



Recognition of the constitution, laws and regulations, customary law, and islamic law in the indonesian and malaysian legal systems

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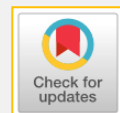
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ABSTRACT

This article discusses the recognition of the constitution, laws, and regulations, customary law, and Islamic law in the Indonesian and Malaysian legal systems through a comparative legal approach. Indonesia, which adheres to the civil law tradition of Dutch heritage, and Malaysia, which adopts common law inherited from the British, turn out to show important similarities in terms of recognition of the four sources of law. The Constitution is placed as the highest law that serves as the basic guideline for the administration of the state, while laws and regulations function as the main instrument to translate the mandate of the Constitution. Customary law in both countries is still recognized as long as it does not conflict with national regulations, reflects local cultural identity, and plays a role in resolving community disputes. Meanwhile, Islamic law has received formal space through religious courts in Indonesia and sharia courts in Malaysia, especially in family, inheritance, and morality matters. This study uses a normative legal method with a comparative approach, supported by primary and secondary legal materials. The results of the study show that despite the different systems, Indonesia and Malaysia have succeeded in combining colonial heritage with local and religious identities, so that the legal system is plural, dynamic, but still integrated. These findings enrich comparative legal studies in Southeast Asia and make an academic contribution to understanding the dynamics of legal pluralism in cognate regions.

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Introduction

Indonesia and Malaysia are better known as cognate nations because they have similar cultures, languages, religions, and history. Both countries use languages that are rooted in the Old Malay language and have similar traditions, customs, arts, and culinary, influenced by Hindu, Buddhist, and Islamic cultures (Novi Handayani, Suwarti Sari 2024). Both countries are rooted in the traditions of the Malay community, which is predominantly Muslim, so that in the development of the law, it cannot be separated from the influence of customary and religious values. Despite this, historically both were influenced by different colonial legal systems. Indonesia inherited the civil law system from the Netherlands, while Malaysia adopted the common law system from the United Kingdom. In Indonesia, the existence of *Islamic law* can

be entered through Pancasila and Article 29 paragraphs (1) and (2) of the Constitution, while in Malaysia the existence of *Islamic law* can be entered through the state's recognition of Malaysia's official religion, namely Islam, according to article 3 paragraph (1) of the Malaysian Constitution (Muin 2017).

In constitutional practice, both Indonesia and Malaysia place the constitution as the supreme law. In this constitutional context, both Indonesia and Malaysia recognize the constitution as the highest source of law used to build the modern legal system Indonesia has the 1945 Constitution of the Republic of Indonesia (1945 Constitution), while Malaysia has the 1957 Federal Constitution (Susanto 2021). Constitutionally, the legal system in Malaysia is based on the Malaysian Constitution (Malaysian Constitution) as the highest law of the country (Firly Ajurni and Novilia Wulan Sari 2024).. The two constitutions serve as basic guidelines in the administration of the state as well as the highest source of law that binds all regulations under it.

In addition to the constitution, both countries also recognize laws and regulations as the main source of law in regulating people's lives. In Indonesia, the hierarchy of laws and regulations is regulated in Law No. 12 of 2011 in conjunction with Law No. 15 of 2019, which affirms the position of laws, government regulations, and regional regulations. This arrangement affirms the hierarchy of regulations starting from the 1945 Constitution, laws, government regulations, and regional regulations (Ibrahim et al. 2020). Meanwhile, in Malaysia, the legislative system is divided between the federal legislature and the state legislature, each of which has the authority to regulate certain aspects in accordance with the division of powers in the Federal Constitution (Tahir et al. 2023). This shows that although the political and legal systems are different, legislation remains the main instrument in carrying out the mandate of the constitution.

In addition, both Indonesia and Malaysia still recognize customary law as a legitimate source of law. Customary law in Indonesia applies as long as it does not conflict with laws and regulations, and still plays an important role in the fields of family, inheritance, and land law. Malaysia also gives recognition to customary law, both Malay customs and indigenous customs, especially in Sabah and Sarawak which have their own peculiarities. This proves that both countries still value local cultural heritage in their legal systems. Customary law in Indonesia and Malaysia has different histories and developments, which is clear The difference in this legal system is different due to historical factors, namely the domination or colonization of the 2 western great powers. Malaysia was colonized by the British and Indonesia was colonized by the Dutch (Engrina Fauzi 2025).

Furthermore, Islamic law also has a place in the legal systems of both countries. Indonesia through the Religious Court regulates and enforces Islamic law, especially in cases of marriage, inheritance, waqf, and sharia economics This institution functions as a special court for Muslims that ensures the implementation of the principles of Islamic law in a broader context (Sholeh 2023). One of the important regulations is the Compilation of Islamic Law (KHI), which serves as a guideline for courts in adjudicating cases related to Islamic law. Meanwhile, in Malaysia, Islamic law has a more formal role because each country has a Sharia Court with broad jurisdiction in Islamic family affairs and the morality of Muslims. Sharia Courts in Malaysia are also governed by laws that clearly define their authority, including marriage, divorce, and settlement of inheritance disputes, which is in accordance with the legal basis in the Constitution (Kartika and Umbu 2024). This equation shows that both countries provide an institutional space for Islamic law as an integral part of the national legal system.

Based on the description above, this makes an interesting reason to study, although Indonesia adheres to the civil law system as a Dutch heritage and Malaysia adopts the common law system as a British heritage, both have important similarities in terms of recognition of the constitution, laws and regulations, customary law, and Islamic law as sources of law. This similarity is inseparable from the closeness of history, culture, and religion rooted in the traditions of the majority Malay community, where the influence of customary and religious values is very strong in the development of law in both countries. This phenomenon shows how the modern legal system in Southeast Asia seeks to balance colonial heritage with local

and religious identities, making it interesting to delve deeper to understand the dynamics of comparative law in cognate areas.

Method

This study uses a normative legal research method with a comparative approach. The main data sources used are primary legal materials, namely the laws and regulations that apply in Indonesia and Malaysia, such as the Constitution of the *Republic of Indonesia in 1945*, *Law Number 12 of 2011 concerning the Establishment of Laws and Regulations*, and the *Federal Constitution of Malaysia 1957*. In addition, this research also uses secondary legal materials in the form of legal literature, journals, scientific articles, and the opinions of relevant legal experts.

The analysis technique used is descriptive qualitative analysis, namely by deciphering, comparing, and interpreting the recognition of the constitution, laws and regulations, customary law, and Islamic law as sources of law in both countries. Through this method, it is hoped that a clearer picture can be obtained of the similarities and differences between the Indonesian and Malaysian legal systems, as well as their relevance to the development of legal science in the Southeast Asian region.

Results and Discussion

The Constitution as the Supreme Law

The Constitution is the main foundation in the constitutional system that affirms the highest legal position in a country. Both Indonesia and Malaysia place the constitution as the most basic legal norm and bind all regulations under it. Indonesia uses the 1945 Constitution of the Republic of Indonesia (1945 Constitution) as a constitution that is the source of all legal sources and basic guidelines in the administration of the state. Meanwhile, Malaysia refers to the 1957 Federal Constitution as a constitution that regulates the formation and implementation of the federal government and the fundamental rights of its citizens (Agustian and Saliman 2019).

The constitutions of both countries are not only formal legal documents, but also reflect the basic values and national identity upheld by the people. The 1945 Constitution in Indonesia reflects the nation's ideals that prioritize the principles of people's sovereignty, unity, and social justice, while accommodating elements of cultural and religious values that are the moral foundation of the nation. On the other hand, the Federal Constitution of Malaysia contains the principles of federation, the role of the sultan and King of Malaysia, as well as the recognition of various ethnic and religious groups, which are the main framework for the administration of a diverse country. Furthermore, the constitutions in both countries also serve as a way to maintain relations between the government and the people. In Indonesia, the Constitutional Court is expected to be the guardian of the constitution and can overcome various legal problems related to the constitution (Rustam, Marlina, and Handoko 2022). In Malaysia, similar functions are also performed by judicial institutions where the role of the constitution is recognized as critical in protecting individual rights and ensuring good governance (Jalal et al. 2022). This shows that there is a recognition of the importance of maintaining the rule of law in order to achieve justice and the welfare of the people.

In the context of constitutional practice, the constitution plays a very important role as an absolute guideline in the making and application of state laws and policies. In Indonesia, the 1945 Constitution of the Republic of Indonesia (1945 Constitution) is affirmed as the supreme law, where all laws and regulations that contradict it can be declared invalid. The responsibility of maintaining and testing the constitutionality of these regulations is entrusted to the Constitutional Court (MK), which functions to ensure that state laws and policies do not deviate from the provisions of the constitution (Akmal and Arlianti 2022). In Malaysia, the Federal Constitution's position as the supreme law also stipulates that all laws and government policies must comply with these provisions. Malaysia has a judiciary that is responsible for ensuring that the Constitution is respected and obeyed.

The Constitution plays a crucial role in regulating the system of government and the division of power between state institutions. In Indonesia, the presidential system of government is stipulated in the 1945 Constitution, where the division of power between the executive, legislature, and judiciary is carried out explicitly to ensure checks and balances between state institutions (Hippy, Amrain, and Kadir 2024). The 1945 Constitution gives executive power to the President as the head of state as well as the head of government, which is balanced by the legislative functions and authority held by the House of Representatives (DPR) (Anwar and Eriton 2022). This system allows for oversight of executive and legislative power through constitutionally regulated mechanisms.

Meanwhile, Malaysia adopts a federal system of constitutional monarchy that regulates the division of power with the King's role as head of state governed through the Federal Constitution. In this context, the King performs ceremonial functions, while executive power is held by the Prime Minister and his cabinet (Sapariah, Safitri, and Sarmila 2022). This system demonstrates a harmonious relationship between the traditions of the monarchy and democratic principles, supporting a clear division of power between different government institutions in accordance with the historical and cultural context in Malaysia.

Both countries show that the constitution can be an effective framework for regulating state governance in accordance with their respective local contexts. In this regard, both the 1945 Constitution in Indonesia and the 1957 Federal Constitution in Malaysia not only function as legal documents, but also contain fundamental values and national identity, which allow people to absorb legal principles in their daily lives (Maulana and Kristanto 2025). Both Indonesia and Malaysia place the constitution as the highest legal basis that is binding and becomes the main guide in the administration of the state.

Laws and Regulations as the Main Source of Law

Laws and regulations are indeed the most dominant source of law in the regulation of the modern legal system in Indonesia and Malaysia. In the context of constitutional law, the governments of Indonesia and Malaysia place laws and regulations as vital instruments to translate the mandate of their respective constitutions. In Indonesia, the regulation regarding the hierarchy of laws and regulations has been affirmed in Law Number 12 of 2011 which was later updated with Law Number 15 of 2019. This hierarchy places the 1945 Constitution as the highest norm, followed by laws/Perppu, government regulations, presidential regulations, and regional regulations. This structure reflects the civil law system that emphasizes the importance of codification of law and the order of norms. With this hierarchy, Indonesia seeks to create legal certainty through the systematic and tiered placement of rules.

The importance of laws and regulations in carrying out government functions can also be seen from the existing supervision and evaluation mechanisms, where the Constitutional Court in Indonesia functions as an institution that tests the constitutionality of laws, while in Malaysia there is a supervisory mechanism that ensures the implementation of regulations in accordance with legal principles (Tambunan et al. 2024). Malaysia views the law as the primary means to uphold justice and protect human rights, by making it a constitutional basis in safeguarding the well-being of the people in accordance with the principles of the Malaysian Constitution and various acts such as the Children Act 2001 (Mardin, Haryanti, and Kharismawan 2022). This shows that in both countries, laws and regulations play a central role in upholding justice and ensuring that the government is accountable to the people.

In an article written by Wan Ahmad and Kawan Kawan (Wan Hussain et al. 2017), Malaysia's legal system is rooted in the Federal Constitution of 1957 whose original legitimacy was derived from the sovereignty of the Malay Rulers and the legacy of local law such as *the Malacca Code Law*, although influenced by the *common law* model English. This constitution is not merely the result of an inter-ethnic social contract, but the institutionalization of elements of watan that existed long before colonialism, such as the position of Islam as the religion of the Federation, the Malay language, the privileges of the Malays, as well as the position of the Malay Rulers. Thus, Malaysian legislation is a hybrid of combining Western legal traditions with local and religious identities that are the nation's identity.

Legislation in Malaysia can be a source of law because the country's legal system adheres to the common law system of British heritage which places court decisions, customs, and written laws and regulations as the basis for the formation of laws (Handar Subhandi Bakhtiar Dan 2025). In the *common law system*, judges' decisions (*judicial precedent*) have a major role in creating generally binding norms. Nevertheless, Malaysia also recognises the federal laws and regulations made by Parliament as well as the state regulations established by the State Legislative Assembly as important sources of law (Handar Subhandi Bakhtiar Dan 2025). This legislation serves to regulate areas that are not fully accessible by precedent or customary law

Laws and regulations in Indonesia and Malaysia have a central function in the legal system which is supported by the constitution as the supreme law. Both countries prove that regulations are the main means in carrying out government functions and upholding justice, as well as a guideline in the life of society and the state. This shows that in both countries, laws and regulations play a central role in upholding justice and ensuring that the government is accountable to the people. Laws and regulations in Indonesia and Malaysia not only function as administrative tools but also as guidelines for life for people in society, nation, and state. Broadly speaking, Malaysia views the law as the main foundation in maintaining order, justice, and balance between state power and the rights of the people, where the entire constitutional system is rooted in the Malaysian Constitution as the supreme law that regulates the division of powers, protection of human rights, and the harmonious application of civil and sharia law (Imam Basuki Rahmanto and Rosdiana Saleh 2024).

Customary Law as a Reflection of Local Culture

Customary law in Indonesia, especially in the archipelago and Malay regions, is a reflection of cultural identities and traditions that have developed organically in society. These laws not only serve as social regulations but also reflect values and norms that have been passed down from generation to generation, thus becoming an integral part of the life of local communities (Saly et al. 2023). Customary law contains local wisdom that adjusts to the social and cultural context, which is very important in maintaining and maintaining the identity of each community group in Indonesia, besides that customary law also functions as a conflict resolution institution, where deliberation and mediation are important mechanisms in the resolution process (Dede Suryanto 2024). Customary law not only serves as a norm that governs community behavior but also plays an important role in the identity and uniqueness of each community in Indonesia

The recognition of customary law in Indonesia has gained official legitimacy integrated with the national legal framework, as long as the rules do not conflict with the constitution and applicable laws. This is in line with the existence of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which emphasizes the need to recognize and respect customary law communities and their rights (Safitri et al. 2022). This recognition is very important because Indonesia has a pluralistic society with various traditions and customary laws (Wibisana, Lema Udjan, and Solfian 2024). One of the main application areas of customary law is in the realm of family law, inheritance, and land management. Customary law often regulates the distribution of inheritance that is adapted according to local cultural norms, such as in the Toba and Minangkabau Batak communities, each of which has a specific way of dealing with inheritance issues (Khoiron 2022).

Mulyoto and Kawan-Kawan in their article said that in Malaysia, customary law has an important position in people's lives, especially among diverse communities, such as the Malays, Iban, Kadazan, and various other tribes. Customary law in Malaysia is known as "Customary Law" and encompasses a wide range of norms and practices related to social, economic, and legal life. The position of customary law in Malaysia is recognized as a legitimate source of law, governed by national and state legislation. Customary law in Malaysia often functions in the context of family arrangements, inheritance, and inter-tribal relationships. For example, in Malay society, the practice of inheritance refers to sharia law as well as customary law that explains the division of inheritance. This creates a balance between local values and recognized sharia regulations (Mulyoto et al. 2024).

Similarly, in Malaysia, customary law is also legally recognized. In addition to Malay customary law which is adjacent to the national legal system, there is also native customary law that applies to indigenous communities in the provinces of Sabah and Sarawak. This recognition affirms the cultural and legal diversity that exists in Malaysia, and shows the country's attitude to respect and preserve customary rules that have existed for a long time. Challenges in the recognition of customary law in Malaysia arise when there is a conflict between customary law and national law. There is pressure from modernization and legal intellectuals that call for a greater emphasis on positive law and ignoring indigenous wisdom. This can result in the loss of cultural identity and traditional practices among indigenous peoples, who often feel marginalized in decision-making that impacts their lives (Efriani et al. 2021).

The recognition of customary law emphasizes that the law is not only legal-formal, but also a reflection of the social and cultural identity of the local community. Customary law contains social and cultural values that shape the way of view, governance, and social interaction in society. Therefore, the existence of customary law strengthens social cohesion and provides a sense of justice rooted in the cultural mindset of the community.

Overall, customary law is an important bridge between the world of formal law and the daily practice of people's daily lives. With clear recognition and respect for customary law, the existence of local culture can continue to be maintained and inherited from generation to generation. This not only strengthens cultural identity, but also provides a legal basis that is relevant and fair according to the social context of the community.

Islamic Law as an Integral Part of the Legal System

Islamic law in Malaysia plays an integral role in the national legal system, serving as one of the legal bases that underpin the legal and social structure of society. In this context, Islamic law together with customary law and positive law create a plural and dynamic legal framework (Chevallier-Govers 2010). Malaysia, as a country with a majority Muslim population, recognizes Islamic law in various aspects of life, especially in the areas of marriage, inheritance, and financial administration through institutions such as sharia courts (Rohmah 2021). In the process of applying Islamic law, there is a complex interaction between customary law and positive law. This integration is shown through rules that govern many aspects of life, for example, arrangements on inheritance that combine Islamic norms with local customary practices (Kusmayanti and Suwandono 2024).

Furthermore, the recognition of Islamic law in the Malaysian judicial system is marked by the existence of sharia courts that function to handle matters related to family law, such as divorce and inheritance rights (Rodiah Nur and Mu'in 2024). These courts operate side by side with the common legal system based on the British legal heritage, creating challenges and opportunities for the integration of each legal system (Shuaib 2019). This shows Malaysia's adaptation to different legal traditions and practices, where Islamic law does not stand alone but is part of a broader dialogue in the formation of national law.

In the era of modernization, reflection on Islamic law and its practice in Malaysian society is indispensable to ensure that these values remain relevant and acceptable to all levels of society. Therefore, continuous efforts are needed to analyze and integrate Islamic law with the social changes that have occurred under the leadership of modern law, seeking to establish harmony between traditional values and the demands of the times (Rohmah 2021). Islamic law in Malaysia is an inseparable system of customary law and positive law, and its role is crucial in shaping a legal framework that is just and responsive to the needs of communities at various levels.

Islamic law as an integral part of the legal system in Indonesia shows unique complexity and diversity. The formal recognition and implementation of Islamic law in various aspects of Indonesian society is reflected in various regulations and laws that include family law, marriage, inheritance, and other social aspects (Tarmizi and Zubair 2023). With a majority Muslim population, Indonesia has a legal structure that accommodates Islamic law, which functions side by side with positive law and customary law. One of the fundamental elements in the recognition of Islamic law in Indonesia is through various legal products issued, such as

Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law which provides a legal basis for marriage and inheritance (Syam, Syahrul, and Ameliyah 2023). This law explicitly regulates aspects related to marital status, the rights and obligations of husband and wife, and the division of inheritance (Hefni 2022). With clear arrangements, Islamic law contributes to the strengthening of family institutions and the administration of justice in the distribution of inheritance.

Furthermore, Islamic law also plays a role in dispute resolution. Religious Courts in Indonesia are designed to resolve cases related to Islamic law, providing an alternative for Muslim communities to demand justice in accordance with sharia principles (Gojali 2023). In this context, the application of sharia principles in resolving business disputes and personal problems shows the relevance and adaptation of Islamic law to the dynamics of modern society (Pragata 2023). However, the emergence of challenges in the application of Islamic law in the midst of legal pluralism in Indonesia cannot be ignored. Differences in interpretation and application of Islamic law can create tension between various existing legal systems. In many cases, the customary norms that apply in a particular society are integrated with the rules of Islamic law, but they can also be contrary to positive law (Khoiron 2022). In this regard, it is important to strengthen dialogue between the various legal communities in order to create better synergy and integration between these legal systems.

In Indonesia, people's views on Islamic law are greatly influenced by their level of knowledge and understanding of Islamic values and how they are combined with local culture (Khoiron 2022). People who are aware of the importance of Islamic law in the context of modernization will appreciate its contribution in maintaining the values of local wisdom while remaining integrated within the national legal framework. Thus, Islamic law is a vital component of the Indonesian legal system, representing the synergy between customary law, positive law, and the socio-cultural values of the community. Efforts to strengthen and harmonize Islamic law with the development of national law are essential to create better social order and justice in the Society (Khoiron 2022).

Conclusion

The Indonesian and Malaysian legal systems have similarities in terms of recognition of the constitution, laws and regulations, customary law, and Islamic law as the main source of law. The constitution in both countries is the highest norm that is binding and becomes the basic guideline in the administration of the state. Laws and regulations are recognized as a vital instrument to translate the mandate of the constitution and regulate people's lives in more detail. Customary law is also still recognized and respected because it reflects cultural identity, local values, and is a means of resolving conflicts in the community. In addition, Islamic law has an important position, particularly in the areas of family, inheritance, and morality, which is accommodated in the special judicial system in both Indonesia and Malaysia. The differences in the civil law tradition in Indonesia and the common law in Malaysia actually show the peculiarities in the way in which the two countries combine colonial heritage with local and religious identities. This similarity of recognition shows the existence of cognate historical and cultural roots, resulting in a plural but still integrated legal system. This proves that the laws in both countries not only function as formal rules, but also as a reflection of the social, cultural, and religious values of the people.

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