



Moderation of Islamic Family Law in Southeast Asia

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Abstract

This study aims to analyze the moderation of Islamic Family Law in Southeast Asia, focusing on how sharia principles are aligned with the social, cultural, and legal dynamics in the region. This study also aims to explore the efforts of countries such as Indonesia, Malaysia, and Brunei in adapting Islamic family law to remain relevant to local contexts and existing social development trends. The method used in this study is a qualitative approach with literature study, which involves analysis of various written sources, including laws and regulations, legal documents, and case studies from each country. The results of the study show that the moderation of Islamic family law in Southeast Asia includes efforts to integrate the principles of justice, human rights, and gender equality in the implementation of sharia law. In Indonesia, the implementation of the Compilation of Islamic Law (KHI) reflects efforts to protect the rights of women and children, while in Malaysia, sharia courts play a role in balancing sharia values with the needs of contemporary society. The study found that despite the challenges in harmonization between Islamic law and national law, a moderation approach allows Islamic family law to remain relevant and responsive to social change without sacrificing the basic principles of sharia.

Keywords: *Moderation; Islamic Family Law; Southeast Asia*

Abstrak

Penelitian ini bertujuan untuk menganalisis moderasi Hukum Keluarga Islam di Asia Tenggara, dengan fokus pada bagaimana prinsip-prinsip syariah diselaraskan dengan dinamika sosial, budaya, dan hukum di kawasan ini. Penelitian ini juga bertujuan untuk mengeksplorasi upaya negara-negara seperti Indonesia, Malaysia, dan Brunei dalam mengadaptasi hukum keluarga Islam agar tetap relevan dengan konteks lokal dan tren perkembangan sosial yang ada. Metode yang digunakan dalam penelitian ini adalah pendekatan kualitatif dengan studi literatur, yang melibatkan analisis terhadap berbagai sumber tertulis, termasuk peraturan perundang-undangan, dokumen hukum, serta studi kasus dari masing-masing negara. Hasil penelitian menunjukkan bahwa moderasi hukum keluarga Islam di Asia Tenggara mencakup upaya untuk mengintegrasikan prinsip keadilan, hak asasi manusia, dan kesetaraan gender dalam implementasi hukum syariah. Di Indonesia, penerapan Kompilasi Hukum Islam (KHI) mencerminkan upaya untuk melindungi hak-hak perempuan dan anak-anak, sementara di Malaysia, pengadilan syariah berperan dalam menyeimbangkan nilai-nilai syariah dengan kebutuhan masyarakat kontemporer. Penelitian ini menemukan bahwa meskipun ada tantangan dalam harmonisasi antara hukum Islam dan hukum nasional, pendekatan moderasi memungkinkan hukum keluarga Islam tetap relevan dan responsif terhadap perubahan sosial tanpa mengorbankan prinsip-prinsip dasar syariah.

Kata Kunci: *Moderasi; Hukum Islam; Asia Tenggara*

Introduction

Family law is a provision of Allah SWT which is sourced from the Qur'an and as-Sunnah regarding family ties both that occur because of blood relations and because of marriage relationships that must be obeyed by every mukalaf.¹ Islamic family law in Southeast Asia has

¹ Ade Daharis dkk., "Analysis of the Use of Technology from the Perspective of Islamic Family Law in Era 4.0," *Jurnal Elsyakhshi* 1, no. 1 (2023): 33-46, <http://journal.staisni.ac.id/index.php/elsyakhshi/article/view/31>.

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a long history that is integrated with local culture and traditions.² Countries in the region, such as Indonesia, Malaysia, Brunei, and parts of Thailand and the Philippines, apply Islamic law in aspects of family life, especially related to marriage, divorce, inheritance rights, and child care.³ As the majority of the population in this region is Muslim, the application of Islamic family law is an integral part of each country's national legal system. However, with the dynamics of globalization, modernization, and shifting social values, Islamic family law has undergone a process of adjustment or moderation to remain relevant and contextual.

Understanding the essence of moderation in Islam and its scope is a necessity in order to obtain a positive side in attitude and moderate understanding in religion.⁴ This paper was written to present the essence of moderation in Islam and its scope. According to the Great Dictionary of the Indonesian Language, the term Moderation is interpreted as the reduction of violence or an effort to avoid extremism.⁵ Meanwhile, the word Moderate is interpreted as an attitude that always avoids extreme behavior and tends to choose a middle way. In Arabic, the term Moderation can be translated as Wasathiyah, which literally means something that is in the middle between two sides.⁶ Terminologically, Wasathiyah can be interpreted as a middle way that does not favor extremism or shortcomings, but rather as the fairest and best path between the two sides.⁷ In a broader context, moderation means trying to reach a middle ground or middle ground in various aspects of life, such as religion, politics, social, and culture, thus allowing the realization of harmony and harmony. The principle of moderation and balance in Islam can be found in various teachings, including in the Qur'an Surah Al-Hujurat verse 13:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۗ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقْوَاهُ ۗ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

Meaning: O man, We created you from a man and a woman, and We made you into nations and tribes so that you may know one another. Indeed, the noblest among you in the sight of Allah is the most righteous among you. Indeed, Allah is All-Knowing, All-Knowing..

This verse emphasizes that Muslims are expected to be a just people and act as witnesses to human actions. It is a call to uphold justice, tolerance, and unity among all human beings regardless of ethnic, racial, or religious differences. The message reinforces the idea that Islam is a benevolent and moderate religion, which teaches peace and balance in interpersonal relationships. This message reminds us of the importance of the Qur'anic values and how their application can create an inclusive and harmonious society. Views on the diversity of religious

² Zubaidi Wahyono, Alizaman D. Gamon, dan Maulana Akbar Shah, "Religious Tolerance in Southeast Asia: Issues and Challenges," *AL-ITQAN: JOURNAL OF ISLAMIC SCIENCES AND COMPARATIVE STUDIES* 9, no. 2 (2024): 24–53, <https://journals.iium.edu.my/al-itqan/index.php/al-itqan/article/view/297>.

³ Henky Fernando dkk., "Bibliometrics of Family Law Research Trends in Southeast Asia: An Analysis Two Decades 2003-2023," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (2024): 82–109, <https://jurnal.ar-raniry.ac.id/index.php/usrah/article/view/22439>.

⁴ Hasan Basri dan Muhammad Zaki, "Religious Moderation in Islamic Views and the Position of Right and Left Extreme," *Journal of Research in Islamic Education* 5, no. 2 (2023): 63–74, <https://journal.iaimnumetrolampung.ac.id/index.php/jrie/article/view/4279>.

⁵ "Pencarian - KBBI VI Daring," diakses 30 Desember 2024, <https://kbbi.kemdikbud.go.id/>.

⁶ Zulfa Laila dan Qaem Aulassyahied, "Understanding the Hadiths on Religious Moderation (Study of the Thoughts of M. Quraish Shihab in the Book Wasathiyah Islamic Insights on Religious Moderation)," *Islam in World Perspectives* 3, no. 1 (2024): 108–18, <http://journal2.uad.ac.id/index.php/IWP/article/view/10384>.

⁷ Supardi Mursalin dkk., "Pecoah Kohon: The Restriction on Inter-Cousins Marriage in Indigenous the Rejang Society," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 1 (2023): 69–80, <https://ejournal.uinmybatangkar.ac.id/ojs/index.php/Juris/article/view/9025>.

backgrounds and understandings in government and private institutions are particularly relevant. In a multicultural and multireligious society, diversity of religions and beliefs is common. However, without a deep understanding of religious teachings and the principle of tolerance, this diversity can spark conflict and tension.

Research related to the moderation of Islamic Family Law in Southeast Asia has been the focus of various legal and social scientists since the last few decades. In this region, the implementation of Islamic Family Law has undergone various adjustments, both in terms of law implementation and adaptation to local values, culture, and existing socio-political conditions.⁸ Previous studies have shown that while sharia principles remain the basis of law, Southeast Asian countries are trying to find a balance between religious provisions and the needs of contemporary societies.⁹ In this regard, moderation plays an important role in adapting Islamic law to local social and cultural dynamics, without sacrificing the essence and core values of Islam.

One of the relevant studies is the research conducted by Fauzi noted that although Indonesia has a pluralistic legal system, Islamic family law still serves as an important guide in resolving marriage and divorce issues. In Malaysia, although the sharia legal system is implemented through sharia courts, this study shows that there are efforts to provide stronger protection for women's rights, for example in terms of inheritance rights and gono-gini property rights.¹⁰ The study concludes that the moderation of Islamic family law in both countries has succeeded in bridging the tension between Islamic law and national law, although there are still challenges in the implementation of related policies. In addition, Ann Black in his study on the comparison of Islamic family law in Brunei and Malaysia also found that the approach to moderation of Islamic family law in Brunei tends to be stricter due to the strong influence of the sharia legal system in the country. However, Rahman also noted that although Islamic family law in Brunei is more conservative, there are efforts to maintain a balance by providing more protection to women and children in aspects of marriage and divorce.¹¹ Meanwhile, in Malaysia, Islamic family law moderation is more open to the effects of human rights and gender equality, although there are still challenges in the implementation of the law in some regions.

Another relevant research is Raid Hasan Mohammed which discusses the moderation of Islamic family law in Indonesia in the context of social change and the advancement of women's rights. Raid Hasan Mohammed pointed out that Islamic family law in Indonesia increasingly accommodates aspects of human rights, especially in cases of divorce, inheritance rights, and children's rights. Raid Hasan Mohammed emphasized the importance of a moderation

⁸ Sahin Husain, Nasir Purkon Ayoub, dan Mukhammadolim Hassmann, "Legal pluralism in contemporary societies: Dynamics of interaction between islamic law and secular civil law," *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasah and Muamalah* 1, no. 1 (2024): 1-17, <https://pubcenter.ristek.or.id/index.php/Syariat/article/view/11>.

⁹ Ratnaria Wahid, "Faith in the Balance: ASEAN's Quest for Religious Freedom Amidst Cultural Diversity," *Religion & Human Rights* 19, no. 2-3 (2024): 140-60, https://brill.com/view/journals/rhrs/19/2-3/article-p140_4.xml.

¹⁰ Fauzi Fauzi, "Urf and Its Role in The Development of Fiqh: Comparative Study of Family Law Between Egypt and Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (2024): 346-71, <https://jurnal.ar-raniry.ac.id/index.php/usrah/article/view/23968>.

¹¹ Ann Black, "Islamization, Modernity, and the Re-positioning of Women in Brunei," dalam *Mixed Blessings* (Brill Nijhoff, 2006), 211-39, https://brill.com/downloadpdf/book/edcoll/9789047409656/B9789047409656_s011.pdf.

approach to maintain the relevance of Islamic law in a society that continues to develop. Her research highlights how the role of religious courts in Indonesia is increasingly important in ensuring that sharia principles remain respected, while taking into account individual rights, particularly the rights of women and children.¹² Al-Hawary Kaas 's research further reviews how the moderation of Islamic family law in Brunei Darussalam shows a different approach but is in line with the principle of moderation. Al-Hawary Kaas noted that Brunei, despite implementing stricter sharia law, seeks to incorporate human rights elements into its practice. Islamic family law in Brunei, according to Al-Hawary Kaas focuses on the role of the state in regulating marriage and divorce through a more structured and more authoritative sharia court system. Al-Hawary Kaas also highlighted the importance of aligning the law with local values that focus on protecting the rights of the family, especially women and children, while maintaining the integrity of sharia law.¹³

In Maki research on the influence of Islamic family law moderation on Indonesian society, it was found that changes in Islamic family law tend to be more responsive to human rights needs and gender equality, but still have to overcome various challenges in terms of legal interpretation.¹⁴ Maki observed that although Islamic family law in Indonesia has become more moderate, issues such as polygamy, inheritance rights, and divorce still need to be adjusted to better reflect the principles of justice and equality that are more inclusive. This study shows that the moderation of Islamic family law in Indonesia aims to ensure that the law is not only relevant to religious principles, but also to the social developments that occur in society.

The discussion of Islam in Southeast Asia can be considered interesting because of one simple thing, namely the number of Muslims in this region is very large. Of the approximately 1.3 billion Muslims worldwide, 60 percent or about 780 million are in Asia, with 250 million of them living in Southeast Asia. Indonesia itself is the country with the largest Muslim population, not only in Southeast Asia, but also compared to Muslim countries around the world. This moderation process is not only seen from substantive legal adjustments, but also in judicial practice and legal administration. Sharia courts and religious institutions play an important role in interpreting and applying Islamic family law in accordance with the social context of modern society. Legal scholars and academics in the region also play a significant role in encouraging legal moderation discourse, ensuring that Islamic law remains relevant and responsive to the needs of the people, while maintaining the essence of sharia.

Thus, the moderation of Islamic family law in Southeast Asia is not only a pragmatic choice, but a need to maintain harmony between the demands of religion and the realities of modern life. This moderation also reflects the flexibility of Islamic law that can continue to evolve according to the social context, without sacrificing the basic principles held by sharia

¹² Raid Hasan Mohammed Bani Issa, Upi Komariah, dan Cucu Susilawati, "Improving Accessibility and Justice: Reforming Indonesia's Religious Courts to Uphold Human Rights and Gender Equality," *International Journal of Intersectionality: Law and Gender* 1, no. 1 (2024): 1-15, <https://journal.laksita.id/index.php/intersectionality/article/view/1>.

¹³ Al-Hawary Kaas, Dubis Bhutta Birdsall, dan Hossain Aziz, "Comprehensive approaches to child development in islamic law," *SYARIAT: Akhwal Syaksyah, Jinayah, Siyasa and Muamalah* 1, no. 1 (2024): 58-70, <https://pubcenter.ristek.or.id/index.php/Syariat/article/view/14>.

¹⁴ Hud Leo Perkasa Maki, "Impact of Digitalization on Islamic Family Law," *Law Studies and Justice Journal (LAJU)* 1, no. 1 (2024): 01-14, <https://journal.ppipbr.com/index.php/laju/article/view/188>.

teachings. Tulisaln ilnil melncobal melngkaljil selputalr Moderation of Islamic Family Law in Southeast Asia.

Method

The research method in this study uses a multidisciplinary approach that combines qualitative methods with normative and empirical analysis to examine the existence of HKI protection in the perspective of Islamic law and legislation in Indonesia. Primary data were obtained through in-depth interviews with legal experts, scholars, practitioners, aiming to gather first-hand views related to the implementation of HKI protection.¹⁵ Secondary data is collected from relevant literature, books, journals, articles, and official documents, including analysis of laws and regulations in Indonesia as well as fatwas of scholars. Data collection techniques include literature studies. The data obtained were analyzed qualitatively to identify the main themes, patterns, and relationships between concepts, and comparative analysis was carried out to compare the principles of Islamic law with national regulations. The validity and reliability of the data are maintained through triangulation of data sources and credibility tests by involving experts in related fields.¹⁶ This comprehensive research method is expected to provide an in-depth understanding of the integration between Islamic law and national legislation in protecting IPR in Indonesia.

Result and Discussion

Definition of Legal Moderation

The word moderation comes from the Latin moderatio, which means a balanced state (not excessive and not deficient). This term also refers to the self-mastery of extreme behavior. According to the Great Dictionary of the Indonesian Language (KBBI), moderation has two meanings: 1. reduction of violence, and 2. avoidance of extremism. If a person is said to be moderate, it means that the person is behaving normally, mediocre, and not extreme. In English, the word moderation is often interpreted as average, core, standard, or non-aligned. In general, moderate attitudes emphasize a balance in beliefs, morals, and character, both in interactions with other individuals and in relationships with state institutions. In general, the term moderation is related to the Arabic word wasatiyyah, which has various interpretations, such as justice or balance (al-'adl), merit or excellence (al-fal), better (al-khairiyyah), and position in the middle (al-bainiyyah).¹⁷ Thus, moderation means taking a balanced decision between two positives and two negatives, or choosing a position in the middle. Moderation is a state of equilibrium between two diametrically opposite poles, where no pole stands alone. Moderation means choosing to be the best, fair, and not excessive, both in this world and in the

¹⁵ Audrey Alejandro dan Longxuan Zhao, "Multi-Method Qualitative Text and Discourse Analysis: A Methodological Framework," *Qualitative Inquiry* 30, no. 6 (Juli 2024): 461-73, <https://doi.org/10.1177/10778004231184421>.

¹⁶ Bui Thanh Khoa, Bui Phu Hung, dan Mohsen Hejsalem Brahmi, "Qualitative Research in Social Sciences: Data Collection, Data Analysis and Report Writing," *International Journal of Public Sector Performance Management* 12, no. 1/2 (2023): 187-209, <https://doi.org/10.1504/IJPSPM.2023.132247>.

¹⁷ Ujang Supriyadi, "Yusuf Al-Qardhawi's Thoughts and Their Implementation to Indonesian Society," *Jurnal Syntax Transformation* 4, no. 12 (2023): 19-33, <http://jurnal.syntaxtransformation.co.id/index.php/jst/article/view/883>.

hereafter. Wasatiyyah reflects the quality of behavior of individuals and groups that are considered reasonable, balanced, and not extreme or excessive.

According Soediman Kartohadiprojo, Family law is all legal rules that determine the conditions and ways to have an eternal relationship and all its consequences.¹⁸ Family law is a comprehensive provision that includes legal relationships related to conscious kinship and kinship due to marriage.¹⁹ Islamic Family Law has various terms that are often used in literature. In Arabic, the terms used include: al-ahwal al-syakhsiyyah, nidzam al-usrah, huquq al-usrah, ahkam al-usrah, and munakahat. Meanwhile, in English, the terms used are Islamic Personal Law, Islamic Family Law, Moslem Family Law, Islamic Marriage Law, and Islamic Family Protection. Meanwhile, in Indonesian, it is known as Marriage Law, Family Law, Family Law, and Individual Law. The Quran contains about 70 verses related to family law. Wahbah al-Zuhaili defines family law (ahkam al-ahwal asy-syakhsiyyah) as a law that regulates relationships in the family from the beginning of its formation to the end, including marriage, divorce, descendants, alimony, and inheritance.²⁰

Islamic Family Law is the rules and laws of Allah that are sourced from the Qur'an and Sunnah, regarding family ties, both formed through blood relations (nasab) and marriage relationships (musaharah), which must be obeyed by every legally responsible individual (mukallaf).²¹ The definition of Islamic Family Law moderation in Southeast Asia refers to a more balanced and flexible approach to the application of Islamic family law, which is tailored to the social, cultural, and political context in Southeast Asian countries. This moderation involves adjusting the law that remains grounded in Islamic principles, but takes into account local values, pluralism, and individual rights, including the rights of women and children. This approach aims to create a balance between religious provisions and the needs of contemporary society in the region.

Islamic Family Law is a set of rules derived from the Qur'an and Sunnah, which govern various aspects of family life, both related to blood relations (nasab) and marital relationships (musaharah). As a universal law, Islamic Family Law not only regulates the rights and obligations of family members, but also ensures that the values of justice and morality are maintained in every family interaction. This law regulates various things, ranging from marriage, divorce, inheritance, to the rights of children and women, all of which have a very important position in maintaining family and community harmony. Every legally responsible individual (mukallaf) is obliged to abide by the principles contained in this law, which are translated in the form of norms that apply in Muslim society.

¹⁸ Shidarta Shidarta, "Membaca Ulang Pemaknaan Keadilan Sosial Dalam Gagasan Revolusi Hukum Soediman Kartohadiprojo," *Veritas et Justitia* 1, no. 1 (2015), <https://core.ac.uk/download/pdf/235704436.pdf>.

¹⁹ Bruce C. Hafen, "The constitutional status of marriage, kinship, and sexual privacy: Balancing the individual and social interests," *Michigan Law Review* 81, no. 3 (1983): 463-574, <https://www.jstor.org/stable/1288509>.

²⁰ SIDIK TON, "WASIAT WAJIBAH SEBAGAI ALTERNATIF MENGAKOMODASI BAGIAN AHLI WARIS NONMUSLIM DI INDONESIA" (PhD Thesis, Universitas Islam Indonesia, 2013), <https://dspace.uui.ac.id/handle/123456789/9416>.

²¹ Ahmad Syaifuddin Al Rosyid dan Ahdiyatul Hidayah, "Muhammad Abu Zahrah's Istinbat Method on the Law of Isbat Nasab Son of Zina Based on the Ilhaq Method," *An-Nisa Journal of Gender Studies* 16, no. 1 (2023): 93-108, <https://annisa.uinkhas.ac.id/index.php/annisa/article/view/168>.

In Southeast Asia, which has the largest Muslim population in the world, the implementation of Islamic Family Law faces major challenges along with the social, cultural, and political diversity that exists in each country. The moderation of Islamic Family Law in the region emerged in response to these challenges. This definition of moderation refers to a more balanced and flexible approach in the application of Islamic family law, which is still based on sharia principles but adapted to the local context and social needs of the community. This moderation approach not only accommodates Islamic values, but also pays attention to aspects of pluralism that exist in Southeast Asian countries, where societies consist of various ethnicities, religions, and traditions.

In its application, the moderation of Islamic Family Law also includes efforts to safeguard individual rights, especially the rights of women and children. In many countries in Southeast Asia, although Islamic Family Law remains governed within the framework of sharia law, local values and understanding of human rights also influence the practice and interpretation of such laws. For example, in Indonesia, the Compilation of Islamic Law (KHI) is designed to adapt sharia principles to Indonesia's pluralistic social context, while in Malaysia, sharia courts seek to integrate women's rights in family law proceedings. These efforts aim to create a balance between religious provisions and the needs of contemporary society, by ensuring that Islamic family law can continue to be relevant amid rapid social and cultural changes.

This moderation approach is also important for maintaining the welfare of society, where Islamic family law can be an effective instrument in creating social justice, without sacrificing the basic principles contained in Islamic teachings. In the context of existing legal pluralities, such as those found in Indonesia, Malaysia, and other Southeast Asian countries, this legal moderation plays an important role in building an inclusive, fair, and responsive legal system to evolving social dynamics. In the Southeast Asian region, the implementation of Islamic Family Law faces complex challenges due to the diversity of different social, cultural, and legal systems in each country. Therefore, the moderation of Islamic Family Law is an important concept to be introduced and applied in this region. Moderation in this context means adjustments or arrangements made so that sharia principles remain relevant and respected, but adapted to the social, cultural, and political contexts that exist in Southeast Asian countries. This moderation approach also seeks to strike a balance between absolute religious provisions and the evolving needs of society, including aspects of human rights and gender equality.

The importance of Islamic Family Law moderation in Southeast Asia lies in the ability of the law to accommodate the pluralism that exists in Muslim societies, which often have different traditions and practices. Countries such as Indonesia, Malaysia, and Brunei are trying to adapt Islamic family law to their respective local contexts. In Indonesia, for example, through the Compilation of Islamic Law (KHI), Islamic family law is adjusted to remain relevant to the values of Pancasila and national law, while maintaining sharia principles. Similarly in Malaysia, the sharia court system seeks to integrate women's rights in family law procedures, ensuring that Islamic family law not only respects religious values but also accommodates existing social changes. On the other hand, the moderation of Islamic Family Law is also important to protect the rights of individuals, especially women and children, within a framework that still adheres to Islamic teachings. In Southeast Asian countries with pluralistic societies, this law seeks to

accommodate the demands of contemporary societies that demand justice and equality in various aspects of life, including in family relationships.

This approach allows Islamic family law to continue to evolve and adapt to the changing times, without sacrificing the basic principles on which the law is based. Thus, the moderation of Islamic Family Law in Southeast Asia not only reflects the adaptation of the law to existing social and cultural realities, but also as an effort to maintain the relevance and integrity of Islamic law in the midst of changing societal dynamics. Overall, the moderation of Islamic Family Law in Southeast Asia has played an important role in creating a more inclusive and responsive legal system to the needs of diverse Muslim communities. With this approach, it is hoped that Islamic family law can continue to play an important role in maintaining social order, justice, and welfare for all family members, without neglecting the basic principles contained in sharia. This moderation approach not only maintains a balance between religious provisions and individual rights, but also creates space for the acceptance of pluralism in Islamic family law that is acceptable to the wider community.

Scope of HKI Moderation in Southeast Asia

Moderation in marriage law in Southeast Asia involves recognizing the importance of pre-nuptial agreements, which can provide better legal protection for women, especially regarding the division of property in marriage and divorce. In some countries, prenuptial agreements are an important part of the marriage contract to protect the rights of both parties. Marriage laws and prenuptial agreements in Southeast Asia vary from country to country, although some general principles can be found. Here is an overview of marriage and prenuptial agreements in some Southeast Asian countries. In Indonesia, marriage is regulated by Law No. 1 of 1974 concerning Marriage. For Muslims, marriage law is also regulated by the Compilation of Islamic Law (KHI).²² Marriage is considered valid if it is performed in accordance with religious law and recorded by the state. Pre-Marriage Agreement, In Indonesia, the marriage agreement is known as "pre-marriage" or "pre-marriage agreement." This agreement is a document prepared by prospective couples before marriage to regulate various matters related to marriage, such as their respective rights and obligations, the division of property, and other aspects relevant to their marriage. The legal basis is stated in Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning the Implementation of the Law. Meanwhile, a postnuptial agreement is a document that regulates things after the marriage takes place, and is also known as a postnuptial agreement. This agreement has the same legal basis, namely Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975.

The Malaysian Family Law Law of 1980 was drafted using the superstitious method, namely by choosing one opinion from various views conveyed by the imams of the madhhab in Islamic law.²³ For example, this law gives women the right to consent to their marriage and prohibits guardians from forcing their daughters to marry (ijbār). The renewal of family law in

²² Mohammed Allehbi, "Reevaluating the Norms of Law and Governance in Islamic Legal History," *J. Islamic L.* 5 (2024): 3, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/joloisl5§ion=3.

²³ Natana J. DeLong-Bas, "Bridging the 'Orient' and the West: Arabia, the British Empire in India, and English Translations of the Qur'an in the Early Twentieth Century," *Journal of Qur'anic Studies* 26, no. 2 (Oktober 2024): 96–127, <https://doi.org/10.3366/jqs.2024.0585>.

Malaysia generally refers to the Shafi'i School, although there are significant differences, especially in terms of polygamy, talaq, and the age of marriage. Marriage Law is governed by two systems of sharia law for Muslims and civil law for non-Muslims. Marriages must be registered with the State Registration Department (JPN) or under the Islamic religious authority. Pre-Marriage Agreement For Muslims, a pre-nuptial agreement can include provisions regarding the division of marital property and alimony, but it must be in accordance with sharia law. For non-Muslims, the prenuptial agreement is governed by civil law. Singapore in reforming family law in response to the development of the times while still considering the thinking of madzhab fiqh embraced by a minority of its population. However, there are several provisions that are not in line with the thinking of fiqh.

Marriage law in Singapore is governed by two legal systems, the Muslim Ordinance for Muslims and the Women's Charter for non-Muslims. Marriages must be recorded at the Marriage Registration Office. Prenuptial agreements are recognized by Singapore law, especially related to the division of assets and child custody in the event of divorce.²⁴ For Muslims, sharia also affects this rule. Marriage Law In Thailand is governed by the Civil and Commercial Code, which includes marriage requirements for all citizens. Marriages must be recorded in order to be legally recognized. Thailand recognizes pre-nuptial agreements, especially those related to the division of property and assets in marriage. This agreement must be made before the marriage and registered at the time the marriage is registered. The Philippines has one of the strictest marriage laws, with divorce not allowed for non-Muslims. Marriage is governed by the Family Code for non-Muslims and by sharia law for Muslims in the autonomous region of Mindanao. Prenuptial agreements are known and legally recognized, particularly in regulating the division of property during marriage and in the case of annulment of marriage.²⁵ Overall, prenuptial agreements in Southeast Asia serve as a tool for regulating financial matters, child custody, and property rights in marriage. However, the legality and specific procedures vary depending on the legal system of each country and religion.

Countries in Southeast Asia, such as Indonesia and Malaysia, impose stricter conditions for the practice of polygamy. Polygamy is only allowed if the husband can give a valid reason and is able to treat the wives fairly. This moderation aims to protect the rights of women and children in the family, as well as ensure that polygamy is not abused. Restrictions on polygamy in Southeast Asian countries vary, mainly influenced by the legal system of each country and the majority of religions practiced. The following is a summary of the rules regarding polygamy in several countries in the region, for example, Indonesia, Polygamy is regulated in Law No. 1 of 1974 concerning Marriage. The law allowed polygamy, but with strict conditions, including consent from the first wife, permission from the court, and proof that the husband was able to act fairly and financially. In addition, there is a limit on the number of wives to four people in accordance with Islamic law.

²⁴ Jeremy D. Morley, "Strategic Planning for International Divorces," *J. Am. Acad. Matrimonial Law.* 36 (2023): 417, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jaaml36§ion=26.

²⁵ Isabelita Solamo Antonio, "The Philippine Shari'a Courts and the Code of Muslim Personal Laws," dalam *The Sociology of Shari'a*, ed. oleh Adam Possamai, James T. Richardson, dan Bryan S. Turner, Boundaries of Religious Freedom: Regulating Religion in Diverse Societies (Cham: Springer International Publishing, 2023), 161-81, https://doi.org/10.1007/978-3-031-27188-5_8.

Education and counseling before marriage are one of the focuses of moderation. This is important to ensure that couples understand each other's rights and responsibilities in marriage. Some countries implement mandatory pre-marriage counseling, where prospective husbands and wives are taught the values of Islamic marriage and the management of domestic conflicts. KHI moderation also includes measures to prevent underage marriage. Although in some interpretations of Islamic law child marriage is allowed, countries such as Indonesia and Malaysia have introduced laws to raise the minimum age of marriage to protect children's rights and ensure they are physically and emotionally mature before marriage. Moderation in child custody (*hadhanah*) in Southeast Asia includes policies that emphasize the best interests of the child. In the case of divorce, priority is given to the welfare of the child, despite the traditional rules that may only grant custody to one parent based on gender. Here, moderation allows for a more flexible approach, including taking into account the economic and psychological capabilities of parents.

In KHI moderation, the arrangement of alimony and the division of common property (*gono-gini*) in divorce is regulated more fairly. Moderation allows for an approach that takes into account the wife's contribution in the household, although it may not be a financial contribution, so that women are not economically disadvantaged after divorce. The scope of moderation also includes the use of formal institutions such as sharia courts as well as non-formal institutions such as mediation or family counseling in resolving family disputes. Moderation provides flexibility in the way family issues are resolved to ensure that the process is not only in accordance with Islamic law, but also effective and does not burden the parties involved. Moderation in family law in Southeast Asia seeks to ensure gender justice, especially in aspects such as the right to work, education, and participation in domestic decision-making. This means removing gender discrimination that may arise in traditional legal interpretations, so that women have greater access to their rights.

Countries in Southeast Asia, such as Brunei, Malaysia, and Indonesia, have adopted an active role in regulating and implementing KHI through state institutions such as sharia courts and religious ministries. Moderation within this scope is seen in the establishment of laws that are in accordance with the local context and the government's efforts to strike a balance between Islamic law and modern civil law. KHI moderation in Southeast Asia also emphasizes the strengthening of women's rights in marriage, such as the right to file for divorce (*khulu'*), the right to receive a proper dowry, and the right to property ownership during marriage. It aims to protect women from injustices that may arise in traditional practices. Moderation in Islamic family law in Southeast Asia also includes adjustments related to the adoption and protection of orphans. Some countries implement rules that ensure orphans receive adequate legal protection and their rights are preserved, including the right to inheritance and proper upbringing. With a moderation approach, Islamic family law in Southeast Asia can be more relevant to the demands of the times and the conditions of modern society, while still adhering to the basic principles of Islam.

Conclusion

The moderation of Islamic family law in Southeast Asia refers to a balanced and flexible approach to the application of family law, adapted to the social, cultural, and political contexts

in the countries of the region. The term moderation comes from the Latin word *moderatio*, which means a balanced and not extreme state. In this context, moderation describes an attitude that prioritizes justice and avoids excessive behavior. In Arabic, the term is associated with *wasatiyyah*, which includes the principles of balance and justice in decisions. Islamic family law regulates rules that determine the conditions and ways to establish family relationships, including marriage, divorce, maintenance, and inheritance. The source of the law comes from the Qur'an and the Sunnah, and must be obeyed by every individual. Moderation in Islamic family law aims to create a balance between religious provisions and the needs of contemporary society.

This approach considers local values, pluralism, and individual rights, including the rights of women and children. Moderation in Islamic family law in Southeast Asia also plays a role in increasing innovation and reducing conflicts that may arise due to different interpretations of rights and obligations within the family. One important aspect of this moderation is the recognition of prenuptial agreements that protect women's rights regarding the division of property in marriage. In addition, moderation also imposes strict requirements for the practice of polygamy to protect the rights of women and children from abuse. Thus, the moderation of Islamic family law in Southeast Asia not only maintains the relevance of family law in the midst of social change, but also ensures that the law remains responsive to issues of equality and diversity in a dynamic society.

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