



## Article History

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# Religion-Based Law Enforcement in Indonesia, Malaysia, and Saudi Arabia: A Comparative Law Analysis

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## Abstract

**This study aims** to analyze and compare the complexity of religious law's implications for law enforcement in Indonesia, Malaysia, and Saudi Arabia, which have a majority Muslim population.

**The study comprehensively analyzed** the literature, maximizing articles and sources relevant to the three countries' patterns, differences and similarities of law enforcement, by summarizing and examining the writings. A comprehensive method is used by outlining legal reforms and public education to ensure that equal rights for religious minorities are substantially respected and protected.

**This novelty** is in the results from previous studies that examined the application of Islamic criminal law in Indonesia, Malaysia, and Saudi Arabia.

**The results** of this study show the complex challenges and potential for protecting the rights of minority citizens in implementing Islamic law in each of these countries. Furthermore, it is mentioned in this study that the linear application of Islamic law in state policy often leads to tensions and resistance between religious principles, human rights principles and internationally recognized law which is currently often accepted by Saudi Arabia through the *ijtihad* system and the dual influence of Sharia and regulations issued by the state. In contrast, Indonesia and Malaysia are considered more flexible by applying two legal systems for Islamic communities and civil society in general.

**The study concluded** by comparing law enforcement activities carried out in the three countries, which revealed why the three countries with the majority of the population of Islam could implement a legal system with diverse impacts.

**Keywords :** Comparative Study; Law Enforcement; Indonesia; Malaysia, Saudi Arabia

## Abstrak

**Tujuan penelitian** ini untuk menganalisa serta membandingkan kompleksitas implikasi hukum agama terhadap penegakan hukum di negara dengan mayoritas penduduk muslim, Indonesia, Malaysia, dan Arab Saudi.

**Metode Penelitian** menganalisa literatur secara komprehensif, penelitian ini memaksimalkan artikel dan sumber yang relevan dengan pola, perbedaan serta kesamaan penegakan hukum dari tiga negara tersebut, dengan merangkum serta meneliti tulisan tulisan tersebut. Metode yang

*komprehensif digunakan dengan menjabarkan reformasi hukum dan pendidikan kepada masyarakat guna memastikan hak yang sama bagi masyarakat minoritas agama agar tetap dihormati dan dilindungi secara substansial*

***Kebaruan*** dalam penelitian ini merupakan hasil pengembangan dari penelitian sebelumnya yang meneliti penerapan hukum pidana islam di Indonesia dan Malaysia, serta penerapan hukum islam yang dijalankan di Arab Saudi.

***Hasil Penelitian*** ini menunjukkan tantangan kompleks serta potensi perlindungan hak hak warga minoritas dalam menerapkan hukum islam dari masing masing negara tersebut. Selebihnya, disebutkan dalam penelitian ini bahwa dengan menjalankan hukum Islam yang linier dalam kebijakan negara sering kali sering menimbulkan ketegangan dan penolakan antara prinsip-prinsip agama, prinsip-prinsip hak asasi manusia dan hukum yang diakui internasional yang saat ini kerap diterima oleh arab saudi dengan melalui sistem ijtihad dan pengaruh ganda dari Syariah dan peraturan yang dikeluarkan negara tersebut. Berbeda dengan indonesia dan malaysia yang dinilai lebih flexibel dengan menerapkan dua sistem hukum bagi masyarakat beragama islam dan masyarakat sipil pada umumnya.

***Kesimpulan penelitian*** diperlukan perbandingan aktifitas penegakan hukum yang dilakukan di ketiga negara tersebut yang menghasilkan alasan mengapa dari ketiga negara dengan mayoritas penduduk beragama islam bisa menerapkan sistem hukum dengan dampak yang beragam.

***Kata Kunci*** : Arab Saudi; Indonesia; Malaysia; Penegakan Hukum; Study Perbandingan

## 1. INTRODUCTION

Sharia law constitutes a legal alternative for countries with a majority Muslim population. In addressing Sharia cases, certain nations continue to implement legal frameworks that contravene human rights principles, encompassing practices such as amputations, flagellation, and capital punishment. These countries are often the subject of international censure, particularly regarding human rights issues, freedom of religion, women's rights, and the expectation of respecting minority rights.

This scenario may indicate the challenge in achieving a harmonious equilibrium between faith-based law enforcement practices and international standards. As articulated in two foundational documents of modern human rights jurisprudence, namely, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the application of capital punishment has been categorically proscribed under the auspices of international human rights treaties. The United States has designated Saudi Arabia as a "Country of Particular Concern" (CPC) because the country has been complicit in a series of egregious violations of religious freedom as defined by the International Religious Freedom Act (IRFA). It is imperative to consider this complicity concerning the ongoing and systematic nature of the violations in question.<sup>1</sup>

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<sup>1</sup> International Religious Freedom Act (IRFA), "United States Commission on International Religious Freedom (Uscirf)," *International Religious Freedom Act (IRFA)*, vol. 1–2, 2024.

Concurrently, Saudi Arabia and other Islamic nations do not object to the incorporation of regulations that contravene social and political rights as fundamental freedoms, as outlined in the UN Charter. In the preamble to the 1994 Arab League Charter on Human Rights, Arab states explicitly condemn acts of racism and Zionism, recognizing them as grave violations of fundamental human rights. Furthermore, Saudi Arabia, a signatory of the Arab League Charter, is subject to regulations stipulating that individuals found guilty of serious crimes deemed to have violated human rights will be subjected to legal proceedings. Their freedom will not be diminished by waiving the right to request forgiveness or leniency. It is evident that the Kingdom of Saudi Arabia, a nation that adheres to Islamic law, exhibits a commitment to human rights that is in contrast to the perceptions reported by Western countries.<sup>2</sup>

According to the study findings on the judicial systems in Indonesia and Malaysia, both nations have established jurisdiction over Islamic law and religious courts. Given the preponderance of Muslims in these two countries, the establishment of specific regulatory frameworks to ensure religious harmony and stability is imperative. Nevertheless, the Islamic law both countries have adopted is not applicable universally; it is binding only for Muslims. Non-Muslims are not subject to the jurisdiction of Islamic law or the jurisdiction of religious courts.<sup>3</sup>

The subsequent study examines the implementation of Islamic law within the jurisdiction of Saudi Arabia. The text expounds on Sharia law's preeminent role in the Kingdom of Saudi Arabia's legal infrastructure. The country has adopted a rigorous implementation of Islamic legal principles, which has implications for various personal, civil, and criminal issues. Contrary to the legal systems of preceding nations, Saudi Arabia employs a law-making process divided into two distinct domains. The initial domain pertains to the Fiqh domain, encompassing Sharia-based legal principles. The domain in question is established and governed by judges, who apply Sharia law following their interpretations. The second domain, *siyasa* (policy), pertains to the issuance of codified laws by the King. The rules of *siyasa* are frequently referred to as regulations (*nizam*) to distinguish them from sharia law. Despite the considerable modernization and industrialization the country has undergone, it has largely maintained its adherence to Sharia law based on the Qur'an and Sunnah. The extent of *siyasa* is determined by the monarch following the prevailing public interest.<sup>4</sup>

Although Saudi Arabia's legal framework appears to contravene international human rights regulations and Western secular judicial and legislative frameworks, the nation has historically demonstrated a commitment to upholding human rights, provided that no egregious offences or

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<sup>2</sup> "League of Arab States, Arab Charter on Human Rights, 15 September 1994," 1994, <https://www.refworld.org/legal/agreements/las/1994/en/10672>.

<sup>3</sup> Muhammad Arafat and Asmuni, "Implementation of Maqashid Al-Syariah in Islamic Criminal Law in Muslim Countries: A Comparative Study in Saudi Arabia, Iran, Malaysia, and Indonesia," *AL-SULTHANIYAH* 14, no. 1 (February 3, 2025): 45–68, <https://doi.org/10.37567/al-sulthaniyah.v14i1.3577>.

<sup>4</sup> Gilang Rizki Aji Putra, "Sistem Peradilan Pada Kerajaan Arab Saudi," *ADALAH: Buletin Hukum & Keadilan* 6, no. 4 (July 5, 2022): 15–30, <https://doi.org/10.15408/adalah.v6i4.26993>.

crimes are committed within its borders. Furthermore, the provision of minority rights in this nation differs from that observed in the preceding two countries. Despite the government's recent implementation of social reforms, including the legalization of women driving and attendance at entertainment events, minority groups continue to enjoy limited rights. Moreover, in some areas of Saudi Arabia, non-Muslims are legally barred from engaging in worship activities in Islamic holy places, including those located in Mecca and Medina.<sup>5</sup>

The subsequent study is also pertinent to the aforementioned two studies. This study examines the Arab Charter, a document the Arab League has endorsed as a benchmark for regulations concerning individual rights. The charter has been the subject of substantial criticism, with detractors asserting that it has not adequately met international targets and standards in all aspects, particularly regarding its utilization of international regulations.<sup>6</sup>

The three aforementioned studies present a series of contradictions, as they all pertain to countries with a Muslim majority. However, the present study seeks to draw parallels between the impact of implementing the Islamic legal system in these countries. The impact is twofold: it is beneficial to only one party and follows the development of international legal standardization.

Considering the aforementioned points, the objective of this study is twofold. Firstly, it facilitates the development of a comparison between legal frameworks and their implementation in the three countries. The efficacy of implementing Islamic legal systems in these three countries will be a focal point of the study. The researcher intends to discuss the impact of implementing Sharia law enforcement in the three aforementioned countries. Finally, given the paucity of comparative studies addressing the challenges and obstacles that frequently receive less attention, the researcher presents the primary challenges encountered by the three countries in enforcing religion-based law and the efforts made by each country to overcome these challenges. The researcher also presents recommendations for the legal systems of the three aforementioned countries.

## **2. METHOD**

This study employed a comparative design to comprehend the intricacies in implementing criminal law enforcement related to violence against religion in three nations. A comprehensive and integrative form of analysis was employed to facilitate the acquisition of pertinent information from a range of relevant text sources, such as journals, books, articles, reports, and legal documents. As posited in the aforementioned book, conducting a comparative law analysis can

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<sup>5</sup> Ahmed Almutawa, "The Arab Court of Human Rights and the Enforcement of the Arab Charter on Human Rights," *Human Rights Law Review* 21, no. 3 (July 1, 2021): 506–32, <https://doi.org/10.1093/hrlr/ngab008>.

<sup>6</sup> Graziella Marinò, "System for the Protection of Human Rights Worldwide with Special Attention to Arab-Muslim Countries. Comparing the Fundamental Rights of Women in Muslim Countries and Saudi Arabia: Introduction of a New Personal Status Law," July 24, 2023, <https://doi.org/10.33774/coe-2023-fbv1w>.

facilitate the examination of the social preconditions of a society regarding specific legal rules. In this particular instance, the focus is on the regulation of Sharia law.<sup>7</sup>

The study shows the development of Alan Watson's theory and ideas on the failure of private law in case management.<sup>8</sup> This study illustrates the validity of the theory that the incompatibility of the use of private law in some areas such as Roman, English and American due to the absence of effective mechanisms to rationalize and modernize private law and the limitations of the courts in deciding private law cases, as well as the argument of the need for stronger laws amid the use of private law. By the reflection of the theory in the legal practice in Indonesia, Malaysia and Saudi Arabia, which are countries with Muslim majority.

### **3. DISCUSSION**

#### **3.1 Comparison of System Framework and Law Enforcement Implementation in Indonesia, Malaysia, and Saudi Arabia**

The effectiveness of criminal law enforcement against crimes against religion is greatly influenced by the complex interaction between the formal legal system and social and religious values in society.<sup>9</sup> An important challenge in the contemporary context is the interface between religious legal principles and modern legal systems based on secular principles. The intersection of Islamic law and modern legal systems has created political and social tensions in many countries with Muslim majorities.

Due to the uniqueness of the Islamic legal system implemented in several countries, including Indonesia, Malaysia, and Saudi Arabia, there is a spectrum of different applications. These differences are reflected in the legal framework, the punishment system, the court structure and the sanctions given to perpetrators. Punishment in Islamic law is considered to have a deterrent effect on the offender to prevent him from committing crimes in the future. However, its implementation at the national level still requires the legislature's support and adjustments to the prevailing national legal system.

##### **3.1.1 Legal Framework and Implementation of Indonesian State Law Enforcement**

Indonesia is one of many countries with a Muslim majority. Indonesia is one of the countries discussing how Islamic Law affects human rights and how to reconcile them. Islamic law is regarded as a source of law in Indonesia. However, the application of Islamic law in the national criminal justice system is still limited.<sup>10</sup>

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<sup>7</sup> Konrad Zweigert and Hein Kötz, "An Introduction to Comparative Law," *International Journal of Law Libraries* 7, no. 3 (June 13, 1979): 290–95, <https://doi.org/10.1017/S0340045X00000356>.

<sup>8</sup> Alan Watson, "Society and Legal Change," *Edinburgh: Scottish Academic Press* 104, no. 5 (1977): 821–26.

<sup>9</sup> Enang Hidayat, "Induction and Its Relevance to the Transformation of Sharia Economic Law in Indonesia: A Study of Four Madhhabs," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 7, no. 1 (2024): 71, <https://doi.org/10.30659/jua.v7i1.28692>.

<sup>10</sup> Dwi Prasetyo and Ratna Herawati, "Tinjauan Sistem Peradilan Pidana Dalam Konteks Penegakan Hukum Dan Perlindungan Hak Asasi Manusia Terhadap Tersangka Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 4, no. 3 (2022): 402–17, <https://doi.org/10.14710/jphi.v4i3.402-417>.

Based on Pancasila, Indonesia develops the freedom of religion by formalizing Article 28e paragraphs (1) and (2) of the Constitution of the Republic of Indonesia. Freedom of religion is very pronounced in this country. It is evidenced by the fact that the State of Indonesia prohibits its citizens or foreign citizens residing in Indonesia from insulting any religion as stated in Law No. 1 of 2023 on the Criminal Code Article 304 which regulates insult to religion, which states that everyone in public is prohibited from insulting people who are performing religious worship or ceremonies.<sup>11</sup> Furthermore, the regulation of insult to religion is governed by Act No. 1 of 2024, which refers to the subject of electronic information and transactions. The law stipulates that any person is prohibited from intentionally disseminating electronic information that contains an insult to a religion. The application of these articles often faces challenges in the form of different interpretations and social repercussions when applying sanctions.<sup>12</sup>

Although Indonesia's legal framework is quite strong in guaranteeing religious freedom, empirical evidence shows that many Indonesian citizens continue to experience restrictions on the freedom to worship. Individuals whose religious practices are not officially recognized by the Indonesian government are particularly subject to these restrictions. An individual's adherence to a religion that is not one of the officially recognized religions can have an impact on his or her civil liberties. In fact, followers of unrecognized religions can be charged with blasphemy.<sup>13</sup>

According to Ismail Suny, the acceptance of Islamic law in Indonesia can be divided into two periods: 1) the period of accepting Islamic law as a source of law that people need to believe in to accept it, 2) the period of accepting Islamic law as an authoritative source that has legal force.<sup>14</sup> The dynamic between inculturation and acculturation approaches is evident in the history of Islamic law formation in Indonesia. The inculturation model was used as the primary reference in the penetration and Islamization by the early preachers of Islam in Indonesia, including the Wali. Inculturation created variations in religious practices and Islamic law, allowing Islam to adapt to local cultures. In the Indonesian constitution, Islamic law is not established as the basis of the State, but as unwritten law, which serves as a referent with the same status as customary law and Western law as sources of national law-making.<sup>15</sup>

A combination of customary law, Islamic law and Western law, especially Dutch law, is the legal system in Indonesia.<sup>16</sup> Historically, the Indonesian legal system is indeed the result of legal

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<sup>11</sup> Pemerintah Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *Kemensesneg, RI* § (2023).

<sup>12</sup> Pemerintah Republik Indonesia, "Undang-Undang (UU) Nomor 1 Tahun 2024 Tentang Perubahan Kedua Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," *Kemensesneg, RI*, 2024.

<sup>13</sup> Basuki, "Konsistensi Penerapan Sanksi Pidana Terhadap Pelaku Penista Agama Di Indonesia," *Jurnal Ilmiah Global Education* 4, no. 1 (2023): 28–40, <https://doi.org/10.55681/jige.v4i1.537>.

<sup>14</sup> Ismail Suny, "Hukum Islam Dalam Hukum Nasional," *Jurnal Hukum & Pembangunan* 17 (June 21, 2017): 351, <https://doi.org/10.21143/jhp.vol17.no4.1348>.

<sup>15</sup> Djoni Sumardi Gozali, *Pengantar Perbandingan Sistem Hukum (Civil Law, Common Law, dan Hukum Adat)*, ed. Ifrani and M. Erham Amin, 1st ed. (Bandung: Penerbit Nusa Media, 2018).

<sup>16</sup> Muhammad Yusril et al., "Analisis Polarisasi Dualisme Dan Pluralisme Hukum Islam Di Indonesia," *Mandub: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 1 (January 7, 2024): 262–71, <https://doi.org/10.59059/mandub.v2i1.1005>.

pluralism as the basis for determining its rules, in this case Islamic law and the normative reality of the country's majority Muslim community.<sup>17</sup> The Indonesian constitution recognizes some of these unwritten laws as long as they are not in conflict with the principles and foundations of Indonesia. However, legal pluralism itself is threatening, as it often leads to overlapping and conflicting national and local laws.<sup>18</sup>

The Indonesian constitution recognizes some unwritten laws as long as they do not contradict Indonesia's principles and foundations. The majority Muslim population also puts pressure on Indonesia with the threat of secessionist movements if Islamic Sharia is not properly implemented in the region, such as the Free Aceh Movement (GAM). With the granting of special autonomy to the Nangro Aceh Darussalam (NAD) region, Islamic Shari'at was enacted, and a national law specifically applicable to the Aceh region was made. Demands for the implementation of Islamic law have also been made in South Sulawesi, Banten, and even by mass organizations such as the Islamic Defenders Forum, etc.<sup>19</sup>

Another form of the government's protection of Islamic principles is the freedom of Muslims to practice Islamic teachings with the assistance of the Ministry of Religion and the Indonesian Ulama Council, the regulation of the wearing of headscarves in the educational environment as a government policy towards Islamic school education, Islamic hospitals, financial institutions, Shariah banks, Shariah insurance and other Shariah economic entities.<sup>20</sup>

One of the sources stated that the effectiveness of applying the religious-based criminal system in Indonesia still had some important caveats in its application. The ideology adopted by the community has led to many negative views toward Islamic-based criminal law and tends to doubt the effectiveness of its application.<sup>21</sup>

Based on some of the abovementioned things, the Indonesian government strives to create a peaceful atmosphere. The Indonesian state's efforts can be seen in every legal product where there are several adaptations of Islamic legal values, such as the Marriage Law, Religious Courts Law, and National Education Law. The ethical and Islamic legal values will eventually become national law and apply to all Indonesians. However, a lengthy discussion is still needed to implement Islamic law in this country.<sup>22</sup>

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<sup>17</sup> Putu Dida Zenith Maha Putri and A. A. Sri Utari, "Pluralisme Hukum Pribadi Dan Perdata Di Indonesia," *Kertha Wicara: Journal Ilmu Hukum* 13, no. 09 (2024): 455–163, <https://doi.org/https://doi.org/10.24843/KW.2024.v13.i9.p3>.

<sup>18</sup> Lalu Hadi Adha, H. Zaeni Asyhadie, and Rahmawati Kusuma, "Akibat Hukum Dan Pluralisme Hukum Adopsi Di Indonesia," *Private Law* 4, no. 3 (2024): 914–25, <https://journal.unram.ac.id/index.php/privatelaw/article/view/5587>.

<sup>19</sup> Matta Baharuddin, "ANALISIS KEDUDUKAN HUKUM ISLAM DALAM SISTEM HUKUM DI INDONESIA," *Jurnal Hukum Diktum*, vol. 166, 2012.

<sup>20</sup> Aula Damayanti, "Contribution Of Islamic Law To Legal Development In Indonesia," *MILRev: Metro Islamic Law* 1, no. 1 (2022): 17–33, <https://doi.org/doi.org/10.32332/milrev.v1i1.6188>.

<sup>21</sup> Anindi Yuli Fuaziah, Aulia Noviani Qodariah, and Deden Najmudin, "Transformasi Nilai Keadilan Hukum Pidana Islam Dalam Qanun Jinayah Dalam Undang-Undang No 11 Tahun 2006 Tentang Pemerintahan Aceh" 9, no. 8 (2024): 1–14, <https://doi.org/10.3783/causa.v2i9.2461>.

<sup>22</sup> Azis Gaffar, Darliana, and Sapriadi, "Hukum Islam Dan Efek Jera Pemidanaan Di Indonesia," *Hukum Pidana Islam* 5, no. 1 (2023): 2023, <https://doi.org/doi.org/10.47435/al-ahkam.v5i1.1721>.

However, some regions in Indonesia have a limited application of Islamic criminal law, such as Aceh, which has a qanun, or regional regulation, based on Sharia law. Islamic criminal law in Aceh covers several types of offences, such as khalwat (being alone with non-muhrim members of the opposite sex), maisir (gambling), khamar (alcohol), and others, with sanctions in the form of flogging, fines, or imprisonment.<sup>23</sup>

Based on the above, a science that can provide anticipatory solutions to prevent riots and social instability is needed to combat religiously related crimes that have become increasingly prevalent in Indonesia recently, so as not to hinder the nation's goals of achieving national development as stated in the Preamble of the 1945 Constitution.

It allows Islamic legal provisions to be used to adjudicate cases affecting Muslim communities in Indonesia by adhering to the principle of derogation or negation of the validity of norms against other norms. Besides the principle of derogation, the principle of legality is another important principle in the sustainability of Islamic criminal law. In Islamic law, the principle of legality is an act that can only be punished if there is a provision in the Qur'an, Hadith or Ijma'. The territorial principle, which is directly related to the geographical continuity of Islamic criminal law, is another principle that applies in the context of Islamic law. Based on these two principles, Islamic criminal law in Indonesia only applies to specific areas, such as Aceh.<sup>24</sup>

### **3.1.2 Legal Framework and Implementation of Indonesian State Law Enforcement**

The Malaysian legal system reflects the pluralistic model, a legacy of the British colonial period, which colonized Malaysia, and is based on the Indonesian model. Malaysia has a distinctive dual legal system in which the civil courts operate in parallel with the Shariah courts.<sup>25</sup> This system is an outgrowth of Malaysia's historical development as a post-colonial state where English common law coexists with Islamic law applicable to Muslims in certain matters. The Act also empowers the states to legislate on Islamic issues, such as the determination and punishment of crimes committed by those professing the Islamic faith that are contrary to the principles of Islam, and establishes Sharia courts with jurisdiction over Muslims in these matters. Malaysia has a dual legal system. There are general courts for all citizens and specialised Syariah courts for Muslims in certain matters.<sup>26</sup>

For the Muslim population (60%), Sharia law is important in regulating personal and family matters. The Qur'an and the Hadith, which detail the sayings and actions of the Prophet Muhammad, form the basis of Shariah law in Malaysia. The contributions of Islamic scholars, who

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<sup>23</sup> Pemerintah Pusat Indonesia, "Undang-undang (UU) Nomor 11 Tahun 2006 tentang Pemerintahan Aceh," Pub. L. No. 11 (2006).

<sup>24</sup> Fakhry Amin et al., *Ilmu Perundang-Undangan*, ed. Anik Iftitah, 1st ed. (Banten: PT Sada Kurnia Pustaka, 2023).

<sup>25</sup> Andrew Harding, "Malaysia: Religious Pluralism and the Constitution in a Contested Polity," *Middle East Law and Governance* 4, no. 2–3 (2022): 356–85, <https://doi.org/10.1163/18763375-00403007>.

<sup>26</sup> Shazny Ramlan, "Implementing Islamic Law to Protect the Environment: Insights from Singapore, Malaysia, and Indonesia," *Asia Pacific Journal of Environmental Law* 23, no. 2 (2020): 202–30, <https://doi.org/10.4337/APJEL.2020.02.05>.



provide additional interpretations and guidance to ensure that its application remains within the principles of Islamic jurisprudence, further strengthen this comprehensive law.<sup>27</sup>

Several measures have been taken to achieve harmonization between the two systems. These measures include reforming the law, training the judiciary, communicating more clearly between the two legal systems, and informing the public. These measures reflect a discourse aimed at integrating these frameworks in Malaysia's heterogeneous society, thereby reducing conflict and increasing efficiency.<sup>28</sup> Islamic Judiciary in Malaysia is known as the Shari'ah Court, which is a judicial institution that handles and adjudicates civil and criminal offenses according to its established jurisdiction. Malaysia's Shari'ah court has jurisdiction over marriage, divorce, kinship, and small property matters.<sup>29</sup>

There are three levels of Shariah courts in Malaysia: The Shariah court, the Shariah Lower Court, the Shariah High Court, and the Shariah Rayuan Court. According to its level, each has different powers in dealing with cases. However, the highest level of the Shari'ah Court only extends to the Rayuan Shari'ah Court located in the state capital. It does not extend to the central level or the Persekutuan Court.<sup>30</sup>

The Shari'ah Court in Malaysia is authorized to administer Islamic Administrative Law rules and regulations for each state and region. It's important to note that the Shari'ah Court is separate from the Department of Religious Affairs, which deals with matters relating to the Islamic community, such as Zakat, Baitulmal, Da'wah, Education, and Mosque Management.

Mahkamah Rendah Syari'ah is authorized to discuss cases assigned to it by the district judges, to hear and decide such cases, to issue court documents and reports, and to discuss cases at the regional level. The High Sharia Court has the authority to discuss cases assigned to it and to issue rulings in civil and criminal cases.<sup>31</sup>

However, it is crucial to acknowledge that the prevailing hierarchy of Shari'ah courts in Malaysia does not currently extend to the center (Mahkamah Persekutuan). The Shari'ah Court, the highest judicial authority, operates solely within the jurisdiction of the Rayuan Shari'ah Court. The latter is situated within the state capital, the kerajaan negeri. It is distinct from the judicial system in Indonesia, which culminates in the Supreme Court. In the Malaysian legal system, the

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<sup>27</sup> Ramlan.

<sup>28</sup> Nor 'Adha Binti Abdul Hamid and Azizah, "Highlights On Moral Offences In The Malaysian Sharia Criminal Enactment: The Analysis Of Prosecution Implementation," *Journal of Muwafaqat* 01, no. 01 (2021): 56–70, <https://muwafaqat.uis.edu.my/index.php/journal/article/view/66>.

<sup>29</sup> Rais Akramin Bin Nasrom, "Gugatan Perceraian Sebab Suami Tidak Bekerja Menurut Undang-undang Negeri Terengganu (Studi Kasus Saman Nomor 1130-014-011-2011 Mahkamah Tinggi Syariah Negeri Terengganu)" (Universitas Islam Negeri Sultan Syarif Kasim Riau, 2015).

<sup>30</sup> Binti Abdul Hamid and Azizah, "Highlights On Moral Offences In The Malaysian Sharia Criminal Enactment: The Analysis Of Prosecution Implementation."

<sup>31</sup> Ramizah Wan Muhammad and Shafy Mohamed Affan, "Constructing an Islamic Criminal Law System in Malaysia," *Jurnal Mimbar Hukum* 32, no. 3 (October 2020): 333–45, [https://ethz.ch/cotent/dam/ethz/special-interest/gess/cis/center-for-securities-studies/resources/docs/Islam\\_and\\_Sharia\\_](https://ethz.ch/cotent/dam/ethz/special-interest/gess/cis/center-for-securities-studies/resources/docs/Islam_and_Sharia_).

principles of legality and territoriality, as outlined in Islamic criminal law, apply to Muslims within the jurisdiction delineated by the Malaysian Constitution.<sup>32</sup>

One of the obstacles faced by the Federal Republic of Malaysia is an ineffective bureaucratic system. To address these concerns, the nation's leaders established the Department of Sharia Courts Malaysia (JKSM) to enhance the efficiency and integrity of the judicial system. The establishment of this department was driven by the necessity to standardize administrative and judicial practices across the Syariah Courts in Malaysia. A significant component of JKSM's mandate involves disseminating procedural practice guidelines for the Syariah Courts, a program initiated in the year 2000. According to the Managing Director of JKSM or the Chief Syariah Judge, a practice guideline is defined as a written document that establishes the procedures or policies of the Syariah Court.<sup>33</sup>

Malaysia arguably boasts a more clearly delineated jurisdictional framework between Sharia and civil courts. This distinction ensures that there is no policy overlap among different law enforcement entities. In the Malaysian context, a more structured documentation system is employed to adjudicate cases about religion. Furthermore, Malaysia has established a standardized handling protocol.<sup>34</sup>

Formalized recording mechanisms, standardized forms, and systematic documentation procedures characterize the structured documentation system in Malaysia's Islamic criminal law enforcement. These mechanisms are utilized throughout the law enforcement, prosecution, and judicial processes. The structured documentation system in Malaysia is predicated upon a formalized Investigation Paper (IP) workflow, which constitutes its core element. A review of extant literature reveals that Islamic law enforcement agencies maintain systematic records of cases from the initial investigation to the prosecution. These records encompass a variety of documents, including the register book, the receipt of the indictment from the Enforcement Section, the examination of the indictment, the preparation of the draft criminal charge, and any procedures involving the prosecution process and during trial. Implementing a systematic registration and documentation process facilitates the monitoring and tracing of cases throughout the various stages of the procedural process. This approach establishes and maintains an audit trail, thereby ensuring the transparency and accountability of enforcement actions.<sup>35</sup>

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<sup>32</sup> Tajul Aris Ahmad Bustami, "Islam and Shariah Offences in Malaysian Constitutional Framework: Issues and Challenges," *International Conference of ASEAN Perspective and Policy (ICAP)* 5, no. 3 (October 3, 2020): 153–62, <https://jurnal.pancabudi.ac.id/index.php/ICAP/article/view/286>.

<sup>33</sup> Menteri Agama Malaysia, "Jabatan Kehakiman Syariah Malaysia (JKSM)," Portal Rasmi Pejabat Menteri Jabatan Perdana Menteri (Hal Ehwal Agama), accessed April 17, 2025, <https://dsnaim.my/jabatan-dan-agensi/jabatan-kehakiman-syariah-malaysia-jksm/>.

<sup>34</sup> Saifullah M, "Implementasi Hukum Pidana Syariah Dalam Konteks Negara Modern," *Jurnal Studi Islam Dan Hukum* 13, no. 1 (2024): 45–62.

<sup>35</sup> Yusrizal, "Studi Komparatif Pelaksanaan Peradilan Islam Di Negara Malaysia Dan Saudi Arabia," *De Lega Lata* 2, no. 2 (2017): 445–71.

Standardized response protocols are procedural guidelines that govern the investigation, prosecution, and adjudication of religious offenses. A review of the extant literature reveals that Malaysia has developed standard procedures for managing religious offenses, encompassing the investigative phase and the subsequent prosecution. It has been established that other states have formally adopted these guidelines. These guidelines have been meticulously delineated, encompassing workflow charts and elucidating actions. These actions are intended for utilization by the Chief Syariah Prosecutor and Syariah Lawyers.<sup>36</sup> The guidelines delineate the protocol to be followed, commencing with the compilation of the register book after receiving the Letter of Enquiry from the Enforcement Department. The subsequent procedures entail the examination of the Letter of Enquiry, formulating the draft indictment, and any procedures about the prosecution process and court sessions. Implementing this standardization initiative has been instrumental in fostering uniformity in procedural frameworks across the diverse states within Malaysia, a feat that is all the more notable in light of the country's federalist system of government.

### **3.1.3 Legal Framework and Implementation of Law Enforcement in Saudi Arabia**

Saudi Arabia is an Islamic state whose legal system is based on the Qur'an and Sunnah of the Prophet Muhammad, with Sharia serving as the fundamental legal framework. Saudi Arabia's legal system is rooted in Sharia law, which has a profound impact on the administration of religious crimes. A salient dimension emerges in the realm of regulatory policies in Saudi Arabia, shaped by the perspectives and expertise of jurists on contentious issues, such as violence in Saudi Arabia. Following extensive deliberations, King Fahd ibn 'Abd al-Aziz (1982–2005) persisted in his endeavors to reform the constitution. In the year 1412 AH, on the 27th day of Sha'ban, Fahd bin Abdulaziz Al Saud, the King of Saudi Arabia at the time, promulgated the al-Marsum al-Malaki (King's Edict) No. A/90, which constitutes the Basic Law of Government. This edict comprises nine chapters and 83 articles. The nine chapters of this text are organized as follows: the first chapter is on general principles; the second is on the system of government; the third is on the values of Saudi society; the fourth is on economic principles; the fifth is on rights and duties; the sixth is on state powers; the seventh is on financial affairs; the eighth is on audit institutions; and the ninth is on conclusions. According to Article 1, Chapter 1 of the King's Decree No. A/90 dated 27 Sha'ban 1412 AH, the Kingdom of Saudi Arabia is recognized as a sovereign Islamic state. The official religion of this state is Islam, and its constitution is defined as the sacred scriptures of Allah, the Qur'an al-Karim, and the Sunnah of the Prophet SAW.<sup>37</sup>

In 2020, Saudi Arabia received 22.5 million reports of cybercrime, resulting in a total loss of \$6.5 million for each report.<sup>38</sup> A mere 4% of these data are violent cases, primarily terrorism

<sup>36</sup> Deaf Wahyuni Ramadhani and Salsabilla Eriko, "Studi Perbandingan Sistem Peradilan Pidana Indonesia Dan Malaysia," *Jurnal Ilmu Hukum* 7, no. 1 (2022): 1–11.

<sup>37</sup> Ibnu, "Politics of Islamic Inheritance Law; Comparative Study of Indonesian and Saudi Arabian Inheritance Law," *Jurnal Bimas Islam* 13, no. 1 (December 2020), <https://doi.org/doi.org/10.37302/jbi.v10i4.38>.

<sup>38</sup> Aleksander Olech, "Cybersecurity in Saudi Arabia," no. 1 October (2021), <https://www.cio.com/article/3445225/saudi-arabias-cybersecurity-concerns-increase-as-threats-evolve.html>.

charges levied against the religious Saudi Arabian state. To achieve this objective, the Kingdom of Saudi Arabia must establish an equitable and balanced codified body of laws.

The criminal law system in Saudi Arabia is predicated entirely on the Sharia legal system. The foundational principles of law and judgment are derived exclusively from the sacred text of the Qur'an and the authentic teachings of the Prophet Muhammad, as well as those principles that Islamic scholars have collectively agreed upon through the rational process of qiyas or consensus. The implementation of Sharia is entrusted to the shari'iyah courts, wherein the ulama serve in dual capacities as both judges and advisors.<sup>39</sup>

The Saudi Arabian judicial system comprises several components, including the King, who exercises particular authority in matters of execution, the Regional Head, who serves as the executor of criminal sentences, and the court system, which is further divided into two categories. The first category is the General/Ministry of Justice, which encompasses the Supreme Court and the High Court, among other entities.<sup>40</sup>

The fundamental principle in Islamic criminal law posits that an offense is deemed criminal if it is deemed illicit by the prevailing legislation, whether in terms of actions expressly forbidden by law or the failure to comply with legal directives. By this fundamental principle, Islamic criminal law acknowledges two categories of sanctions: hudud and ta'zir. The principles of material and moral law in Islamic criminal law are thoroughly embedded in the national criminal law system in Saudi Arabia.<sup>41</sup> The legal principles of Sharia implement these principles. In the Islamic kingdom of Saudi Arabia, the criminal justice system is divided into three distinct categories, each governed by specific Sharia legal principles.

The first is Hudud, which are offenses subject to hudud penalties and are considered public rights for which no individual or entity holds the authority to grant clemency. According to Islamic law, there are seven categories of hudud, or religious offenses. These categories include adultery, qazaf (accusing adultery), alcohol, stealing, hirobah (robbery/armed robbery), apostasy, and rebellion.

The second is Qisas and Diat. Offenses subject to qisas (corporal punishment) or diyat (compensation) are considered personal rights, which may be forgiven under certain circumstances. Two classifications are delineated: murder and physical offenses.

The third is Takzir, Crimes other than hudud and qisas that are subject to ijthad (discretion) by the judge are without limitation in number. According to Shari'ah jurisprudence, certain offenses have been designated as takzir crimes. These include usury, betrayal of trust, backbiting, and bribery. The determination of most takzir crimes is entrusted to rulers, who are expected to

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<sup>39</sup> Salim A and Hassan N, "Religious Freedom and Legal Protection in Muslim-Majority Countries," *International Journal of Constitutional Law* 21, no. 3 (2023): 278–95.

<sup>40</sup> Firdaus Muhamad Iqbal, "Polemik Hukuman Mati Di Arab Saudi Dalam Tinjauan Hukum Hak Asasi Manusia," *Jurnal Pemuliaan Hukum* 6, no. 1 (2023): 54–68, <https://doi.org/10.30999/ph.v6i1.2004>.

<sup>41</sup> Tim Hukumonline, "Asas-Asas Hukum Pidana Islam," March 6, 2023, <https://www.hukumonline.com/berita/a/asas-hukum-pidana-islam-lt640592145a0c8/>.

act in the public interest and order. Rulers are not permitted to act in a manner that contradicts the texts and general principles of Shari'ah.<sup>42</sup>

The judicial apparatus of Saudi Arabia comprises several entities, the most prominent of which is the King, who exercises particular authority in matters of execution. The regional heads, known as Regional Directors, serve as executors of criminal sentences within their respective jurisdictions. The court system is divided into two categories: the General/Ministry of Justice, which encompasses the Supreme Court and the High Court, among other entities, and other judicial entities.

In the Kingdom of Saudi Arabia, the principles of legality and territoriality outlined in Islamic criminal law apply throughout the nation. In the context of Saudi Arabia, several pivotal elements merit consideration. A notable feature is the centralization of authority within the judicial system, wherein a select group of individuals wields significant judicial powers. Additionally, the preponderant influence of the ulema in the legal interpretation process is a salient factor. The nation's legal framework is characterized by the stringent implementation of sanctions, which are guided by the tenets of sharia law.<sup>43</sup>

The judicial system in Saudi Arabia is organized into three primary levels: the Al-Mahakim al-Musta'jilah (Immediate Court) and the Mahakim Juziyah (Criminal Court). The former is responsible for addressing cases of a pressing nature within the criminal and civil realms. At the same time, the latter is designated explicitly for adjudicating urgent cases in the criminal sphere. In the criminal sphere, the court's jurisdiction encompasses offenses that result in physical harm or injury to individuals. Conversely, in the civil domain, the court's authority extends to disputes involving financial matters with a value not exceeding 300 riyals. These courts were centered in Makkah, Madinah, and Jeddah, with a single judge serving as the law enforcement officer. Al-Mahakim Ash-shar'iyah (Shar'iyah Courts) are vested with expanded powers, encompassing the adjudication of grave cases with the potential for hand-cutting and the death penalty. Additionally, it has been authorized to adjudicate al-ahwal al-syakhshiyah (family law) cases, encompassing matters such as marriage, divorce, reconciliation, wills, and financial disputes with a value exceeding 300 riyals. The court is headquartered in Makkah, Jeddah, and Madinatul Munawwarrah, comprising three judges, a chairman, and two members. The Hay'ah al-Muraqabah al-Qadha'iyah (Judicial Supervisory Board) is also referred to as the Supreme Shari'a Court (al-mahkamah ash-shari'iyah al-kubra). This appellate body is headquartered in Makkah and functions as the highest court within the Saudi judicial system. Finally, the Court al-Tamyiz (Court of Appeal) is the final authority. This court possesses the authority to conduct a review of civil and criminal judgments that judges have rendered at lower levels of the judicial hierarchy.<sup>44</sup>

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<sup>42</sup> Putra, "Sistem Peradilan Pada Kerajaan Arab Saudi."

<sup>43</sup> Tim Hukumonline, "Asas-Asas Hukum Pidana Islam."

<sup>44</sup> Putra, "Sistem Peradilan Pada Kerajaan Arab Saudi."

According to another source, the judicial system in the Kingdom of Saudi Arabia comprises four distinct institutions, each with its unique system and regulations. The High Court (Mahkamah Ulya) is the highest institution in this system.<sup>45</sup> Saudi Arabia's legal system is rooted in the tenets of Sharia, which encompasses four fundamental sources: The Quran, Sunnah (the traditions and practices of the Prophet Muhammad), Ijmak (the consensus of scholars), and Kias (analogical reasoning). Judicial decision-making in Saudi Arabia is significantly influenced by the tenets of the Hambali school, a prominent branch of Sunni jurisprudence. The country strictly implements sharia law, and numerous daily activities are organized according to religious principles.

### **3.1.4 Comparison of the Legal Framework and Implementation of Law Enforcement in Indonesia, Malaysia and Saudi Arabia**

A comparative analysis of Islamic criminal law in Indonesia, Malaysia, and Saudi Arabia reveals a diverse spectrum of implementation. The Kingdom of Saudi Arabia is a country that applies Islamic law in its entirety as the basis of its constitution and criminal law. The criminal law of Saudi Arabia is divided into three categories: hudud, qisas, and diat, as well as takzir.<sup>46</sup> Malaysia has adopted a dualistic system, whereby the jurisdiction of sharia courts is limited to specific geographical areas and exclusively to Muslims. Concomitantly, the Republic of Indonesia continues to implement Islamic law as a component of its national legal system, albeit with limited implementation, except for specific regions, such as Aceh.<sup>47</sup>

These disparities are influenced by historical, social, and political factors unique to each nation. As a conservative Islamic state, the Kingdom of Saudi Arabia has established Sharia as its fundamental legal framework. Malaysia, a nation that is both predominantly Muslim and a former British colony, has adopted a dualistic system. Meanwhile, in Indonesia, a predominantly Muslim nation with a Dutch colonial legacy and a state foundation based on the principles of the Five Principles also known as the "*Pancasila*" and the country's legal system, the application of Islamic criminal law remains a subject of lasting discourse.<sup>48</sup>

The provision of valuable insights is enabled by this comparison, which is of particular significance in the context of the development of Islamic criminal law systems in different countries. In this regard, it is imperative to consider both local and global contexts. The integration of Islamic law into national legal systems varies across countries, reflecting each nation's unique historical, cultural, and political contexts.

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<sup>45</sup> Titit Fridawaty et al., "Menavigasi Penerapan Hukum Islam Dalam Sistem Peradilan Modern," *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. Februari (2024): 78–88, <https://jurnal.fanshurinstitute.org/index.php/jimmijl78>.

<sup>46</sup> Suud Sarim Karimullah, "The Implications Of Islamic Law On The Rights Of Religious Minorities In Muslim-Majority Countries," *MILRev: Metro Islamic Law Review* 2, no. 2 (November 9, 2023): 90, <https://doi.org/10.32332/milrev.v2i2.7847>.

<sup>47</sup> Ratno Lukito, "'Compare But Not to Compare': Kajian Perbandingan Hukum Di Indonesia," *Undang: Jurnal Hukum* 5, no. 2 (December 30, 2022): 257–91, <https://doi.org/10.22437/ujh.5.2.257-291>.

<sup>48</sup> Haliza Nur Madhani et al., "Perbandingan Legislasi Hukum Pidana Islam Di Indonesia Dan Beberapa Negara Muslim Lainnya," *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 1, no. 3 (May 24, 2024): 72–82, <https://doi.org/10.62383/demokrasi.v1i3.252>.

### **3.2 Comparison of the Legal Framework and Implementation of Law Enforcement in Indonesia, Malaysia and Saudi Arabia**

A comparative study of the implementation and impact of Islamic criminal law in Indonesia, Malaysia, and Saudi Arabia reveals notable disparities in executing this legal system. Despite the common foundation of Islamic law in these countries, how it is operationalised exhibits significant variations. In the context of the law's implementation, Saudi Arabia has been observed to adopt a strict approach, accompanied by a discernible increase in the visibility of its enforcement mechanisms. In contrast, Indonesia and Malaysia have encountered a range of challenges in their implementation, characterised by a greater degree of flexibility.

#### **3.2.1 Effectiveness and Impact of Islamic Law Implementation in Indonesia**

Islamic law in Indonesia is currently limited in scope, with its application being restricted to specific areas such as the calculation of religious observances, including Ramadan and Eid, the establishment of prayer times, and the implementation of halal labelling in government-produced goods. In Indonesia, the universal application of Islamic criminal law is not prevailing. However, it should be noted that in certain areas that have been granted special autonomy, such as Aceh, the implementation of sharia law is more strictly enforced. In Aceh, for instance, qanuns govern the implementation of Islamic criminal law, including the administration of flogging for specific offences.<sup>49</sup> The restricted implementation in Aceh is grounded in Law No. 11/2006 concerning the Government of Aceh, which governs moral offences (khalwat, zina, and alcohol consumption) with sanctions of flogging and fines.<sup>50</sup>

Despite endeavours to implement Islamic criminal law, its efficacy is frequently contested. However, the implementation of these measures is frequently impeded by social resistance and challenges from the prevailing positive legal system. It is a commonly held view that implementing the law in question has not yet been wholly effective in addressing the issue of crime.

The Indonesian context is characterised by a bottom-up approach, incorporating local variations. It suggests that the impetus for interfaith dialogue is not solely derived from state-initiated policies, but is also influenced by community-led initiatives. This phenomenon is exemplified by the establishment and execution of Islamic law in Indonesia, wherein proposals and practices emanating from the community serve as the foundational principles for legal development. In the context of Islamic law, the bottom-up approach is evident in integrating local practices and customs (urf) into the application of Islamic law. In contradistinction to certain other Muslim countries, in which uniform interpretations of Islamic law emanate from the centre of

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<sup>49</sup> Ali Abubakar et al., *Problematika Penegakan Qanun Jinayat di Aceh*, ed. Mursyid Djawas, 1st ed. (Aceh Besar: Sahifah, 2019).

<sup>50</sup> Indonesia, Undang-undang (UU) Nomor 11 Tahun 2006 tentang Pemerintahan Aceh.

power, Indonesia has a system that permits local adaptations, which in turn can influence national policy.<sup>51</sup>

The Islamic ideology embraced by the community is characterised by significant diversity, a factor that has given rise to a plethora of negative perceptions about Islamic criminal law. It has resulted in widespread scepticism concerning the efficacy of its implementation.<sup>52</sup> An illuminating exemplification of the interplay between a top-down and bottom-up approach in the formulation of Islamic law in Indonesia is offered by the Compilation of Islamic Law (KHI). Although the KHI was issued through Presidential Instruction No. 1 of 1991, which appears to indicate a top-down approach, its substance is heavily influenced by Islamic legal practices that have developed in Indonesian society.

It is widely acknowledged that KHI's position is considered weak due to its placement of KHI within the domain of unwritten law, with KHI material distinguished from the Presidential Instruction. Furthermore, KHI's role as a guide in litigation signifies that judges and justice-seeking communities are not bound by it. The condition thus indirectly fosters the significance of a bottom-up approach, whereby communities and legal practitioners at the local level possess the discretion to interpret and apply the tenets of Islamic law according to their respective local contexts. Whilst the aforementioned point may result in the emergence of legal uncertainty in some instances, this also enables more responsive adaptation to local needs and conditions.<sup>53</sup>

In addition to the intractable challenges associated with the complexity of the aforementioned approach, the Republic of Indonesia also faces considerable difficulties in effectively enforcing Islamic law within the country. Concerning inter-institutional coordination, Wilayatul Hisbah, or the sharia police, possesses limited investigatory capabilities and depends on the general police force.

### **3.2.2 Effectiveness and Impact of Islamic Law Implementation in Malaysia**

Malaysia has a clearly defined jurisdiction, characterised by a structured dual court system. The legal infrastructure of Malaysia is characterised by the operation of two distinct legal systems: the Islamic legal system of Sharia Law, applicable to the Muslim population, and the civil law system, applicable to all citizens. Sharia courts in Malaysia adjudicate on specific cases about Islamic law. However, not all aspects of Islamic criminal law are widely applied. The implementation of Islamic criminal law in Malaysia has yielded equivocal results. It has been posited that, despite the presence of components of Islamic law within the justice system, their

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<sup>51</sup> Muhammad and Nurlaila, "Arus Top-Down Dan Bottom-Up Pada Gerakan Dialog Antar Agama Di Indonesia," *Abrahamic Religions: Jurnal Studi Agama-Agama* 1, no. 2 (September 30, 2021): 159, <https://doi.org/10.22373/arj.v1i2.10659>.

<sup>52</sup> Cecep Cahya Supena, "Manfaat Penafsiran Hukum Dalam Rangka Penemuan Hukum," *Moderat: Jurnal Ilmiah Ilmu Pemerintahan* 8, no. 2 (2022): 427–35, <https://doi.org/10.25157/moderat.v8i2.2714>.

<sup>53</sup> Sulfanwandi, "The Kompilasi Hukum Islam in Indonesia: Compilation and Its Relation to Islamic Jurisprudence [Kompilasi Hukum Islam Di Indonesia: Penyusunan Dan Kaitannya Dengan Ushul Fikih]," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 9, no. 2 (January 4, 2021): 219, <https://doi.org/10.22373/legitimasi.v9i2.8513>.



implementation is frequently constrained and does not reach the same degree of rigour as that observed in Saudi Arabia. It has given rise to considerable challenges in the effective enforcement of the law.<sup>54</sup>

The unique status of the nation of Malaysia as a federal constitutional monarchy, with its dual legal system, is a product of its historical background as a multicultural society with a significant Muslim population and its former status as a British colonial settlement. The present study explores the significance of Sharia law in the governance of personal and family matters for the Muslim population, which constitutes 63.5% of the total population.<sup>55</sup> The legal system of Malaysia is rooted in Sharia law, which is derived from the Quran and Hadith, the latter being a collection of the words and actions of the Prophet Muhammad. This exhaustive legislation is further reinforced by contributions from Islamic scholars, who furnish supplementary interpretations and directives to guarantee its implementation remains congruent with the tenets of Islamic jurisprudence.<sup>56</sup>

A series of measures has been initiated to harmonize the two systems. These measures encompass, but are not limited to, the implementation of legal reforms, the training of judicial personnel, the enhancement of communication between legal systems, and the provision of more comprehensive information to the public. The implementation of such measures has been demonstrated to have a beneficial effect on conflict reduction and efficiency enhancement, thereby reflecting a discourse that seeks to facilitate the integration of these frameworks within the context of Malaysia's heterogeneous society.<sup>57</sup>

This analysis established a dualistic legal system in Malaysia, comprising civil and Sharia law. The former has been assigned a limited role in the Muslim family and moral matters. The maximum penalty for such an offence is three years' imprisonment, a fine of 5,000 Ringgit, and six lashes. Consequently, the present study seeks to explore the challenges encountered in implementing Islamic law in Malaysia and their implications on its effectiveness. Therefore, the aforementioned duality of law results in jurisdictional conflicts within the Malaysian state. In 2023, several cases about Sharia law were documented as having been abandoned, a development that can be attributed to the presence of an overlap with the civil courts.<sup>58</sup>

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<sup>54</sup> Yulia Rimapradesi, Meiliani Nur Azizah, and Elsa Iqlima Azzahara, "Analisis Perbandingan Sistem Hukum Syariah Malaysia Dan Bruneidarussalam Dalam Implementasi Sharia Penal Code (Hukum Pidana Syariah)," *DIALEKTIKA PUBLIK* 8, no. 1 (September 30, 2024): 1–8, <https://doi.org/https://doi.org/10.33884/dialektikapublik.v8i1.8135>.

<sup>55</sup> Office of International Religious Freedom, "2022 Report on International Religious Freedom: Malaysia," 2022, <https://www.state.gov/reports/2022-report-on-international-religious-freedom/malaysia/>.

<sup>56</sup> Raihan Azzahra and Farid Sufian Shuaib, "Religious Courts in Indonesia and Malaysia: History, Structure, and Jurisdiction," *Indonesian Comparative Law Review* 4, no. 2 (September 26, 2022): 115–30, <https://doi.org/10.18196/iclr.v4i2.15911>.

<sup>57</sup> Mohd Amir bin Abdullah, "Analyzing the Dynamics Between Sharia Law and Civil Law in Governing Divorce Proceedings Among Muslims in Malaysia and Comparing Legal Outcomes," *Law and Economy* 3, no. 4 (2024): 29–38, <https://doi.org/10.56397/le.2024.04.05>.

<sup>58</sup> Adnan Trakic and Hanifah Haydar Ali Tajuddin, *Islamic Law in Malaysia: The Challenges of Implementation*, Islamic Law in Malaysia: The Challenges of Implementation, 2021, <https://doi.org/10.1007/978-981-33-6187-4>.

A substandard bureaucratic system is one of the obstacles confronting Malaysia. In response to this challenge, the country's leaders established the Department of Sharia Courts Malaysia (JKSM) to enhance the efficiency and integrity of the judicial system. The rationale behind the establishment of this department was to address the necessity of standardising administrative and judicial practices across the Syariah Courts in Malaysia.<sup>59</sup>

Jabatan Kehakiman Syariah Malaysia (JKSM) is a significant institution that performs a pivotal function within Malaysia's Islamic justice system. It functions as the primary driving force within the judicial system and the legislation of Sharia, thereby ensuring the consistent and effective implementation of Islamic law. JKSM operates within Malaysia's dual legal system, which comprises Islamic and secular law (commonly referred to as common law). These legal systems co-exist in regulating the lives of the populace, with a particular emphasis on the Islamic legal framework, given that Muslims constitute the majority of the Malaysian population.<sup>60</sup>

The role of the Jabatan Kehadilhan Syariah Malaysia (JKSM) is pivotal within the Malaysian Sharia justice system, with its remit encompassing numerous strategic functions. These include the adjudication of cases within the Syariah Rayuan Court, the development of judicial procedures, the coordination of the enforcement of court decisions, in addition to human resource development and the modernisation of the judicial system.<sup>61</sup>

Establishing the Bahagian Sokongan Keluarga (BSK) is a concrete exemplification of this function, as it enforces nafkah orders. The role of JKSM in the enhancement of the Syariah Court's service delivery system is multifaceted, encompassing aspects such as digitalisation, the optimisation of ICT governance, and a range of associated functions.<sup>62</sup>

As an institution operating within the Malaysian legal system, which is characterised by its dual legal system status, the JKSM has faced considerable difficulty in harmonising the implementation of sharia law with the federal constitutional framework. Nevertheless, the implementation of initiatives such as the Bahagian Sokongan Keluarga and the digitisation of court services has illustrated JKSM's commitment to the development of an effective, fair, and pluralistic sharia justice system.<sup>63</sup>

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<sup>59</sup> Menteri Agama Malaysia, "Jabatan Kehakiman Syariah Malaysia (JKSM)."

<sup>60</sup> Ainan Husnaa, Muhammad Saifullah, and Raihanah Hj Abdullah, "A Brief Overview on the Inquisitorial Method In Malaysian Shariah Courts," *Journal of Shariah Law Research* 6, no. 1 (2021): 67–88, <https://ejournal.um.edu.my/index.php/JSLR/article/view/30153>.

<sup>61</sup> Menteri Agama Malaysia, "Jabatan Kehakiman Syariah Malaysia (JKSM)."

<sup>62</sup> Agus Hanafi and Mohammad Hedhayatullah Bin Mohammad, "Peran Bahagian Sokongan Keluarga Dalam Masalah Pemenuhan Nafkah Isteri Pasca Perceraian (Studi Kasus Di Mahkamah Tinggi Syariah Kedah, Malaysia)," *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial* 2020, no. 1 (February 26, 2018), <https://doi.org/doi.org/10.22373/jms.v20i1.6501>.

<sup>63</sup> Mohammad Haris Shah and Ahmad Hidayat Buang, "Ahmad Ibrahim and His Contribution in the Development of Islam in Malaysia," *Journal of Al-Tamaddun* 16, no. 1 (June 29, 2021): 81–98, <https://doi.org/10.22452/JAT.vol16no1.6>.

### 3.2.3 Effectiveness and Impact of Islamic Law Implementation in Saudi Arabia

In Saudi Arabia, Islamic criminal law is applied in its totality, following the principles established in the Qur'an and Sunnah. The nation's legal framework is profoundly influenced by Islamic legal principles, with a complete absence of secular legal systems in the domain of legislation.<sup>64</sup>

The efficacy of law enforcement in Saudi Arabia is often considered superior to that in Indonesia and Malaysia. It can be attributed to the consistent and strict application of the law within Saudi Arabia. Nevertheless, this has also given rise to censure from the international community about violations of human rights and the utilisation of corporal punishment, such as flogging. The Kingdom of Saudi Arabia is a staunch proponent of implementing hudud law, a practice guided by the tenets of the Hanbali school of thought. Moreover, the nation is home to a General Court and a Sharia Court of Appeal, the latter of which has a particular focus on criminal matters.<sup>65</sup>

Saudi Arabia's legal reforms have enhanced the standards of judicial professionalism; however, concerns regarding transparency and accountability persist. The integration of maqashid sharia principles in legal codification is imperative for the Islamic legal system to maintain its relevance in the modern era.<sup>66</sup>

In the Kingdom of Saudi Arabia, the legislative process is undergoing significant change, with the drafting of new laws intended to enhance the efficacy of legal reform initiatives within the country. It is anticipated that the codification of the legal system in Saudi Arabia will be achieved through the enactment of the Personal Status Law, the Civil Transactions Law, the Discretionary Sanctions Criminal Law, and the Evidence Law. It will ensure that the legal framework of the country follows Islamic law.<sup>67</sup>

**Table 1. Differences in the Effectiveness and Impact of Islamic Law Implementation in Indonesia, Malaysia and Saudi Arabia**

Aspects of Influence	Indonesia	Malaysia	Saudi Arabia
<b>Jurisdiction</b>	Limited area	Limited material	National
<b>Maximum Sanction</b>	Whip 100 times	Whip 6 times	Death penalty
<b>Execution Rate</b>	67% (Aceh)	82%	95%
<b>Institutional Support</b>	Fragmented	Integrated	Centralised

<sup>64</sup> Fridawaty et al., "Menavigasi Penerapan Hukum Islam Dalam Sistem Peradilan Modern."

<sup>65</sup> Arafat and Asmuni, "Implementation of Maqashid Al-Syariah in Islamic Criminal Law in Muslim Countries: A Comparative Study in Saudi Arabia, Iran, Malaysia, and Indonesia."

<sup>66</sup> Putra, "Sistem Peradilan Pada Kerajaan Arab Saudi."

<sup>67</sup> Mahdi Muhammad, "MBS Gulirkan Reformasi Hukum, Upaya Hadirkan Kepastian Hukum Di Arab Saudi," Kompas, February 9, 2021, <https://www.kompas.id/baca/internasional/2021/02/09/mbs-gulirkan-reformasi-hukum-upaya-hadirkan-kepastian-hukum-di-arab-saudi>.

### 3.3 Implementation Challenges and Resolution Efforts by Indonesia, Malaysia and Saudi Arabia

A comparative analysis of the implementation challenges and countermeasures of Islamic criminal law in Indonesia, Malaysia, and Saudi Arabia offers a comprehensive insight into the dynamics of implementing Islamic law in a modern context. Each nation confronts distinct challenges shaped by its unique social, political, and cultural milieu, leading to the evolution of bespoke strategies to address these challenges.

The Indonesian approach is more moderate, with a strategic focus on promoting dialogue, educational initiatives, and the systematic integration of Islamic legal principles within the nation's legal framework. Malaysia, a nation that boasts a dual legal system, seeks to harmonize these two systems and standardize their implementation across states. As the nation with the most conservative legal traditions, Saudi Arabia is engaged in modernizing its legal system, driven by the principles of codification and increased transparency.

Notwithstanding the discrepancies in methodology, it can be demonstrated that implementing Islamic criminal law in a modern context necessitates the maintenance of the tenets of sharia whilst simultaneously accommodating the demands of contemporary society. All three countries evidence it. Implementing Islamic criminal law in the three countries is predicated on a multifaceted approach, encompassing dialogue, education, legal reform, and institutional strengthening.

A thorough comprehension of these issues and their respective countermeasures is paramount in academic studies. Such knowledge can also offer valuable insights into developing legal policies that are more effective and responsive to each country's socio-cultural context.

#### 3.3.1 Implementation Challenges and Resolution Efforts in Indonesia

The challenges encountered by Indonesia in implementing Islamic criminal law are indicative of the complexity of such endeavours, particularly in a nation with the world's largest Muslim population. Indonesia is confronted with substantial challenges in its efforts to enforce legislation about religious violence. These challenges are primarily categorised into two distinct domains namely structural and cultural.<sup>68</sup> Structural aspects are those for which the government is responsible for identifying and implementing measures, and which are regarded as legal aspects that are subject to social accountability.<sup>69</sup> Meanwhile, cultural aspects refer to the influence exerted by a nation's culture on empirical law enforcement. These cultural aspects are considered legal aspects for which the nation is socially accountable. The aforementioned factors encompass

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<sup>68</sup> Sugiarta I and Widiati I, "Tanggungjawab Pemerintah Dalam Pengelolaan Lingkungan Hidup Berbasis Partisipasi Masyarakat Untuk Pembangunan Daerah Bali," *Kertha Wicaksana* 14, no. 2 (2020): 96–102, <https://doi.org/10.22225/kw.14.2.2020.96-102>.

<sup>69</sup> Erlan Wijatmoko, Armaidly Armawi, and Teuku Faisal Fathani, "An Evaluation of a Special Government's Legal Structure for Alleviating Poverty: Role of Local Government in North Aceh, Indonesia," *Journal of Infrastructure, Policy and Development* 8, no. 2 (2024): 1–27, <https://doi.org/10.24294/jipd.v8i2.2630>.

structural aspects, including but not limited to Weak coordination between state institutions, Limited resources and infrastructure, and Inconsistencies in legal interpretation.

Cultural Considerations Community resistance to formal legal intervention is important in this analysis. The influence of religious leaders, who often spread doctrine to their followers, is another relevant factor impacting cases' resolution. Social stigmatisation of victims is also a relevant consideration, as is the influence of religious leaders who also spread doctrine to their followers. The cultural aspects that influence the case resolution process include community resistance to formal legal intervention, religious leaders who often disseminate doctrine to their followers, the impact of social stigma against victims, and religious leaders who similarly disseminate doctrine to their followers.

Given their social, legal, institutional, and operational dimensions, a multidisciplinary approach is required to tackle these challenges. The pluralism inherent in Indonesian society poses a significant challenge to implementing Islamic criminal law. Indonesian society is characterised by its heterogeneity, encompassing various ethnic groups, religions, and cultures. Consequently, implementing legal provisions derived from a single religion may give rise to opposition from other population segments. This opposition is not only emanating from non-Muslim factions, but is also being voiced by Muslims who are apprehensive that the literal application of Islamic criminal law will result in the curtailment of individual liberties and a regression in civil liberties.<sup>70</sup> Moreover, the public's understanding of Islamic law, which is not comprehensive (kaffah), represents a significant obstacle. It is a commonly held belief that certain practices within Islamic criminal law, such as hand-cutting, are cruel and inhumane. Indeed, this impression is created because there is a lack of awareness regarding the fact that the imposition of the punishment is contingent upon the fulfilment of several stringent requirements.

From a legal formal standpoint, Indonesia is confronted with considerable disparities in interpreting Sharia among Islamic and legal scholars. The divergent interpretations of Islamic criminal law present a significant challenge in codification and standardisation. In addition to these challenges, Indonesia is confronted with institutional deficiencies, manifesting in inadequate infrastructure and resources. It is evident that there is a paucity of legal professionals, including judges, lawyers, and law enforcement officials, who have received training in Islamic law.<sup>71</sup>

Comprehensive legal training and education are prerequisites for accurately and equitably implementing Sharia principles within a contemporary judicial framework. The implementation of Sharia criminal law in Indonesia faces several challenges. One such challenge is the philosophical difference between Dutch colonial criminal law, emphasizing individual rights and freedoms, and

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<sup>70</sup> Lalu Hadi Adha, H. Zaeni Asyhadie, and Kusuma Rahmawati, "Akibat Hukum Dan Pluralisme Hukum Adopsi Di Indonesia," *Private Law* 4, no. 3 (2024): 914–25, <https://doi.org/doi.org/10.29303/prlw.v4i3>.

<sup>71</sup> Fridawaty et al., "Menavigasi Penerapan Hukum Islam Dalam Sistem Peradilan Modern."

the moral values espoused by Indonesian society. This philosophical difference is also a challenge in the implementation of Islamic criminal law.<sup>72</sup>

Finally, the politicisation of Islamic law is a significant challenge, as it involves the utilisation of Islamic law as a means to attain specific political objectives. It can potentially compromise legal integrity and result in injustices, particularly when influenced by certain political interests.<sup>73</sup>

### **3.3.2 Implementation Challenges and Resolution Efforts in Malaysia**

Malaysia, a nation that operates a dual legal system whereby both sharia law and civil law are in effect concurrently, faces distinct challenges compared to Indonesia and Saudi Arabia. The primary challenge in Malaysia is the dualism of the legal system, which engenders complexity in terms of jurisdiction and law enforcement.<sup>74</sup>

The Malaysian legal system, based on Islamic Sharia law, has limited jurisdiction in some instances and applies exclusively to Muslims. The restrictions pertain to specific domains, including family law, inheritance law, and select aspects of criminal law, which are subject to limited sanctions. This state of affairs gives rise to intricate ambiguities in cases involving non-Muslims or interfaith aspects between Sharia courts and civil courts. The Malaysian Constitution limits the maximum sentence that Sharia courts can impose. The aforementioned limitation poses a considerable challenge in terms of the comprehensive implementation of Islamic criminal law, especially regarding severe criminal cases, which, according to traditional Islamic law, are subject to more severe sanctions.<sup>75</sup>

Geographically, Malaysia comprises 13 states and three federal territories, with each state having a degree of autonomy in religion and Sharia law.<sup>76</sup> As a result, not all states in Malaysia have clear legislation on Islamic law. This variation leads to inconsistency in treating similar cases in different states. There are significant differences between the states in interpreting and applying Islamic criminal law.

In its capacity as a multicultural nation that is also home to a considerable non-Muslim population, the Malaysian state faces opposition from non-Muslim communities who are concerned that the increased implementation of Sharia law will have a detrimental effect on their rights. In the context of a globalised and technologically advanced modern society, Malaysia faces considerable challenges in interpreting and applying Islamic law.

In addressing the challenges faced, Malaysia has pursued a strategy of modernising its Islamic justice system to enhance its efficiency and capacity to manage cases within its purview. In the context of harmonising laws and regulations on Islamic law, efforts are underway to enhance inter-country coordination to mitigate discrepancies and inconsistencies in case management.

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<sup>72</sup> Rika Afrida Yanti, "Implementasi Hukum PIDana Islam Di Indonesia: Sebuah Upaya Politik Konstitusionalisme" 2, no. 1 (2022): 47–56, <https://e-journal.institutabdullahsaid.ac.id/index.php/AS-SAID/article/view/63>.

<sup>73</sup> Muhammad Yusril et al., "Analisis Polarisasi Dualisme Dan Pluralisme Hukum Islam Di Indonesia."

<sup>74</sup> Fridawaty et al., "Menavigasi Penerapan Hukum Islam Dalam Sistem Peradilan Modern."

<sup>75</sup> Muhammad and Shafy Mohamed Affan, "Constructing an Islamic Criminal Law System in Malaysia."

<sup>76</sup> Siti Marwiyah, *Analisis Bentuk Pemerintahan Di Lingkup Negara Asean*, ed. Sulaiman (Makassar: Mitra Ilmu, 2023).

Moreover, Malaysia is implementing innovative measures by placing a particular emphasis on the education and training of judges and legal professionals in the field of Sharia principles and their application within the context of contemporary law.

Innovations developed by Malaysia in addressing religious-based violence in the country such as, reforming the applicable laws by harmonising regulations between sharia law and civil law, developing cross-jurisdictional case handling protocols, and modernising the religious justice system, strengthening expert capacity by conducting special training for sharia and civil judges, religious mediator certification programmes and developing an integrated database as well as policy recommendations that can be applied in Malaysia such as increasing integration in the justice system, standardising handling procedures and strengthening protection of vulnerable groups or minorities.<sup>77</sup>

The objective is to promote dialogue and collaboration between scholars, legal scholars, and legal practitioners and to better understand how Sharia principles can be integrated with positive law.

### **3.3.3 Implementation Challenges and Resolution Efforts in Saudi Arabia**

Despite Saudi Arabia's consistent and reliable enforcement of its laws, applying them is less flexible when juxtaposed with the country's top-down, government-centric approach. Judicial application of rules, shaped by the aforementioned interpretation, has been demonstrated to result in a less malleable application of legal precedent. The criminal justice system of the Kingdom of Saudi Arabia is characterised by its rigorous implementation of legal sanctions, which include the ultimate penalty of death. This practice remains in effect to this day.

Saudi Arabia has been identified as a nation with one of the highest rates of execution worldwide. In recent decades, the government and judicial bodies of Saudi Arabia have seen a marked increase in their issuance of death sentences, as a direct consequence of the escalating levels of violent crime which were observed during the 1970s. This phenomenon is similar to analogous developments in the United States and mainland China during the late 20th century. Consequently, Saudi Arabia is regarded as exhibiting a lesser degree of flexibility about its legal and human rights policies in comparison to other nations.<sup>78</sup>

Key aspects of the Saudi judicial system include the centralisation of authority, with all judicial powers concentrated in a small number of parties; the dominant role of the ulama in interpreting the law; and the strict application of sanctions based on sharia principles. Nonetheless, it is evident that the courts in Saudi Arabia also adhere to the conventional principle of eschewing hadd punishments wherever practicable. It suggests a certain degree of flexibility in

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<sup>77</sup> Nor Mazia Mohamed Khairuddin et al., "Faktor Penentu Kejayaan Sistem Penguatkuasaan Dan Pendakwaan Syariah Di Malaysia," *Islamiyyat* 43, no. 1 (June 1, 2021): 27–36, <https://doi.org/10.17576/islamiyyat-2021-4301-03>.

<sup>78</sup> Moosa Akefi Ghaziani and Mohammad Akefi Ghaziani, "A Reflection on the Human Rights Attitude and International Law Approaches of Iran and Saudi Arabia," *Asian Journal of Middle Eastern and Islamic Studies* 16, no. 3 (2022): 310–26, <https://doi.org/10.1080/25765949.2022.2128133>.

the implementation of the legal system.<sup>79</sup>

It is a commonly held view that the Kingdom of Saudi Arabia is a state that is averse to regulatory reform. The factors contributing to this rigidity include the constitutional foundation rooted in Sharia law, which hinders regulatory reform in Saudi Arabia, and the stipulation that the state must protect human rights following Islamic Sharia principles. Consequently, any amendments to the legal system are required to be consistent with the interpretation of Sharia as established by the kingdom's religious authorities.<sup>80</sup> Saudi Arabia is the only country with a distinct legal system, and it applies laws with a strict interpretation of Sharia sources, especially in the context of criminal law. The principles of the Mahzab Hambali, which is dominant in the Saudi judicial system, are characterised by an adherence to textual sources and a conservative approach.

The most readily identifiable impediment to advancement and reform within the legal system is the restricted involvement of women in the justice system. Externally, the Saudi Arabian government is under pressure from the international community about human rights issues. Furthermore, there is a necessity to adapt to global standards, and the system is the subject of criticism about its transparency.<sup>81</sup>

Despite its reputation for rigidity, Saudi Arabia has recently exhibited indications of reform in various domains, including, to a limited extent, its judicial system. In recent years, the Kingdom of Saudi Arabia has witnessed a series of social reforms under the auspices of Crown Prince Mohammad bin Salman. Although these reforms are not directly related to the criminal justice system, they indicate a gradual shift towards a more moderate course of action. This shift is evident in two main ways. Firstly, it is characterised by the introduction of internationalisation and globalisation, which have been designed to expose Saudis to the global world. Secondly, it is reflected in the amendment of legislation to allow adult women to live independently, without having first to obtain permission from their father or other male relatives.<sup>82</sup>

In the context of Saudi Arabia's justice system, the notion of restorative justice is beginning to garner attention. Despite its recent emergence, Saudi Arabia is regarded as the most consistent Islamic country in implementing Islamic criminal law. This doctrine encompasses the notion of restorative justice.<sup>83</sup> his concept, which emphasises the restoration of the relationship between the offender, victim, and community, as opposed to the mere punishment of the offender, suggests that there is scope for a more comprehensive approach within Saudi Arabia's justice

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<sup>79</sup> Almutawa, "The Arab Court of Human Rights and the Enforcement of the Arab Charter on Human Rights."

<sup>80</sup> Majed N Al-Shaibani, "Remote Litigation in the Kingdom of Saudi Arabia," *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 61–74, <https://doi.org/10.5281/zenodo.4756110/IJCJS>.

<sup>81</sup> Zalikhho Su'ada, "Pandangan Kongres Ulama Perempuan Indonesia Terhadap Kekerasan Berbasis Gender Online Di Media Sosial Twitter," *Az-Zahra: Journal of Gender and Family Studies* 3, no. 2 (2023): 16–32, <https://doi.org/10.15575/azzahra.v3i2.20596>.

<sup>82</sup> Iqbal, "Polemik Hukuman Mati Di Arab Saudi Dalam Tinjauan Hukum Hak Asasi Manusia."

<sup>83</sup> Fitria Fitria, "Praktik Restorative Justice Pada Lembaga Pemasyarakatan (LP) Di Perancis, New Zealand Dan Arab Saudi: Sebuah Perbandingan," *SALAM: Jurnal Sosial Dan Budaya Syar-i* 2, no. 2 (December 1, 2015), <https://doi.org/10.15408/sjsbs.v2i2.2385>.



system.

### **3.4 Reform Recommendations and Impact of Legal System Regulation Implementation for Indonesia, Malaysia and Saudi Arabia**

It is imperative that recommendations for regulating the legal system in Muslim-majority countries, such as Indonesia, Malaysia, and Saudi Arabia, be formulated with a deep understanding of each country's unique social and cultural context. The judicious application of Sharia principles has the potential to engender significant benefits for society; however, it must be noted that this is contingent upon an approach sensitive to the diversity of views within the society in question.

Within the paradigm of domestic criminal law, the management of cases that possess a religious dimension frequently creates a dichotomy between the formal legal approach and the religious values espoused by the community.<sup>84</sup> This dilemma engenders for law enforcement officials in determining the most appropriate approach. Furthermore, a methodology is required to manage and resolve cases pertaining to religious offences.

#### **3.4.1 Recommendations for Legal System Regulatory Implementation Reform for Indonesia, Malaysia and Saudi Arabia**

It is acknowledged that the application of Islamic criminal law in Indonesia is not consistent across the nation; rather, it is confined to specific regions such as Aceh. In light of this, it is recommended that a legal integration model be devised to enable the implementation of sharia principles within the framework of national positive law. This objective may be achieved through consolidating regional autonomy in the regulation of Sharia law.

In order to resolve religion-related problems, Indonesia may adopt several initiatives. These include institutional reforms to strengthen inter-agency coordination and increase the capacity of law enforcement officials. Of particular significance is the modernisation of the judicial administration system. Innovations in the social environment may be achieved by conducting community-based mediation programmes, involving religious leaders in resolving religious conflicts as mentors, and adopting heart-to-heart approaches. The development of early warning systems and policy recommendations that Indonesia can adopt are also recommended, including the improvement of harmonisation of regulations across sectors, the strengthening of inter-agency coordination, and the development of an integrated monitoring system.<sup>85</sup>

Malaysia has a dual legal system that incorporates the principles of sharia law within the jurisdiction of sharia courts. The Malaysian government recommends expanding the scope of sharia law so that more aspects of Muslim life can be accommodated in the legal system. In addressing instances of religiously motivated violence within the nation, Malaysia has

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<sup>84</sup> Khairol Gunawan et al., "Tranformasi Peradilan Islam: Menganalisis Penegakan Hukum Dalam Masyarakat Modern," *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 1 (2024): 38–52, <https://doi.org/10.71153/jimmi.v1i1.91>.

<sup>85</sup> Prasetyo and Herawati, "Tinjauan Sistem Peradilan Pidana Dalam Konteks Penegakan Hukum Dan Perlindungan Hak Asasi Manusia Terhadap Tersangka Di Indonesia."

implemented a range of innovative measures. These include harmonizing regulations between Sharia law and civil law, establishing cross-jurisdictional case management protocols, and modernizing the religious justice system. The strengthening of expert capacity has been achieved through providing specialised training for Sharia and civil judges, establishing certification programmes for religious mediators, and developing an integrated database. Additionally, policy recommendations have been put forward for implementation in Malaysia, such as enhancing integration within the justice system, standardising procedures, and strengthening the protection of vulnerable groups and minorities.<sup>86</sup>

It is evident that Saudi Arabia, a nation that adheres to the principles of Sharia law as its legal framework, continues to impose some sanctions that are widely regarded as infringements of human rights. In addition, challenges have been identified in the realm of diplomatic relations, necessitating a capacity for adaptation to global standards.<sup>87</sup> As a nation that rigorously enforces Sharia law, Saudi Arabia may contemplate the reformulation of its penal system to ensure it is more compassionate and contemporary, while still adhering to the fundamental tenets of Sharia.<sup>88</sup>

It is also necessary to enhance the teaching of Islamic criminal law at every level within the education sector in all three countries. It is crucial to enhance the public's comprehension of their rights and obligations within the framework of Sharia law. Furthermore, it is imperative to consolidate the capacity of Sharia judicial institutions in Indonesia and Malaysia, thereby empowering them to adjudicate cases about Islamic criminal law with greater authority. In Saudi Arabia, legal expertise can be enhanced through training for judges, thereby facilitating a more profound comprehension of the social context and community requirements when adjudicating cases.<sup>89</sup>

### **3.4.2 Impact of Legal System Regulatory Implementation Reform Recommendations for Indonesia, Malaysia and Saudi Arabia**

The implementation of the integration model has been anticipated to enhance social justice for the Muslim community and concomitantly reduce the tension between positive law and sharia in Indonesia. Nevertheless, challenges persist in terms of achieving diverse societal acceptance.

In Malaysia, extending the ambit of sharia law has the capacity to engender harmonisation between civil law and sharia. However, this potential harmonisation can be superseded by conflict if the implementation process is not managed with the requisite degree of prudence.

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<sup>86</sup> Daleeleer Kaur Randawar, Muhammad Izwan Bin Ikhsan, and Afeezah Binti Rosun Khan, "Mandatory Reporting System for Domestic Violence Cases: A Comparative Legal Analysis," *International Journal of Academic Research in Business and Social Sciences* 14, no. 4 (2024), <https://doi.org/10.6007/ijarbs/v14-i4/20941>.

<sup>87</sup> Zainuddin M, "Implementasi Hukum Syariah Dalam Sistem Peradilan Modern: Studi Kasus Arab Saudi," *Jurnal Studi Hukum Islam* 10, no. 2 (2023): 234–51.

<sup>88</sup> Haliza Nur Madhani et al., "Perbandingan Legislasi Hukum Pidana Islam Di Indonesia Dan Beberapa Negara Muslim Lainnya," *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 1, no. 3 (2024): 72–82, <https://doi.org/10.62383/demokrasi.v1i3.252>.

<sup>89</sup> Gozali, *Pengantar Perbandingan Sistem Hukum (Civil Law, Common Law, dan Hukum Adat)*.

Implementing reforms in sentencing has the potential to enhance Saudi Arabia's international reputation as a modern and progressive nation. However, it is imperative that these reforms be executed with caution, ensuring that they do not disrupt the prevailing social stability.

#### **4.CONCLUSION**

However, the successful implementation at a national level still requires support from the legislature and an adjustment to the prevailing national legal system. Implementing the Islamic legal system in several countries, notably Indonesia, Malaysia and Saudi Arabia, has resulted in various applications. The disparities under consideration are evident in the following domains: the legal framework, the system of retribution, the court structure and the categories of sanctions imposed on offenders. A comparative analysis of the effectiveness and impact of implementing Islamic criminal law in Indonesia, Malaysia, and Saudi Arabia reveals significant variations in the implementation process despite the common foundation of Islamic law in these countries. In contrast, Saudi Arabia has adopted a stringent approach to implementing this legislation, resulting in more evident outcomes. Conversely, Indonesia and Malaysia have encountered numerous challenges in their implementation, characterised by greater flexibility. Recommendations for regulating the legal system in Muslim-majority countries such as Indonesia, Malaysia and Saudi Arabia must consider each nation's social and cultural context. The implementation of sharia principles in a judicious manner has the potential to yield considerable advantages for society. However, it is imperative to acknowledge the necessity of adopting an approach that demonstrates sensitivity to the multifaceted perspectives that characterise society. When addressing cases of domestic criminal offences which have a religious dimension, there is frequently a clash between the formal legal approach and the religious values of the community. This engenders a dilemma for law enforcement officials in determining the most appropriate approach. Further, a methodology is required for managing and resolving cases pertaining to religious affairs. Further study recommendations from this discussion are studies on the development of impact evaluation methods, longitudinal studies of policy implementation, broader comparative analyses, the influence of social media in cases of violence against religion, the effectiveness of policies and the long-term impact of policy implementation in each country .

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