

Navigating the Conflict between Cultural Practices and Human Rights: A Legal Assessment of the Malaysian Framework

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ABSTRACT

This paper analyses the complex conflict between cultural practice and universal human rights in the Malaysian pluralistic legal system. Marked by the co-existence of civil and Syariah law, the Malaysian system is often faced with jurisdictional uncertainties that affect the rights of vulnerable populations, namely, women and children (Hua, 2016; Noor and Lee, 2023). The study examines the ways in which the principle of cultural relativism tends to override the general norms of human rights through a qualitative analysis of the constitution using a doctrinal analysis of constitutional provisions, in this case Article 121(1A) and landmark judicial rulings. The discussion penetrates controversial topics like child marriage and jurisdictional questions in interfaith marriages. The results indicate that, despite legal pluralism's embrace of diversity, it is often associated with loopholes in rights protection when not interpreted in context. The paper suggests adopting inclusive constitutionalism and the broader use of maqāṣid al-shariah as avenues to reconcile religious jurisprudence with international human rights principles, and, finally, legislative changes as a means to protect core liberties.

Keywords: Legal Pluralism, Human Rights, Syariah Law, Malaysia, Cultural Relativism.

INTRODUCTION

As cultural aspects are usually perceived as a threat to national legislation and international human rights documents, they are considered to be major contributors to how human rights are formulated in a nation (Abdelhameed, 2025; Chevallier-Govers, 2010). This trend is particularly observed in Malaysia, where the legal system is mainly pluralistic, and the legal system may operate simultaneously with the civil and Syariah legal systems, which are supplemented by customary laws regarding indigenous people (Mustafa, 2025; Putra et al., 2023). Having such a complicated structure, which can be subject to the different standards of society, gives rise to complicated jurisdictional problems, particularly when it comes to the standardization of the application of universal standards of human rights (Harding, 2012; Hua, 2016). It is a contradiction in itself: legal pluralism as the embodiment of cultural diversity may cause loopholes in the safeguarding of rights, especially to disadvantaged communities (Chevallier-Govers, 2010; Samur et al., 2022). Normative conflicts are competitions between traditional or religious practices, and in certain instances, articulations of patriarchal standards, and constitutional commitments of gender equity and worldwide responsibility (Azmawati et al., 2017; Saleh et al., 2020). It is an institutional design flaw of the juridical context to come to terms with conflicting normative orders, which is a problem of supporting human rights (Mustafa, 2025; Shuaib, 2019).

The modern-day situation in Malaysia tends to follow the principle of cultural relativism, which can undermine the universality of human rights norms and still maintain the norms of discrimination of women and minorities in the country (Abdelhameed, 2025; Suleman, 2021). This interrelation highlights the critical importance of having a sensitive perception of how cultural norms influence the concept of human rights. In this discussion, the negotiability of the Malaysian legal system through these tensions will be assessed and emphasis placed on how the judiciary interprets the provisions of the constitution in civil as well as Syariah law. The two-court system is marked with questions of jurisdictions where the civil and Syariah have different understandings of

human rights (Nor et al., 2016; *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, 2010). An overview of some case law shows how the judiciary tries to reconcile these conflicting legal traditions and can even sometimes reach paradoxical normativities by making conclusions based on other incompatible legal premises based on universal rights (Chan, 2023; Müller, 2016).

Further, the impression that the Syariah courts apply divine, unmediated law is likely to undermine the authority of the greater legal order and could make it unfeasible to challenge such law, thus influencing the substantive issues, such as the rights of women (Moustafa, 2018). They find it hard to negotiate rights talk because constitutional guarantees go hand in hand with the increased religious conservatism, both in activist groups (Samir and Hopkins, 2017). The increasing judicialization of religion, particularly in connection with Article 3 of the Federal Constitution, has created a stronger interpretation of the Islamic law, which can lead to its potential promotion as a new grundnorm in the Malaysian legal system. The repercussions of this change on religious minorities and women are far-reaching as Syariah interpretations are increasingly making a more significant impact in constitutional jurisprudence, which can restrict the rights guaranteed by the Federal Constitution (Neo, 2020).

LITERATURE REVIEW

The available literature on the constitutional system of Malaysia points at the strains related to the implementation of Islamic law in the context of a secular constitutional system (Yunus, 2023). Researchers examine the impact of the dual legal system on the application of human rights, noting that both legal and political actors strategically use cultural and religious arguments to support or oppose these norms (Chan, 2023). One of the key areas is the dynamic of legal harmonisation, where attempts to reconcile civil and Syariah law can be subject to constitutional constraints and debates about the secular nature of the Malaysian Constitution (Yunus, 2023). Another practical concern is the lack of contextual interpretation of constitutions, which makes implementing them more challenging despite official acknowledgement of diverse ethnic and religious backgrounds (Neo, 2020). There are schools of thought that human rights, which are perceived as Western constructs, are being resisted because of historical grievances and colonial opposition, which make it hard to universally accept them (Peerenboom, 2003).

On the other hand, an emerging literature argues that human rights can be negotiated through cultural prisms and that culture is not fixed but can evolve to confront discriminatory behaviours (Monforte, 2018). This approach questions the opposition between universalism and cultural relativism, proposing a merger between the indigenous understanding of human rights and their cultural appeal and normative strength (Mukharrom & Abdi, 2023). According to scholars, Islamic law and human rights may seem incompatible, but they can converge through close textual readings and contextual knowledge (Karimullah, 2023). This implies reconsidering the historical flexibility of Islamic law to customary law, as reflected in 16th to 18th-century legislative manuscripts, which did not suggest much conflict between the two systems (Setyawan et al., 2024). This historical viewpoint implies that the current tensions might be a result of modern interpretive paradigms, not necessarily due to some incompatibilities (Zhussipbek & Nagayeva, 2019).

Nevertheless, these past instances continue to give way to a dichotomy between universal human rights and culturally particular legal frameworks despite existing historical precedents (Marko & Constantin, 2019). This is commonly advocated by the readings of the Islamic law that stress its all-inclusive and unchangeable character (Hovden, 2023). But modern Islamic legal thinkers believe that Islamic law has its own principles of justice and equality, which do not contradict international norms, and thus need internal reformulation to reconcile the difference (Karimullah, 2023). Several researchers argue that Islamic law contains principles of human dignity, which can be explained by a reassessment of fundamental texts (Jafari et al., 2024). Critics have cautioned, though, that certain "Islamic human rights plans" can selectively take advantage of international principles to restrict their use by implying a possible superficial as opposed to substantial integration (Hakeem, 2004).

RESEARCH METHODOLOGY

The methodology of the study is doctrinal legal research, which critically examines primary legal sources like constitutional provisions, statutes, and judicial precedents, and secondary academic literature. Such a method

helps us to have a complete picture of the interpretation of legal provisions in the cases of religious and customary laws. A comparative study of judicial rulings in both civil and Syariah courts is employed to shed light on areas of convergence and divergence. The research also considers the effects of reservations to Malaysian international human rights treaties and the ways such restrictions perpetuate legal pluralism, which erodes universal standards, especially those related to gender equality. The policy documents and governmental reports are also evaluated qualitatively to examine the gaps between the international conventions ratified by countries and the national practice.

Moreover, the research has included a normative legal research framework, using both statutory and conceptual methodologies to examine the legal issues at hand. A comparative legal approach is also used to elicit experience from the solutions adopted by other Asian countries, such as Indonesia, Japan, and the Philippines, to handle such legal disputes. This comparative prism explains the possible ways through which Malaysia can harmonise its dual legal system with international obligations. This research question examines the legal conflicts between indigenous customary laws and the constitutional obligation to gender equality, especially in the context of the experiences of Orang Asli women. Lastly, the paper incorporates a problem solution model to present a failure of institutions and an action plan model for an Independent Intangible Cultural Heritage Commission that could address jurisdictional issues.

Theoretical Construct: Cultural Relativism and Universalism

The issue with Malaysia is that it is difficult to determine the exact point at which cultural practices infringe on internationally established human rights standards (Abdelhameed, 2025). This includes negotiating between Islamic law and human rights, given the possible convergent and divergent interpretations of sharia in relation to universal principles. The first category is universalist, which posits that there should be one standard of human rights, and the second category is cultural relativists, who believe that it is essential to consider the context (Donders, 2010; Pratiwi, 2020). This results in an intrinsic tension in which both systems claim universality, leading to a conflict between unprovable universalisms (White and Gonsalves, 2021). Reconciliation usually entails the search for points of similarity and the recognition of common goals concerning justice and human dignity, despite their differences of origin.

One of the most important processes of such reconciliation is *ijtihad*, the reinterpretation of classical texts to align with modern human rights frameworks. Nevertheless, there are still some challenges, including the traditional interpretation of some laws, including *hudud*, which is hard to align with international standards against inhuman treatment. Policies that weaken human rights are frequently justified by cultural relativism, which claims that human rights should align with religious values rather than international norms (Dau, 2024; Karvatskaya et al., 2021). Finally, there is a need to balance these views in a subtle way, using tools such as overlapping consensus, while acknowledging that key principles of justice and dignity are widely echoed in the Islamic tradition and in universal human rights.

Findings

Analysis shows that the tension of legal pluralism is critical, as the legal principles in Malaysia tend to fail due to the absence of contextual interpretation of constitutional principles. Even with the supremacy of the constitution, courts often prioritise cultural and religious traditions, continuing the inequalities of women and children in marriage and custody (Abdelhameed, 2025; Jayasooria, 2016). This is compounded by the unspoken policy of Islamization in secular courts, where Islamic beliefs can be put into judgments that touch on vulnerable communities. The unwillingness of the judiciary to interfere in unilateral child conversion cases further relegates the non-Muslims, as they have no option of turning to the law in either system. The interpretation of Islamic jurisprudence by Malaysian judges regarding the origin of children is usually strict, in contrast to the more sophisticated civil rights-based approaches used in other countries, such as Indonesia or Morocco.

Child marriage is one of the main points of disagreement, as it is legally acceptable under the Syariah law, but the international conventions also provide that the minimum marriage age should be 18 (Samir et al., 2022). Although civil law establishes 18 as the minimum age, Syariah law can make exceptions with the court's approval, creating a loophole that violates the Convention on the Rights of the Child (CRC) (Samur et al., 2022).

The lack of awareness of legal rights and the prioritisation of customary practices by traditional leaders, coupled with this flexibility, undermine efforts to eliminate the practice (Hidayati et al., 2023). Moreover, Article 121(1A) of the Federal Constitution introduces substantial obstacles due to jurisdictional issues; civil courts often leave Syariah courts to decide on apostasy, even in cases involving individual liberties (Moustafa, 2018). This division of jurisdiction also affects the protection of intangible cultural heritage, in which traditional activities can be rejected by religious leaders as not part of orthodoxy, leaving them unprotected by law (Mustafa, 2025).

Nevertheless, the analysis also concludes that the *Maqāṣid al-Sharī'ah* Framework (the Islamic law objectives) can be used to weigh religious norms against modern human rights. Although it has been applied on a limited basis to preserve Muslim children's religious beliefs, a more universal, humanistic approach grounded in public interest (*maslahah*) might emphasise principles such as freedom and equality. The broader interpretation enables a more adaptable application of Islamic law to address contemporary issues, such as gender equality, and provides a way forward for integrating the dual legal system in Malaysia with the international legal system.

RECOMMENDATIONS

As a way of negotiating Malaysia within the multifaceted legal pluralism, the paper proposes an inclusive constitutionalism strategy that will focus on human dignity while engaging constructively with local religious discourses. The first suggestion would be to revisit Article 121(1A) of the Federal Constitution to avoid encroachment on the civil court's powers, ensuring that the civil court remains the final authority to decide constitutional questions. Major reforms to the law are required to harmonise differences in Islamic law across states, especially in family law, in line with universal human rights principles, without compromising the uniqueness of Islamic jurisprudence.

It is also important to reinforce the mechanisms of judicial checks and balances to ensure uniform application of laws across both systems and to provide a clear appellate process when cases affecting fundamental rights are at stake. Moreover, the paper recommends adopting educational programs that demonstrate the harmony between cultural norms and universal human rights, and that the latter are not a foreign imposition but a statement of common human dignity. Considering the deep-rootedness of such practices, gradual changes grounded in in-house and intercultural discourse are more likely to bring society to a state of social legitimacy than a sudden, top-down shift. Finally, a critical reconsideration of patriarchal interpretations of personal status laws that hinder gender equality should take place, so that the legal framework becomes reflected in just practical results for women.

CONCLUSION

The dual legal system in Malaysia is a complex interaction between cultural identity and universal human rights. Although legal pluralism is supposed to mirror the diversity of society, it might, when cultural relativism is applied without any restrictions on rights, promote discrimination against the less powerful. Implementing human rights will require both legislative change and shifts in cultural and religious values to align with universal ideals. The way forward requires a jurisgenerative constitutionalism that allows dynamic interaction among various legal systems, thereby permitting the development of new norms that embrace both cultural diversity and global norms. Malaysia can build a more inclusive and equitable legal system that protects the basic liberties of every citizen by embracing constitutional oversight models and encouraging internal criticism of the religious and customary systems.

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