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Transcendental Emancipatory Unification of Family Law in Muslim Majority Countries in Southeast Asia

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ABSTRACT

Transcendentally, the basis of legal reform in Muslim-majority Southeast Asian countries includes cultural and religious pluralism, social justice, modernity and tradition, globalization and interconnectivity, and politics and policy. Emancipatory family law reform is not only related to moral values. But it is also influenced by government policies, political dynamics, and the formation of laws that are responsive to the rights of children and women. The study aimed to analyze the politics of family law unification in Indonesia, Malaysia, and Brunei Darussalam and efforts to unify family law to protect women and children from an emancipatory transcendental perspective. The research method was normative empirical. Data analysis carried out inductively and structured from the politics of the formation and renewal of family law in Southeast Asia: Indonesia, Malaysia, and Brunei Darussalam. Through this research analysis, it concluded that political initiatives for family law reform are influenced by pressure from civil society, non-governmental organizations, human rights movements, and gender equality. Family law reform reflects power relations in society. Emancipatory transcendental analysis can deeply explore the structure of family law as a foundation for maintaining or changing policy direction, particularly regarding gender and individual rights under family law. This analysis creates the concept of emancipatory transcendental politics, which combines religious, customary, and Western law and creates gender equality and social justice in efforts to unify family law in Indonesia, Malaysia, and Brunei Darussalam.

Keywords: Legal Politics; Formation of Family Law; Family Law Reform; Transcendental Emancipatory.

ABSTRAK

Secara transendental dasar pembaruan hukum di negara mayoritas Islam Asia Tenggara meliputi pluralisme budaya dan agama, keadilan sosial, modernitas dan tradisi, globalisasi dan interkonektivitas, serta politik dan kebijakan. Secara emansipatoris pembaruan hukum keluarga tidak hanya berkaitan dengan nilai-nilai moral, tetapi juga

terpengaruh oleh kebijakan pemerintah, dinamika politik dan pembentukan hukum yang responsif terhadap hak-hak anak dan perempuan. Tujuan dari penelitian ini adalah untuk menganalisis politik unifikasi hukum keluarga di Indonesia, Malaysia, dan Brunei Darussalam serta menganalisis upaya unifikasi hukum keluarga dalam memberikan perlindungan perempuan dan anak dengan perspektif transcendental emansipatoris. Metode penelitiannya normative empiris. Analisis data dilakukan secara induktif dan terstruktur dari politik pembentukan dan pembaruan hukum keluarga di Asia Tenggara; Indonesia, Malaysia dan Brunei Darussalam. Melalui analisis penelitian ini, dapat disimpulkan bahwa inisiatif politik reformasi pembaruan hukum keluarga dipengaruhi oleh tekanan masyarakat sipil, organisasi non-pemerintah, gerakan hak asasi manusia dan kesetaraan gender. Pembaruan hukum keluarga mencerminkan hubungan kekuasaan dalam masyarakat. Analisis transcendental emansipatoris mengeksplorasi dengan mendalam bangunan hukum keluarga sebagai landasan mempertahankan atau mengubah arah kebijakan, terutama terkait dengan gender dan hak-hak individu dalam hukum keluarga. Dari analisis tersebut terciptalah konsep politik transcendental emansipatoris yang memadukan hukum agama, adat, dan barat serta tercipta kesetaraan gender dan keadilan sosial dalam upaya unifikasi hukum keluarga di Indonesia, Malaysia, dan Brunei Darussalam.

Kata Kunci: Politik Hukum; Pembentukan Hukum Keluarga; Pembaruan Hukum Keluarga; Transendental Emansipatoris.

Introduction

Transcendental, emancipatory reform of family law in the three countries, Indonesia, Malaysia, and Brunei Darussalam, will undoubtedly lead to debate among progressive modernists and traditional conservatives. The formation and renewal of family law are related to legal material considered out of date. This is carried out using specific methods. Reforms are carried out following the changing times, and Brunei Darussalam and Malaysia are not immune to the dynamics of reform.

In Brunei, the last attempt at total reform and unification was carried out in 1999, and several more reforms were implemented in 2002¹ and most recently in 2012.² Meanwhile, in Malaysia, total unification efforts were implemented in 1983 and 1984 simultaneously in 14 states. Then, another unification effort was implemented in 2004 with the implementation of penalties or sanctions for several things such as unregistered

¹Habibah Nurul Umah and Sadari Sadari, "Pembaharuan Hukum Perkawinan Di Dunia Muslim Modern Dinamika Dan Ragamnya," *MISYKAT Jurnal Ilmu-Ilmu Al-Quran Hadist Syari Ah Dan Tarbiyah* 7, no. 1 (2022): 86, <https://doi.org/10.33511/misykat.v7n1.86-99>.

²Seilla Nur Amalia Firdaus, Siah Khosyiah, and Murni Rossyani, "Pembaharuan Hukum Keluarga Islam: Studi Perbandingan Hukum Keluarga Di Brunei Darussalam Dan Malaysia," *Zaaken: Journal of Civil and Business Law* 5, no. 2 (2024), <https://doi.org/10.22437/zaaken.v5i2.35264>.

marriages, polygamy,³ failure to provide child support, and other marital violations. In 2016, parliament proposed a draft reform of Islamic family law in Malaysia, which aims to codify the law, but to date, it has not been successful. Meanwhile, in Indonesia, Law Number 16 of 2019, amending Law Number 1 of 1974 concerning Marriage, changed the age limit for marriage.⁴ Before that, in 2010, there were changes regarding the civil rights of illegitimate children, following the Constitutional Court's ruling, although these had not yet been formulated in the Act of Family Law.⁵ The differences in the formation and reform of family law in the three countries -the focus of this research - include the epistemology of customary and religious friction. Moreover, as countries that were once colonized, it greatly influences the reform of family law in each country, including Indonesia, Malaysia, and Brunei Darussalam. Then, the stages that must be passed to perfect the unification of family law in each country are analyzed through a transcendental emancipatory approach and finally related to legal politics in constructing their family law.

Family law reform is a perennial and interesting topic to research. Among the underlying reasons are: First, cultural and religious pluralism, as Southeast Asia is a region rich in cultural and religious diversity. The particular study allows to understand how Islamic values interact with local traditions and the dynamics of family law. Second, Social justice. Islamic family law often deals with issues of gender justice and the protection of women's and children's rights.⁶ Examining legal reforms helps identify efforts to achieve greater social justice. Third, Modernity and tradition. Family law reform reflects the tension between modernity and tradition. However, the study explores how Southeast Asian Muslim societies navigate modern challenges without abandoning traditional values. Fourth, Globalization and Interconnectivity. In the era of globalization,

³Siti Marlina et al., "Perbandingan Hukum Poligami Di Indonesia Dan Malaysia," *Jurnal Inovasi Hukum Dan Kebijakan* 5, no. 4 (2024): 15–25, <https://ejournals.com/ojs/index.php/jihk/article/view/399>.

⁴Syarifah Lisa Andriati, Mutiara Sari, and Windha Wulandari, "Implementasi Perubahan Batas Usia Perkawinan Menurut UU No. 16 Tahun 2019 Tentang Perubahan Atas UU No. 1 Tahun 1974 Tentang Perkawinan," *Binamulia Hukum* 11, no. 1 (March 2023): 59–68, <https://doi.org/10.37893/jbh.v11i1.306>.

⁵Eunike Loist Hutasoit et al., "Perlindungan Hukum Bagi Anak Luar Nikah Di Indonesia; Studi Komparasi Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Dan Hukum Islam," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 16, no. 2 (August 2024): 420–437, <https://doi.org/10.32505/jurisprudensi.v16i2.8938>.

⁶Zaini Nasohah et al., "Elements of Child Welfare Protection in Islamic Family Law InSoutheast Asian Countries," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 3 (2025): 1349–70, <https://doi.org/10.22373/sjhk.v9.i3.26746>.

social and economic changes influence legal norms. Then, it examines the logical consequences of global interconnectivity on family law reform in Southeast Asia. Fifth, in politics and policy, family law is not only concerned with moral values but is also influenced by government policies and political dynamics.⁷ Understanding these aspects helps to see how family law can change in response to political and social pressures. In addition, political-legal theory is used as an analytical tool.

Many studies have focused on family law in Muslim-majority countries in Southeast Asia. Based on the literature review, there five previous studies compare family law in Indonesia and Malaysia. Halim dan Pratama,⁸ and Marlina,⁹ discuss polygamy. Agustin¹⁰ discusses the philosophical background and methods in determining the age limit for marriage. Bero, Fikri, and Mujib discuss the inheritance distribution system.¹¹ Finally, Jaliensyah discusses the reasons for divorce due to domestic violence.¹² Other studies that discuss family law in Indonesia and Brunei Darussalam include Putri¹³ who discuss the fulfillment of wife and child support. This study strengthens the findings of the six studies. The difference is that this present study covers various areas of Islamic family law regulations in Indonesia, Malaysia, and Brunei Darussalam which are then analyzed in terms of weaknesses and strengths. Therefore, the particular study focuses on the unification of family law in the three countries by referring to legal reform in the three countries from a transcendental emancipatory perspective.

⁷Musleh Harry and Muhammad Nasrulloh, "From Moral Authority to Policy Integration : The Role of Religious Leaders in Marital Mediation in Indonesia and Malaysia," *De Jure: Jurnal Hukum Dan Syar'iah* 18, no. 1 (2026): 33–53, <https://doi.org/10.18860/j-fsh.v18i1.35639>.

⁸Abdul Halim and Ariyall Hikam Pratama, "Poligami Tidak Tercatat Di Pengadilan Agama Di Indonesia Dan Mahkamah Syariah Malaysia," *Jurnal Yuridis* 7, no. 1 (2020), <https://ejournal.upnvj.ac.id/index.php/Yuridis/article/view/1845>.

⁹Marlina et al., "Perbandingan Hukum Poligami Di Indonesia Dan Malaysia."

¹⁰Inneke Wahyu Agustin, "Penetapan Usia Perkawinan Di Indonesia Dan (Wilayah Persekutuan) Malaysia: Menelusuri Latar Belakang Filosofis Dan Metode Yang Digunakan," *Al-Mazaahib: Jurnal Perbandingan Hukum* 6, no. 1 (2018): 81, <https://doi.org/10.14421/al-mazaahib.v6i1.1528>.

¹¹Suripto Bero, Sariatul Fikri, and Mishbachul Mujib, "Perbandingan Sistem Pembagian Waris Dalam Hukum Indonesia Dan Malaysia," *USRAH: Jurnal Hukum Keluarga Islam* 6, no. 2 (April 2025): 52–65, <https://doi.org/10.46773/usrah.v6i1.1467>.

¹²Martina Purna Nisa, "Critical Review of Domestic Violence as Reason for Divorce (Comparison of Divorce Laws in Indonesia, Malaysia and the Maldives)," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (2021): 1–26, <https://doi.org/10.19105/al-lhkam.v16i1.4292>.

¹³Nur Hastuti Bima Putri et al., "Pemenuhan Nafkah Istri Dan Anak : Perbandingan Negara Di Asia Tenggara," *AL-AFKAR: Journal for Islamic Studies* 7, no. 1 (2024): 1178–97, https://al-afkar.com/index.php/Afkar_Journal/article/view/1174.

Method

The particular study employed a normative empirical method. The research method was qualitative, where new concepts and theories rooted in the culture of the community can be discovered. Data collection was conducted through in-depth interviews with experts in history, Islamic law, family judges, and marriage offices. Furthermore, documentation techniques were used to collect family law regulations, history, and the background of the formation of family law in the three countries. After data collection, analysis was conducted using the Miles and Huberman interactive analysis model, consisting of three simultaneous activities: data collection, data reduction, data presentation, and conclusion drawing/verification. Validity testing was carried out through member checking, expert opinion, expert discussions, and triangulation.

Findings and Discussion

The Politics of Family Law Unification in Indonesia, Malaysia and Brunei Darussalam

Politics Unification Law on the Formation and Reform of Family Law in Indonesia

The development of family law in Indonesia, starting in 1964 and continuing through the reform era, shows a shift from mere political compromise between factions in parliament towards strengthening transcendental emancipation.¹⁴ Interesting to note that the ratification of Marriage Law No. 1/1974 marked the beginning of the phase of the square (enactment) of Islamic law in Indonesia.¹⁵ The provisions of marriage jurisprudence were transformed into the law, which consists of 14 chapters and 67 articles, although with several modifications.¹⁶ As a continuation of the codification efforts, the birth of the Compilation of Islamic Law (KHI) through Presidential Instruction

¹⁴Arso Sostro Atmodjo and A. Wasit Aulawi, *Perkembangan Hukum Perdata Dalam Dimensi Sejarah Dan Politik Hukum Di Indonesia* (Jakarta: Grafiti, 2003).

¹⁵Zainal Azwar et al., "Child Filiation and Its Implications on Maintenance and Inheritance Rights: A Comparative Study of Regulations and Judicial Practices in Indonesia, Malaysia, and Turkey," *Journal of Islamic Law* 5, no. 1 (2024): 62–85, <https://doi.org/10.24260/jil.v5i1.2326>.

¹⁶Rahmadi Usman, *Perkembangan Hukum Perdata Dalam Dimensi Sejarah Dan Politik Hukum Di Indonesia* (Jakarta: Grafiti, 2003); Nasrullah Nasrullah et al., "Reconstructing Mining Governance Through Maqasid Al-Sharia: Towards Natural Resource Management Public," *Syariah Jurnal Hukum Dan Pemikiran* 25, no. 1 (2025), <https://jurnal.uin-antasari.ac.id/index.php/syariah/article/view/18046>; Sukarni and Hafini Bin Mahmud, "Development and Concept of Environmental Fiqh in the Works of Banjar Scholars: Historical and Thought Analysis," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 172–88, <https://jurnal.uin-antasari.ac.id/index.php/syariah/article/view/12906/3950>.

Number 1 of 1991 confirmed the validity of Islamic law in Indonesia.¹⁷ This Presidential Instruction was then followed up with a joint decision of the Chief Justice of the Supreme Court and the Minister of Religious Affairs on March 21, 1995. The background to the formation of the KHI was a written guideline for judges in Religious Courts. However, in fact, the KHI is also used by the Muslim community, especially in the field of inheritance.¹⁸

The development of Islamic civil law in Indonesia, including marriage and inheritance, is the result of social and political changes in society.¹⁹ Although Islamic law is seen as sacred and eternal, its practice dynamically adapts through national legislation.²⁰ In the view of national legal politics, there are three legal systems, namely customary law, Islamic law, and Western law, which have been in effect since the Dutch colonial era and even before that until now. These three laws have become basic values in society in the formation of Indonesian law.²¹ For Indonesian society, because the majority are Muslim, Islamic law has made a major contribution in determining the objectives and basic policies in laying down the basic concepts of national legal politics in the framework of the formation of the Indonesian legal system, especially certain civil laws that apply to Muslims, such as matters of marriage, inheritance, wills and gifts that are based on Islam, as well as waqf and alms.²² Specifically, it can be described that the influence of Islamic law in the Indonesian legal political process is quite long through several stages, namely from the pre-Dutch colonial period, the Dutch colonial period, the Japanese occupation period, the 1945 Independence period, the Old Order and New Order

¹⁷Anggi Prasetyo and Ilyya Muhsin, "The Practice of Shihah Marriage among the Rifa'iyah Congregation in Sociological and Islamic Marriage Law Perspectives," *Al-Adalah* 20, no. 2 (2023): 5–9, <https://doi.org/10.24042/adalah.v20i2.19324>.

¹⁸Syarifuddin, *Politik Hukum Islam Di Indonesia* (Jakarta Timur: Sahifah, 2020).

¹⁹Arbanur Rasyid et al., "Dynamics of Childless Marriage Through the Lens of Maqasid Al-Shari'a," *Jurnal Ilmiah Peuradeun* 12, no. 2 (2024), <https://doi.org/10.26811/peuradeun.v12i2.1182>; Dewi Fransiska Mamonto et al., "The Evolution of Islamic Civil Law in Indonesia: Developments, Contemporary Challenges, and Future Directions," *Nusantara: Journal of Law Studies* 3, no. 2 (2024): 147–58, <https://doi.org/10.5281/zenodo.17385985>.

²⁰Amran Suadi, "Perkembangan Hukum Perdata Islam Di Indonesia (Aspek Perkawinan Dan Kewarisan)," *Jurnal Yuridis* 2, no. 1 (2015): 1–27, <https://ejournal.upnvj.ac.id/Yuridis/article/view/155>.

²¹Rahmad Alamsyah, Imadah Thoyyibah, and Tri Novianti, "Pengaruh Teori Receptie Dalam Politik Hukum Kolonial Belanda Terhadap Hukum Islam Dan Hukum Adat Dalam Sejarah Hukum Indonesia," *Petita* 3, no. 2 (December 2021): 343–362, <https://doi.org/10.33373/pta.v3i2.3875>.

²²Roslina et al., "Reinterpreting Islamic Inheritance: Supreme Court Jurisprudence and Gender Justice in Indonesia," *Jurnal Ilmiah Peuradeun* 13, no. 3 (2025), <https://doi.org/10.26811/peuradeun.v13i3.1593>.

eras, and the reform era. Although Indonesia is not an Islamic state, Islamic law has been reflected as material for the formation of national law.²³ This integration is carried out through legislative channels with two objectives, namely, in the spiritual and material dimensions²⁴ and legal unification.²⁵

Meanwhile, legal policy in the renewal of Islamic law is not only in material law, but also in formal law, namely the development of religious courts with the enactment of Law No. 7 of 1989 concerning religious courts. In 2006, religious courts were again given the mandate to resolve sharia economic disputes, with the enactment of Law No. 3 of 2006 concerning Religious Courts. The second amendment was Law No. 50 of 2009, which, with the existence of the authority of procedural law and applied law, has become increasingly established.²⁶

The policy of family law reform in Indonesia, as its main and ideological foundation, is to continue to adhere to Pancasila and the 1945 Constitution.²⁷ Based on this spirit of reform, in the 1970s, a debate arose in parliament regarding the formulation of the Marriage Law proposed by the government and only ratified in 1974, under the name of Law Number 1 of 1974 concerning Marriage (abbreviated as the Marriage Law). At the development of family law reform in the Muslim world, then Indonesia has actually been left behind in carrying out family law reform.²⁸

Then, in 1991, as a form of implementation and in response to the need for new laws for Indonesian Muslims, Presidential Instruction Number 1 of 1991 concerning the

²³Roslina et al.; Jabbar Sabil, Faisal Faisal, and Muhammad Zukhdi, "Fiqh Reform in the Sultanate of Aceh Darussalam: Is It Modernism or Moderatism? A Study of the Hareuta Sihareukat Custom," *Jurnal Ilmiah Peuradeun* 13, no. 1 (2025), <https://doi.org/10.26811/peuradeun.v13i1.1397>.

²⁴Hendra Gunawan, "Eksistensi Hukum Islam Di Indonesia Dalam Pembangunan Nasional," *Yurisprudencia: Jurnal Hukum Ekonomi* 4, no. 1 (2018): 108–31, <https://jurnal.uinsyahada.ac.id/index.php/yurisprudencia/article/view/1500>.

²⁵Syafruddin Syam, Syahrul Syahrul, and Siti Ameliyah, "Pembangunan Politik Hukum Islam Pada Masa Orde Baru, Reformasi Dan Pasca Reformasi," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 2 (March 2023): 327, <https://doi.org/10.35931/aq.v17i2.1992>.

²⁶Hamzah Hamzah, "Peranan Peradilan Agama Dalam Pertumbuhan Dan Dinamika Hukum Kewarisan Di Indonesia," *AL-SYAKHSHIYAH Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 2, no. 2 (August 2020): 122–139, <https://doi.org/10.35673/as-hki.v2i2.921>.

²⁷Abdurrahman Muqsith, "Study Komparasi Tentang Poltik Hukum Antara Indonesia, Eropa, Dan Jazirah Arabiyah," *Fenomena* 19, no. 02 (November 2024): 232, <https://doi.org/10.36841/fenomena.v19i02.5577>; Ibnudin et al., "Reconstruction Interfaith Marriage Law in Indonesia: Relevance of Sociology Knowledge and Maqasid Sharia," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 1 (2025): 70–86, <https://mail.shariajournals-uinjambi.ac.id/index.php/al-risalah/article/view/1819>.

²⁸Ahmad Rajafi, "Sejarah Pembentukan Dan Pembaruan Hukum Keluarga Islam Di Nusantara," *Aqlam: Journal of Islam and Plurality* 2, no. 1 (February 2018), <https://doi.org/10.30984/ajip.v2i1.507>.

Compilation of Islamic Law (abbreviated as KHI) was born.²⁹ This was a response to the renewal of the Islamic legal system in Indonesia. In the Indonesian context, there are two major themes of renewal through Islamic legal reform, including family law sub-laws, namely returning to the Qur'an and as-Sunnah, and the theme of Indonesian's.³⁰ The legal policy of family law reform in Indonesia includes, first, the age limit for marriage. Second, the civil rights of children following the Constitutional Court decision. Third, the legality of marriage in Indonesia. Fourth, the requirements for polygamy in Indonesia.

Politics Unification Law on the Formation and Reform of Family Law in Malaysia

The Malaysian Constitution integrates the principles of deliberation, justice, equality, and freedom.³¹ The principle of deliberation is not explicitly mentioned in the Constitution.³² However, the principles of justice and equality are stated in Articles 7 and 8.³³ In the political history of the formation of family law in Malaysia, all regulations related to Islamic law were at the state level.³⁴ From 1952 (before the formation of the Federation of Malaysia in 1957) until 1978, almost all states (including federal territories) established the same rules for the administration of Islamic law.³⁵ These laws concerned the appointment and authority of state religious councils, *muftis*, *Sharia* court procedures, marriage and divorce, and violations related to Islamic law.³⁶

²⁹Muhammad Fitri Adi, "Hadhonah Rights of Children (Not Mumayyis) Based OnCompilation of Islamic Law and Child Protection Act," *Nusantara : Journal of Law Studies* 2, no. 1 (2023): 9–19, <https://doi.org/10.5281/zenodo.17388734>.

³⁰Sapriadi Sapriadi et al., "Sistematika Hukum Islam Di Indonesia," *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam* 4, no. 2 (2022): 150–159, <https://doi.org/10.47435/al-ahkam.v4i2.1216>.

³¹Tuan Muhammad Faris Hamzi Tuan Ibrahim, Nasrul Hisyam Nor Muhamad, and Ahmad Syukran Baharuddin, "Maqāsid Al-Sharī'ah and Digital Forensics: Towards a Fiqh-Based Evidentiary Model in Sharī'ah Criminal Justice," *Al-Adalah* 22, no. 2 (2025): 565–98, <https://doi.org/10.24042/adalah.v22i2.27886>.

³²Ahmad Bunyan, Muhammad Jihadul, and Nurulbahiah Awang, "Unregistered Marriages in Sabah : Indonesian Migrant Workers at the Crossroads of Faith , Law , and Livelihood," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (2025): 608–29, <https://doi.org/10.53955/jhcls.v5i2.702>.

³³Muhammad Tahir Azhari, *Negara Hukum* (Jakarta: Kencana, 2020).

³⁴M Wildan Humaidi, Ridwan, and Mohd Mahyeddin Mohd Salleh, "State-Religion Relations and Halal Governance : Islamic Legal Policy in Indonesia and Malaysia," *Al-Manahij: Jurnal Kajian Hukum Islam* 20, no. 1 (2026): 1–20, <https://doi.org/10.24090/mnh.v20i1.15374>.

³⁵Norazlina Abdul Aziz et al., "Harm 'Darar' in Polygamous Marriage : Analyzing The Legal Framework in Malaysia and Indonesia," *AHKAM: Jurnal Ilmu Syariah* 25, no. 1 (2025): 53–70, <https://doi.org/10.15408/ajis.v25i1.32068>; Nurulbahiah Awang, "The Right Concept and Application of Polygamous Marriage in Malaysia : An Analysis to the Role of Court under the Provision of Islamic Family Law (Federal Territories) Act 1984," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 1 (2024): 58–70, <https://doi.org/10.14421/ahwal.2024.17104>.

³⁶Donald L Horowitz, "The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change," *The American Journal of Comparative Law* 42, no. 2 (1994): 233, <https://doi.org/10.2307/840748>.

The federal government began to consider the importance of sharia law in the wake of the Renaissance. The federal territories were the first to enact Islamic family law, prepared by the federal attorney general's office. Many of the laws were adopted from the Hanafi and Maliki schools of Islamic family law in India and Pakistan. In response, states had the option of following the Federal Territory's design or following the Kelantan design, which strictly adhered to the Shafi'i school of thought.³⁷ Typically, in highly controversial areas such as restrictions on polygamy, some states preferred Kelantan's approach. While most other states followed the Federal Territory's model for most of the regulations.³⁸

The legal policy governing the formation of procedural law in Malaysia for resolving family cases remains influenced by English law to this day.³⁹ For example, matters relating to relevance, accounting records, expert testimony, character evidence, court notices, documentary evidence, and the burden of proof are all derived from English procedural law.⁴⁰ In some respects, Islamic law is still followed, such as the requirement for two witnesses in a case and the differential treatment of minors and non-Muslim witnesses. However, there is no distinction between male and female witnesses in Malaysian Sharia procedural law.⁴¹ The most intense controversy during the process of unifying Islamic law in Malaysia in the 1980s concerned Islamic family law.⁴² Many Sultans in the states opposed the unification of Islamic family law. The differences in

³⁷Holis et al., "Bridging Istinbāṭī and Taṭbīqī: An Integrative Ijtihād Model for Halal Fatwa Governance and Regulatory Compliance," *Nusantara : Journal of Law Studies* 5, no. 1 (2026): 691–727, <https://doi.org/10.66325/nusantaralaw.v5i1.171>.

³⁸Horowitz, "The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change."

³⁹Aan Eko Widiarto et al., "The Authority Relationship of Central and Local Governments in Forming Laws and Regulations : Between Indonesia and Malaysia," *Legality : Jurnal Ilmiah Hukum* 33, no. 1 (2025): 148–67, <https://doi.org/10.22219/ljih.v33i1.36629>.

⁴⁰Adi Syahputra Sirait et al., "Assessing Criminal Penalties in Marriage Law : A Comparative Study of Policy Frameworks within Indonesian and Malaysian Legislation," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (2024): 255–70, <https://doi.org/10.24090/mnh.v18i2.11208>.

⁴¹Toto Andri Puspito et al., "Evaluating Digital Zakat Platforms: Usability, Technical Performance, and Maṣlahah in Indonesia and Malaysia," *Nusantara : Journal of Law Studies* 5, no. 1 (2026): 631–70, <https://doi.org/10.66325/nusantaralaw.v5i1.261>.

⁴²Dahlia Haliah and Rita Mustika Rahayu, "The Construction of Cerai Manis (Preferred Divorce) on the Border of Indonesia and Malaysia Communities," *Al-Adalah* 20, no. 1 (2023): 19–34, <https://doi.org/10.24042/adalah.v20i1.16518>.

cultural backgrounds and Sultanates in each state gave rise to diverse political and legal perspectives, making unification difficult.⁴³

The legal policy of establishing Islamic family law in Malaysia was spearheaded by the federal government, the main actor influencing the development of Islamic thought and directing public opinion in the thought and implementation of Islamic teachings in Malaysia.⁴⁴ From the 1970s onward, the increasing popularity of PAS as an opposition Islamic party and its positioning as a defender of Islam against UMNO, which was perceived as un-Islamic, led the ruling party to begin interpreting Islam extensively to create a modern and moderate Islam following the UMNO's development goals. This effort intensified during the era of Prime Minister Dr. Mahathir Mohamad.⁴⁵

In the early 1980s, the Malaysian government began an Islamization program designed to increase the commitment of UMNO and Barisan Nasional.⁴⁶ Pros and cons colored the standardization of substantive law for Islamic families in Malaysia. The team formed by the Malaysian federal government only succeeded in standardizing formal law or the Sharia courts, and the civil courts.⁴⁷ Meanwhile, provisions on substantive law in the Federal Constitution state that jurisdiction relating to Muslim affairs falls under the jurisdiction of the states. This allocation gives absolute power to the states to make laws relating to Muslim communities. Therefore, the absence of standardization of substantive law in Malaysia that regulates this matter within the scope of Islamic law in a particular state is not something strange. This is because the parties who draft and approve the law

⁴³Triannah Sofiani and Iqbal Kamalludin, "Legal Dilemma of Undocumented Indonesian Migrant Workers in Malaysia: Compliance or Non-Compliance?," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 2 (2025): 105–24, <https://doi.org/10.30631/alrisalah.v25i2.1998>.

⁴⁴Puspito et al., "Evaluating Digital Zakat Platforms: Usability, Technical Performance, and Maslahah in Indonesia and Malaysia"; Mohd. Ali bin Muhammad Don et al., "The Waqf Models for Higher Education: Malaysia's Experience and Challenges in Strengthening a Waqf-Based Higher Education System," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 2 (2025): 58–73, <https://doi.org/10.30631/alrisalah.v25i2.1995>.

⁴⁵Ahmad Abdul Hamid, *Political Islam and Islamist Politics in Malaysia*, *Political Islam and Islamist Politics in Malaysia*, 2013, <https://doi.org/10.1355/9789814519250>.

⁴⁶Nurul Hasanah, "Kebijakan Politik United Malay National Organization (UMNO) Dalam Perkembangan Islam Di Malaysia 1981-2003 M: Political Policy of the United Malay National Organization (UMNO) in the Development of Islam in Malaysia 1981-2003 AD," *Journal of Islamic History* 2, no. 2 (October 2022): 158–176, <https://doi.org/10.53088/jih.v2i2.434>.

⁴⁷Shahidra, *Interview* (Kuala Lumpur, 2024).

are different.⁴⁸ This fact is one of the causes of a significant lack of uniformity in the provisions of Islamic law in the states.⁴⁹

Each state has the right to establish its own Islamic law, independent of other states or the Federation, as long as it does not exceed the scope granted by the Federal Constitution and relevant Federal Laws. Also, this inconsistency applies to Sharia criminal law. This has resulted in all states in Malaysia having their own Sharia laws. Comparatively, there are differences between states in the types and categories of violations, the nature and form of their provisions, and the application of sanctions.

The enactment of Act 303 of 1984 on Islamic Family, followed by the revision of the marriage and divorce provisions in Act 2 of 2006, represented a political-legal effort to unify family law in Malaysia. However, in reality, all of its provisions could not be immediately implemented in full by the states; therefore, its validity in the states must also be based on orders or regulations from the King and the state parliament. It is important to remember that the country's constitution emphasizes a federal state that is independent and self-governing, and that adheres firmly to Islamic law as the law of the land. Then, in 2016, at the urging of various parties, SIS, and community organizations in Malaysia, academics from several universities and parliament tried to submit a draft reform of family law in the 1976 enactment on marriage and divorce certificates in the draft D.R. 20/2016. However, until now, because it still causes pros and cons in the Malaysian parliament, the Draft Family Law Reform Act in Malaysia has not been passed. So what is enforced is the 1984 Regulation, and additional regulations in the states in the 2006 act. For judicial matters, it still uses English law to this day, both the Sharia court and the civil court.

Politics Unification Law on the Formation and Reform of Family Law in Brunei Darussalam

Family law policy in Brunei Darussalam is marked by a radical shift from the legal dualism of the colonial era to the supremacy of absolute Islamic law based on the transcendental aspects of *Malay Islam Baraja*. During the British monarchy, Islamic law

⁴⁸Siti Musawwamah et al., "Resistance to Child Marriage Prevention in Indonesia and Malaysia," *Ahkam: Jurnal Ilmu Syariah* 23, no. 1 (2023): 259–80, <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/32014/12428>.

⁴⁹Shahidra, *Interview* (Kuala Lumpur, 2024).

and local customs were sidelined.⁵⁰ Until the declaration of independence on January 1, 1984, Brunei asserted its sovereignty by placing Islamic law, particularly the Shafi'i school of thought, as the main pillar of national law. Post-independence family law reform was motivated by a transcendental awareness to fill the legal gaps in classical Islamic jurisprudence texts.⁵¹

In 1999, for the first time, the Parliament and Government of the Kingdom of Brunei Darussalam implemented family law reforms in Brunei, including, firstly, family law, which is a law that has provisions in the area of family members within the scope of the household, including certain areas such as *munakahat* and *mawaris*. Second, the background to the birth of Islamic legal reform in this era is to fill the legal vacuum. The influence of reform in various fields provides an opportunity for Islamic law to become a reference in national law, the influence of the renewal of Islamic legal thought, both by international and national Islamic legal experts, especially regarding the development of science and technology, as well as gender issues. Third, the previously explained products of the family law reform in Brunei Darussalam are divided into two areas, namely *munakahat* and *mawaris*, where the *munakahat* includes Marriage Registration, Minimum Age Restrictions for Marriage, the Role of Marriage Guardians, Polygamy, Divorce, *Khulu'*, and *Rujuk*. While in *Mawaris* includes legal heirs, inheritance, classification of heirs, and *wajibah* wills. The limitation of the age of marriage still follows the rules of the 1911 ordinance law, where women are 12 years old, and men are 14 years old. Brunei is one of the countries that has not ratified the issue of the minimum age limit for marriage, despite receiving several warnings from the United Nations (UN).⁵²

Meanwhile, the legal policy that was successfully implemented by the Government of the Kingdom of Brunei was related to the procedures and methods as well as the deeds of submission to the Sharia Court in 2002. Historically, the Brunei legal system was based on English common law, with an independent judiciary, an assessment body, and written common laws, and laws passed by the Sultan. In the past, the legal system of Brunei

⁵⁰Saidah, *Pentadbiran Undang-Undang Di Negara Brunei Darussalam* (Brunei Darussalam: Universitas Brunei Darussalam, 2003).

⁵¹Arif Sugitanata Arif, "Hukum Keluarga Islam Di Brunei Darussalam," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 8, no. 1 (2021): 1–12, <https://doi.org/10.32505/qadha.v8i1.2275>.

⁵²Zurai, *Interview* (Bandar Sri Begawan, 2023).

Darussalam was generally the responsibility of the British Resident and the Sultan. The British Resident was responsible for all matters relating to the appointment of judges to the lower courts and the functioning of those courts. The Sultan held jurisdictional powers to maintain the rules and laws of sharia, which meant the Sultan appointed all "*kathis*" in the areas mentioned in their "power" or jurisdiction for that purpose. Because the courts had different jurisdictions, the sentences imposed also varied. The courts at that time were the Resident's Court, the Court of First Instance Judges, the Court of Second Instance Judges, and the Native Judges' Court and *Kathis*.⁵³

Regarding the unification of family law in Indonesia and Brunei Darussalam, similarities can be found, namely applied nationally, without any distinction. However, Malaysia differs, as it is a state with diverse cultural characteristics and different government systems, making it difficult to unify its family law into national law. However, Deed No. 303 of 1984 represents an effort by the Malaysian government to unify the law and establish a national Islamic family law in Malaysia.

Both Malaysia and Brunei Darussalam have made significant efforts to unify their laws by updating key aspects of their family law. Indonesia only succeeded in unifying its family law after the enactment of Law No. 1 of 1974, which amended Article 7, which stipulates the minimum age for marriage for both men and women, at 19 years. Therefore, the theory of unification derived from the discussion of these three countries is the theory of transcendental emancipatory unification. This theory explains the process of unifying national laws based on religious law, customs, and emancipation, which focuses on the fulfillment and protection of women's human rights. This argument is a response to the international human rights treaties resulting from conferences in the 1980s and 1990s, which required every member country to ratify the treaties.

The background inspired the particular study to focus on the unification of the formation and renewal of family law in Indonesia, Malaysia, and Brunei Darussalam, offering a new concept of legal unification, namely transcendental emancipatory unification. This theory attempts to see how the unification of law in the three countries following the laws that apply and are lived in the three countries, namely religious law,

⁵³Ego Syaputra, Asasriwarni Asasriwarni, and Zulfan Zulfan, "Religious Jurisdiction System: A Comparison In Brunei Darussalam And The Philippines," *Jurnal Mediasas : Media Ilmu Syari'ah Dan Ahwal Al-Syakhsyiah* 6, no. 1 (2023): 62, <https://doi.org/10.58824/mediasas.v6i1.508>.

customary law, and emancipation law resulting from the ratification of international human rights, which are very influential in the unification of family law renewal in Indonesia, Malaysia, and Brunei Darussalam. It is hoped that the concept of this theory's findings can be used further in examining legal unification that focuses not only on family law, but also on economic law or other laws.

Transcendental Emancipatory Efforts to Unify Family Law in Indonesia, Malaysia and Brunei Darussalam

Emancipatory transcendentalism offers a new conceptual framework for unifying Islamic family law in Indonesia, Malaysia, and Brunei Darussalam. This emancipatory transcendentalism explains that family law unification and reform are not solely influenced by Western law but rather involve a synthesis, embracing religious and customary law as the basis of legitimacy, in order to protect the rights of women and children.⁵⁴

Transcendentally, the influence of Islamic law in Indonesian legal politics has gone through a long process, from the pre-colonial period, the Dutch and Japanese colonial era, the independence period, the Old Order, the New Order, and the reform era.⁵⁵ In the reform era, there was an increase in women's emancipation in parliament, namely 30% of members of the DPR (House of Representatives of the Republic of Indonesia) and DPD (Regional Representative Council), encouraging the birth of emancipatory products, namely changes to the civil rights of illegitimate children, based on the Constitutional Court's decision and the issuance of Law No. 16 of 2019 concerning the first amendment to Law No. 1 of 1974 concerning Marriage, concerning the minimum age for marriage. In addition to material law, reforms occurred in formal law, through the strengthening of the Religious Court institution. First, the enactment of Law No. 7 of 1989 concerning Religious Courts. Second, Law No. 3 of 2006 concerning the First Amendment to Law No. 7 of 1989 concerning Religious Courts. This emancipatory approach grants religious courts absolute and fair authority to resolve Sharia economic disputes. The second

⁵⁴Nuraida Fitri Habi and Muhammad Atho Mudzhar, "Women, Islamic Law and Custom in Pucuk Induk Undang Nan Limo Manuscript of Jambi," *Ahkam : Jurnal Ilmu Syariah* 24, no. 2 (2024): 233–50, <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/38557>.

⁵⁵Chuzaimah Batubara et al., "Realizing Justice and Maṣlaḥah in E-Commerce: Fiqh Muamalah Insights and Challenges in Malaysia and Indonesia," *Juris: Jurnal Ilmiah Syariah* 23, no. 2 (2024): 253–67, <https://doi.org/10.31958/juris.v23i2.12356>.

amendment to Law Number 50 of 2009 further solidifies the existence of procedural and applied legal authority.

In a transcendental emancipatory manner, the unification of Islamic family law in Islamic countries is carried out within the framework of the principles of Islamic politics (wise wisdom), which gives the ruler the authority to make administrative regulations for the public/community's benefit. Considering the need to adapt to modern society, the transcendental emancipatory concept in forming family law that is just and prioritizes gender equality, there are several stages, namely *takhayyur* (election) and journey (patching), benefit (public interest), as well as reinterpretation of textual sources, the *Qur'an* and *Sunnah*.⁵⁶

In Malaysia, from a transcendental perspective, the emancipatory unification of family law was heavily influenced by Islamic scholars, leading to the formation of the United Malays National Organization (UNMO), also known as the Malay Nationalist Party. Although it incorporates ideas from conservative, moderate, and even liberal groups, UMNO maintains its image as a party that upholds Islamic values, as Islam is the country's constitution.

In a transcendental context, clerics in Malaysia hold sole authority as guardians of Islamic morality.⁵⁷ This has sparked tensions with liberal Muslim groups. Among their actions have been attacks on writers they consider deviant, such as Zainah Anwar of the SIS (Indonesian Muslim Brotherhood), and academics such as Farish M. Noor and Patricia Martinez. According to the Malaysian Ulema Association (PUM), these writers have written articles insulting Islam, the Prophet Muhammad, and the ulama. With such blasphemy, clerics within the government bureaucracy have argued that these writers should be prevented from writing in the name of Islam by prohibiting them from interpreting the *Qur'an*, as they lack sufficient knowledge to speak about Islam.⁵⁸ And it

⁵⁶Henky Fernando et al., "Bibliometrics of Family Law Research Trends in Southeast Asia: An Analysis Two Decades 2003-2023," *El-Ussrah: Jurnal Hukum Keluarga* 7, no. 1 (2024): 82, <https://doi.org/10.22373/ujhk.v7i1.22439>; Muhammad Rikza Muqtada, Ahmad Sharifuddin, and Abdul Mufid, "Fiqh Contestation on Women's Public Leadership in Indonesia and Malaysia: Reproducing Qur'anic and Hadith Interpretations," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 1 (2024): 221–48, <https://doi.org/10.19105/al-lhkam.v19i1.13163>.

⁵⁷Siddig Ahmad et al., "Mafhūmu Fiqhi Al-Marātib Wa Fiqhi Al-Awlawiyyāt Fī Maqāṣidi Al-Qur'ān: Dirāsah Taṭbīqiyyah Fī Malaysia," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 1 (2024): 271–302, <https://doi.org/10.19105/al-lhkam.v19i1.8917>.

⁵⁸Fernando et al., "Bibliometrics of Family Law Research Trends in Southeast Asia: An Analysis Two Decades 2003-2023."

would be dangerous if these writings could influence politics in the formation and reform of laws in Malaysia.

Thus, the transcendental efforts of Islamic law shifted from the spirit of modernity in the 1980s to a conservative direction in the 1990s.⁵⁹ The government introduced Islamic laws or amended existing Islamic laws as an effort to improve the status of Islam in Malaysia. In fact, the status of Islam and Malay is identical.⁶⁰ This makes religion a political ideology and source of legitimacy that has a significant impact on democratic governance, women's rights, and human rights.⁶¹ Nevertheless, efforts to unify family law still produce transcendental emancipatory legal products through the Islamic Family Law Act 303 of 1984, where the most striking are the rights of women to file for divorce in court, requests for child custody, fair distribution of joint property, and the imposition of sanctions on fathers or husbands who deliberately do not provide for their wives and children, and many more.⁶²

However, in 1990, an amendment was made that was deemed less emancipatory. In the case of polygamy, the amendment permitted the registration of polygamous marriages carried out without court permission if the person was willing to pay a fine or accept imprisonment. One of the fifth conditions in Act 303 regarding polygamy was that second and subsequent marriages must not reduce the standard of living enjoyed by the wives and children. This condition was later removed in an amendment in the 1990s, making it easier for men to practice polygamy. This has led to the rise of polygamous marriages without court permission, both polygamous marriages conducted on the border of Southern Thailand and clandestine marriages in Malaysia itself. Because the

⁵⁹Louay M Safi, "Islam and The Trajectory of Globalization: Rational Idealism and The Structure of World History," in *Islam and the Trajectory of Globalization* (Routledge, 2021), 1–20, <https://doi.org/10.4324/9781003203360-1>.

⁶⁰Tobi Angel Kolawole and Helen Ting M. H., "Sharia Politics in Nigeria and Malaysia: Governance, Islamization and Human Rights," *Journal of Politics and Law* 15, no. 3 (2022): 25, <https://doi.org/10.5539/jpl.v15n3p25>.

⁶¹Rodiyah Rodiyah, Siti Hafsyah Idris, and Robert Brian Smith, "Mainstreaming Justice in the Establishment of Laws and Regulations Process: Comparing Case in Indonesia, Malaysia, and Australia," *Journal of Indonesian Legal Studies* 8, no. 1 (May 2023): 333–378, <https://doi.org/10.15294/jils.v7i2.60096>.

⁶²Asrizal Saiin, Anwar M Radiamoda, and Kemas Muhammad, "The Property Rights Regulation , Semenda Marriage , and Exploring the Determinants in ASEAN Countries," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 134–59, <https://doi.org/10.53955/jhcls.v3i2.68>.

requirements for polygamy were easier, a phenomenal case was the polygamous marriage of one of the famous Malaysian singers, Siti Nurhaliza.

In addition, in the field of divorce, the amendment allows the court to approve divorces pronounced outside the court if they meet the conditions in fiqh. Research has shown that as a result of this amendment in several states, the number of divorces outside the court is 3 times higher than those where husbands file for divorce in court.⁶³ Therefore, it is examined from the transcendental emancipatory politics of international law the influence of the globalization of human rights with the birth of international human rights instruments in 1990 such as Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economics, Social and Cultural Rights (ICESCR), International Convention of Discrimination against Women (CEDAW) and International Convention of The Rights of Child (CRC), in fact, has influenced the legal and political regimes in many countries, especially Malaysia.

When the Federal Constitution was being drafted, the Reid Commission initially thought that individual rights did not need to be included. But they were eventually included as fundamental liberties as they concern about the future.⁶⁴ This led to the revitalization of the UDHR, CEDAW, and CRC as annexes, but with reservations regarding several clauses in CEDAW and CRC in 1995, to align them with the Malaysian constitution. The conventions and ratifications were carried out to ensure they follow the constitution, customary law, and religious law in Malaysia.

In the 1984 legal unification, the federal system granted family law authority to each State. Although national unification through Act 303 is considered incomplete due to legislation at the Federal level, the act remains the main reference for all federal and federal states on marriage (marriage age limits in particular), divorce, maintenance, custody, and other matters related to family life. While those outside Act No. 303 still follow the regulations set by the State. Furthermore, the interesting about Act No. 303 is the existence of penalties for violations the marriage age limit, grounds for divorce,

⁶³Joseph Liow, "With Compliments Deconstructing Political Islam In Malaysia: UMNO'S Response To PAS' Religio-Political Dialectic," 2003, <https://rsis.edu.sg/wp-content/uploads/rsis-pubs/WP45.pdf>.

⁶⁴Raihanah Abdullah, *Undang-Undang Keluarga Islam Di Malaysia Satu Sorotan Literatur, Dalam Mahkamah Syariah Di Malaysia: Pencapaian Dan Cabaran*, ed. Ahmad Hidayat Buang (Kuala Lumpur: University Malaya, 2005).

polygamy, and maintenance, as well as the existence of sanctions for violations. Although there are differences in the regulation of sanctions between federal and federal states governments.

The Sisters in Islam (SIS) organization played a crucial role in advocating for modern family law reform by rejecting provisions in Act 30 and its 1999 amendments in favor of women's and children's rights. This momentum led to the national standardization of the Islamic Family Law, initiated by the 2001 Raja-Raja meeting and strengthened under Prime Minister Abdullah Badawi in 2005 to enhance protections for polygamy and divorce property. As a result, nearly all states made changes to their enactments to align with the revised Act 303, although Terengganu retained the old rules, thus remaining in accordance with Act No. 303 of 1984.

Not unlike in Indonesia, a key theory found in family law research in Malaysia is transcendental emancipatory politics, namely equality between men and women in court. Furthermore, the application of this theory is based on the Malaysian Islamic Family Law Bill drafted in 2005, which also included female figures and academics in drafting the bill. This draft was promulgated in the gazette on February 2, 2006. However, this new family law reform has not yet been implemented in all federal states. Therefore, the current law is Act No. 303 of 1984, which was amended or updated and changed to several articles/clauses in 1995.

Meanwhile, in Brunei, transcendental emancipatory influence emerged as a form of decolonialization to restore Islamic law and the Shafi'i school of thought, which had previously been marginalized by the dominance of British law. After independence in 1984, Brunei reformed family law with an Islamic spirit to fill the legal gap not specifically regulated in classical Islamic jurisprudence texts.

Emancipatory influences and global challenges have driven efforts to unify family law in Brunei to align Islamic law and the issues of gender, science and technology, and economic globalization. Transcendentally, this unification, which began in 1999, remains rooted in the Shafi'i school of thought as a national identity, yet remains adaptive in filling legal gaps not specifically regulated in classical fiqh texts. Substantively, the results of the unification cover two main areas. First, *munakahat* includes regulations on marriage registration, minimum age limits, the role of guardians, polygamy, and divorce. Second, *mawaris*, specifically *wajibah wills*. This reform is a crucial instrument for the Brunei

government to address the needs of modern society while establishing Islamic law as a comprehensive national legal framework. So in 1999, for the first time, the unification of modern family law was born in Brunei Darussalam, known as the 1999 Islamic Family Law. Then it was supplemented with standardization of formal law and Sharia Court procedures in 2002. Renewal efforts were made again in 2006, but until now the regulations are still in draft form and have not been enacted.

Based on the previous explanation, emancipatory family law reform in Malaysia, Brunei Darussalam, and Indonesia is influenced by pressure from civil society, non-governmental organizations, human rights movements, and gender equality. Family law reform also reflects power relations within society. A transcendental emancipatory analysis can explore how family law is used as a tool to maintain or change power structures, particularly on gender and individual rights under the family law. Despite the influence of globalization, all three countries continue to prioritize transcendental values of religion and culture as the primary foundation of their legal policies. Malaysia balances moderation with an Islamic-Malay identity. Indonesia integrates cultural diversity and Islamic values within its constitution. Meanwhile, Brunei emphasizes its identity through the values of *Melayu Islam Beraja* (MIB).

Thus, cultural and Islamic values are still very strong in these three countries, so in terms of emancipatory transcendental politics, their national legal policies are still sourced from cultural customs and adhere to Islam or religious values in particular. In Indonesia, its constitution is regulated in Article 29 of the 1945 Constitution, Article 7 of the Constitution in Malaysia, and Article 5 of the Constitution in Brunei Darussalam, confirming that Islamic law is the main source of national law for Malaysia and Brunei Darussalam, while Indonesia is one of the sources of national law, which is also enshrined in its ideology of Pancasila. Therefore, the combination of these two analyses creates the concept of emancipatory transcendental politics that combines religious values or law, customary law, and emancipatory values from Western law.

Conclusion

The unification of family law in Indonesia, Malaysia, and Brunei Darussalam has resulted in a transcendental emancipatory political unification that combines religious values, customary law, and Western law. Despite being influenced by globalization and openness to women's and children's rights, transcendental Islamic values remain the

dominant force in Malaysia and Brunei. Meanwhile, Indonesia has a source of national law, enshrined in its Pancasila ideology, which is reinforced by each country's constitution. In Indonesia, this is regulated in Article 29 of the 1945 Constitution, in Malaysia, in Article 7, and in Brunei Darussalam's constitution, in Article 5. The combination of these two analyses creates a transcendental emancipatory political concept that combines transcendental values or religious law, customary law, and emancipatory values from Western law.

Credit Author Statement

Martha Eri Safira, as the first author, contributed to the conceptualization of the research design, the implementation of the study, and the writing of the research findings, the particularly in analyzing legal aspects and theoretical frameworks. **Iffatin Nur**, contributed to the particularly in analyzing legal aspects and theoretical frameworks. **Abdul Mun'im**, contributed to the literature review and data analysis. **Uswatul Khasanah** contributed to coding and data display. **Raihanah binti Abdullah** contributed to data analysis and manuscript editing. All authors have read and approved the final version of the manuscript for publication.

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