



Development and Practice of Islamic Law Codification in Southeast Asia

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Abstract: *This article aims to examine the development of Islamic law codification in Southeast Asia. Southeast Asia is a region with Muslims who have peaceful, tolerant, and moderate characteristics. Islam that developed in Southeast Asia has differences with those in Arabia, Morocco, Turkey, India, Pakistan, Uzbekistan, and China in terms of culture and customs. The main question that will be answered in this article is how the codification of Islamic law developed in Southeast Asia. The study uses empirical legal juridical studies with an approach to the social history of Islamic law. The article concludes that from the perspective of Islamic legal history, the development of legal codification has experienced three phases, namely: the kingdom, colonialism, and post-colonialism. Countries with a Muslim majority, such as Indonesia, Malaysia, and Brunei Darussalam, have experienced quite significant development, while countries such as Thailand, the Philippines, and Singapore have not experienced any significant development, and countries such as Cambodia, Vietnam, and Myanmar tend to have no development. In addition, Islamic law that developed in Southeast Asia accommodates local values and customs that become a new identity or "Malay Islam" and are different from other regions.*

Keywords: *Legal Codification, Southeast Asia, Malay Islam, History of Islamic Law*

Abstrak: Artikel ini bertujuan untuk mengkaji perkembangan kodifikasi hukum Islam di Asia Tenggara. Asia Tenggara merupakan wilayah dengan pemeluk Islam yang memiliki karakteristik yang damai, toleran dan moderat. Islam yang berkembang di Asia Tenggara memiliki perberbedaan dengan seperti di Arab, Maroko, Turkiye, India-Pakistan, Uzbekistan sampai ke Cina dari aspek budaya dan adat. Pertanyaan utama yang akan dijawab dalam artikel ini adalah bagaimana perkembangan kodifikasi hukum Islam di Asia Tenggara. Studi tersebut menggunakan kajian hukum empiris yuridis dengan pendekatan sejarah sosial hukum Islam. Artikel tersebut menyimpulkan bahwa dalam perspektif sejarah hukum Islam perkembangan kodifikasi hukum mengalami tiga fase, yaitu: kerajaan, kolonialisme dan pasca kolonialisme. Negara-negara yang mayoritas Islam seperti Indonesia, Malaysia dan Brunei Darussalam mengalami perkembangan yang cukup signifikan, sedangkan negara seperti Thailand, Filipina, Singapura tidak mengalami perkembangan yang tidak berarti, dan negara seperti Kamboja, Vietnam dan Myanmar cenderung tidak ada perkembangan. Di samping itu, hukum Islam yang berkembang di Asia Tenggara mengakomodir nilai dan adat lokal yang menjadi sebuah identitas yang baru atau "Islam Melayu" dan berbeda dengan wilayah lain.

Keywords: Kodifikasi Hukum, Asia Tenggara, Islam Melayu, Sejarah Hukum Islam

A. Introduction

Southeast Asia is a region with Muslims who have peaceful, tolerant, and moderate characteristics. This reality is different from Islam, which is different from Arabia, Morocco, Turkey, India, Pakistan, Uzbekistan, and China. If traced in history, the origin of the development of Islam in Southeast Asia originated from Aceh, before finally developing to Java, Banten, Palembang, South Sulawesi, Kalimantan, and Ternate. Azra assessed that Aceh was the main network in Southeast Asia, which then spread to Malacca, Kedah (Malaysia), Brunei Darussalam, Pattani (South Thailand), and Moro (South Philippines).¹ Islam that developed in Southeast Asia is often referred to as "Islam Melayu," which is in the Nusantara region.

According to Hooker, in less than 100 years, Islamic law has experienced rapid development in Southeast Asia, especially in Indonesia and Malaysia. Postcolonial Indonesia, which was colonized by the Dutch, and Malaysia, which was colonized by the British, each influenced the legal system of the colonial country. However, the local characteristics and customary laws of each region were still adopted, which can then be called the "new school" in the development of Islamic law in Southeast Asia. Hooker called the custom as "local Sharia" adapting the reality combined with Wahyu. Local sharia is achieved through the acceptance of legal pluralism and legal hybridization, resulting in the region producing original and unique Islamic law.²

¹R. Powell, "Evolving Views of Islamic Law in Turkey," *Journal of Law and Religion* 28, no. 2 (2013), 467-487; Azyumardi Azra, "Cultural Pluralism in Indonesia: Continuous Reinventing of Indonesian Islam in Local, National and Global Contexts," *Asia-Pacific Journal on Religion Society* 2, no. 2 (2018).

²MB. Hooker, "Introduction: Islamic Law in South-East Asia," *Studia Islamika* 10, no. 1 (2003). M.B. Hooker, Southeast Asian Shari'ahs, *Studia Islamika* 20, no. 2 (2013); Siti Musawwamah, Muhammad

Islam plays a very important political role in Southeast Asian countries, where governments that have been in power since independence have a vested interest in influencing the trajectory, content, hermeneutics, and style of the legal traditions of their Muslim citizens and aligning them with the broader policy goals of the state. Islamic law not only developed substantively, but also with the establishment of a state-approved bureaucracy for the administration of law for Muslims. These bureaucratic institutions are the main instruments for countries in Southeast Asia to develop Islam in each region.³

Islamic law is experiencing dynamic development in the Southeast Asian region. Islamic law is revealed in various forms of legal paths that are in accordance with the evolving needs of today. This dynamism makes it relevant in facing today's challenges. Islamic law has been implemented in various forms and regulatory channels that are in accordance with the problems of the Islamic world. However, the rule is still within its basic framework, which is to compile the family system and subsequently the human social system based on Islamic law. Rather, it is this dynamic that makes it eternal and relevant to continue to move forward in facing today's challenges. Islamic law established by the state is dynamic with social and customary realities such as marriage, divorce, and the rights of women and children, especially in Southeast Asia.⁴

The term Islamic law is a translation of the word '*al-fiqh al-Islami*', which in Western literature is called '*the Islamic Law*', or in looser terms '*the Islamic Jurisprudence*'. The first term is more inclined to Sharia,⁵ while the second is more inclined to fiqh, but both cannot be used consistently.⁶ Likewise, the term Islamic law contains various meanings, namely, fiqh and sharia. Fiqh is a practical law taken from the postulates of *tafsili* (detailed),⁷ While Sharia is a regulation revealed by Allah to man to be guided in relation to his God, to his neighbor, to his environment, and to life.⁸

Apart from the various definitions mentioned above, Islamic law can be stated as *a divine law* that governs all aspects of human life, and does not discriminate between morality and law. It contains the legal aspect of worship, which is the law that regulates the relationship between man and God, and the aspect of *muamalah* law, which is the law that regulates the relationship between fellow human beings and between humans and their environment. Here, one of the differences between Islamic law, which is divine law, and positive law (legal positivism), which only regulates the

Taufiq, Erie Haryanto, Umi Supraptiningsih, and Maimun, "Resistance to Child Marriage Prevention in Indonesia and Malaysia," *Ahkam* 23, no. 1 (2023).

³Kerstin Steiner, "Branding Islam: Islam, Law and Bureaucracies in Southeast Asia," *Journal of Current Southeast Asian Affairs* 37, no. 1 (2018), 27-56.

⁴Zaini Nasohah, "Dynamics of Islamic Family Law in Facing Current Challenges in Southeast Asia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 1 (2024).

⁵Joseph Schach, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1982), 1.

⁶Ahmad Rofiq, *Pembaharuan Hukum Islam di Indonesia* (Yogyakarta: Gema Media, 2001), 1.

⁷Abd Wahab Khallaf, *Ilmu Usul Fiqh* (Kairo: Dar al-Qalam, 1978), 11.

⁸Mahmud Syaltu, *Al-Islam Aqidah wa Syari'ah* (Cairo: Dar al-Qalam, 1966), 12.

order of society in the relationship between one individual (as a subject of law) and another, or between individuals as citizens and the government or state.⁹

However, today there is a phenomenon that leads to the assimilation between Islamic law and positive law. Islamic law, as a legislated religious law, is a national law. This began when Muslim countries had just been liberated from the colonial period by European countries, and the majority of these Muslim countries applied the laws inherited from the colonizers. However, in the following periods, they carried out *law reform* by making Islamic law with a modern bureaucracy. *This Islamic law reform* mainly starts from the area of personal law and family law, namely the field of marriage and inheritance law. From here, efforts to codify Islamic law emerged.

The codification of Islamic law is very necessary in any country as long as there are Muslims in that country, so that the Islamic law does not lose its effectiveness, especially in a country where Muslims and non-Muslims live together, both as a majority and as a minority. Codification (Dutch: *codificatie*/English: *codification*) is defined as the collection of a number of provisions, regulations, and laws that are compiled into a law book.¹⁰ In *the Great Dictionary of the Indonesian Language*, it is stated that codification is the collection of various provisions into laws or the preparation of laws and regulations. So, codifying means compiling or bookkeeping so that it becomes a law book.¹¹

Sudarsono said that legal codification is the classification of certain types of laws based on certain principles into a standard law book.¹² In practice, codification is translated as "Statute" or *Wet Boek* to distinguish it from "Law" or *Wet*. Codification, which is equated with the product of the law book, has a wider scope than the law. It can encompass certain laws as a whole that are not found in ordinary law. The terms *Wet* and *Wet Boek* in Dutch, which are translated into Indonesian as "Law" or "Book", always refer to the formal form that has been determined in the applicable legislation.¹³

This article uses the method of empirical juridical law analyzed with a historical approach of Islamic law.¹⁴ The history of Islamic law is a legal approach that seeks to identify the stages of legal development by limiting its focus and periodization over time. The historical method emphasizes the process by which human behavior is formed in society, its background, and the factors that influence those realities. In addition, in the context of the history of Islamic law, this kind of study has been

⁹Satjipto Raharjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 1996), 34; Andi Darna, "Perkembangan Hukum Islam Di Indonesia: Konsep Fiqih Sosial dan Implementasinya dalam Hukum Keluarga," *El-USrah: Jurnal Hukum Keluarga* 4, no. 1 (2021).

¹⁰Yan Pramudya Puspita, *Kamus Hukum Edisi Lengkap Bahasa Belanda, Indonesia, Inggris* (Semarang: Aneka Ilmu, 1980), 521.

¹¹Tim Penyusun, *Kamus Besar Bahasa Indonesia* (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2008), 787.

¹²Andi Nuzul, *Membangun Sistem Hukum Nasional dalam Perspektif Masyarakat Pluralis* (Yogyakarta: UII Press, 2010), 63.

¹³Abdurrahman, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Akademi Presindo, 1992), 9.

¹⁴Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2014), 22-44; Peter Mahmud Marzuki, *Metode Penelitian Hukum* (Jakarta: Kencana, 2014), 166.

conducted by Minhaji and Mudhzar, who study Islamic law with a social history approach. This shows that historical perspectives are important in the study of law because they allow context to be taken into account in the determination of law, and the historical perspective also allows for the integration of law with the social and cultural order that emerges in society.¹⁵

B. Purpose of Legal Codification

Legal codification as part of the development orientation in the legal field is projected to realize legal certainty. This was stated by Mertokusumo, as quoted by Andi Nuzul, that the desire for codification was born due to objections caused by legal uncertainty.¹⁶ In the context of the codification of Islamic family law, it is important to do so because if you only refer to classical fiqh books, there will be various variations in its implementation.

As is known, in the field of Islamic law, there are several schools where there are not uncommon striking differences between one school and another. The problem then arises when there is a legal problem in the family field, what school should be used as a basis by the court to decide the problem. This is where legal uncertainty often arises.

Therefore, the codification of law has a place in the genre of legalism that has developed in Europe since the 19th century. This school arose as a reaction to the uncertainty and inconsistency of customary law, so that from that time in Europe, there was an attempt to standardize the law by way of codification by compiling all the laws completely and systematically into a code. Efforts to codify the law began in France in the late 18th century, later emulated by the rest of Europe. In the Netherlands, legal codification has also been held since 1838, marked by the birth of *the Burgerlijk Wetboek (BW)*, and in Indonesia, legal codification emerged with the birth of the Criminal Code of Indonesia (KUHP).¹⁷

The codification of the law aims to; *first*, achieving unity and uniformity of law (*rechtseenheid/rechtunificate*), meaning that codification allows for unification, i.e. applying one kind of law to the entire community, for example, the Criminal Code of Indonesia (KUHP); *second*, achieving legal certainty (*rechtssicherheit/rechtzakerheid*), meaning that through codification or legal bookkeeping the community has guidelines on what actions cannot be punished, so that the authority of the state ruler can be avoided, even eliminated. *Third*, simplifying the law, which means the beginning of the codification of various patterns, which is a direct result of the place and level of

¹⁵Mattulada "Studi Islam Kontemporer: Pendekatan Sintesis, Historis, Sosiologis dan Antropologis" Menelaah Fenomena Keagamaan, Taufik Abdullah and M. Rusli Karim, *Metodologi Penelitian Keagamaan: Sebuah Pengantar* (Yogyakarta: Tiara Wacana, 1989), 7.

¹⁶Nuzul, *Membangun Sistem Hukum Nasional*, 64.

¹⁷Nuzul, *Membangun Sistem Hukum Nasional*, 63.

progress of society, as a direct result of the place of guidelines that include various legal elements that are the measure of justice.¹⁸

In practice, these three goals go hand in hand because they are an inseparable whole. This means that if one of them is ignored, then the enforcement of legal codification will not run. In addition, legal codification is also intended to replace the legal system that is still in force.¹⁹ The replacement is based on the consideration that the current law is considered inappropriate or does not reflect the values, identity, and legal awareness of the nation concerned.

Thus, it can be said that the codification of the law is intended to simplify the law in order to create unity, uniformity, and legal certainty. In addition, under certain conditions, legal codification aims to change the legal system from the old system to the new system.

However, in reality, written law or codification is a currency that contains two. On the one hand, it has several goals that have positive value; on the other hand, it has a negative aspect, namely, the nature of the law being static. This means that with the publication of legal regulations in the form of codification, it is not easy for the law to keep up with dynamic changes in society.²⁰

C. The Practice of Codification of Islamic Law in the Archipelago

Codification of Islamic law in Muslim countries such as the Middle East, North Africa, South Asia, and Southeast Asia, including Indonesia, experienced development after the colonial era. Post-colonialism was marked by independence from colonialism and the formation of a nation state that was no longer in the form of a kingdom that adhered to an absolute monarchy system. There are several challenges faced in the process of codifying Islamic law, namely, aligning the concepts of fiqh with social conditions and modern developments in each country.²¹

JND. Anderson divides the renewal of Islamic law in Muslim countries into three forms, namely (1) a country that still considers sharia as a basic law and can still be fully applied, (2) a country that cancels sharia law and replaces it with a completely secular law (Western law) and (3) a country that takes the path of compromise between sharia and Western law.²² Taheer Mahmud stated that there are three groups of Muslim countries related to the application of Islamic family law, namely (1) countries that have implemented family law and marriage law from the various sects that it adheres to, and have not changed, (2) countries that have changed their total family law and marriage law with modern law, regardless of their religion and (3)

¹⁸Andi Nuzul, *Membangun Sistem Hukum Nasional*, 64; Pipin Syarifin, *Pengantar Ilmu Hukum* (Bandung: Pustaka Setia, 1999), 226

¹⁹Nuzul, *Membangun Sistem Hukum Nasional*, 64.

²⁰Pipin Syarifin, *Pengantar Ilmu Hukum*, 226.

²¹Tarek Badawy, "The General Principles of Islamic Law as the Law Governing Investment Disputes in the Middle East," *Journal of International Arbitration* 29, no. 3 (2012), 255-267; Zaini Nasohah, "Dynamics of Islamic Family Law in Facing Current Challenges in Southeast Asia."

²²JND. Anderson, *Islamic Law in The Modern World*, translated by Machnun Husain (Yogyakarta: Tiara Wacana, 1994), 100-101.

countries that have implemented Islamic family law and marriage law that have been reformed with various modern legislative process.²³

Muslim countries that belong to the first group include Saudi Arabia, Qatar, Yemen, and Bahrain. In these countries, Islamic family law based on their respective sects is traditionally applied without codification and legislation.²⁴ Then the countries that belong to the second group include Turkey and Albania. Both Muslim countries have abandoned Islamic law and applied modern Western law, i.e., the Civil Code adopted in this country, to replace Islamic law. Turkey did the above after the fall of the Ottoman Caliphate by applying the *Swiss Civil Code* in 1926.²⁵ Then, Muslim countries are included in the third group, which is generally Muslim countries in South and Southeast Asia. In these countries, both majority and minority Muslims legislate and codify Islamic family law.²⁶

By understanding the above description, it can be concluded that countries that are included in the Malay or Southeast Asian region are reforming Islamic family law by means of a compromise between Western law and Islamic Sharia. The compromise lies in terms of legislation imitating the Western approach, while the legal material is still taken entirely from Islamic law, even though the law has been formulated in such a way by the imams of the school. From here, the term legal codification emerged. Legal codification is basically a form of reform efforts in the field of law, especially in the field of Islamic family law in the Malay archipelago.

The practice of codifying Islamic law in Southeast Asia can be divided into three periods, namely (1) the era of Islamic kingdoms, (2) the colonial era, and (2) the era of independence.

1. Islamic Kingdoms Period

Experts say that the Islamic kingdoms of the Malay Archipelago have strictly enforced Islamic sharia in all fields, including Islamic family law. Antoni Reid mentioned that Islamic lawsuits over the behavior of Southeast Asians reached their peak in the first half of the 17th century. Although it is difficult to measure people's commitment to the teachings of Islam, there is ample evidence of this obedience in those years. Currently, the government makes the standard Islamic teachings a test of the loyalty of its citizens.²⁷

Conditions like this occur in the kingdoms of Aceh, Ternate, Banten, Mataram, Makassar (Gowa), Pattani, and Kedah. Although the power of the kings (Sultans) in these kingdoms was absolute, it is surprising that there is so much evidence of the implementation of the sharia or the law of Allah in their kingdoms. In addition to the chronicles that record that a number of pious kings imposed Islamic laws on certain

²³Taheer Mahmud, *Family Law Reform in The Muslim World* (Bombay: Tripathi, 1972), 3.

²⁴Mahmud, *Family Law*, 3-4.

²⁵Mahmud, *Family Law*, 5-6.

²⁶Mahmud, *Family Law*, 7.

²⁷Antoni Reid, *Southeast Asia in the Age of Commerce 1450-1680*; Leirissa and P. Soemitro, *Southeast Asia in the Age of Commerce 1440-1680*, Vol. 2 (Jakarta: Yayasan Obor Indonesia, 2011), 212.

matters, foreign observers who visited Southeast Asia at that time confirmed this in their reports. They also mentioned that the Islamic law applied in the Islamic kingdoms of the Malay archipelago refers to the Shafi'i madhhab.²⁸

However, the Islamic kingdoms in the Malay Archipelago throughout the 17th century developed sharia courts that functioned to carry out Islamic laws to be obeyed by their Muslim citizens. Even in the case of Aceh, there are two types of sharia courts: one for personal violations related to *budiyah*, such as prayer, fasting, and religious orthodoxy; and another for family law, such as marriage, divorce, and inheritance. Antoni Reid added that it is likely that this also happens in other Islamic kingdoms, such as in Banten, Pattani, and Ternate.²⁹

However, the enactment is based on Islamic law that has been codified or still taken directly from various classical fiqh books; this is still a problem that needs to be discussed. There are strong indications that the codification of Islamic law in the kingdoms of Southeast Asia has been codified into the form of a statute book. This can be seen from various kinds of royal laws mentioned by historians, for example, the codification of Islamic family law contained in the Trengganu (Malaysia) inscription written in the Jawi script, containing a short list of ten rules, and those who violate them will be punished. In addition, there is also a short legal rule book, one of which is *the Qanun Law Treatise* or the *Malacca Short Law book*, which contains the rules of Islamic Civil and Criminal Law.³⁰ Then, in Brunei, it is also known that Islamic sharia has been codified into Qanun Brunei. The *Brunei Qanun was written during the reign of Sultan Hassan (1605-1619 AD)*, which was perfected by Jalilul Jabbar (1619-1652 AD).³¹

Likewise, in the kingdom of Aceh, it is known that there is a Law of the Kingdom of Aceh. This law is in the form of a book of Islamic law (fiqh) written by Abdul Rauf al-Singkili under the name *Mir'at al-Thullab* at the request of one of the Sultans of Aceh. This book is compiled based on or refers to several classic books, such as *Fath al-Wahhab*, *Fath al-Jawab*, *Thuhfat al-Muhtaj*, *Nihayah al-Muhtaj*, *Tafsir al-Baidhawī*, and others.³² According to Azyumardi Azra, the book *Mir'at al-Thullab* became a handbook for scholars in other Islamic kingdoms of the archipelago (Indonesia).³³

During the Aceh kingdom, the Aceh Darussalam Sultanate Law was codified, namely the *Tazkirāt al-Ṭabaqāt al-Qanūn al-Syar'ī* of the Aceh Kingdom. This manuscript was compiled by a scholar, namely *al-Syaykh Syams al-Baḥr*, during the reign of Sultan 'Alī Mughāyat Syāh (1514-1530 AD). The *Tazkirāt al-Ṭabaqāt* contains 21 articles that regulate the rights and obligations of the government and the people.

²⁸Reid, *Southeast Asia*, 212

²⁹Reid, *Southeast Asia*, 215.

³⁰Khoiruddin Nasution, *Hukum Perdata Islam (Keluarga) Indonesia dan Perbandingan Hukum Perkawinan di Dunia Islam* (Yogyakarta: ACAdemia+TAZZAFA, 2009), 100-101.

³¹Alfi Wahyu Zahara and Muhammad Hilmi Ajjahidi, "Family Law Dynamics on Divorce Arrangements in Indonesia and Several Muslim Countries in the World," *Tahkim* 5, no. 2 (2023).

³²Azyumardi Azra, *Jaringan Ulama: Timur Tengah dan Kepulauan Nusantara Abad XVII & XVIII* (Jakarta: Kencana, 2007), 246.

³³Azyumardi Azra, 247.

These articles describe the vision and policies of state development, social, economic, and religious control. Articles 7, 8, and 13. The second constitution of the Aceh Darussalam Sultanate, called *Adat Meukuta Alam*, was compiled by scholars during the reign of Sultan Iskandar Muda (1607-1636 AD). The third is, *Syarḥ Taẓkirah Ṭabaqāt*, also the constitution of the Sultanate of Aceh Darussalam. This manuscript was written by Teungku di Mulek during the reign of Sultan 'Ala' al-Dīn Maṣṣūr Syāh (1858-1870 AD).³⁴ However, of the three laws, the most famous is the *Qanun al-asyi*, because it was made during the reign of Sultan Iskandar Muda, the most famous sultan, and Aceh experienced its glory at that time.

In line with that, the period of Islamic law during the kingdom period in Indonesia is a foundation that will influence the period afterward. During the kingdom period, religious advisors such as qadhi contributed to the development of Islamic law, namely, strengthening the integration of *sara'* (Islamic law) with custom (*adat*). The success of the internalization of Islamic law in the Syafi'i school of thought is evident in almost all areas of Islamic law, such as marriage, divorce, reconciliation, inheritance distribution, and zakat management.³⁵

In the Southern Philippines, according to historical records, King Baguinda was a prince from Minangkabau (West Sumatra). He arrived in the Sulu Islands ten years after successfully preaching Islam in the islands of Zamboanga and Basilan. As a result of his hard work, Kabungsuwan Manguindanao, the famous king of Manguindanao, finally embraced Islam. From here, the beginning of Islamic civilization in this region began to be pioneered. At that time, the system of government and legal codification was known, namely the Manguindanao *Code of Law or Luwaran*, which was based on Minhaj, Fathu al-Qariib, Taqriib al-Intifa, and *Mir'at al-Thullab*.³⁶

Based on the description above, it can be concluded that the Malay territory of the archipelago is still in the form of an Islamic kingdom, known to have codified Islamic law, for example the Malacca Law or *the Malacca Qanun Treatise*, the *Brunei Qanun*, the Aceh Kingdom Law and the Manguindanao *Law or Manguindanao Code of Law*. It is also stated that generally, the law is inspired by classical Islamic jurisprudence books that are of the Shafi'i school.

2. Colonial Period

The Malay Archipelago is at least divided into three European colonies, namely the Indonesian territory, now colonized by the Dutch, the Malaysian, Brunei, and Singapore territories, which are colonized by the British, and the Southern Philippines territory, which is colonized by Spain. The Southern Thailand region (Pattani) was never colonized by Europeans, but was controlled by the Thai nation, which is now

³⁴Jabbar Sabil, "Fiqh and Siyasa Model of Integration: A Study of The Constitution of The Sultanate of Aceh Darussalam," *Legitimasi* 13, no. 1 (2024).

³⁵Ridhwan Ridhwan and A Nuzul A Nuzul, "The Petta Kalie's Contribution in The Development of Islamic Law during The Kingdom of Bone," *Samarah* 5, no. 1 (2021).

³⁶Rijal Mumazziz Z, Duet of Scholars of Mahdhab Shafi'i in the XIV Century Nusantara, *Mabahits; Journal of Family Law* 2, no. 1 (2021).

Thailand. In this context, the practice of codification of Islamic family law will be discussed.

In the case of the Dutch colonizers in Indonesia, although they wanted the area they controlled to use Dutch law, they could not run it effectively. They then allowed the original institutions in the Islamic society to continue to run, so that in the Jakarta Statute of 1624, it was stated that inheritance for native Indonesians who were Muslims must use Islamic law. Based on this, the VOC government (*Vereenigde Oost Indische Compagnie*) asked D.W. Freijer to compile a *Compendium* containing the law of marriage and Islamic inheritance law known as *the Compendium Freijer*.³⁷

This position of Islamic Law continued to be so for approximately two centuries. When the Dutch really controlled the Indonesian archipelago, their attitude towards Islam changed. There was a systematic attempt to marginalize Islamic law with the repeal of *the Freijer Compendium* in 1828. The marginalization became even more evident when the Dutch government issued Stbl 1937 No. 116, which contained the revocation of the authority of the Religious Court.³⁸

Similar to Indonesia, which was colonized by the Dutch, in Malaysia, Brunei, and Singapore, the British colonizers recognized the existence of Islamic marriage and divorce laws by introducing *the Mohammedan Marriage Ordinance*, No. V of 1880 to be enforced in the strait countries (Penang, Malacca, and Singapore) which contained: CHAPTER I: Registration of Marriage and Divorce (Articles 1 to 23) CHAPTER II: Inauguration of Qadi (Articles 24 to 26), CHAPTER III: Property in Marriage (Article 27), and CHAPTER IV: General Provisions (Articles 28 to 33).³⁹ Meanwhile, for the allied Malay countries (Perak, Selangor, Negeri Sembilan, and Pahang) the *Registration of Muhammadan Marriages and Divorces Enactment* 1885 was enforced. For the non-allied Malay countries or under the auspices of Kelantan, Trengganu, Perlis, Kedah, and Johor, the *Divorce Regulation of 1325 H /1907 AD* was enforced.⁴⁰

Based on the above description, it can be concluded that when the Malay territory of the archipelago was under colonial rule or colonial rule, there was a strong indication that Islamic family law was still implemented. Both the Netherlands and Britain recognized the application of Islamic family law in their respective colonies. Nevertheless, there is little difference between the Netherlands and the British; if the Dutch finally castrated Islamic law in its colony (Indonesia), then the British still recognized it.

In the context of legal codification, the colonizers, both British and Dutch, issued regulations that affirmed the enforcement of Islamic law for Muslims in their respective colonies. However, in the case of Dutch colonialism in Indonesia, there are strong indications that in the last days of their rule, their attitude began to change,

³⁷Nasution, 20.

³⁸Nasution, 21

³⁹Nasution, 111.

⁴⁰Nasution, 125.

namely, there was a strong desire to abolish Islamic law, including family law, by abolishing the authority of the Religious Court.

3. Independence Period

In this section, it can be classified into three subs, namely (1) countries with a Muslim majority population, (2) countries that are Muslim minorities, but have autonomous rights:

a) Development of Islamic Law in Muslim-Majority Countries

1) *Indonesia*

After independence, the Indonesian government tried to make efforts to improve the field of marriage and family through the stipulation of Law No. 22 of 1946 concerning Marriage Registration, Talak, and Referral for the Muslim community. In the implementation of the law, the Instruction of the Minister of Religion No. 4 of 1946 was issued, which was intended for Marriage Registrar Employees (PPN). The instruction in addition to containing the implementation of Law No. 22 of 1947 also contains the necessity of VAT to try to prevent the marriage of minors, explain the obligations of polygamous husbands, seek peace for problematic couples, explain ex-husbands to ex-wives and children if they are forced to divorce, during the iddah period so that VAT seeks to rerefer divorced couples.⁴¹

On December 22, 1973, the Minister of Religious Affairs represented the government in bringing the concept of the Marriage Bill approved by the House of Representatives into the Marriage Law. So on January 2, 1974, the President ratified the law and promulgated it in State Gazette No. 1 of 1974 dated January 2, 1974. In 1967-1968, two new marriage bills were discussed in the Indonesian parliament. In July 1972, a new bill was submitted to the House of Representatives. After 18 months of debate, the "Marriage Act" was enacted on the second day of January 1974. In the preamble to this new law, it reads that this regulation was made with the philosophy of Pancasila and the ideals to advance a National Law. However, Muslims are not satisfied with the results. Therefore, efforts towards the codification of marriage law continue to be made. At its peak, when the Compilation of Islamic Law (KHI) was born, related to marriage, inheritance, and waqf, Law No. 17 of 1999.⁴²

Until now, efforts towards the codification of Islamic law in Indonesia have only reached the birth of KHI. KHI has become the main reference by judges, clerks, lawyers, and others in resolving marriage, inheritance, and waqf cases in Indonesia. However, the presence of KHI is not satisfactory. The reason is that the KHI was issued based on the Presidential Instruction (Inpres), while the Presidential Instruction is unclear about its position in the Indonesian legislative hierarchy. This concern is justified because if one day the incumbent president wants to revoke the Presidential Instruction, then it is possible.

⁴¹Wirjono Projodikoro, *Hukum Perkawinan di Indonesia* (Bandung: Sumur, 1974), 50.

⁴²Abidin Nurdin, "Dialectics in Relationship Between Religion and State: A Correlation of Religious Principles and Ideals of Law in Indonesia," *al-Bayyinah* 4, no. 1 (2020).

By understanding these conditions, there was finally a desire to perfect KHI into a kind of Islamic Civil Code that was enforced as an applied law in the Religious Court. The government, through the Directorate of Development of Religious Justice Bodies, has also prepared a bill on "applied law" in Religious Courts. In the framework of this bill, comparative studies have also been carried out in Malaysia, Singapore, Pakistan, Saudi Arabia, and Egypt. This bill is now being debated publicly and, in time, will be discussed in the House of Representatives before becoming law. It is hoped that the government, through the Directorate of Development of the Religious Judicial Agency, can give confidence to the House of Representatives that this bill is an urgent need for justice seekers and legal certainty in Indonesia.

Thus, the codification of Islamic law through legislation has become a policy in Indonesia, following what the late Hazairin and other Islamic figures once theorized, that the future of Islamic law will depend a lot on this policy. Policies like this are also carried out by almost all countries with a Muslim majority population, both in the Middle East region and in the Asian and African regions.

2) Malaysia

In the early phase of Malaysia's independence, British influence and legal experts were still very strong, but in some state's new laws on the administration of Islamic law had been enacted. This is intended to provide the basis of the constitution and authority to the Islamic Religious Council, the Ministry of Religious Affairs, and the Sharia Court.

The main characteristic of Malaysia's socio-political conditions is that the population is multi-communal, so that very few political decisions take place in the country that are not influenced by the reality of ethnic and religious diversity among the population of approximately 25 million. The legal structure and constitution of the country were created to protect things that can violate the law. The Malaysian sultans are said to be the main protectors of the peninsula's religions, and in the customs of the Malay community, there is a perception of unity between religions, traditional values, villages, and families.⁴³ So it is not easy for the Malays to separate Islam. Malay became an Islamic identity, and Islam was the same as Malay.

After Malaysia's independence, family law reform efforts have covered all aspects related to marriage and divorce, not just marriage and divorce registration as in the previous law. The business was started in 1982 by Malacca, Kelantan, and Negeri Sembilan, which was later followed by other states. The current Islamic marriage law in Malaysia is a marriage law that is in accordance with the provisions of the laws of each state. The family laws include the Malacca Law 1983, the Kelantan Law 1983, the Negeri Sembilan Law 1983, the Federal Territories Law 1984, the Perak Law 1984, the Kedah Law 1979, the Penang Law 1985, the Trengganu Law 1985, the Pahang Law

⁴³Ahmad Fathoni, "The Social History of Islamic Law in Southeast Asia; Study of the Enforcement and Codification of Islamic Law in Malaysia," *Jurnal As-Syari'ah* 17, no. 1 (2015).

1987, the Selangor Law 1989, the Johor Law 1990, the Sarawak Law 1991, the Perlis Law 1992, and the Sabah Law 1992.⁴⁴

3) Brunei Darussalam

As in the petition submitted to the Sultanate of Brunei to the whole of British Crown on July 2, 1986 in which the petition contained two demands, of the two petitions only the number one issue was approved by the British and was not followed up with the development of the Shari'a Court, while the second was rejected because its content was contrary to the content of the 1906 agreement. The Shari'a Court of Brunei is only allowed to enforce Islamic law relating to matters of marriage, divorce, and worship (specifically). Meanwhile, issues related to *jinayat* are left to English law based on *the Common Law of England*. Consequently, the rules and legislation in Brunei continue to undergo overhauls.⁴⁵

In Brunei, the introduction of a broad and conservative Sharia Criminal Code that includes hudud punishments, such as cutting off hands and stoning to death, has been encouraged by the monarchical (sultanate) system. The country sees the law as further strengthening the state's ideology of a 'Malay Muslim Monarchy' and thus its own legitimacy. The Sultan has sharply rejected external rights-based criticism and threatened domestic critics with lawsuits, although the implementation of the Law's harsher provisions and penalties has been delayed.⁴⁶

Based on the above description, it can be concluded that the codification of Islamic family law in Malaysia and Brunei has occurred since the early days of the independence of the two countries. This is possible because the two countries do not have historical problems regarding the state's relationship with Islam. Both countries have made Islam the basis of their countries.

Unlike in Indonesia, the codification of Islamic family law has never even been carried out. The government has indeed made efforts to adopt Islamic family law based on fiqh books, then made it into positive laws in the form of laws, such as marriage laws, zakat, inheritance, and others. However, there has never been an attempt to codify it in the form of a Criminal Code.

Efforts to formalize Islamic family law in Indonesia have only reached the compilation stage with the birth of KHI. It is important to emphasize that, from the perspective of the legislative hierarchy and the position of KHI in the legal system in Indonesia, it cannot be called a Charter, because the birth of KHI is only based on the Presidential Instruction. However, in terms of substance and application, KHI can be seen as equivalent to the law. Therefore, there is a strong and systematic effort from Muslims to submit a bill to the House of Representatives to strengthen the KHI into a Law Book.

⁴⁴Nasution, 141.

⁴⁵Alfi Wahyu Zahara and Muhammad Hilmi Ajjahidi, 35-54.

⁴⁶Tim Lindsey and Kerstin Steiner, "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013," *Griffith Law Review* 25, no. 4 (2017), 1-29.

b) Islamic Law in Muslim Minority Countries

1) Thailand

Thailand is a country with a majority Buddhist population. Under the rule of the modern Thai kingdom, in the name of nationalism, many policies of integration and assimilation were imposed by the government on Pattani Muslims. The policy is a fact that they have to adapt to Buddhist values and norms.⁴⁷ Finally, Thai Muslims experience many obstacles to practicing the teachings of their religion, including Islamic law.

History records that Islam has existed in Thailand since the 13th century. Muslims have been active in trade and administration in the kingdom of Thailand. However, in its development, as a minority group, in 2000, the percentage of religions in Thailand was Buddhism (95%), Islam (4%), Christianity (0.6%), and other religions (0.4%).⁴⁸ In Thailand, his government has positively included Islamic law as a legitimate source of personal law for Muslims in the south. So Muslims are governed by two different legal systems, Islamic law and secular law. However, only Islamic law applies to Muslims, especially in resolving marriage and inheritance disputes. Islamic family law has a long history and has been preserved for the advancement and benefit of Muslims, especially in the four Muslim provinces of Thailand.⁴⁹

In Pattani or Southern Thailand, there is no Religious Court because the authority to adjudicate matters relating to family and inheritance is left to a religious judge called *Dato Yutitham*. This is only true in four Muslim provinces in southern Thailand, namely Pattani, Yala, Naratiwat, and Satun. *Dato Yutitham* is usually elected by the imams of the mosque and is directly controlled by the local general court. All decisions issued certainly have legal force, although limited to the province.⁵⁰

The codification of Islamic law, including the family, has been systematically initiated since the 1940s to be implemented in Islamic societies in four provinces. The codification has now been covered in *the Civil Law of Thailand* with regard to family and inheritance. In this case, the content of the sharia is inclusive for adjudicating cases among Muslims. However, the entire system is directly related to Shafi'i fiqh because the majority of Thai Muslims adhere to this sect. Conflicts between Muslims who adhere to different schools cannot be resolved by the existing judicial system, because only those that have been legally codified, even though Dato Yutitham himself was able to overcome them. A systematic codification and its inclusive implementation in Thailand will surely benefit Muslims, as well as the entire society.⁵¹

⁴⁷Arong Suthasasna, *Shariah and Codification: Thailand Experience*, *Shari'ah Law Journal*, 1987, 133.

⁴⁸Sanurdi Sanurdi, "Islam in Thailand," *Tasamuh: Journal of Islamic Studies* 10, no. 2 (2018), 379-390.

⁴⁹Samah Mahamatayuding, et. al., "Muslim Family Law in Southern Thailand: A Historical Overview," *Journal of Muslim Minority Affairs* 37, no. 3 (2017), 1-14; Nasaiz Aziz, et. al., "Child Marriage in Kabang, South Yala, Thailand: Islamic Family Law Perspective," *El-Usrah* 6, no. 2 (2023).

⁵⁰Suthasasna, 141.

⁵¹Suthasasna, 142.

2) Philippines

The colonial influence of the West, such as Spain, Portugal, the Netherlands, England, France, and the United States, that shaped the typology of Southeast Asian Islamic culture further strengthened the plurality of their Islamic character, which was increasingly apparent. The Muslim community of the Philippines, who were members of the Moro Islamic movement community, were the product of the colonial policies of Spain and the United States that determined the fate and treated Muslims as a colonized nation. This long history resulted in the emergence of the heroic character of Filipino Muslims, who were different from other Muslims in Southeast Asia, who were relatively calm and peaceful. Conducting a historiography of Islam in Southeast Asia without involving the cases of Muslims in the Philippines will not find this plurality of character.⁵²

In the study of the "Draft Law on the Administration of Islamic Law 1974" prepared by the Research Staff, and also in the draft of the "Philippine Muslim Individual Code". The law was passed in 1977 with the *Code of Muslim Personal Law of the Philippines* of 1977. This codification was established based on President Ferdinand E. Marcos' Decree No. 1083 on February 4, 1977. This law was amended with the birth of *Executive Order* No. 209 of 1987. Then it was amended again by *Executive Order* No. 227 of 1987.⁵³

Discriminatory treatment of the Muslim minority in the Philippines has been going on for hundreds of years due to the Spanish colonial policy that was very allergic to Islam. Furthermore, the issue of nationality and ethnic minorities is related to national integration, class struggle, and economic deprivation. The identity issues experienced by the Muslim minority in the Philippines in positioning themselves in the process of national integration are caused by several factors, such as history, religion, and the concept of the nation-state. However, in contemporary times, political and economic issues, in addition to religious issues, have emerged as new forces in the issue of Muslim identity in the Philippines.⁵⁴

Thus, it can be concluded that both in the Southern Philippines for Moro Muslims and in Southern Thailand for Pattani Muslims, family law has been applied based on Islamic law. The Thai government has codified Islamic family law imposed on Muslims in Southern Thailand. The results of the codification are an integral part of the country's legal system, or *the Thai Civil Law*.

3) Singapore

Before becoming an independent country, Singapore was included in the Straits Countries of Malaysia. At that time, Islamic family law was recognized as enforceable

⁵²Ajid Thohir, "Historical Overview and Initiating Historiography of Islam in the Philippines," *International Journal of Nusantara Islam* 3, no. 2 (2016).

⁵³Nasution, 166.

⁵⁴Fikri Surya Pratama, "A Historical Overview of Muslim Minority Identity and Positioning in the Philippines," *Tsaqofah* 21, no. 1 (2023), 67-84.

by the British. This law can be said to be a form of codification of Islamic family law in Singapore. This has been described in the discussion about Malaysia.

Since Singapore became an independent country, Muslims in the country have been trying hard to approach the Singapore government to pass a law regulating Islamic personal and family law. This effort was undertaken through representation, both individually and through Muslim organizations, who worked for many years, and it was not until 1966 that the government passed a draft Act of Parliament and accepted *the Administration of Muslim Law Act 1966*. Before the bill was adopted, Muslims from various tribes and sects were given the opportunity to make representations and were asked to appear before the Parliamentary Election Committee to express their views on the law. The Law on the Administration of Islamic Law (AMLA) is an Islamic law. However, this administration is not Islamic Law itself. This Act provides flexible space for the Islamic Religious Council, the Religious Court, and the Islamic Marriage Registrar to establish sharia law.⁵⁵

4) Cambodia, Vietnam and Myanmar

In general, there is not much information that can be obtained about the condition of Islamic law in the three Southeast Asian countries. Most likely, the wrong factor is that the Muslim population in the three countries is very small, so it receives less attention. Muslims in Cambodia, for example, continue to practice Islamic family law like other Muslims in Southeast Asia, especially family law, which includes marriage, divorce, talaq, and inheritance. The implementation of Islamic family law has not been institutionalized, and the material has not been compiled in the form of legislation, let alone in the form of codification. Under such conditions, muslims practice family law in a traditional and individual manner; the same thing happened in Vietnam.

Then, in Myanmar or Burma, the condition of Muslims is very concerning. They were fought, even expelled from their hometowns. The hostile attitude is motivated by historical factors because Muslims in the country are immigrants from Bangladesh. They are known as Rokhi Muslims.

Based on the above description, it can be concluded that in Southeast Asian countries where Muslims are minorities and are not given autonomous rights, Islamic family law is traditionally implemented and is still private. They have no formal legal institutions. Despite this, Singapore's Muslims are a little fortunate because the government pays great attention to its Muslim population; they are given the freedom to practice Islamic law, especially family law. It was even accommodated in the form of *the Administration of Muslim Law Act 1966*. Although it is admitted that the administrative law is still felt to be imperfect.

⁵⁵Sudirman Tebba, *Perkembangan Mutakhir Hukum Islam di Asia Tenggara* (Bandung: Mizan, 1993), 58.

D. Conclusion

The history of the development and codification of Islamic law in Southeast Asia has experienced several phases since the kingdom, the colonial era, and the independence era. Southeast Asia is a different region from other places in the Islamic world, such as the Middle East, North Africa, Turkey, India, Pakistan, and Central Asia. Islam that developed in Southeast Asia is often called Malay Islam, which has peaceful, tolerant, and moderate characteristics. From the perspective of the history of Islamic law, the development of legal codification has experienced three phases, namely: the kingdom, colonialism, and post-colonialism. Countries with a majority Muslim population, such as Indonesia, Malaysia, and Brunei Darussalam, have experienced quite significant development, while countries such as Thailand, the Philippines, and Singapore have not experienced any significant development, and countries such as Cambodia, Vietnam, and Myanmar tend not to experience development. On the other hand, Islamic law that developed in Southeast Asia accommodates local values and customs that become a new identity or "Islam Melayu" and is different from other regions.

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