



## **Bilateral Principles as Moderating Inheritance Rights in Southeast Asia**

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### **Abstract**

*This study is situated against the backdrop of the dynamics of Islamic inheritance law in Southeast Asia, a region characterized by pluralistic social, cultural, and legal systems. The research aims to analyze the bilateral principle as an instrument of moderation (tawasuth) in the fulfillment of inheritance rights and to identify patterns of its application within Islamic family law systems across Southeast Asia. A qualitative approach was employed, utilizing literature reviews and comparative analysis of regulations, Islamic legal literature, and prior research. The study covers Indonesia, Malaysia, Brunei Darussalam, and Thailand — countries that exhibit distinct legal system characteristics and varying positions regarding Islamic law. The findings indicate that the application of the bilateral principle is contextual. Indonesia demonstrates a pluralistic and flexible pattern through the interplay of Islamic law, customary law (adat), and family deliberation, Malaysia exhibits a more institutionalized approach via Sharia Courts and state-level jurisdiction, Brunei Darussalam applies faraid (fixed inheritance shares) more uniformly with the backing of state religious institutions, while Thailand displays a territorial-pluralistic pattern, particularly in the Muslim-majority region of Southern Thailand. The study's novelty lies in developing the bilateral principle as an instrument for moderation in inheritance matters from a cross-national comparative perspective. The bilateral principle does not replace faraid; rather, it serves as a methodological approach to bridge Sharia norms with social realities, thereby fostering justice, public interest (maslahah), inclusivity, and family harmony.*

**Keywords:** Moderation, Bilateral Principle; Inheritance; Southeast Asia

### **Abstrak**

Kajian ini dilatarbelakangi oleh dinamika hukum kewarisan Islam di Asia Tenggara dalam lingkungan sosial, budaya, dan sistem hukum yang plural. Penelitian ini bertujuan menganalisis asas bilateral sebagai instrumen moderasi (tawasuth) dalam pemenuhan hak kewarisan serta mengidentifikasi pola penerapannya dalam sistem hukum keluarga Islam di Asia Tenggara. Penelitian menggunakan pendekatan kualitatif melalui studi pustaka dan analisis komparatif terhadap regulasi, literatur hukum Islam, serta penelitian terdahulu. Kajian mencakup Indonesia, Malaysia, Brunei Darussalam, dan Thailand yang memiliki karakter sistem hukum dan posisi hukum Islam yang berbeda. Hasil penelitian menunjukkan bahwa penerapan asas bilateral bersifat kontekstual. Indonesia memperlihatkan pola pluralistik dan fleksibel melalui interaksi hukum Islam, hukum adat, dan musyawarah keluarga, Malaysia lebih terinstitusionalisasi melalui Mahkamah Syariah dan kewenangan negara bagian, Brunei Darussalam menerapkan faraid secara lebih seragam dengan dukungan institusi keagamaan negara, dan sedangkan Thailand menunjukkan pola teritorial-pluralistik, khususnya di wilayah Muslim Thailand Selatan. Novelty penelitian terletak pada pengembangan asas bilateral sebagai instrumen moderasi kewarisan dalam perspektif komparatif lintas negara. Asas bilateral tidak menggantikan faraid, tetapi menjadi pendekatan metodologis untuk menjembatani norma syariah dengan realitas sosial, sehingga mendukung keadilan, kemaslahatan, inklusivitas, dan keharmonisan keluarga.

**Kata Kunci:** Moderasi; Asas Bilateral; Kewarisan; Asia Tenggara.

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## Introduction

One of the important contents of the study of Islamic family law is the law of inheritance, which regulates the transfer of property from heirs to heirs in accordance with sharia law. These provisions are firmly based on the Quran, Hadith, and ijma' of Islamic scholars, so that they are binding and fair in their distribution. However, in practice, the application of Islamic heritage law is influenced by social, cultural, and legal systems in various regions, including Southeast Asia. Southeast Asia, a region where the majority of the population is Muslim, and has diverse legal characteristics. Countries such as Indonesia, Malaysia, Brunei Darussalam, and Thailand have different legal systems that govern Islamic heritage, although they are still based on Sharia principles. These differences point to the continued adaptation of Islamic law to local social conditions, which have continued to evolve over time.<sup>1</sup>

One of the important issues in the study of contemporary Islamic inheritance law is the concept of the bilateral principle, which gives equal weight to male and female lineages in determining heirs. This principle is seen as a form of moderation in inheritance law that seeks to overcome the challenges of equality and justice in modern society, without ignoring the established sharia provisions. The bilateral principle in Islamic heritage experienced dynamics when it transformed from normative principles to social practices. At the normative level, the bilateral principle emphasizes the connection of inheritance through the lineage of the father and mother. At the practical level, its application interacts with family interests, differences in perceptions of justice, property control, the existence of surrogate heirs, as well as deliberation and mediation mechanisms. These dynamics show that the application of bilateral principles does not take place in a linear manner, but through a negotiation process between Islamic inheritance norms and the social reality of society. In this context, family deliberation can be understood as a form of moderation that seeks to maintain the principle of inheritance while avoiding conflict and maintaining the family's welfare.

In the context of diverse Southeast Asian communities, such as Indonesia, Malaysia and Brunei Darussalam, whose population is Muslim, it turns out that there are still problems in the Islamic inheritance distribution system such as the influence of customary or matrelineal lines in the Minangkabau customs, the implementation of the inheritance distribution mechanism that is tug-of-war between the sharia and civil courts and the codification of laws in Brunei which is based on sharia in the midst of its society which some of the above things are challenges for the implementation of the regulation of the Islamic inheritance system.<sup>2</sup> Moreover, in some literacy that examines the inheritance

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<sup>1</sup> norhatijah dkk., *"Reforming Islamic Family Law in Southeast Asia: A Comparative Study of Indonesia, Malaysia, and Brunei Darussalam"*, vol.2 no 1 (Juni 2025).

<sup>2</sup>selfia marlina dan endriyenti, *intervensi hukum islam terhadap hukum kewarisan adat minang kabau*, Vol 4. no. 2 (2023).

system in Thailand which is tertorial in nature and the population dominated by religions other than Islam is an important concern to see the application of bilateral principles in mitigating issues that develop in the social reality of Thai society. Therefore, the application of bilateral principles is relevant for further study, as it can provide solutions to various interpretations of inheritance law and bridge the gap between religious texts and social reality.<sup>3</sup> Furthermore, the concept of reform is also closely related to efforts to make Islamic family law more responsive to the needs of the times.

Based on this background, it is important to study the bilateral principle as the moderation of inheritance rights in Southeast Asia, in order to understand how Islamic law can adapt flexibly without losing its basic values in the midst of a prosperous society while providing wider justice and breadth in implementing Islamic inheritance practices for each community. In addition, this research will contain and try to show how the pattern of application of inheritance law that carries bilateral principles as a concept in religious moderation in Southeast Asia.

## Method

This study uses a comparative method with a qualitative approach and literature study. In principle, the qualitative approach was chosen because this study elaborates in depth on the content, content and reasons for thinking, both similarities and differences found in Southeast Asian countries related to the duality of the Bilateral principle.<sup>4</sup> Primary data sources include the Qur'an, Hadith and fiqh books from madhhab as well as laws and regulations related to family law in Southeast Asia such as Law Number 1 of 1974, Compilation of Islamic Law (KHI) in Indonesia and regulations on Islamic family law in Southeast Asia such as each enactment in Malaysia, Brunei Darussalam family law and regulations of a theoretical nature in Thailand specifically for religious areas Islam. Secondary data sources are in the form of journals and books related to moderation and Islamic inheritance law. In addition, this study uses a *conceptual approach* to see the differences in inheritance distribution practices in several countries in Southeast Asia such as Indonesia, Malaysia, Brunei Darussalam, and Thailand in Islamic family law in Southeast Asia and analyzes the interaction patterns of religious moderation in inheritance distribution with the Bilateral Principles approach. Data analysis techniques are descriptive research to describe and analyze the similarities and differences in the application of bilateral principles. Data analysis in this study uses qualitative analysis that is comparative to reduce data, object classification and comparative analysis. As for the data validity

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<sup>3</sup> sulaiman Dorloh, *The Code of Muslim Family Law and Law of Inheritance (1941) as Applicable in the Provincial Courts of Southern Four Border Provinces of Thailand: Issues and Prospects*, no 6 (2009): 271.

<sup>4</sup> Silva Amanda Putri dan Albina M, *Analisis Komparatif Model-Model Penelitian Kualitatif: Pendekatan Teoritis dan Praktis dalam Studi Sosial dan Pendidikan*, no 1 (2025): 187–95, <https://doi.org/https://doi.org/10.61104/qz.v2i1.271>.

technique to check the authenticity of source identity, the virtue of literature is to re-examine and classify data so that later conclusions can be drawn related to the application of bilateral principles in the Southeast Asian Region.<sup>5</sup>

## Results and Discussion

### The Concept of Bilateral Principles in Islamic Inheritance Law

The bilateral principle in Islamic inheritance law is a principle that places the lineage of the paternal and maternal side in a balanced manner in determining the relationship of inheritance.<sup>6</sup> In other words, a person can become an heir through kinship from the male and female lines without discrimination against one of the lineages. This principle shows that the Islamic inheritance system does not only rely on a single line of inheritance, but recognizes both parties as the basis of the legal relationship in inheritance. Conceptually, the bilateral principle departs from the understanding that family relations in Islam include a wide range of relationships, both through the *patrilineal and matrilineal paths*.<sup>7</sup> In the Quran, the concept of inheritance not only limits inheritance rights to men, but also gives rights to women in accordance with the stipulated provisions. This shows the recognition of both lineages in the Islamic legal system.

In practice, the bilateral principle can be seen from the recognition of heirs such as sons and daughters, fathers and mothers, brothers on the father's and mother's sides, and other relatives who have a relationship of descent<sup>8</sup>. Although there are differences in inheritance between men and women under certain conditions, the basic principle used still shows that both lineages have a valid legal position in receiving inheritance rights.

The bilateral principle can also be understood as a form of balance in the structure of the Islamic family that is not only centered on one party. This is in line with the main purpose of Islamic law (*maqashid sharia*), which is to realize justice, benefits, and protection of human rights.<sup>9</sup> Therefore, this principle is not only normative, but also has an important social dimension in maintaining family harmony. The bilateral principle in Islamic heritage in Southeast Asia is understood as a principle relevant to the Sharia Maqashid because it recognizes kinship relationships through the paternal and maternal lineages, guarantees the protection of property (*hifz al-mal*), maintains the continuity of the lineage (*hifz al-nasl*),

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<sup>5</sup> Lexy. J. moleong, *Metedologi penelitian kualitatif* (2007; Remaja Rosdakarya, t.t.).

<sup>6</sup> Dian Dewi Khasanah, *Hukum Kewarisan Islam* (Sada Kurnia Pustaka, 2024).

<sup>7</sup> Enni Eka Kusumawati, *Hakikat Asas Kepentingan Nasional dalam Perdagangan Internasional: Tinjauan Teoritis dan Implementasinya di Indonesia: Tinjauan Teoritis dan Implementasinya di Indonesia*, no 2 (2025), <https://doi.org/https://doi.org/10.64147/dokhum.v1i2.9>.

<sup>8</sup> Tsurayya Haniatul Fauziah dan Muhammad Saepudin, *Analisis Perbandingan Kewarisan Islam dan Hukum Waris Perdata di Indonesia*, 4, no. 1 (2026).

<sup>9</sup> Safira Meisya Salsa Bina, "Asas Keseimbangan Dalam Hukum Perjanjian," *JOURNAL SAINS STUDENT RESEARCH* 1, no. 2 (2023): 871–80, <https://doi.org/10.61722/jssr.v1i2.324>.

and supports the realization of justice and family welfare.<sup>10</sup> However, the application of bilateral principles cannot be interpreted as absolute equality in the distribution of inheritance, but rather as recognition of both lines of kinship while maintaining the provisions of faraid that have been established and opening up space for ijtihad in terms of its implementation and regulation.

Hazairin, a prominent figure among jurists who was active in the reform of Islamic law and also the founder of the bilateral basic system. The principle of bilateral inheritance advocated by Hazairin aims to equalize the status of boys and girls in terms of inheritance. According to Hazairin, inheritance rights for girls are not problematic, because boys and girls have the same rights and status. This position does not imply an understanding of equal distribution, but in Islam each part has been determined by Allah SWT. The different inheritance rights of women and men cannot be said to be unfair, because men have greater responsibilities than women.<sup>11</sup> In the Quran surah an Nisa verse 11 reads

*Allah has decreed to you about the division of your children, (i.e., the share of a son is equal to the share of two daughters). If the children are all females of more than two, their share is two-thirds of the property left behind. If she (the daughter) is alone, she gets half (of the inherited property).*<sup>12</sup>

According to Hazairin, the above verse contains a basis that shows that the system desired by the Qur'an is a bilateral system. The Qur'an states that the part of the boy is the two parts of the girl. This verse clearly does not mention who died, whether it was father or mother. Meanwhile, the verse explains that all children, both boys and girls, are heirs to both parents. This is a manifestation of the bilateral system, because in the patrilineal system, only boys have the right of inheritance from both parents, and similarly, in the matrilineal system, only girls have the right of inheritance from both parents.<sup>13</sup>

In the development of modern Islamic family law, the bilateral principle is often associated with efforts to moderate inheritance law to be more responsive to social change. In various Muslim countries, including in Southeast Asia, this principle has become one of the cornerstones for adapting inheritance law to the increasingly complex conditions of society without abandoning the basic principles of Islamic law. Gender studies in the bilateral principles of Islamic heritage in Southeast Asia show two tendencies. The affirmative perspective views the bilateral principle as an instrument that provides recognition of women as heirs and reduces the dominance of inheritance from patrilineal kinship. On the contrary, the critical perspective argues that bilateral is not synonymous

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<sup>10</sup> Muchlis Samfrudin Habib, *Sistem Kewarisan Bilateral Ditinjau Dari Maqashid Al-Syari'ah*, no. 1 (2017): 30–42.

<sup>11</sup> Beni Ahmad Saebeni, *Fiqh Mawaris* (Bandung, Pustaka setia, 2012).

<sup>12</sup> Pangeran Harahap, *Hukum Islam di Indonesia* (Cipta Pustaka Media, 2014).

<sup>13</sup> Hazairin, *Hukum Kewarisan menurut Qur'an dan hadis* (Jakarta: Tintamas, 1972).

with equal rights between men and women,<sup>14</sup> In the classical fiqh construction, men have a maintenance obligation to the family, while women are not burdened with the same obligations. Therefore, differences in parts under certain conditions are understood as distributive justice, not merely gender inequality. The structure of Islamic inheritance also considers lineage, heir status, and economic responsibility. Thus, gender issues in bilateral principles should not be seen as a conflict between equality and differences of rights, but should be placed within the framework of justice, family welfare, and changes in the social structure of Southeast Asian societies.

### **Inheritance Systems in Southeast Asia**

The inheritance system in Southeast Asia has diverse characteristics because it is influenced by three main elements, namely Islamic law, customary law, and civil law (colonial inheritance).<sup>15</sup> These three elements interact with each other in shaping the practice of inheritance distribution in each country, resulting in a non-uniform inheritance system even though they are in the same region that has cultural and religious similarities. In Indonesia, the inheritance system is pluralistic. This means that three systems apply simultaneously: Islamic inheritance law for Muslims, customary law that applies in various regions, and Western civil law (Civil Code) which is still used in some cases.<sup>16</sup> In practice, Islamic inheritance law in Indonesia refers a lot to the Compilation of Islamic Law (KHI) as the main guideline for religious courts, especially for Muslims. In Malaysia, the Islamic inheritance system is under the authority of each state, as religious affairs including Islamic family law are not under full federal law.<sup>17</sup> Each country has an Islamic Family Law Enactment that regulates the distribution of inheritance based on faraid law. This system is more structured and has clear institutional strengthening through the Syariah Court. Meanwhile, in Brunei Darussalam, the Islamic inheritance system is applied more thoroughly because the country makes Islamic law one of the main bases in its legal system.<sup>18</sup> The division of inheritance generally refers directly to faraid law with the supervision of strong religious institutions. This makes the application of Islamic

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<sup>14</sup> Reni Nur Aniroh, "MEMPERTEGAS IDE KESETARAAN GENDER DALAM SISTEM KEWARISAN BILATERAL : Sistem Waris Bilateral Pasca Hazairin," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 13, no. 2 (2020): 119–38, <https://doi.org/10.14421/ahwal.2020.13203>.

<sup>15</sup> Sahrul Gunawan dan Muh Ahsan Kamil, *ANALISIS KOMPARATIF HUKUM ISLAM, HUKUM ADAT DAN HUKUM POSITIF DALAM PEMBAGIAN HARTA WARISAN*, no. 01 (2025).

<sup>16</sup> Dr Ellyne Dwi Poespasari, *Pemahaman Seputar Hukum Waris Adat Di Indonesia* (2018).

<sup>17</sup> Meydina Dwi Aripthia dkk., *PERBANDINGAN PENGATURAN PEMBERIAN WARIS PADA AHLI WARIS NON MUSLIM DI INDONESIA DAN MALAYSIA*, t.t.

<sup>18</sup> Rima Rahmayani Tanjung, 'STUDI KOMPARATIF HUKUM PERKAWINAN DI NEGARA MUSLIM ASIA TENGGARA: MALAYSIA, BRUNEI DARUSSALAM, DAN SINGAPURA,' 04, no. 2 (2025), <https://doi.org/https://doi.org/10.61876/alj.v4i2.142>.

inheritance law in Brunei more uniform and centralized compared to other countries in the Southeast Asian region.

In addition to these three countries, other Southeast Asian countries, such as Thailand, also have Muslim communities that apply Islamic heritage laws on a limited basis, especially in areas with a Muslim majority population. However, its application is often aligned with national law. Not only in Thailand which is known to be a minority of Muslims, in the system of bilateral principles of Islamic heritage In Singapore, the principle of Islamic heritage is formalized through the faraid mechanism and the institution of *the Sharia Court*, while in Cambodia the issue of Muslim heritage is more appropriately placed in the context of the interaction between Islamic norms, national law, and the practices of the Muslim community. So that each country has its own different legal mechanisms in the practice of inheritance distribution.<sup>19</sup> These differences show that bilateral principles undergo different adaptation processes according to the legal and social configuration of each country. Thus, the inheritance system in Southeast Asia shows the existence of diversity influenced by the historical, political, and cultural factors of each country. This diversity is an important background in understanding how bilateral principles can play a role as a form of moderation in Islamic inheritance law in the region.

#### **Bilateral Principles as a Form of Moderation of Inheritance Law**

The bilateral principle in Islamic inheritance law can be understood as a form of moderation (*tawasuth*) in the development of Islamic family law as an effort to create a balance between the provisions of textual evidence and the social reality of society<sup>20</sup>. This moderation is not intended to change the basic principles of Islamic law, but to provide a more contextual understanding of the application of inheritance law in modern life, especially in societies with complex family structures such as those in Southeast Asia. Contextually, the moderation of inheritance law through bilateral principles is evident in the recognition that kinship ties are not only based on male lineages (*patrilineal*), but also female lineages (*matrilineal*). Thus, the inheritance system becomes more inclusive as it provides balanced recognition of both bloodlines.<sup>21</sup> This is in line with the principle of justice in Islam which emphasizes the portion of rights in accordance with responsibility and the closeness of family relationships.

In the social context, the application of bilateral principles as a form of moderation is particularly relevant in Southeast Asia which has diverse customary law traditions, such as *the patrilineal system* in some regions and *the matrilineal system* in others. The issue of

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<sup>19</sup> feirul malieq intajalle dkk., “Instrumen Pembahagian Harta Pusaka Islam di Singapura, 12, no. 91–111 (t.t.).

<sup>20</sup> Hamdan Arief Hanif, *AKTUALISASI WARIS ISLAM (FARAID) DALAM POLITIK HUKUM INDONESIA*, t.t.

<sup>21</sup> Muhammad Riski Rhomadhon, “TELAAH SOSIO ANTROPOLOGIS TERBENTUKNYA HUKUM KEWARISAN DALAM ISLAM,” *Jurnal Al-Wasith: Jurnal Studi Hukum Islam* 9, no. 2 (2024): 127–40, <https://doi.org/10.52802/wst.v9i2.1330>.

religious differences between heirs in a family is also a hot study so that the existence of bilateral principles can be a bridge between Islamic law and customary law, so that harmonization in inheritance practices can be created without causing prolonged social conflicts.<sup>22</sup> The application of Islamic inheritance law in Southeast Asia continues to face various obstacles stemming from the complexity of the relationship between Islamic law, state law, and customary law. This is due to the existence of legal pluralism and differences in social constructions regarding kinship relationships. For example, in Thailand, which has uniformity of religious adherents, it is an obstacle for the Muslim community to implement the practice of Islamic heritage as a whole. So that by carrying out the bilateral principle as a model for the study of newness in the distribution of inheritance law, it can be used as an instrument in religious moderation so that it can be accepted by adherents of other religions.<sup>23</sup>

Furthermore, bilateral principles also reflect the dynamics of Islamic law reform (tajdid), which is always open to new interpretations as long as they do not conflict with the basic principles of sharia. In this regard, contemporary Islamic jurists seek to re-understand heritage texts using the maqasid al-sharia approach, which is the main goal of sharia, which includes justice, welfare, and the protection of human rights. The bilateral principle is the concept of linking the theory and practice of a pluralistic society. Thus, the bilateral principle not only functions as a concept in inheritance law that contains theory only, but also as an instrument of moderation that answers the challenges of social change. The turmoil that arises, in the midst of a society that seeks to give importance to its group, can be suppressed with an understanding of religious moderation and one of its efforts is to introduce bilateral principles in the concept of inheritance. Through this approach, Islamic inheritance law can remain relevant, and able to adapt and provide fair solutions for all family members in the context of modern societies in Southeast Asia.

### **Comparison of Applications in Southeast Asia**

Indonesia is the country with the largest Muslim population in the world, despite the fact that Indonesia also recognizes several diverse ethnicities, religions, cultures, and races with a population of 280 million people<sup>24</sup>. So that the application of Islamic inheritance law is pluralistic because it coexists with Western customary law and civil law. In the context of Muslims, the inheritance system refers to the Compilation of Islamic Law (KHI) which is the main guideline within the Religious Court. In KHI, the division of inheritance still adheres to the concept of faraid which is sourced from the Qur'an and hadith, where the

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<sup>22</sup> Defel Fakhyadi, "Patriarkisme Hukum Kewarisan Islam: Kritik Hukum Waris Islam dan Kompilasi Hukum Islam," *Hukum Islam* 21, no. 1 (2021): 1, <https://doi.org/10.24014/jhi.v21i1.10447>.

<sup>23</sup> Aripia dkk., *PERBANDINGAN PENGATURAN PEMBERIAN WARIS PADA AHLI WARIS NON MUSLIM DI INDONESIA DAN MALAYSIA*.

<sup>24</sup> <https://sektab.go.id/en/statistics-indonesia-releases-2020-census-results/?UTM> accessed on Tuesday, May 5, 2026, at 10 a.m. 50



share of the heirs has been determined in detail.<sup>25</sup> In the Compilation of Islamic Law (KHI), the term bilateral principle is not explicitly mentioned with the expression "bilateral principle", but the concept of bilateral principle in Islamic inheritance law is reflected in article 171 letter C of the Second book of the KHI and also in article 174 of the KHI which mandates that heirs consist of two groups, namely the male (father) and the female (mother) group.<sup>26</sup>

However, in social practice, customary law is very influential, sometimes adjusting the division of inheritance based on family deliberation. This shows that, although the faraid system is used normatively, inheritance practices in Indonesia remain flexible and are often influenced by family values and mutual agreements.<sup>27</sup> These dynamics show that society does not always view inheritance solely as a matter of division based on mathematical proportions, but also as a matter of maintaining family relationships. In one case, the parties previously experienced differences of opinion regarding the control and distribution of inheritance. After the case went to court and went through a mediation process, the parties finally agreed on a *Peace Act*. The property is then divided into families. A more complex dynamic is seen when there is a surrogate heir (*mawālī*). In one of the cases studied, there was a grandson who became a surrogate heir because his parents had died before the heir. This concept has an important meaning in Hazairin's thought because it allows the inheritance relationship to remain connected through the descendants of the deceased first. The concept then took a normative form in Article 185 of the Compilation of Islamic Law regarding surrogate heirs. Thus, the practice shows that there is a process of meeting between Hazairin's bilateral ideas, the social needs of the community, and Indonesia's positive law.<sup>28</sup>

However, community practice also shows that bilateral principles do not always run without conflict. One of the cases shows that there are relatives who are able to control the inheritance and there are even problems regarding the inclusion of heirs. This condition causes the rights of one of the heirs to be neglected and cause disharmony in the family.<sup>29</sup> The settlement through mediation is then directed to a family settlement. So that by looking at the obstacles that occur in the community, the regulations and practices of the community should be seen as having a gap in the distribution of Islamic heritage in Indonesia. On the other hand, it can be seen how the Efforts to Implement the Islamic

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<sup>25</sup> Luh putu Vera Astri pujayanti, *Hukum Perdata: Asas-Asas dan Perkembangannya* (2025; Pt. Sonpedia Publisihing Indonesia, t.t.).

<sup>26</sup> Pangeran Harahap, *Hukum Islam di Indonesia* (2014; Ciptapustaka media, t.t.).

<sup>27</sup> Fauziah dan Saepudin, *Analisis Perbandingan Kewarisan Islam dan Hukum Waris Perdata di Indonesia*.

<sup>28</sup> Azwan Fadli, ANALISIS HUKUM ISLAM TERHADAP PERTIMBANGAN HAKIM DALAM PENETAPAN AHLI WARIS (PUTUSAN NOMOR 0669/Pdt.G/2019/PA.Tgm)' (diploma, UIN RADEN INTAN LAMPUNG, 2024), <https://repository.radenintan.ac.id/32981> Jurusan: Hukum Keluarga (*Ahrwal Syakhsiyyah*), t.t.

<sup>29</sup> intajalle dkk., *"Instrumen Pembahagian Harta Pusaka Islam di Singapura*.

practice of inheritance distribution often experience friction between customary laws in the community so that by carrying out a model of bilateral principles, this can be a bridge for heirs to obtain their rights as a form of moderation.

Malaysia is a multiethnic country in Southeast Asia with a population of 33 million people dominated by the largest ethnic group Malays, often referred to as Bumiputera. There are other ethnicities such as ethnic Chinese and Indians who are partly of Tamil descent.<sup>30</sup> The state of Malaysia consists of 13 states and 3 federal territories, which conceptually reflects a system of federalism, where each state has certain powers in local government, while Islamic inheritance law is under the authority of each state through the Islamic Family Law Enactment.<sup>31</sup> The inheritance system that is generally used is faraid law whose implementation is under the supervision of the Sharia Court. This system is more structured than Indonesia because it has clear legal institutions in its implementation. Malaysian civil law has a position that is not much different from civil law at the time of colonization in Malaysia. The difference lies only in terms of its promulgation. So currently Malaysian civil law has the highest authority compared to sharia-based laws. Civil law also allows the civil court to settle appeals from the sharia courts.

The scope of Islamic law is limited only to family law issues. However, in inheritance in Malaysia, there is often confusion about where and how the estate can be settled. So that in Malaysia itself there are several different institutions that manage and complete the distribution of inheritance. In the process of distributing inheritance in Malaysia, the heirs must first identify the category of inheritance property of the heir because each category has a different place of application.<sup>32</sup> Things that need to be audited by heirs such as large inheritances whose value exceeds RM 2,000,000 or assets that have a will. This property follows the provisions of the Probate and Administration Act 1959 and the procedure for recognising provisions from the civil courts (*Rules of Court*, 2012) and settled in the civil high court. The applicant will register himself as an administrator, record all assets, and obtain a faraid certificate. Small estates include immovable property (land/building) or a combination of immovable property and movable property with a total value exceeding RM 2,000,000 without a will. Small inheritances follow the provisions of the 1955 Small Inheritance Deed in their distribution and are settled to the land official or small inheritance distribution unit carried out by its employees to be divided in accordance with Sharia law. Compact inheritance includes assets that only consist of transfer assets (such as cash, stocks, bank savings) with a value that does not exceed RM 600,000. Simple Puska property follows

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<sup>30</sup> <https://asiasociety.org/education-southeast-asia?UTM> accessed on Tuesday, May 5, 2026, at 10 a.m. 36

<sup>31</sup> Syailendra Sabdo Djati Ps, *ASAS IJBARI DALAM HUKUM WARIS ISLAM DAN IMPLIKASINYA TERHADAP PENOLAKAN WARIS*, 3, no. 1 (2025).

<sup>32</sup> Suripto Bero dkk., *PERBANDINGAN SISTEM PEMBAGIAN WARIS DALAM HUKUM INDONESIA DAN MALAYSIA*, t.t.

the Amanah Raya Corporation Act 1995 and an application is submitted for the distribution of movable property whose value is below RM 600,000.<sup>33</sup>

In Malaysia, there is a division of legislative power that separates the administrative aspects that come from the central or Federation and the sharia legal aspects mandated to each region. Although the administrative process is often uniform under a partnership deed, the details of each inheritance, will, and grant are set forth in each state's law. Like the Islamic will, in order to be in line with sharia law, the Islamic will of 1999 will be used in Selangor. This enactment broadly regulates transferable property, immovable property and regulates specific matters such as mandatory wills (section 27). Although the administration of the power of administration is under the power of association, the sharia courts in each state have exclusive power to decide the relevant matters. Determination of heirs and share rates through issuance of *faraid certificates* and recognition of heirs Confirming the status of hibah (gift during life) and waqf regulated by the enkeman of each state.<sup>34</sup>

Therefore, from the above, it should be remembered that in addition to the enactment that stands side by side with the Federation, the technical process must comply with the three main deeds of association that concern the categorization of assets in order to be administratively valid throughout Malaysia. The distribution of inheritance in Malaysia is generally more strictly followed by the provisions of the sharia without much customary interference in the formal legal aspects. However, in social practice, families can still make additional distributions through grants or wills as a form of family agreement. Thus, the bilateral principle in the Malaysian context is more apparent in the recognition of a balanced kinship system within the framework of Islamic law.<sup>35</sup> Both with such complicated regulations in Malaysia with the concept of kinship, both adhere to the same principle in carrying out the concept of religious moderation. This is proof that the bilateral principle is still relevant and in line with the Malaysian pluralistic society..

Brunei Darussalam merupakan negara kecil di Asia Tenggara dengan jumlah The population is about 450 people and is dominated by ethnic Malays and is the majority group and has the main position in the social system and the state, but there are ethnic Chinese and other immigrant communities.<sup>36</sup> Brunei Darussalam applies Islamic law more comprehensively in its national legal system, including in the field of inheritance. The division of inheritance fully refers to faraid law with direct supervision from the state's

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<sup>33</sup> Resali Muda, "HARTA PUSAKA ISLAM DIMALAYSIA: ANTARA PERUNDANGAN DAN PENTADBIRAN," *Malaysian Journal of Syariah and Law* 4 (Juli 2016), <https://doi.org/10.33102/mjssl.vol4no1.13>.

<sup>34</sup> Aa Sofyan dan Aiman Al-Farabi, *Harmonisasi Fiqh Waris Islam dengan Hukum Positif di Indonesia*, 04 (2024).

<sup>35</sup> Muda, "HARTA PUSAKA ISLAM DIMALAYSIA."

<sup>36</sup> <https://asiasociety.org/education/introduction-southeast-asia?utm>, accessed on Tuesday, May 5, 2026, at 10 a.m. 50

religious institutions. This system makes the implementation of inheritance more uniform and is not much influenced by customary law. The Muslim community of Brunei Darussalam complies with regulations in the distribution of their inheritance as a material law, namely the *Islamic Family Law Order 1999* which regulates the provisions of the division (*furdhul Muqaddarah*), the class of heirs and regulates the provisions of 1/3 of the property that can be bequeathed. Meanwhile, the processer and the resemi institution that completed it referred to the *Sharia Court Order 2000* regulation, one of the contents of which established the Sharia High Court as the facilitator who had the authority to decide Muslim inheritance. However, Brunei Darussalam also provides support with the concept of takkharuj or consensus with non-coercive prisnip as a model instrument for distributing Muslim inheritance. In practice, Brunei has a high level of compliance with sharia provisions, so the distribution of inheritance tends to be more consistent legally.<sup>37</sup> In Brunei's Islamic family law limits the aspects of marriage and divorce so that the distribution of inheritance in Brunei generally follows the doctrine of classical faraid which is inversely proportional to bilateral reforms such as khi in Indonesia. In order to maintain the welfare of the heirs between female heirs from the risk of exclusion by male relatives, the Brunei people tend to depend on grant schemes in writing during their lives. So that the problem that arises is no longer related to legal prurality but the study is only focused on the distribution of inheritance in the Brunei Darussalam community which is more towards consensus as a form of implementation of the concept of religious moderation.<sup>38</sup>

Thailand is a Southeast Asian country that has ethnic diversity. Demographically, the majority of the population comes from ethnic Thais who dominate various strategic systems in Thailand. In addition, there are also ethnic minorities such as Chinese, Malays in the South and mountainous ethnicities such as Karen, Hmong, and Akha in the North<sup>39</sup>. The inheritance system for Muslims in Thailand is specifically regulated through *the Islamic Law on Family and Inheritance of 1946* which contains marriage, divorce and inheritance. The implementation of this law is territorial, with only limited enforcement in four southern provinces: Pattani, Narathiwat, Yala, and Satun. In substance, Islamic law is applied as a substitute for the provisions of the *Civil and Commercial Code* in the courts of first instance for Muslim parties, except for provisions regarding the age limit of inheritance.<sup>40</sup> The inheritance system in Thailand, especially for Muslim families in the South, is a

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<sup>37</sup> Neng Sarah, *Dialektika Fiqih Klasik dan Kompilasi Hukum Islam dalam Ahli Waris Pengganti: Menuju Rekonstruksi Hukum Kewarisan Islam*, 05, no. 01 (2026).

<sup>38</sup> Zezen Zainul Ali dan Mega puspita, *pembaharuan hukum keluarga islam di asia tenggara dari negara mayoritas smpai minoritas muslim* (Jejak pustaka, 2023).

<sup>39</sup> [https://en.wikipedia.org/wiki/Southeast\\_Asia?utm\\_source=](https://en.wikipedia.org/wiki/Southeast_Asia?utm_source=) accessed on Tuesday 5 May 2026, at 11.13 am

<sup>40</sup> Mada O. Puteh dan Phaosan Jehwae, "Family Law Enforcement Problems and Islamic Heritage in Thailand," *Al Hurriyah : Jurnal Hukum Islam* 6, no. 2 (2022): 91, <https://doi.org/10.30983/alhurriyah.v6i2.5053>.

manifestation of the political dynamics of the law that demonstrate pluralism in a Buddhist-majority society. Since the 1932 political transformation into a constitutional monarchy, the Thai government has allowed Muslims in the provinces of Pattani, Narathiwat, Yala, and Satun to apply Islamic civil law, including in matters of inheritance. The concept of inheritance for Muslims in Thailand, particularly in the South, does recognize and use the faraid system, but its application is very flexible and influenced by the country's legal policies. In the judicial mechanism, the case of the heirs is decided by a **Datok Qadi** who sits with the court judge.<sup>41</sup> Datok Qadi has full authority to decide cases based on sharia principles, where the decision is absolute, final, and cannot be appealed. There are details of how the faraid system and other methods are applied in the region, For families whose members are all Muslims, the distribution of inheritance can be done through the option of Islamic law (faraid). The community usually asks for a fatwa from the local Islamic Religious Council regarding the distribution of property based on the provisions of sharia. In the faraid system, there are normative limitations that prohibit inheritance between Muslims and non-Muslims based on the hadith of the Prophet. Therefore, for interfaith families in Thailand, the pure faraid system is often considered difficult to provide justice for non-Muslim family members. Hambatan penerapan waris di Thailand terdapat pada Masyarakat yang berbeda agama.

This model is the most dominant in which families are given the freedom to choose their legal options, whether Islamic law, state law, or customary law. In the context of interfaith families, grant and testamentary instruments are often used as legal solutions to overcome faraid normative restrictions, which prohibit inheritance from other religions, in order to maintain family harmony. This pattern shows the institutional synergy between the Civil Court and the Islamic Religious Council. Courts often request and consider the fatwas of the Islamic Religious Council before deciding war cases involving Muslim citizens. There is a competition for influence between religious norms and state norms or customs. This is clearly seen in Songkla through the implementation of the "Covenant Law," where religious leaders suppress compliance with sharia law with the support of social sanctions for those who disobey.

Therefore, the most dominant pattern used is the optional pattern, where the family prefers to use a grant or will instrument. This method is considered a legal solution to ensure that all family members (including non-Muslims) continue to receive a share of the property without violating strict religious principles, while maintaining family harmony. This gap provides that consensus as an instrument of religious moderation is a deterrent in

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<sup>41</sup> Puteh dan Jehwae, "Family Law Enforcement Problems and Islamic Heritage in Thailand."

dealing with dynamics that arise in society.<sup>42</sup> Although the faraid system remains the legal basis for Muslims, the Thai government allows for legal pluralism so that people can choose the mechanism that best suits their family's needs. The recognition of freedom in carrying out religious practices in several areas of a therapeutic nature in Thailand is perhaps one of the proofs of the existence of a form of moderation that lives in Thai society.

### **Legal Analysis and Social Relevance**

A legal analysis of bilateral principles in Islamic heritage shows that this concept has an important position in the effort to re-understand the structure of kinship relations more comprehensively. In classical Islamic law, inheritance has been regulated in detail through faraid provisions sourced from the Quran and hadith. However, in the development of contemporary Islamic law studies, the bilateral principle is seen as an approach that emphasizes balanced recognition of the paternal and maternal lineages without eliminating the basic provisions of Islamic law. From a juridical perspective, the bilateral principle does not conflict with the basic principle of Islamic inheritance law, since basically Islam has recognized the existence of heirs from both sides of the family.<sup>43</sup> The difference lies more in the emphasis on analytical and interpretive approaches in understanding the structure of inheritance. Therefore, bilateral principles can be positioned as a methodological approach to understanding inheritance law more broadly and contextually, rather than as a substitute for the well-established faraid provisions.

Sociologically, the application of bilateral principles has strong relevance in Southeast Asian societies which are pluralistic and have diverse kinship systems.<sup>44</sup> In some regions, the family structure is not only dominated by the patrilineal line, but there is also a matrilineal system or a balanced bilateral system. This condition makes the bilateral principle more acceptable because it is in accordance with the social reality of the community that prioritizes family relations from both parties. In addition, bilateral principles also contribute to strengthening the value of social justice in the family. Another social relevance can be seen in efforts to reduce potential conflicts in inheritance distribution. With a more inclusive approach to both lineages, bilateral principles can help create a more harmonious and family-based inheritance distribution process. This is in line with the values of maqashid al-sharia which emphasizes the benefit, justice, and protection of family relationships.

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<sup>42</sup> Meydina Dwi Aripah et al., 'COMPARISON OF INHERITANCE ARRANGEMENTS FOR NON-MUSLIM HEIRS IN INDONESIA AND MALAYSIA', *Notary* 12, no. 2 (2019): 883–99, <https://doi.org/10.14710/nts.v12i2.29133>.

<sup>43</sup> Muchlis Samfrudin Habib, *Sistem Kewarisan Bilateral Ditinjau Dari Maqashid Al-Syari'ah*.

<sup>44</sup> Infitahatun Nimah dkk., *Penerapan Asas Kebangsaan dalam Penetapan Status Kewarganegaraan Ganda di Indonesia Menurut Hukum Perdata Internasional*, 3 (2025).

By looking at the Southeast Asian region such as Indonesia, Malaysia, Brunei Darussalam and Thailand which have a plurality of religious people, it turns out that the issue of religious conflict can be mitigated by mutual tolerance in religion. Indonesia with a strong customary system, as well as the pluralism found in Malaysia and Brunei Darussalam as well as the issue of different religions of heirs in Thailand are complex issues in the Practical model of inheritance distribution in Southeast Asia. So that countries with the majority of Muslims do not impose Islamic principles to be imposed by force, but are given breadth to other religions to practice their respective religions both in the kinship model so that by carrying out the model of bilateral principles as happened in Indonesia, Malaysia, Brunei Darussalam and Thailand become an alternative solution to maintain harmony between religious people. Thus, it can be concluded that the bilateral principle not only has theoretical value in the study of Islamic inheritance law, but also has a real contribution to building a more just, moderate, and in accordance with the social development of society in Southeast Asia.

### Conclusion

Based on the discussion of the bilateral principle as the moderation of inheritance rights in Southeast Asia, it can be concluded that the bilateral principle is an approach in Islamic inheritance law that emphasizes balanced recognition of the lineage of the fathers and mothers. This principle does not contradict Islamic inheritance law, but serves as a contextual approach in understanding and implementing the values of justice in the inheritance system. The inheritance system in Southeast Asia shows the existence of a conflicting model of inheritance system such as the diversity of legal applications, ranging from a pluralistic system in Indonesia, a more structured system in Malaysia, to a more uniform and sharia-based system in Brunei Darussalam, as well as the existence of teritorial regulations in Southern Thailand and the issue of religious differences between heirs. These differences are influenced by the historical, cultural, and legal system factors of each country, but they still have similarities in making Islamic law the main basis for Muslims. With the concept of bilateral principles, it is used as a bridge to connect the principles of Islamic principles (maqashid sharia) with the reality of the Southeast Asian Community.

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