

Harmonization of Local Customs with Maqasid Syariah in the Formation of Islamic Family Law in Malaysia

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ABSTRAK : Kajian ini meneliti bagaimana adat tempatan diharmonikan dengan Maqasid Syariah dalam pembentukan undang-undang keluarga Islam di Malaysia. Masyarakat Melayu sebagai majoriti Muslim di Malaysia mempunyai adat yang berakar kuat dalam sistem sosial dan kekeluargaan. Dalam masa yang sama, undang-undang keluarga Islam perlu berpaksikan kepada prinsip syariah yang menitikberatkan maqasid seperti pemeliharaan agama (*hifz al-din*), nyawa (*hifz al-Nafs*), akal (*hifz al-Aql*), keturunan (*hifz al-Nasl*) dan harta (*hifz al-Mal*). Kajian ini menggunakan pendekatan kualitatif melalui analisis dokumen terhadap Enakmen Undang-undang Keluarga Islam di beberapa negeri dan perbandingan dengan prinsip Maqasid Syariah. Hasil kajian mendapati bahawa pengharmonian antara adat dan syariah adalah penting dalam memastikan penerimaan masyarakat terhadap undang-undang Islam, tanpa mengabaikan matlamat syariah. Implikasi kajian ini menyarankan supaya prinsip Maqasid dijadikan kerangka utama dalam menyaring unsur adat agar tidak bertentangan dengan hukum syarak dan nilai universal Islam.

Kata kunci: Maqasid Syariah, adat tempatan, undang-undang keluarga Islam, harmonisasi, masyarakat Melayu

ABSTRACT : This study examines how local customs (*adat*) are harmonized with Maqasid Syariah in the formation of Islamic family law in Malaysia. The Malay community as the majority of Muslims in Malaysia has customs that are deeply rooted in the social and family system. At the same time, Islamic family law needs to be based on sharia principles that emphasize maqasid such as the preservation of religion (*hifz al-din*), life (*hifz al-Nafs*), intellect (*hifz al-Aql*), lineage (*hifz al-Nasl*) and property (*hifz al-Mal*). This study uses a qualitative approach through document analysis of Islamic Family Law Enactments in several states and comparison with the Maqasid Syariah principles. The results of the study found that the harmonization between customs and syariah is important in ensuring the acceptance of Islamic law by the community, without ignoring the goals of syariah. The implications of this study suggest that the Maqasid principles should be used as the main framework in filtering elements of customs so that they do not conflict with Islamic law and the universal values of Islam.

Keywords: Maqasid Syariah, local custom, Islamic Family Law, harmonization, Malay community

1. INTRODUCTION

In Muslim societies, the consideration and acceptance of local customs (*adat*) play a significant role in ensuring that Islamic teachings are applied in a manner that is both practical and contextually appropriate. While Islamic law is divinely revealed and universal in its principles, its application has always recognized the importance of local realities and cultural norms, provided they do not contradict the core teachings of Islam. This is reflected in the well-established legal maxim, “*al-‘ādah muhakkamah*” (custom is an authoritative source of law), which underscores the Shariah’s openness to accommodating *adat* or *uruf* (custom) as long as it aligns with Islamic values. (Gunardi et al., 2017)

Accepting *adat* helps promote social harmony, legal relevance, and community acceptance. It ensures that Islamic rulings are not imposed in a vacuum but are instead rooted in the lived experiences of the people. In matters of family law such as marriage customs, inheritance, and conflict resolution local traditions often carry deep historical and emotional significance. Ignoring these customs can lead to social resistance or legal alienation. By integrating acceptable *adat* into Islamic legal frameworks, scholars and lawmakers can preserve the identity and cultural richness of the Muslim community while safeguarding the objectives (*maqasid*) of Shariah. (Sahid, 2018)

Ultimately, the inclusion of local customs reflects the dynamism of Islamic law and its ability to accommodate diversity within the unity of its divine objectives. It serves as a bridge between tradition and revelation, helping Muslim societies implement Islamic principles in a way that is both authentic and relevant.

Malaysia as a Muslim majority country has a unique Islamic legal system, especially in the family aspect. Islamic family law is not only guided by Islamic law but also considers the cultural background of the local Malay community which is rich in customs. The question is to what extent these customs are harmonized with the Maqasid Syariah which is the core of justice and prosperity in Islam. This study examines the interaction between customs and Maqasid Syariah in the formation of Islamic family law in Malaysia and assesses the level of harmony between the two.

The formation of Islamic Family Law in Malaysia is a complex process that must account for the diverse socio-cultural realities of its multi-ethnic society. One of the unique features of Malaysian society, particularly in states like Negeri Sembilan, is the presence of deeply rooted local customs such as *Adat Perpatih*. These customs, while traditional in nature, have historically governed aspects of family life, including inheritance, marriage, and communal responsibilities. In the contemporary Islamic legal framework, the harmonization of such local customs with the higher objectives (*maqasid*) of Syariah is both necessary and strategic. This harmonization ensures that the law remains contextually relevant and socially cohesive while fulfilling the core aims of Islamic law namely, the protection of religion, life, intellect, lineage, and property. Without such integration, there is a risk of legal dissonance, cultural alienation, and reduced efficacy in the implementation of Syariah. Therefore, examining the interplay between local *adat* and *maqasid syariah* is critical for developing Islamic Family Law that is both legally sound and culturally grounded in the Malaysian context.

2. CONCEPTUAL FRAMEWORK

MAQASID SYARIAH

Maqasid syariah refers to the higher objectives intended by Islamic law, which aim to protect and preserve religion (*al-din*), life (*al-nafs*), intellect (*al-‘aql*), lineage (*al-nasl*), and property (*al-mal*). Modern scholars such as Al-Shatibi, Ibn Ashur, and contemporary thinkers

have expanded its scope to include justice, human dignity, and public welfare (*maslahah*). *Maqasid syariah* serves as a foundational framework for interpreting and applying Islamic rulings in a manner that promotes human well-being and societal harmony. (Al-Khadimi, 2014)

Applying *Maqasid Shariah* (the higher objectives of Islamic law) is crucial in Islamic family law as it ensures that rulings are aligned with the overall purpose of protecting fundamental human needs and promoting social well-being. This approach ensures that family law not only adheres to specific textual interpretations but also serves the broader goals of justice, mercy, and the preservation of essential values.

Maqasid Shariah emphasizes the protection of five core values: religion, life, intellect, lineage (family), and property. In family law, this translates to ensuring that legal rulings and practices safeguard these essentials for all individuals involved, particularly within the family unit. Maqasid Shariah guides the application of Islamic law to achieve both individual and societal well-being. In family law, this means that rulings should be just, fair, and promote the welfare of all family members, including children, spouses, and extended family. A key aspect of Maqasid Shariah is the pursuit of benefits (*maslahah*) and the avoidance of harm (*mafsadah*). In family law, this principle helps to ensure that laws and practices are designed to minimize harm and maximize the positive outcomes for individuals and the family. Maqasid Shariah also provides a framework for *ijtihad* (independent reasoning) in Islamic law. When faced with new or complex family law issues, scholars can refer to the objectives of Shariah to guide their interpretations and rulings, ensuring they align with the overall purposes of Islamic law. (Nor Adibah Wan Ahmad et al., 2021)

Among examples of applying maqasid sharia in family law, it ensures that marriage is not just a contract but also a means of fulfilling natural human needs, preserving lineage, and promoting mutual rights and responsibilities. Maqasid sharia guides the process of divorce to minimize harm and ensure fairness, especially for vulnerable parties like women and children. In child custody, Maqasid Shariah emphasizes the importance of the child's well-being and provides a framework for making decisions that prioritize the child's best interests. As for issues related to inheritance, Maqasid sharia ensures that inheritance laws are applied fairly and justly, taking into consideration the needs of all potential inheritors.

In essence, applying Maqasid al-Shariah in Islamic family law ensures that legal rulings are not merely technical applications of rules but rather instruments for achieving the broader goals of justice, mercy, and the well-being of individuals and the Muslim community.

2.2 LOCAL CUSTOM (ADAT) AND ITS IMPORTANCE IN MUSLIM SOCIETY

In Muslim societies, the consideration and acceptance of local customs (*adat*) play a significant role in ensuring that Islamic teachings are applied in a manner that is both practical and contextually appropriate. While Islamic law is divinely revealed and universal in its principles, its application has always recognized the importance of local realities and cultural norms, provided they do not contradict the core teachings of Islam. This is reflected in the well-established legal maxim, "*al-'adah muhakkamah*" (custom is an authoritative source of law), which underscores the Shariah's openness to accommodating *adat* or *uruf* (custom) as long as it aligns with Islamic values. (Sahid, 2019)

Accepting *adat* helps promote social harmony, legal relevance, and community acceptance. It ensures that Islamic rulings are not imposed in a vacuum but are instead rooted in the lived experiences of the people. In matters of family law such as marriage customs, inheritance, and conflict resolution, local traditions often carry deep historical and emotional significance. Ignoring these customs can lead to social resistance or legal alienation. By integrating acceptable *adat* into Islamic legal frameworks, scholars and lawmakers can

preserve the identity and cultural richness of the Muslim community while safeguarding the objectives (*maqasid*) of Shariah.

Ultimately, the inclusion of local customs reflects the dynamism of Islamic law and its ability to accommodate diversity within the unity of its divine objectives. It serves as a bridge between tradition and revelation, helping Muslim societies implement Islamic principles in a way that is both authentic and relevant.

2.3 ADAT IN THE MALAYSIAN CONTEXT

Adat refers to traditional customs and norms passed down through generations. In Malaysia, *adat* is legally and socially recognized, particularly in matters related to family and inheritance. For example, *Adat Perpatih* is a matrilineal customary system practiced in Negeri Sembilan. It has distinct principles governing property inheritance and kinship that differ from conventional Islamic practices. While some elements of *adat* may conflict with Islamic law, many are neutral or complementary, and thus subject to harmonization. (Wardi & Sahid, 2016)

3. THE FORMATION OF ISLAMIC FAMILY LAW IN MALAYSIA

The formation of Islamic family law in Malaysia is the result of a long historical, political, and socio-religious evolution shaped by the interaction between Islamic jurisprudence, colonial legal influences, and local customs (*adat*). Islamic family law refers to laws governing personal and familial matters such as marriage, divorce, maintenance, inheritance, and child custody, and in Malaysia, these matters fall under the jurisdiction of the individual states as provided by the Federal Constitution. (*Islamic Family Law (Federal Territories) Act 1984*, n.d.)

3.1 HISTORICAL BACKGROUND

The roots of Islamic family law in Malaysia can be traced back to the introduction of Islam to the Malay Archipelago in the 12th and 13th centuries. As Islam spread, it began to influence local customs and governance, especially in Malay sultanates like Melaka, Johor, and Kedah. Legal texts such as *Hukum Kanun Melaka* and *Undang-Undang Laut Melaka* reflect early attempts to integrate Islamic principles into state administration and customary laws.

However, the advent of British colonial rule in the 19th century led to significant shifts. While the British introduced Western legal systems for civil and criminal matters, they allowed the application of Islamic law in personal matters among Muslims, provided it did not contradict British legal interests. This policy of "non-interference" resulted in the institutionalization of Islamic family law within a plural legal system. (Adil & Ahmad, 2016)

3.2 CONSTITUTIONAL AND LEGAL FRAMEWORK

Under the Malaysian Federal Constitution, Islamic law is a matter for state jurisdiction, as stipulated in the Ninth Schedule, List II (State List). This means that each of the 13 states and the Federal Territories can enact and enforce its own Islamic family law legislation. The main legislative framework includes *Islamic Family Law (Federal Territories) Act 1984* (Act 303) and corresponding enactments in each state, such as the *Enakmen Undang-undang Keluarga Islam* for Selangor, Kelantan, and others. These laws regulate marriage registration, polygamy, divorce, child maintenance, *nafkah iddah*, *hadhanah*, and *harta sepencarian* (*joint matrimonial property*). The law is implemented through the Syariah Courts, which are also

established at the state level (Akta Undang-Undang Keluarga Islam (Wilayah-Wilayah Persekutuan) 1984 (Act 303) - Peguam Syarie/Peguam Syarie, n.d.)

3.3 LEGAL PROVISIONS RELATED TO ISLAMIC FAMILY LAW IN MALAYSIA

In Malaysia, matters relating to the marriage and divorce of Muslim couples fall under the jurisdiction of the respective states. Each state possesses its own legislation governing issues pertaining to marriage, divorce, and related matters in accordance with Islamic law as practised within that state. (Ahmad Ibrahim, 2000)

The following is a list of Islamic Family Law statutes in Malaysia, organised by state: (Hasnizam Hashim, 2025)

	State	Act / Enactment / Ordinance
1	Wilayah Persekutuan	Islamic Family Law Act (Federal Territories) 1984 (Act 303)
2	Johor	Islamic Family Law Enactment 2003
3	Kedah	Islamic Family Law Enactment (Kedah Darul Aman) 2008
4	Kelantan	Islamic Family Law Enactment 2002
5	Melaka	Islamic Family Law Enactment (State of Melaka) 2002
6	Negeri Sembilan	Islamic Family Law Enactment (State of Negeri Sembilan) 2003
7	Pahang	Islamic Family Law Enactment (State of Pahang) 2005
8	Perak	Islamic Family Law Enactment (State of Perak) 2004
9	Perlis	Islamic Family Law Enactment 2006
10	Pulau Pinang	Islamic Family Law Enactment (State of Penang) 2004
11	Sabah	Islamic Family Law Enactment 2004
12	Sarawak	Islamic Family Law Ordinance (Sarawak) 2001
13	Selangor	Islamic Family Law Enactment (State of Selangor) 2003
14	Terengganu	Islamic Family Law Enactment (State of Terengganu) 2017

Source: Acts / Enactments / Ordinances on Islamic Family Law in Malaysia

3.4 ROLE OF THE SYARIAH JUDICIARY AND INSTITUTIONS

The Syariah Court hierarchy includes Syariah Subordinate Courts, Syariah High Courts and

Syariah Court of Appeal. Matters of Islamic family law are adjudicated by judges trained in both Islamic jurisprudence and civil law. In addition, state-level Islamic Religious Councils (Majlis Agama Islam Negeri) and Fatwa Committees also play a crucial role in interpreting and guiding the application of Islamic family law.

3.5 CUSTOMARY INFLUENCE IN LEGAL DEVELOPMENT

One of the unique features of Islamic family law in Malaysia is its accommodation of local customs (*adat*), particularly in states like Negeri Sembilan (with *Adat Perpatih*) and Malacca (with *Adat Temenggung*). These customs influence practices such as property inheritance, marriage negotiation, and community roles in dispute resolution. Legislators and jurists have, over time, selectively incorporated aspects of these customs into the law, as long as they do not contradict Shariah principles. (Febrianty et al., 2024)

3.6 REFORMATION AND MODERNIZATION EFFORTS

In recent decades, there have been several efforts to reform Islamic family law in Malaysia to better reflect the principles of justice, gender equity, and *maqasid syariah*. These include introducing standardized laws across states (e.g., Model Family Law 2001), strengthening procedural fairness in divorce and maintenance cases, recognizing the rights of women in *harta sepencarian* and *hadhanah* cases, and incorporating *ijtihad* and contemporary *maslahah* into legal reasoning.

In essence, this is the foundation to understand how Islamic family law in Malaysia was formed, and why harmonization with adat and *maqasid syariah* is crucial for its continued

4. HARMONIZATION OF LOCAL CUSTOMS AND MAQASID SHARIAH IN ISLAMIC FAMILY LAW IN MALAYSIA: CONCEPTS AND EXAMPLES

The harmonization of local customs and *Maqasid Shariah* in Islamic family law in Malaysia refers to the integration of culturally rooted practices with the higher objectives of Islamic law (*maqasid syariah*) to create a legal framework that is both authentic and contextually relevant. This approach ensures that legal rulings and family-related policies not only uphold justice, compassion, and public welfare (*maslahah*), but also reflect the lived realities and social values of Malaysian Muslim communities. For instance, the recognition of customary marriage practices like *akad nikah* held according to local traditions, or the application of Adat Perpatih principles in inheritance and guardianship, exemplifies how local customs can be aligned with Shariah goals such as protecting lineage (*hifz al-nasl*), preserving dignity, and promoting social harmony. This model enhances the legitimacy and effectiveness of Islamic family law by making it more inclusive and adaptable to local needs without compromising its religious foundations. (Mualimin Mochammad Sahid, 2024)

4.1 IMPORTANCE OF HARMONIZATION IN ISLAMIC FAMILY LAW

Islamic family law governs intimate aspects of human life such as marriage, divorce, child custody, maintenance, and inheritance. In Malaysia, where local customs (*adat*) are deeply rooted in the Malay-Muslim identity - especially in states like Negeri Sembilan - harmonizing these customs with the overarching objectives of Islamic law (*maqasid syariah*) is crucial. This harmonization ensures that Islamic family law is not only theologically sound but also socially coherent and culturally relevant.

4.2 ENHANCING SOCIAL ACCEPTANCE AND LEGAL LEGITIMACY

By incorporating acceptable elements of *adat*, Islamic family law becomes more relatable and practicable. Communities are more likely to comply with laws that reflect their lived experiences and traditional values, as long as those values do not contradict the fundamental teachings of Islam.

4.3 ADVANCING JUSTICE AND WELFARE

Maqasid syariah promotes values such as justice (*'adl*), compassion, protection of lineage (*nasl*), and preservation of family units. Many customary practices serve these same aims. When harmonized, *adat* can support the realization of justice within the family, especially in areas like dispute resolution and inheritance.

4.4 PRESERVING CULTURAL IDENTITY WITHIN ISLAMIC ETHICS

Malaysia's family legal system stands as a model of how cultural uniqueness can coexist with religious universality. Harmonization allows communities to preserve their identity while staying within the ethical and legal limits of Islamic law. (Febrianty et al., 2024)

5. EXAMPLES OF HARMONIZATION IN ISLAMIC FAMILY LAW IN MALAYSIA

5.1. INHERITANCE OF CUSTOMARY LAND (*TANAH ADAT*) IN NEGERI SEMBILAN (*ADAT PERPATIH*)

Tanah adat refers to customary land in Negeri Sembilan governed by *Adat Perpatih*, a matrilineal system where land is inherited through the female line, typically from mother to daughter. This land is tied to the *suku* (clan) and cannot be sold or transferred outside the clan without approval from traditional leaders. While men may have rights to use the land, they do not inherit it. The management and distribution of *tanah adat* are handled by customary authorities rather than civil or Syariah courts.

Although this system differs from Islamic *faraid* inheritance law, it has been accepted in Negeri Sembilan through the principle of "*al-'adah muhakkamah*" (custom is authoritative), as long as it does not contradict Islamic teachings. Religious authorities view *tanah adat* as communal or trust property, aligning with *maqasid shariah* by preserving lineage (*hifz al-nasl*), protecting property (*hifz al-mal*), and promoting social harmony (*maslahah*).

The harmonization of customary law (*adat*) and Islamic law in the distribution of *tanah adat* (customary land) in Negeri Sembilan, particularly under *Adat Perpatih*, represents a unique model of legal coexistence. While *Adat Perpatih* follows a matrilineal inheritance system where land is passed through the female line and managed communally by the clan (*suku*), this practice differs from Islamic *faraid* law, which mandates fixed shares for heirs, including males.

To resolve this apparent conflict, *tanah adat* is reclassified not as personal property, but as communal or trust-based property (*harta pusaka adat*), thus placing it outside the scope of *faraid* and aligning it with the Islamic legal maxim "*al-'adah muhakkamah*" (custom is authoritative when not contradicting Shariah). (Yasmin Hanani Mohd Safian, 2017)

This harmonization is further supported by the principles of *maqasid shariah*, especially the protection of lineage (*hifz al-nasl*), property (*mal*), and public welfare (*maslahah*). Religious authorities in Negeri Sembilan, including fatwa committees, have recognized the legitimacy of this *adat*-based land distribution, seeing it as consistent with the higher objectives of Islamic law (*maqasid shariah*). In practice, the management and distribution of *tanah adat* remain under the authority of traditional institutions such as the Buapak, Lembaga, and Undang, with minimal interference from civil or Syariah courts. This model preserves cultural identity while upholding Islamic ethical values, ensuring the law remains both contextually relevant and religiously grounded. (Jabatan Mufti Kerajaan Negeri Sembilan, 2016)

5.2. *HARTA SEPENCARIAN* (JOINT MATRIMONIAL PROPERTY)

In Malaysian society, *harta sepencarian* refers to property jointly acquired by husband and wife during marriage, including by the wife through indirect contributions (e.g., housework, childcare). While the classical Islamic jurisprudence typically recognizes individual ownership unless otherwise stated in a contract, it seems that the practice of *harta sepencarian* to have

contradicted with the Islamic law of inheritance (*faraid*) as there is no specific example and reference related to it. (Yazid Ahmad et al., 2014)

Harta sepencarian (joint matrimonial property) is a legal concept in Malaysia that reflects the harmonization between Malay customary practices (*adat*) and Islamic law. Rooted in Malay tradition, it acknowledges that both spouses, whether through financial or domestic contributions, jointly build the household during marriage. Even if property is legally registered under one name, the custom holds that both husband and wife have equitable rights to assets acquired during the marriage. This aligns with the cultural belief in shared responsibility and partnership in marital life.

Islamic law, while not explicitly detailing *harta sepencarian* in classical texts, allows room for equitable arrangements and *ijtihad* (independent reasoning), especially in the pursuit of justice (*'adl*) and public interest (*maslahah*). Malaysian Syariah courts have formally incorporated the concept under legislation like the Islamic Family Law (Federal Territories) Act 1984, which allows courts to divide matrimonial assets based on direct and indirect contributions. This legal adaptation serves the maqasid shariah by ensuring fairness, protecting property rights (*hifz al-mal*), and safeguarding vulnerable spouses - often women - after divorce. Thus, *harta sepencarian* stands as a successful model of legal harmonization that balances cultural tradition with Islamic principles. (Mochammad Sahid et al., 2020)

5.3. MARRIAGE RITUALS AND CEREMONIAL CUSTOMS

In Malaysia, marriage rituals and ceremonial customs are deeply influenced by Malay culture (*adat*) and have been largely harmonized with Islamic teachings, creating a culturally rich yet religiously compliant framework for marriage. While Islam outlines the essential components of a valid marriage, such as the consent of the bride (*ijab-qabul*), presence of witnesses, and payment of *mahar* (dowry), Malay-Muslim communities incorporate additional customary elements like *merisik* (pre-engagement inquiry), *meminang* or *khitbah* (formal proposal), *hantaran* (gift exchange), and *bersanding* (wedding reception ceremony) or *walimah al-'ursy*.

This harmonization is possible because these cultural practices are not integral to the validity of marriage in Islam but are maintained as long as they do not contradict Shariah. For example, *merisik* and *meminang* promote family involvement and proper matchmaking, which align with Islamic values of modesty and protecting lineage (*hifz al-nasl*). The giving of *hantaran*, though cultural, is permissible if done within one's means and without extravagance or burden, in line with the Islamic principle of avoiding *israf* (wastefulness).

Islamic authorities and scholars in Malaysia accept these rituals based on the legal maxim "*al-'adah muhakkamah*" (custom is authoritative when not in conflict with Shariah), and many are endorsed in practice by Syariah courts and state religious councils. Rituals such as *akad nikah* (the actual marriage contract) are always performed in accordance with Islamic requirements, while cultural ceremonies like *bersanding* are permitted provided, they avoid elements like excessive display, superstition, or un-Islamic entertainment. Through such careful moderation, Malaysia has successfully integrated cultural identity into Islamic marital practices while safeguarding the core principles of the religion. (Che Zaharah Abdullah Zaharah Yahya, 2015)

5.4. CUSTOMARY MEDIATION AND RECONCILIATION (*SULH*)

In Malaysia, the harmonization of customary mediation and Islamic reconciliation (*sulh*) is effectively achieved by integrating traditional Malay dispute resolution practices with the formal mechanisms of Islamic family law. Traditionally, Malay communities resolve family

conflicts through informal discussions facilitated by community elders or family leaders, emphasizing consensus, mutual respect, and the preservation of family harmony. These practices align closely with the Islamic concept of *sulh*, which encourages peaceful settlement and reconciliation as emphasized in the Qur'an and Hadith. (Binti & Adnan, 2024)

To formalize this harmonization, Malaysian Syariah courts have established dedicated Sulh Units that apply Islamic principles while respecting cultural customs. These units often adopt the conciliatory tone and communal methods found in local custom (*adat*), provided they do not contradict Shariah. This integration is supported by Islamic legal maxims such as “*al-'adah muhakkamah*” (custom is authoritative) and the overarching objectives of *maqasid shariah*, namely justice, family preservation, and social welfare. As a result, the mediation process in Malaysia is both religiously valid and culturally meaningful, promoting amicable outcomes in family disputes.

Furthermore, in many Malay communities, disputes are resolved through village-level mediation involving family elders or community leaders. The harmonization in this issue is shown as it is adopted formally in Syariah Courts through Sulh Councils, promoting peaceful reconciliation in family disputes such as divorce, child custody, or maintenance. This is in line with *maqasid shariah* as it preserves family harmony (*hifz al-nasl*), reduces harm (*darar*), and encourages social justice.

5.5. POLYGAMY WITH LOCAL SOCIAL OVERSIGHT

In Malaysia, the practice of polygamy is legally permissible under Islamic law but is carefully regulated to align with both Shariah principles and local cultural expectations. Traditionally, Malay society has viewed polygamy with caution, and local customs often emphasize family and community consultation before a man takes an additional wife. This cultural approach reflects concerns for social harmony, fairness, and the well-being of existing family members, particularly the first wife and children.

To harmonize this with Islamic teachings, Malaysia's Islamic Family Law requires a man to obtain permission from the Syariah Court before entering a polygamous marriage. The court must be satisfied that the marriage is justified, and that the husband is capable (financially, emotionally, and spiritually) of treating all wives fairly, as required by the Qur'an (as mentioned in Surah An-Nisa', 4:3). In some communities, local customs are respected by encouraging input from family elders or wives before the court's decision, effectively blending *adat* values of communal oversight with Islamic legal requirements. This harmonization ensures that polygamy, while religiously allowed, is practiced responsibly and ethically, upholding *the maqasid shariah* especially in protecting family (*hifz al-nasl*), preventing harm (*darar*), and promoting justice.

5.6. POST-DIVORCE SUPPORT AND CHILD CUSTODY

In Malaysia, the harmonization between customary practices (*adat*) and Islamic law in matters of post-divorce support and child custody (*hadhanah*) is reflected in how both systems emphasize the welfare and protection of the family, especially women and children, after a marriage ends. (Nora Abdul Hak, 2020)

Traditionally, Malay custom (*adat*) upholds the idea that extended families and communities have a role in caring for divorced women and ensuring children are supported emotionally and financially. This cultural value aligns well with Islamic principles, which stress justice, compassion, and responsibility in family matters.

Under Islamic Family Law in Malaysia, the Syariah Courts have the authority to order child custody (*hadhanah*), child maintenance (*nafkah*), and post-divorce support, including reasonable housing and sustenance for the ex-wife during the *iddah* period and, in some cases, beyond. The courts often consider the customary roles of grandparents or maternal relatives in child-rearing when determining the best interests of the child.

These decisions reflect both Islamic injunctions on safeguarding the rights of dependents and adat values that prioritize family care and communal responsibility. By integrating these two frameworks, Malaysia ensures that post-divorce arrangements are both religiously sound and culturally sensitive, fulfilling *the maqasid shariah* of preserving lineage (*hifz al-nasl*), protecting the vulnerable (*hifz al-nafs*), ensuring social justice and welfare of all (*maslahah*).

6. CONCLUSION

The harmonization between local customs (*adat*) and Islamic law based on the framework of *maqasid shariah* is essential for ensuring that Islamic family law in Malaysia remains both faithful to Islamic principles and responsive to the local cultural context. Practices such as the distribution of *tanah adat* under Adat Perpatih, the recognition of *harta sepencarian*, and the observance of marriage rituals demonstrate how deeply rooted customs can coexist with objectives of Islamic law (*maqasid shariah*) such as justice (*'adl*) as protection of religion (*hifz al-din*), protection of soul (*hifz al-nafs*), protection of intellect (*hifz al-aql*), preservation of lineage (*hifz al-nasl*), protection of property (*hifz al-mal*), and similarly, mechanisms like customary mediation (*sulh*), regulated polygamy, and culturally aware approaches to post-divorce support and child custody (*hadhanah*) reflect the integration of communal wisdom with Shariah's ethical goals. This harmonization not only reinforces the social acceptance and credibility of Islamic family law but also upholds the higher objectives of Shariah, such as promoting welfare (*maslahah*), preventing harm (*darar*), and ensuring fairness (*al-'adalah*). By acknowledging and incorporating local customs that are consistent with these aims, Malaysia presents a dynamic legal framework in which Islamic law remains relevant, compassionate, and closely connected to the everyday experiences of its society. This harmonization not only strengthens the social legitimacy of Islamic family law but also upholds the higher purposes of Shariah, such as promoting welfare (*maslahah*), preventing harm (*darar*), and ensuring fairness (*al-'adalah*). By recognizing and adapting local practices that align with these objectives, Malaysia offers a dynamic model of legal pluralism, where Islamic law remains relevant, compassionate, and grounded in the lived realities of its people.

7. References

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