

Research Article

History of Development and Reform of Family Law in Indonesia and Malaysia

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Abstract.

This study aims to determine the history of the development and reform of Islamic family law in Indonesia and Malaysia. The writing method of this article uses a comparison. It compares the history of the development and reform of Islamic family law in Indonesia and Malaysia. As a result, Indonesia and Malaysia have experienced dynamic developments and reforms in the Islamic family law pre and post-independence. Both countries are Muslim-majority countries, so Islamic law, especially the Islamic family, will develop over time. As for the difference, in Indonesia, even though the Muslim majority is more than 85%, discussion of the draft law on Muslim marriage or family always becomes an issue. It is related to establishing the State Foundation of Pancasila, which accommodates all religions. After the 1998 reform, democracy was broadly applicable. It causes the desire to formalize Islamic teachings into a positive legal system to become increasingly stronger. In Indonesia, there is some difficulty in reforming family law regarding the issue between Islamists, nationalists, Muslims, and followers of other religions. It differs from Malaysia, which established Islam as the official state religion. Malaysia is a Muslim-majority country in Southeast Asia and became the most dynamic in reviewing its Muslim family law provisions.

Keywords: Islam, family law, history, Indonesia, Malaysia

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1. Introduction

Discussions about Islam in Southeast Asia are considered interesting because the Muslim population in this region is quite large. There are around 1.3 billion Muslims worldwide, 60 percent or around 780 million of whom are in Asia, and 250 million live in Southeast Asia. Meanwhile, Indonesia is considered the country with the largest Muslim population not only in Southeast Asia but also when compared with the number of Muslims in Muslim-populated countries throughout the world.[1] The Muslim population in Southeast Asia also has a unique character, especially when linked to the Middle East, the region of origin of the Islamic religion. Southeast Asian Muslims are known to be tolerant and adaptive to various local traditions or pre-Islamic religious teachings. It

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relates to the pattern of spreading Islam in this area, carried out peacefully, slowly, and into the heart of local community traditions.[2]

Tahir Mahmood said Malaysia and Indonesia have reformed Islamic law in Southeast Asia. As strong adherents of the Shafi'i school of thought, Malaysia and Indonesia have implemented Islamic law in every constituent unit for quite a long time. According to Mahmood, the development of Islamic law in Malaysia went through at least three amendment periods, namely 1952-1978, 1976-1980, and 1983-1985. The result of this last amendment stage is called the Islamic Family Law Act [or Enactment].[3] However, each state in Malaysia has amended the law in its development. It is also not much different from Malaysia. Indonesia has also experienced developments in reforming Islamic family law. Khoiruddin Nasution said, as quoted by Yushadeni, that Islamic family law in Indonesia continued to undergo adjustments and updates in at least three periods, namely, before the colonial period, during colonialism, and the era of independence starting from the old and new orders, until reform era.[4]

This article certainly cannot cover all matters related to the dynamics of the development and reform of Islamic family law in Southeast Asia. The author will focus on the historical aspects of the development and reform of Islamic family law in Indonesia and Malaysia. This study of the development and reform of family law in a Muslim-majority country is no less interesting than discussions of other aspects. Islamic family law, which concerns marriage, divorce, child care, inheritance, and religious courts, is not only related to state affairs. For Muslims and other religions, the provisions regarding family law are part of the larger provisions of the religion. Daniel S. Lev said that family law almost always becomes an issue between religions and countries worldwide.[5]

2. Methods

This research used qualitative research methods with the library research or literature study type. This method collects data by understanding and studying theories from various research-related literature.[6] In this study, the materials or objects were obtained by examining the data that the researcher obtained. This research was analytical and descriptive to describe and analyze the subjects studied.[7] The data sources used consist of primary data sources, namely books that discuss the views of Indonesian laws and Malaysian Laws. In addition, data were also obtained from other/secondary sources such as books, journals, dictionaries, or articles related to this study.

3. Results and Discussion

3.1. History of the Development and Reform of Islamic Family Law in Indonesia

3.1.1. Before Dutch Colonization

The way to resolve disputes among Muslims when Islam first came to Indonesia was peaceful (hakam). So, the first judicial institution to appear in Indonesia was the tahkim institution. The ahl al-hall wa *al-'aqd* institution, in the form of customary justice. The Swapraja Judicial institutions during the Islamic kingdoms. The fourth is the Religious Court until now.

The acceptance of Islamic law in Indonesia can be seen from the evidence. First, the Batavian Statute of 1642 states that inheritance disputes between Muslim indigenous people must be resolved using Islamic law, which everyday people use. Second, the 1768 Cirebon Muharrar and Papakem books were used, and BJD Clotwijkstra regulations were made for Bone and Gowa in South Sulawesi. Third, the publication of Islamic law books as a guide to family and inheritance law matters in the sultanates of Palembang and Banten, followed by the kingdoms of Demak, Jepara, Tuban, Gresik, and Ngampel. Fourth, on May 25, 1760, the VOC issued the Resolutie der Indische Regeering regulation (recognizing the existence of Islamic law to resolve problems among Muslims) and implemented the Freijer Compendium for Muslims (a legal book containing the rules of marriage and inheritance law according to Islam).[8]

3.1.2. Dutch Colonial Period

The Compendium Freijer (a legal book containing the rules of marriage and inheritance according to Islam) was applied during the Dutch colonial period. It was established on May 25, 1760, for use by the VOC. At the suggestion of a Cirebon resident, Mr. PC Hasselar (1757-1965) created the book Tjicebonce Rechtboek. A separate Compendium was made in Makasar for Semarang's Landraad (now the General Court). A VOC letter 1808 strengthened the Compendium, which ordered Islamic rulers to regulate marriage and inheritance matters. Based on the various opinions expressed in the book, it can be seen that the law that applies to Muslims is customary law. Then, the disputes are resolved in religious courts as long as customary law requires it, and it is not determined as an ordinance.

During Dutch rule, the Indonesian population was divided into three groups: Europeans applied Bugerlijk Wetboek. Secondly, Chinese people use BW with a few exceptions. Thirdly, Arabs and non-Chinese foreigners apply their customary laws. There are no special rules for Indonesian Muslims. Before the Dutch came to Indonesia, the law that applied was Islamic. Then, with his arrival in Indonesia, Islamic law was marginalized and finally only applied to very limited cases. Likewise, with the judges, European judges are paid salaries, while religious judges are not paid. At first, the Dutch recognized Islamic law in Indonesia, but gradually, it was progressively revoked. In 1913, it was revoked until only customary law was applied.

3.1.3. Independence Period

1. Old Order Period (Orla)

After independence, the first law regarding marriage that emerged during the Old Order (Ir. Sukarno's government) was Law No. 22 of 1946 concerning marriage registration, divorce, and reconciliation. This law expanded its application to all of Indonesia with Law No. 32 of 1954. The existence of Law no. 22 of 1946 is a replacement for Huwelijks Ordonantie Stbl No. 348 of 1929 jo. Stbl No. 467 of 1931, and Vorstenlandse Huwelijks Ordonantie Stbl No. 98 of 1933. The contents of Law No. 22 of 1946 has two articles. First, the requirement to register marriages, divorces, and reconciliations.[9] Second, determining the staff registering marriages, divorces, and reconciliations. There is another policy as a tribute to Muslims, namely the determination of No. 5/ SD dated March 26, 1946, concerning the transfer of the High Islamic Court, previously in the Department of Justice, to the Department of Religion. Likewise, the previous religious headman of the Resident and Regent was handed over to the Minister of Religion. UU no. 1 of 1974 was the first law that contained marriage material. Even though it only existed in 1974, people have wanted it for a long time. For example, women's organizations even discussed it in the People's Council (Volksraad). Previously, there was RA. Kartini and Rohana Kudus criticized underage marriage, forced marriage, polygamy, and *talaq*. There was also collaboration between Indonesian women and the Brotherhood of Wives, the Association of Wives, and True Women in Bandung on October 13, 1929, discussing polygamy and prostitution.

2. New Order Period (Orba)

During the New Order period (Suharto's reign), legislation continued efforts in the Old Order, in 1966 as TAP MPRS No. XXVIII/MPRS/1966, in article 1 paragraph (3),

states that it is necessary to enact a Law on Marriage immediately. In 1967 and 1968, as a response to the TAP MPRS, the government submitted two bills to the Mutual Cooperation DPR, namely, the Bill on Muslim Marriage, a bill regarding the basic provisions of marriage. The DPR did not approve this bill (1 faction rejected, 2 abstained, and 13 accepted). Then, the government withdrew the bill. In early 1967, the Minister of Religion KH. Moh. Dahlan re-submitted the Muslim Marriage Bill for discussion in the Council. However, this marriage bill failed to be passed (the DPR was not enthusiastic about discussing it because its drafting was based on various views).

Meanwhile, community organizations were increasingly pressing. Finally, the government prepared a new bill on July 31, 1973, consisting of 15 chapters and 73 articles.[8] This bill aims to:

- (a) i. Providing legal certainty for marriage issues because before Marriage Law was applied, it was only judge-made law.
- ii. Protecting women's rights and women's desires/hopes.
- iii. Creating laws that suit the demands of the times.

Besides these demands, there were also negative responses from various organizations, for example, Sarekat Isteri Jakarta and Ratna Sari, chairman of the Indonesian Muslim Association.

There are important notes from the history of Law No. 1 of 1974 concerning marriage: Firstly, the rejection of the Marriage Bill was related to the policy of the Dutch East Indies government, which castrated Islamic law from the authority of the religious judiciary. Second, Law No. 1 of 1974 concerning first marriages born during the New Order era. It was a response to demands for the birth of laws during the Old Order era. UU no. 1 of 1974 continues Law no. 22 of 1946. Law no. 1 of 1974, effective since October 1, 1975, consists of 14 chapters and 67 articles.

Then, in 1989, Law No. 7 1989 concerning Religious Courts. In 1990, PP (Government Regulation) no. 45 contains changes to PP No. 10 of 1983. In 1991, the KHI was successfully drafted regarding marriage, inheritance, and waqf, which came into effect with Presidential Instruction No. 1 in 1991.

3. Reformation Period

Since the fall of the New Order government in May 1998, there have been 4 presidential terms, namely BJ Habibie, KH. Abdurrahman Wahid, Megawati, and

SBY. During the reform period, there was a debate on PP No. 10 of 1983. They were divided into 5 groups, namely:

- (a)
 - i. It is approved that the PP be abolished and allow polygamy as formulated by the conventional ulama.
 - ii. It agrees with the PP to be removed because polygamy is a private matter and does not need to be regulated by the state.
 - iii. The PP was revoked because it was proven that it could not protect women.
 - iv. The PP was revoked because it was discriminatory. Even though the state stands above all groups, religions, and ethnicities, it only applies to civil servants.
 - v. The majority group has an opinion that the PP is maintained or even revised because it can curb the rate of polygamy, especially among civil servants. This group includes Aisyiyah Muhammadiyah throughout Indonesia.

There is a proposed revision of the contents of Law No. 1 of 1974 and KHI. In 2006, Law No. 3 of 2006 was an amendment to Law No. 7 of 1989, which expanded the authority of the Religious Courts.[9]

The enactment of Law No. 7 of 1989 concerning religious courts brought major changes to the position and authority of religious courts. Religious judicial institutions are no longer considered “pseudo-judicial” institutions. However, it is considered an institution of judicial power whose position is the same as other judicial institutions, as stated in Article 10 of Law Number 10 of 1970 concerning the principles of judicial power.

3.1.4. The birth of Law Number 1 of 1974

The birth of Law Number 1 of 1974 concerning marriage resulted from a compromise by Parliament members, which had previously gone through long, tiring struggles and debates. The long struggle and debate are meant because before Law Number 1 of 1974 was passed by the DPR (January 2, 1974). Two marriage bills were entered and discussed in Parliament: the Bill on Muslim Marriage (May 22, 1967) and the Bill on Provisions Basic Terms of Marriage (September 7, 1968). However, the two bills could not be completed as expected because there was no agreement among members of Parliament, so the President withdrew the two bills on July 31, 1973.

The disagreement between members of Parliament was more due to the problem of group interests, which had been apparent from the start. At least three large groups throughout Indonesian history have always tried to get involved in bringing up the discourse on the Marriage Law. Those religious groups are the state and women, where groups that call themselves Islamic nationalists want in matters of marriage, Muslims have clear guidance, and it is non-negotiable. Meanwhile, secular nationalist groups still want a marriage law that has national characteristics without discriminating between religion, customs, and ethnicity.[10]

In response to the failure to enact the two marriage bills above, various demands have emerged for the government to apply a marriage law to all Indonesian citizens immediately. These demands came from ISWI (Indonesian Women's Scholars Association) and the Deliberative Body of Indonesian Islamic Women's Organizations.

On December 22, 1973, the government re-submitted a new marriage bill. After being discussed in the DPR for approximately three months and undergoing several changes, finally, at the plenary session (January 2, 1974), the bill was passed and promulgated as Law Number 1 of 1974 concerning Marriage, State Gazette (LN) Number 1 of 1974, Supplement to the LN Year Number 3019/1974.

From the description above, it is clear that historically, several factors led to the emergence of Law Number 1 of 1974, including:

1. Shared Needs
2. Spirit of Nationalism (maintaining diversity)
3. Implementation of Article 29 paragraph (2) of the 1945 Constitution
4. Differences of Opinion among Muslims

3.1.5. The Birth of the Compilation of Islamic Law

The Compilation of Islamic Law (Presidential Instruction Number 1 of 1991) is only a temporary shortcut. A more permanent Islamic Civil Code was expected to be produced one day. It is called a shortcut because it is very urgent and needed, where the Religious Courts (PA) institution, which is declared valid, stands on an equal footing with other judicial bodies through Law Number 14 of 1970 concerning the Principles of Judicial Power, and then confirmed through Law Number 7 of 1989. It turns out that there is a similar material law (unified) nationally. So, it can give rise to different decisions between one religious court and another, even in similar cases. Besides that, it also makes the presence of the PA as a judicial authority not fulfill its requirements.

There is a formal discourse to fulfill this need following the provisions of Article 5, paragraph 1, in conjunction with Article 20 of the 1945 Constitution. So, the material law that will be in the form of positive law is equivalent to the law, and its validity is truly legalistic (Legal law). However, you can imagine how long the process that will be passed. Various stages must be taken, from preparing the draft bill to discussing it in Parliament. It is not only that, non-technical factors are also very difficult to penetrate, such as an unsupportive political climate and psychological factors. Indeed, on one aspect, constitutionally, the presence and existence of the Religious Courts has been recognized by all parties. However, on the other side, perhaps the allergic and emotional attitude, which is very reactive towards the necessity of Islamic Civil Law in a short period, has not been eradicated if the route taken is through formal legislative channels.[11]

Responding and paying attention to these conditions and being linked to urgent needs, an agreement was reached between the Minister of Religion and the chairman of the Supreme Court at that time to find a solution by taking a short route in the form of a Compilation. Then, a Joint Decree (SKB) was born between the chairman of the Supreme Court and the Minister of Religion dated March 21, 1985, No.07/KMA/1985 and No.25 of 1985, which assigned the preparation of positive Islamic Civil Law in the Compiled Law Book to the Committee. It must explore and study as deeply and widely as possible the sources of Islamic law contained in the Koran and Sunnah, in addition to the books of Islamic Jurisprudence of the Imam School of thought, which were then used as orientation. It even carried out comparative studies in various Islamic-based countries.[12]

In legaling, the compilation was created as a Presidential Instruction on June 10, 1991. Then, the statement of its validity was confirmed by the Decree of the Minister of Religion Number 154 of 1991, dated July 22, 1991. Thus, since then, the Compilation of Islamic Law (KHI) has become valid as laws used and applied by government agencies and communities that need them to resolve problems relating to marriage, grants, endowments, and inheritance problems.

The description above has shown a common thread as an illustration that the factors causing the birth of KHI include:

1. Legal Vacuum
2. The mandate of Law Number 1 of 1974
3. Many schools of jurisprudence are adhered to in Indonesia, and there is no common perception in defining Islamic law between sharia and fiqh.

1. History of the Development and Reform of Family Law in Malaysia

2. Development and Reform of Islamic Family Law in Malaysia

Along with the arrival of Islam in Malaysia in the XII-XIII century, the Shafi'i School became the version of Islamic law applied in Malaysia. As with the arrival of Islam in other Southeast Asian regions, some of which were through a peaceful process. Islamic law in Malaysia adapts peacefully to local law, usually customary law. The earliest records of Islamic law in Indonesia are the stone letters in Terengganu or Trengganu inscriptions written in Javanese script. This law contains nine or ten regulations, which begin with a preamble and result in the stipulation.[13] The first rule is lost because of the missing stone fragments. The fourth rule relates to debts and receivables (but is somewhat vague), as is the fifth rule missing. The sixth rule is about the punishment for those who commit adultery, namely stoning with stones for married people and a hundred hits with rattan for those who are not yet married. Seventh rule about impolite women. The eighth rule regarding punishment for accusations of adultery between husband and wife. Furthermore, the ninth rule states that this law applies to all without discrimination. Kanun Malacca (UU Malacca) is the second written law after Batu Surat Terengganu. The Malacca Law or Kanun Malacca Law consists of 44 articles based on the fiqh of the Shafi'i School, which contains the areas of *jinayah*, *mu'amalah*, *munakahat*, events and clerkships, adab al-qadi, administrative and government regulations.[13]

The Malaysian legal system is based on the English (Anglo-Saxon) common law legal system. Islamic law and customary law are among the legal axes, especially in personal status. Several parts of Malaysia were once colonies of the Netherlands and Portugal, but since the end of the 17th century, they all became British colonies.[14]

1880 England introduced the Islamic Marriage Ordinance or Mohamedan Marriage Ordinance Number V of 1880 in the Straits Countries (Pinang, Malacca island, and Singapore). It was the beginning of British intervention in Islamic family administration. The most important content of this law is the rules regarding marriage registration.[13] Meanwhile, for allied Malay countries (Perak, Selangor, Negeri Sembilan, and Pahang), the Registration of Muhammadan Marriages and Divorces Enactment 1885 was applied. Furthermore, for allied countries or auspician countries (Kelantan, Terengganu, Perils, Kedah, and Johor) it was, implemented The Divorce Regulations of 1907.[8]

Malaysia finally gained independence in 1957. Family law reform has gradually covered all aspects of marriage and divorce. As in the previous law, it is not just marriage and divorce registration. This business started in 1983 in Malaka Kelantan and Negeri Sembilan, followed by other states.

The Islamic marriage law currently in effect in Malaysia is a marriage law following the provisions of the laws of each country. These family laws include:

1. Malacca Family Law 1983,
2. Kelantan Law 1983,
3. Negeri Sembilan Law 1983,
4. Federal Territories Act 1984,
5. Silver Act of 1984,
6. Kedah Law 1979,
7. Penang Law 1985,
8. Trengganu Law 1985,
9. Pahang Law 1987,
10. Selangor Law 1989,
11. Johor Law 1990,
12. Sarawak Law 1991,
13. Perlis Law 1992,
14. Sabah Act 1992.[8]

Meanwhile, there is no law relating to Islamic inheritance in one country, so inheritance cases still use fiqh in deciding them.

1. Material on Islamic Family Law in Malaysia

Marriage Registration and Marriage Law in Malaysia also require marriage registration. In principle, the registration process is carried out after the Marriage Contract. However, in practice, there are three types of recording processes, including:

First, registration is carried out immediately after the marriage contract is completed for those living in each country. However, Kelantan stipulates seven days after the marriage ceremony, and the registration is witnessed by the guardian, two witnesses, and the registrant. As the Pinang Island Law Article 22 Paragraph 1 states: After the marriage, the registrant must record the specified points and the stipulated ta'liq or other ta'liq for the marriage in the marriage register.

Second, A native Malaysian who gets married at the Malaysian embassy. In this case, the registration process is the same for Malaysians who marry in their country. The difference is only in the registrar, namely, not the original registrar appointed in Malaysia, but the registrant appointed at the Malaysian embassy or consul in the country concerned. As in the Pinang island, Law Article 24 Paragraph 1 states:

(a) Subjected to sub-section.

(b) Marriages may be solemnized according to sharia law by registrants appointed under the section.

Article 28 Paragraph 3 states: At the Suruhhanjaya Tinggi embassy or Malaysian consul officials, the state has notified the Malaysian government of its objection to the marriage ceremony being solemnized at the High Commissioner's embassy or consul officials.

Third, Malaysians who live abroad and marry not at the Malaysian embassy or consul abroad. For this case, the process is that men who marry within six months after the marriage ceremony register with the registrar appointed by the nearest embassy and consul. If the person concerned returns to Malaysia before the six-month period expires, they may also register in Malaysia. This provision is based on Sarawak Law article 29, paragraph 1, Kelantan Law, and Negeri Sembilan Law.[15]

2. Marriage Age Limitation

Malaysian laws and regulations limit the minimum marriage age to 16 years for the bride and 18 years for the groom. This provision is based on Malaysian law, which states that the permitted age of marriage for women is not less than 16 years, and for men is not less than 18 years. If one or both couples wishing to get married are less than the applicable age limit, it is necessary to obtain the permission of a sharia judge first.

3. Divorce in Malaysia

The reasons for divorce in family law in Malaysia are the same as those for *fasakh*. As in the Perak Law and the Pahang Law, it is stated that five reasons cause divorce, including:

The husband is crazy/suffering from leprosy, impotent. The marriage permission/approval from the wife is illegal or due to coercion. At the time of the marriage, the wife had a mental illness or had valid reasons for *fasakh*, according to *sayri'ah*. Meanwhile, what applies in Negara Sembilan, the Federation of Pinang Island, and

Selangor, several of the reasons are the same as in Perak and Pahang. However, there are several additional reasons, including:

- (a) It is not known where the husband lived for one year.
- (b) My husband did not provide sustenance for three months.
- (c) The husband was imprisoned for three years or more.
- (d) The husband does not provide mental support for one year.
- (e) The wife was married by the father before she was sixteen years old, rejected the marriage, and had not been sexually assaulted by her husband.
- (f) Husband abuses wife.

From the reasons above, three things need to be paid attention to. First, even though all laws make the element of insanity a reason for divorce, the laws of Negeri Sembilan, Pinang Island, Selangor, and Sarawak require a minimum of 2 years of illness. Meanwhile, the Kelantan, Pahang, and Perak Law do not require a minimum limit. Second, all laws include other reasons for fasakh. Third, the laws of Kelantan, Negeri Sembilan, Pinang Island, Selangor, and Sarawak associations have forced marriage as one of the reasons for divorce.[15]

4. Polygamy in Malaysia

Based on the Marriage Law in Malaysia regarding not allowing or allowing a man to practice polygamy. As for the conditions that must be met for someone who wants to practice polygamy, there is written permission from the judge. This provision is almost included in all state marriage laws. However, there are several differences which can be broadly grouped into:

First is the majority group (Negeri Sembilan Law Article 23 paragraph 1, Pinang Island Law Article 23 paragraph 1, Selangor Law Article 23 paragraph 1, Pahang Law Article 23 paragraph 1, Federal Territory Law Article 21 paragraph 1, Perak Law Article 21 paragraph 1 in the article, states: No man may marry another person while he is still married to his current wife unless he obtains the written authorization from a Sharia judge. Then, if he marries without such authorization, the marriage can not be registered under enactment. Perak Law article 21, paragraph 1, there is an additional sentence: "Get prior approval from the Judge that he will treat his wives fairly."

Second, polygamy without permission from the court may be registered on condition of first paying a fine or serving a predetermined sentence. This provision

applies to countries such as Sarawak and Kelantan. The court's consideration of whether to give permission depends on the wife and husband. There are several reasons that the wife can put forward, including infertility, physical maturity, and physical unfitness for sexual intercourse. The wife is crazy. Meanwhile, several reasons that husbands can put forward include economic ability, trying to be fair, the marriage being carried out does not endanger the religion, life, body, mind, or property of the previously married wife

5. Criminal Provisions in the Marriage Law in Malaysia

The criminal provisions of the Marriage Law in Malaysia are strictly regulated in the legislation, such as in several issues such as the following:

(a) Polygamy: Husbands who commit polygamy that do not comply with the statutory regulations are generally subject to punishment in the form of a fine up to one thousand ringgit or imprisonment for a maximum of 6 months or both at the same time. Likewise, husbands who cannot treat their wives fairly can be classified as breaking the law and subject to a maximum fine of one thousand ringgit or imprisonment for a maximum of 6 months or both.

(b) Marriage Registration

For people who marry outside Malaysia region and do not comply with existing regulations, it is an act that violates the law. They can be punished by paying a fine of one thousand ringgit or imprisonment for a maximum of 6 months or both.

6. Divorce

People who violate the regulations regarding divorce, whether husband or wife, for example, carrying out a divorce outside the court and not getting approval or recognition from the court or making a false confession letter can be punished with a fine of one thousand ringgit or imprisonment for a maximum of six months or both.

7. Interfaith Marriage

The prohibition on interfaith marriages in Malaysia is based on the provisions contained in section 51 of the Reform Act Constitution (Marriage and Divorce) 1976 as stated: If one party to a marriage has converted to Islam, the other party who has not converted to Islam, they are permitted to divorce. It is with the condition that no application under the section may be submitted before the expiration of three months from the date of conversion to Islam.[15]

8. Family Law Provisions in Indonesia and Malaysia

The marriage law applied in a country shows how far the country bases its positive law on religious teachings. In other words, it depicted how far he treats religious teachings. Marriage law, or more broadly family law, is closely related to religious provisions and state affairs. Marriage is a spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the belief in the Almighty God.[16] The family is the first social unit in society, formed from a legal marriage between a man and a woman.[17]

In Indonesia, the Draft Marriage Law, later ratified as Law Number 1 of 1974, is a significant legislative provision related to the existence of the Muslim majority in Indonesia. At that time, Islamist groups, especially the Nahdlatul Ulama (NU) in the Persatuan Pembangunan Party (PPP) in Parliament, faced secular nationalist groups, especially the Demokrasi Indonesia Party (PDI). Meanwhile, the New Order government with the Golongan Karya Fraction and the ABRI Fraction tended to be permissive in following the wishes of the majority of citizens.[5] Even though this marriage law is considered weak, some of it is complemented by the Compilation of Islamic Law (KHI) stipulated by Presidential Instruction in 1992. However, the marriage law also gives great authority to the Religious Courts, an Islamic civil justice institution whose authority has tended to be limited since the colonial era.

Unfortunately, the Marriage Law in Indonesia does not strictly implement various sanctions for violating statutory provisions. For example, the obligation to register marriages, limit the age of marriage, and prohibit polygamy without a permit from the Religious Court are not subjected to sanctions. It is different from the marriage law in Malaysia. In the state of Perlak, there are at least 21 sanctions for violators of various provisions regarding Islamic family law in this country. Polygamy without permission, for example, is punishable by six months in prison.[18]

When talking about the application of Muslim family law, Malaysia, a Muslim-majority country in Southeast Asia, is indeed the most dynamic in reviewing the provisions of their Muslim family law, in contrast to Malaysia, which has established Islam as the official state religion, Indonesia, despite having a Muslim majority of more than 85 percent, discussion of the draft law on Muslim marriage or family is always a very hot issue. It is related to establishing the State Foundation of Pancasila, which accommodates all religions.

Polygamy or marriage is generally permitted but rarely practiced. It causes the requirements for practicing polygamy to be tightened, especially regarding the wife's

consent. In addition, few men have enough income to support two or more wives. After marriage, wives generally depend on their husbands for their livelihood. Meanwhile, wives who work and have an income will almost certainly not want to be polygamous. In Malaysia, the penalty for violating the provisions regarding polygamy is a fine of 1000 ringgit or 6 months in prison. This strict punishments are not enforced in Indonesia.[18]

4. Conclusion

As for the results of this research, it can be concluded that there are similarities between Indonesia and Malaysia, namely that both countries experienced quite dynamic developments and reforms in Islamic family law from pre-independence to post-independence. Both countries are Muslim-majority countries, so Islamic law, especially the Islamic family, can continue to develop over time. As for the difference, in Indonesia, even though the Muslim majority is more than 85 percent, discussion of the draft law on Muslim marriage or family is always a very hot issue. It is related to establishing the State Foundation of Pancasila, which accommodates all religions. After the 1998 reform, democracy was broadly applied, causing the desire to formalize Islamic teachings into a positive legal system to become increasingly stronger. In Indonesia, there is some difficulty in reforming family law regarding the issue between Islamic and nationalist groups and Muslims and followers of other religions. It differs from Malaysia, which established Islam as the official state religion. Malaysia is a Muslim-majority country in Southeast Asia, and it is indeed the most dynamic in reviewing its Muslim family law provisions. Malaysia is very advanced in implementing Muslim family law.

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