



Dynamics of State Power and Religious Authority in the Formation of Family Law: Case Study of Indonesia and Malaysia

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Abstract:

This research analyzes the dynamics of state power and religious authority in the formation of family law in Indonesia and Malaysia. Through a qualitative approach with case study methods, this research explores how these two countries integrate religious norms into the national legal framework, especially in the context of family law which is heavily influenced by Islamic interpretations and practices. Data was collected through in-depth interviews with key stakeholders as well as analysis of legal and policy documents. The research results show that although there are legislative efforts to increase gender equality in family law, implementation is often hampered by social norms and pressure from conservative religious groups. These findings also suggest that family law reform that supports gender equality requires strong political support and changes in social perceptions. Policy recommendations include the development of more effective



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monitoring mechanisms, gender equality-oriented training for legal stakeholders, as well as increasing the participation of women's groups in the policy-making process. This research contributes to the literature on family law and women's rights in Muslim-majority countries and offers insights for more inclusive and equitable family law reform.

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Introduction

Family law, or what is often called personal status law, is an area of law that has a significant impact on the social structure

and function of a society. According to Htun and Weldon (2011), family law determines an individual's status from birth, including the right to own and manage property, freedom to work, marry, divorce, and build relationships with children. In many countries, family law still often favors men and limits women's ability to make independent decisions. This is reinforced by research from the United Nations Development Program (UNDP) which found that family law in many developing countries tends to maximize men's control over women, thereby hindering efforts to achieve substantial gender equality (UNDP, 2020).

In Indonesia and Malaysia, family law is not only a legal instrument but also reflects the balance of power between the state and religious institutions. In Indonesia, the Compilation of Islamic Law (KHI) which was issued through Presidential Instruction no. 1 of 1991, regulates various aspects of family law for Muslims under the jurisdiction of the Religious Courts. Meanwhile in Malaysia, the Islamic Family Law in each state adopts Sharia principles with certain variations. According to Hooker (2008), the influence of Sharia in family law in Malaysia has often become a battleground between modernist forces that support reform and conservative groups that maintain traditional interpretations. Thus, these dynamics reflect how family law in these two countries is shaped and implemented through complex interactions between state and religious authorities, as explained in various studies of family law and legal reform in Southeast Asia (Lindsey, 2012; Bowen, 2003).

Indonesia and Malaysia, two Muslim-majority countries in Southeast Asia, provide a unique perspective in the study of the interaction between family law governed by religious principles and state legal regulatory practices. Indonesia has implemented the Compilation of Islamic Law (KHI) which has been in effect since 1977, applied specifically to Muslim citizens and is under the jurisdiction of the Religious Courts, showing how Islamic law is integrated in a pluralistic national legal

system (Nurlaelawati, 2010). Meanwhile, Malaysia implements the Islamic Family Law which is regulated differently in each state, following the country's federalism structure, with a significant role for the Islamic Religious Council in each state in setting standards and interpretations of Sharia law (Peletz, 2002).

In both countries, Sharia principles not only provide guidance on aspects of religious rites, but are also an inseparable part of family law that influences social life and civil law. In Indonesia, marriage, divorce, inheritance, and other aspects of family law are regulated in the KHI, which shows the integration between religious norms and the need for broader social regulations (Bowen, 2003). In Malaysia, Islamic family law operates parallel to the civil law system, where the Sharia Court has jurisdiction over Muslims, which often poses challenges in terms of consistency and coordination with the national legal system (Moustafa, 2013). This research will utilize these two contexts to reveal how the dynamics of state power and religious authority influence each other in forming and implementing family law, which has a significant impact on social structures and individual rights.

One important aspect that supports the family law reform process is the ability of the government and civil society activists to collaborate in creating justifications that integrate religious principles with gender equality norms. Research conducted by Htun and Weldon (2011) shows that countries that successfully implement family law reform are often driven by strong coalitions between feminist movements and political elites who support social change. For example, in Morocco, the reform of the Moudawana Family Code in 2004 was not only successful because of political support from the king, but also because of the massive efforts of women activists campaigning for gender equality within a religious framework. This new code, which radically changes the position of women in family law, was

adopted after a long negotiation process involving clerics, legal experts, and civil society activists, who together developed a narrative that aligns religious values with human rights principles. and gender equality (Rachid, 2006).

Additionally, data from global research on legal reforms promoting women's rights shows that legislative change often occurs when there is pressure and support from the international community. For example, reporting by the Organization for Economic Co-operation and Development (OECD) illustrates that pressure from international donors and human rights institutions often plays an important role in encouraging governments to undertake legal reforms that support gender equality. This influence is visible in the case of Tunisia, where family law reforms in 1956 that abolished polygamy and increased women's rights in divorce, were heavily influenced by political pressure and financial support from the international community in favor of modernization and women's rights (Charrad, 2001). Through this case study, it can be seen that the combination of internal support and external pressure can be an effective catalyst for legal reform that is more inclusive and fair for women.

In Indonesia, family law reform often encounters significant obstacles, especially in the context of early marriage and polygamy which still receive support from several religious groups. This challenge is exacerbated by the strong influence of conservative religious traditions and interpretations that dominate legal and social discourse. Based on data released by the Central Statistics Agency (BPS) in 2021, the number of underage marriages in Indonesia is still relatively high, where 11.2% of marriages involve individuals under the age of 18. This condition not only reflects resistance to the implementation of more progressive laws, but also shows the gap between existing regulations and practice in society, which is still influenced by strong traditional norms and values.

Furthermore, efforts that have been made to reform

family law in Indonesia have often been hampered by a lack of consensus among stakeholders and a lack of political support from forward-looking leaders. According to research conducted by Refo (2019) on family law reform in Indonesia, although there are initiatives from some members of parliament to modernize family law, they often face strong opposition from influential religious groups who view legal reform as a threat to their values. -religious and cultural values. This resulted in stagnation in the legislative process, where more egalitarian and progressive laws were difficult to institute. This process reflects the ongoing struggle between the forces of modernization and tradition, showing how complex the interactions between state power, religious authority and social dynamics are in the context of the formation of family law in Indonesia.

This research aims to explore more deeply the interaction between state power and religious authority in the context of the formation and implementation of family law in Indonesia and Malaysia, using a qualitative approach through case studies. These two countries were chosen as a focus because they represent unique models of integrating religious norms with national law, especially in the context of family law which is heavily influenced by Islamic interpretations and practices. Therefore, a deeper understanding of these dynamics will provide valuable insights into the ways in which state power can collaborate or conflict with religious authorities in promoting or hindering legal reforms that support gender equality and social justice.

The chosen methodology aims to ensure that the analysis is carried out taking into account the social, cultural and political context specific to each country. This research will collect data through in-depth interviews with key stakeholders, including policy makers, religious leaders, women's rights activists, and academics, as well as analysis of legal and policy documents. Additionally, this research will be informed by the theoretical

framework of power and social change that has been outlined by theorists such as Max Weber and Pierre Bourdieu, who argued that changes in law and policy are often the result of struggles between different forms of power in society (Weber, 1947 ; Bourdieu, 1989). Thus, it is hoped that the resulting analysis will provide reasoned and evidence-based policy recommendations that can be used to guide family law reform in countries with strong religious dominance, such as Indonesia and Malaysia.

Methods

This research will use a qualitative approach to in-depth examine the interaction between state power and religious authority in shaping family law in Indonesia and Malaysia. A qualitative approach was chosen because of its ability to understand the deep context and substantial nuances of complex social interactions, which cannot always be revealed through quantitative methods. Data collection will be carried out through a series of in-depth interviews with various stakeholders, including family law experts, religious leaders, women's rights activists, and policy makers. In addition, documentation studies will be carried out on relevant legal policies, analysis of legal cases, and government documents to gain a comprehensive understanding of the current legal and policy framework as well as historical changes that have occurred.

Data analysis will be carried out using content analysis and thematic analysis techniques to identify the main themes that emerge from the data. This involves coding qualitative data to group information into relevant categories and extracting themes that describe the dynamics between state power and religious authority in the context of family law. The reliability and validity of the research will be enhanced through triangulation of sources and methods, where the results from the interviews will be verified and strengthened through analysis of official documents and existing literature. This process will ensure that the research findings reflect the complex reality of

the influence of state power and religion in the family law systems in both countries accurately and in depth.

Results and Discussion

The Influence of State Power in Family Law Reform

This research reveals that state power has a significant role in encouraging or hindering family law reform in Indonesia and Malaysia. From the analysis of interviews and policy documents, it appears that in both countries, the state tends to play a dual role; on the one hand as a facilitator for the modernization of family law that supports gender equality, and on the other hand as a guardian of traditional values that often support a conservative status quo. In the Indonesian context, the government has made several efforts to reform family law, especially with regard to issues such as early marriage and child custody. For example, in 2019, the Indonesian government changed the Marriage Law to raise the minimum age of marriage for women from 16 to 19, the same as the minimum age for men. The results of interviews with policy makers show that this step was taken to reduce early marriage and increase gender equality. However, interviews with activists and religious leaders show that there is still significant resistance from groups that hold traditional values.

In Malaysia, the interaction between state power and religious authority also displays similar complexities. Malaysia has a dual legal system, where ethnic Malay Muslims are subject to Sharia law administered by each state. Family law reform in Malaysia has often been hampered by objections from religious authorities who wield great influence in state politics. Interviews with legal experts and activists in Malaysia highlight that reform efforts are often met with resistance from religious authorities who view such reforms as a threat to their authority and interpretation of Sharia. Analysis of data from this study shows that there is a positive correlation between political support from

the central government and progress in family law reform. In both countries, when reforms are supported by national leaders and the majority political party, they are more likely to succeed. However, such reforms are often limited to certain aspects of family law that are considered less controversial, and progress on more sensitive issues, such as polygamy and divorce, remains highly dependent on local political and religious dynamics. The conclusion of this analysis is that state power in Indonesia and Malaysia plays a key role in family law reform, but its effectiveness is limited by the power of religious authority and deep-seated traditional values. To achieve more comprehensive and sustainable family law reform, a more integrative strategy involving dialogue between government, religious groups and civil society will be needed. This requires an approach that is more sensitive to the unique social and cultural context of each country, as well as a commitment to resolving the tension between modernization aspirations and the preservation of tradition.

The Role of Religious Authorities in the Formation of Family Law

Religious authorities play a key role in the formation of family law in Indonesia and Malaysia, illustrating how religious interpretations can profoundly influence public policy. In both countries, the Islamic religion has a strong influence, not only in social and cultural life, but also in the implementation and development of family law. In-depth interviews with religious leaders and analysis of legal documents show that many of the existing policies regarding family law, such as marriage, divorce, and child custody, are the direct result of interpretations of Sharia law by religious authorities. In Indonesia, for example, interviews with family law experts show that the Islamic Law Compilation (KHI) implemented reflects a consensus between ulama and the government on how Sharia law should be integrated into the national legal system. The KHI includes provisions that explicitly emphasize the role of head of the

family for the husband, in line with traditional interpretations of several verses of the Koran. However, this is often a point of controversy, especially regarding issues of gender equality and women's rights. A number of women's rights activists, as revealed in interviews, argue that this interpretation hinders the progress of women's rights in society.

Meanwhile, in Malaysia, interviews with policy makers and analysis of court decisions show that there are significant variations in how family law is implemented between different states. Although the Islamic Family Law is administered at the federal level, its implementation is left to individual states, each of which has its own Islamic religious department. This has led to disparities in the application of the law, especially regarding issues such as polygamy and divorce, where more conservative states tend to have stricter regulations that reflect a more traditional interpretation of Sharia. At a more micro level, the results of data analysis from court documents in both countries reveal that despite efforts to reform, implementation on the ground is often not in line with these reforms. For example, although reforms in some areas aim to give women greater rights in divorce and custody, court decisions often still side with men, reflecting deep-seated gender biases and strong cultural norms that still persist. In conclusion, religious authorities in the Indonesian and Malaysian contexts function as key players in the formation of family law, where religion is often the main justification in determining and implementing laws. Despite significant challenges, insights from this research suggest that there are opportunities for more inclusive dialogue and reform that consider equality and social justice, the extent to which civil society, government, and religious authorities can find common ground in the interpretation and application of the law.

Power Dynamics in the Context of Gender Reform in Indonesia and Malaysia

This research shows that the power dynamics between state and religion have a significant influence on the gender reform agenda in Indonesia and Malaysia. In the context of family law, these two countries show how these power interactions can hinder or facilitate efforts aimed at achieving gender equality. In Indonesia, family law reform is often hampered by objections from influential religious groups, who see the reform as a threat to traditional and religious values. Meanwhile in Malaysia, despite government initiatives to reform family law, it often clashes with conservative interpretations of Islamic law held by religious authorities. From data obtained through interviews with policy makers and religious leaders, as well as analysis of policy documents, it appears that in both countries, the power of religion in the context of family law is very strong. In Indonesia, for example, efforts to increase the age limit for marriage for women are often met with resistance from religious groups. Interviews with policy makers show that often these kinds of reforms are unsuccessful because they are deemed to conflict with religious teachings which are seen as unchangeable laws.

In Malaysia, state power tends to be stronger in regulating family law. However, this does not mean that the reform went without obstacles. Analysis of divorce and custody cases obtained from sharia courts shows that despite policy reforms, practice in the field is still largely conservative, with sharia judges often using discretion to strengthen the husband's position, in accordance with conservative interpretations. This shows that although the state has the power to reform, religious authorities still have a strong influence in the implementation of the law. Furthermore, the results of interviews with women's rights activists in both countries show significant resistance to reforms that are considered to affect traditional family structures. Activists in Indonesia and Malaysia both report that there is a strong feeling among many communities that laws governing the family must maintain traditional and religious

values, which often do not support gender equality. This indicates that reform efforts often encounter not only legislative or policy obstacles, but also deep-seated social norms and values. From this analysis, it can be concluded that gender reform in the context of family law in Indonesia and Malaysia is a complex and multifaceted process. Despite efforts by the state to modernize family law in an effort to achieve gender equality, resistance from religious authorities and social objections to changes in traditional values are often the main obstacles. This research shows the importance of a more inclusive and participatory approach to family law reform, which involves not only negotiation between state and religious powers, but also broader dialogue with society to change the norms and values that support gender inequality.

Comparison of the Implementation of Family Law in Indonesia and Malaysia

This research explores the implementation of family law in Indonesia and Malaysia, two countries with a majority Muslim population but with different approaches to implementing Islamic law. In Indonesia, family law is regulated in the Compilation of Islamic Law (KHI) which covers all aspects of family life from marriage to inheritance. This KHI is applied nationally and is tried in religious courts. On the other hand, Malaysia has a more decentralized approach, where each state has the authority to regulate its own Islamic family law, although generally still within the conservative framework of Sharia law. Data collected through interviews with legal experts, case law analysis, and policy documentation indicate significant variations in the application of family law in the two countries. In Indonesia, although the KHI is designed to create uniformity in the application of Islamic family law, practice in the field often varies depending on local interpretation. For example, in some areas, religious courts tend to be more conservative in applying laws related to child custody and divorce, while in other areas

they are more liberal. In Malaysia, the diversity of legal applications is more structured because of the authority given to each state. For example, the states of Kelantan and Terengganu, which have more conservative governments, strictly enforce Islamic family law in accordance with orthodox interpretations of Sharia. In contrast, in Kuala Lumpur and Selangor, the approach to family law tends to be more moderate, reflecting a more heterogeneous and liberal urban population.

The results of the analysis also show that differences in the implementation of family law in the two countries often reflect local political and social dynamics. In Indonesia, more progressive family law reform has been hampered by pressure from influential conservative groups, who use family law as a tool to defend traditional values. In Malaysia, the fight for gender equality in family law is also faced with similar challenges, where change often occurs through personal initiatives taken by individuals or groups in society, rather than through broad legislative reform. From this perspective, both countries face challenges in achieving family law reform that is inclusive and supports gender equality. However, this analysis also shows that there are opportunities to learn from each country in developing more effective and fair approaches to family law. This comparison highlights not only differences but also possible synergies that can help overcome resistance to change and support the development of more just laws in both countries.

Community Response and Activism in Family Law Reform

This research reveals that society's response to family law in Indonesia and Malaysia reflects complex power dynamics between state interests, religion and women's rights. Based on data from in-depth interviews with women's rights activists, religious leaders, and policy makers, there appears to be significant variation in public acceptance of family law reform efforts. In Indonesia, despite a strong push by activist groups to increase gender equality in family law, many regulations persist

due to support from powerful religious groups. This often gives rise to internal conflict in society, where traditional and religious values collide with norms of equality and modernization. In the Malaysian context, research shows that reform efforts are often hampered by the conservative interpretation of Sharia held by many religious leaders. Although the government has tried to implement more progressive policies, such as increasing women's rights in divorce and inheritance, resistance from conservative factions has succeeded in slowing or even thwarting some of these initiatives. Women's rights activists in Malaysia, through interviews, revealed that they often have to operate within the strict constraints imposed by the dominant religious context, which limits their space for public advocacy.

Further analysis of the data shows that in both countries, there are significant numbers of people who support more inclusive and egalitarian family law reform. However, this support is often poorly organized or lacks access to political platforms that would allow them to influence policy effectively. For example, in a case study in Indonesia, it was found that despite widespread support for ending the practice of child marriage, legislative and political obstacles have made legal change very slow. Discussions with experts indicate that one effective way to increase the effectiveness of advocacy is through education and awareness campaigns aimed at changing public perceptions of family law issues. This research suggests that collaboration between NGOs, governments, and religious groups could be key in promoting sustainable reform. Increased education about women's rights and gender equality can help shape public opinion that is more supportive of family law reform. The conclusion of this discussion is that, despite significant challenges, there are real opportunities for family law reform in Indonesia and Malaysia through strategic activism and advocacy. Increasing cross-sector collaboration and using an

evidence-based approach in building arguments for reform can provide a more effective pathway to achieving desired change.

Family Law Reform for Gender Equality: Policy Recommendations Based on Data Analysis

In an in-depth study of family law reform in Indonesia and Malaysia, the data obtained shows that these two countries have unique challenges in realizing gender equality through family law. Through in-depth interviews and documentation analysis, this research finds that despite proposed legislative initiatives to improve gender equality, implementation on the ground is often hampered by social norms and pressure from conservative religious groups. For example, in Indonesia, although revisions to the Compilation of Islamic Law aim to provide more protection to women, there is still significant resistance from those who view these changes as a threat to traditional social structures. Further analysis shows that in Malaysia, although laws such as the Islamic Family Law (Federal Territories) Act 1984 have undergone several amendments to provide more rights to women, there is still an imbalance in practices such as polygamy and custody that do not fully support the principle of gender equality. Respondents in this study reported that existing regulations are often interpreted in a way that continues to prioritize men's rights, especially in the context of divorce and division of property.

Based on these results, policy recommendations that can be proposed include the establishment of more effective oversight mechanisms to ensure that the law is implemented in a manner consistent with the principles of gender equality. This could include mandatory training for judges and lawyers in the interpretation of family law from a gender perspective as well as the development of independent institutions that can handle complaints related to discrimination in family law enforcement. Furthermore, it is critical to involve women's groups in the law-making and revision process to ensure that their voices are taken into account substantively in policy formation. Furthermore,

extensive public awareness campaigns should be implemented to change society's perception of gender equality. Educating the wider community about the negative impacts of gender inequality in family law can help reduce resistance to legal reform. Data from this research shows that when people have a better understanding of the benefits of gender equality, they are more likely to support legal changes that support this principle. Finally, it is important to increase regional and international cooperation in the field of family law reform. By sharing experiences and best practices between countries, Indonesia and Malaysia can gain new insights and support more effective family law reform initiatives. This collaboration can be through international forums or through bilateral cooperation projects that focus on knowledge exchange and capacity development in family law governance with a gender equality perspective.

Conclusion

This research reveals the complexity of the interaction between state power and religious authority in the formation of family law in Indonesia and Malaysia, two countries with the largest Muslim majority in Southeast Asia. The results of the analysis show that, despite legislative efforts to promote gender equality through family law, there is still significant resistance stemming from social norms and pressure from conservative religious groups. This study provides evidence that family law changes that support gender equality require strong political support and changes in social perceptions, which can be achieved through education and public awareness campaigns.

Based on these findings, policy recommendations were developed aimed at increasing the effectiveness of family law in supporting gender equality. This includes the development of better supervisory institutions, gender equality-oriented training for legal stakeholders, as well as increasing the participation of women's groups in the policy-making process. Furthermore,

international and regional cooperation needs to be increased to share experiences and best practices, thereby encouraging more inclusive and just family law reform. In conclusion, family law reform oriented towards gender equality in Indonesia and Malaysia is a multidimensional process that requires a holistic approach involving various elements of society and government.

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