enhance Islamic inheritance law effectiveness while maintaining constitutional pluralism:

- **Jurisdictional Harmonization:** Expanding Syariah court executive authority over immovable property would eliminate civil court intervention requirements and reduce administrative delays.
- **Administrative Streamlining:** Establishing one-stop inheritance centers could coordinate multiple agencies and reduce bureaucratic complexity.
- **Capacity Building:** Enhanced Syariah court resources and judicial training would improve service delivery and reduce case backlogs.

For Brunei: While Brunei's system demonstrates greater efficiency, the research identifies potential areas for enhancement:

- **Minority Accommodation:** Developing alternative dispute resolution mechanisms for non-Muslims could address access to justice concerns while maintaining Islamic law supremacy.
- **Transparency Enhancement:** Increasing public awareness and legal education could further strengthen community understanding and compliance.

5.4. Limitations and Future Research Directions

This comparative study's normative legal methodology provides valuable insights into institutional effectiveness but has certain limitations. The reliance on legal documents and court decisions may not fully capture social and cultural implementation dynamics that influence practical law application. Future research employing ethnographic methods could examine how communities actually experience and navigate these legal systems beyond formal institutional structures.

Additionally, the study's focus on inheritance law, while illuminating broader patterns, may not reflect implementation challenges in other areas of Islamic family law. Comparative analysis of marriage, divorce, and child custody laws could provide more comprehensive understanding of institutional effectiveness across different legal domains.

The theoretical framework's emphasis on institutional analysis could benefit from integration with socio-legal approaches that examine how law operates within broader social contexts. Understanding how economic development, education levels, and urbanization influence Islamic law implementation could enhance policy recommendations' practical applicability.

This comparative analysis demonstrates that institutional structures fundamentally shape Islamic inheritance law implementation effectiveness in contemporary Muslim societies. While both Malaysia and Brunei Darussalam maintain commitment to Islamic legal principles, their divergent approaches to institutional organization produce significantly different outcomes in terms of legal certainty, administrative efficiency, and community access to justice.

The study's findings contribute to broader theoretical understanding of legal pluralism's practical challenges and opportunities in postcolonial contexts. The evidence suggests that successful Islamic law implementation requires not merely constitutional recognition but comprehensive institutional support that aligns legal structures with religious objectives. As Southeast Asian Muslim societies continue to navigate modernity while preserving religious identity, the experiences of Malaysia and Brunei provide valuable insights for developing effective and legitimate Islamic legal systems in diverse political contexts.

6. Conclusions

This comparative study provides significant insights into how institutional structures fundamentally shape the implementation effectiveness of Islamic inheritance law in contemporary Southeast Asian nation-states. Through the application of Romano-Gierke legal pluralism framework and Maqasid al-Shariah theoretical analysis, the research demonstrates that constitutional arrangements and governmental approaches critically influence both the consistency and practical application of faraid principles in Malaysia and Brunei Darussalam.

The findings reveal that Malaysia's federal dualistic legal system, while offering accommodation for diverse communities, creates inherent jurisdictional tensions that undermine Islamic inheritance law effectiveness. The separation of determination authority (Syariah courts) from execution power (civil courts) generates administrative complexities and legal uncertainties that contradict the unified nature of Islamic jurisprudence. Conversely, Brunei Darussalam's centralized Islamic legal framework demonstrates superior institutional coherence through exclusive Syariah court jurisdiction, enabling direct implementation of inheritance decisions without inter-court conflicts.

The study's theoretical implications extend beyond institutional analysis to challenge conventional assumptions about legal pluralism's effectiveness in accommodating religious diversity. The evidence suggests that successful Islamic law implementation requires comprehensive institutional support that aligns legal structures with religious objectives, rather than mere constitutional recognition. Malaysia's fragmented system inadvertently undermines Islamic law's divine authority through secular intervention, while Brunei's unified approach enhances religious legitimacy and community compliance.

The research contributes to broader understanding of comparative legal methodology by demonstrating how institutional variables influence normative implementation in post-colonial contexts. The findings indicate that political commitment, unified jurisdiction, and administrative integration constitute essential prerequisites for effective Islamic legal system operation in modern nation-states. These insights offer valuable guidance for Southeast Asian Muslim societies navigating the balance between religious authenticity and contemporary governance requirements.

Future research should examine the social and cultural dynamics of Islamic law implementation beyond formal institutional structures, particularly investigating how community experiences and socio-economic factors influence practical legal application. Additionally, comparative analysis across other areas of Islamic family law would enhance understanding of institutional effectiveness patterns across different legal domains, contributing to more responsive and applicable Islamic legal frameworks in the region.

References

- [1] "Al Qur'an Surat 11 Ayat ke 17 dan 176".
- [2] M. B. Hooker, *Islamic Law in South-East Asia*. Oxford University Press, 1984.
- [3] A. Ibrahim, *The Administration of Islamic Law in Malaysia*, vol. 35. 1987.

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- [4] Laws of Malaysia, *Distribution Act 1958 (Revised)*. 1983.
- [5] N. A. M. Noh, "The Challenges in Enforcing the Syariah Court Decisions in Malaysia," *J. Islam. Law Judic.*, vol. 8, p. 2, 2019.
- [6] Government of Brunei Darussalam, *Syariah Penal Code Order*. 2013.
- [7] W. Z. W. Hussain, *Islamic Legal System in Brunei Darussalam: History, Development and Structure*. 2020.
- [8] S. V. Biryukov, "Santi Romano and the Concept of Legal Pluralism," *Lex Russ.*, vol. 76, no. 6, pp. 138–147, Jun. 2023, doi: 10.17803/1729-5920.2023.199.6.138-147.
- [9] R. Cotterrell, "Still Afraid of Legal Pluralism? Encountering Santi Romano," *Law Soc. Inq.*, vol. 45, no. 2, pp. 539–558, May 2020, doi: 10.1017/lsi.2019.24.
- [10] M. Croce and M. Goldoni, "Santi Romano and the Juristic Point of View," in *The Legacy of Pluralism*, Stanford University Press, 2020, pp. 51–98. doi: 10.11126/stanford/9781503612112.003.0003.
- [11] C. Bazán Seminario, "Decolonising Legal Theory: The Rule of Law and the Legalisation of Legal Pluralism," *Rev. Via Iuris*, no. 36, pp. 38–67, Jan. 2024, doi: 10.37511/viaiuris.n36a2.
- [12] E. Conte, "Legal Pluralism from History to Theory and Back: Otto von Gierke, Santi Romano, and Francesco Calasso on Medieval Institutions," *Law Hist. Rev.*, vol. 42, no. 2, pp. 169–180, May 2024, doi: 10.1017/S0738248023000159.
- [13] J. Marglin and M. Letteney, "Legal Pluralism as a Category of Analysis," *Law Hist. Rev.*, vol. 42, no. 2, pp. 143–153, May 2024, doi: 10.1017/S0738248023000196.
- [14] C. Thornhill, "von Gierke, Otto (1841–1921)," in *The Encyclopedia of Political Thought*, Wiley, 2014, pp. 3810–3811. doi: 10.1002/9781118474396.wbep1031.
- [15] Y. Qu, "The Enlightenments and Perplexities of Research on Legal Pluralism Theory in China," in *Proceedings of the 2018 3rd International Conference on Modern Management, Education Technology, and Social Science (MMETSS 2018)*, Paris, France: Atlantis Press, 2018. doi: 10.2991/mmetss-18.2018.101.
- [16] Muhammad Mujtaba Abdulkadir and Halima Ibrahim Bature, "Aligning Maqasid al-Shari'ah and Ijtihad: A Framework for Contemporary Islamic Jurisprudence," *J. Arts Sociol. Res.*, vol. 7, no. 6, pp. 299–306, May 2025, doi: 10.70382/ajasar.v7i6.030.
- [17] H. Mavani, "Islamic Bioethics: Ijtihad," in *Oxford Research Encyclopedia of Religion*, Oxford University Press, 2024. doi: 10.1093/acrefore/9780199340378.013.1261.
- [18] C. Tohari, H. Fawwaz, and I. Swadjaja, "The Ijtihad Construction Of Islamic Law Based On The Maqâshid Al-Syarî'Ah Approach In The Indonesian Context," *Prophet. Law Rev.*, vol. 4, no. 2, pp. 195–221, Dec. 2022, doi: 10.20885/PLR.vol4.iss2.art4.
- [19] A. Yaqin, "An Examination of the Moderate Ijtihad Method from the Perspective of Abdullah bin Bayyah and Its Application in the Formulation of Islamic Law," *Ulul Albab J. Stud. dan Penelit. Huk. Islam*, vol. 8, no. 2, p. 122, Apr. 2025, doi: 10.30659/jua.v8i2.44684.
- [20] E. Krapyvin and B. Malyshev, "The Role of H. L. A. Hart's Rule of Recognition in Contemporary Anglo-American Legal Positivism," *Uzbborod Natl. Univ. Herald. Ser. Law*, vol. 1, no. 84, pp. 78–82, Sep. 2024, doi: 10.24144/2307-3322.2024.84.1.10.
- [21] M. Djawas, A. Nurdin, M. Zainuddin, I. Idham, and Z. Idami, "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Rev.*, vol. 10, no. 1, p. 64, May 2024, doi: 10.20956/halrev.v10i1.4824.
- [22] M. Reza Saputra and Wicipto Setiadi, "Implementation Of General Principles Of Good Government In The Organization Of The 2024 Elections," *Int. J. Law Soc.*, vol. 1, no. 3, pp. 94–112, May 2024, doi: 10.62951/ijls.v1i3.65.
- [23] M. B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws*. Oxford: Clarendon Press, 1975.
- [24] A. Ibrahim, *The Administration of Islamic Law in Malaysia*. Kuala Lumpur: IKIM, 2000.
- [25] F. S. Shuaib, *Pengenalan Sistem Perundangan di Malaysia*. lexisnexis, 2011.
- [26] MLJ, *Isu pembagian harta pusaka umat Islam dan batas yurisdiksi antara Mahkamah Sivil dan Mahkamah Syariah di Malaysia.*, vol. 5. 2007, p. 101.
- [27] M. S. Yaacob, "Instrumen Hibah dan Wasiat dalam Pengurusan Harta Islam di Malaysia," 2015.
- [28] M. B. Hooker, *Syariah Law in Southeast Asia*. Oxford University Press, 2008.

-
- [29] A. Ibrahim, "The Administration of Islamic Laws in Brunei Darussalam," *J. Southeast Asian Law*, vol. 2, no. 1, 2002.
- [30] Kerajaan Brunei Darussalam, *Islamic Family Law Order 1999 dan Islamic Inheritance Law Faraid*. 1999.
- [31] A. Ibrahim, "The Administration of Islamic Law in Malaysia," Institute of Islamic Understanding Malaysia (IKIM), 1997, p. 24.
- [32] Government of Brunei Darussalam, *Undang-Undang Faraid 1999 dan Undang-Undang Keluarga Islam (Pengangkatan 1999)*. 1999.
- [33] H. Mutalib, *Islam in Southeast Asia*. ISEAS Publishing, 2008.
- [34] N. C. Abdullah, "The Need for Harmonisation Between Civil and Syariah Courts in Malaysia: A Critical Review," *Malayan Law J.*, 2014.