

## **LEGAL PLURALISM: HOW TÜRKIYE AND MALAYSIA BALANCE SHARIAH AND CIVIL LAW**

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This comparative study examines how Türkiye and Malaysia, two Muslim-majority democracies with similar economic development levels and religious demographics have adopted diametrically opposite approaches to balancing Shariah and civil law within their legal systems. Türkiye represents a model of legal monism, having abolished religious courts in 1924 and established a strictly secular unified legal system based on European civil codes. Malaysia embodies legal pluralism, maintaining parallel Shariah and civil court systems since independence in 1957, with constitutionally defined jurisdictional boundaries separating religious and secular law. Through qualitative comparative analysis of constitutional frameworks, legislative structures, institutional mechanisms and substantive law applications across family law, inheritance, criminal law and commercial transactions, this research reveals that outcomes are determined not primarily by socioeconomic factors or religious devotion, but by foundational ideological choices embedded in constitutional design. Türkiye's constitutional secularism creates an impenetrable firewall against religious law, while Malaysia's Federal Constitution recognizes Islam as the religion of the Federation while simultaneously establishing a sophisticated dual legal framework. The study demonstrates that both systems face distinct challenges. Türkiye confronts tensions between formal legal secularism and persistent informal religious practices, while Malaysia grapples with jurisdictional conflicts between competing court systems and questions about civil rights protection. These findings challenge deterministic narratives about modernization and secularization, offering valuable insights for other Muslim-majority nations navigating the complex relationship between religious authenticity, constitutional governance and modern state sovereignty.

Keywords: Malaysia, Türkiye, Legal Pluralisme, Shariah, Law

## **1.0 INTRODUCTION**

Legal pluralism, the coexistence of multiple legal systems within a single jurisdiction presents one of the most complex challenges facing modern Muslim-majority nation-states. As countries navigate the intersection between religious law and civil law inherited from colonial or modernization processes, they must balance competing demands preserving Islamic identity and religious values while maintaining constitutional governance, rule of law and international human rights standards. The tension between religious authenticity and modern state sovereignty has produced diverse institutional arrangements across the Muslim world, ranging from complete secularization to comprehensive Islamization, with various hybrid models in between.

Türkiye and Malaysia represent two of the most instructive cases for understanding how Muslim-majority democracies manage this fundamental challenge. Despite sharing significant commonalities, both are upper-middle-income countries, industrialized economies, functioning democracies with Muslim-majority populations exceeding 60%, they have adopted diametrically opposite approaches to integrating Shariah and civil law. Türkiye pursued radical secularization in the 1920s, completely eliminating religious courts and replacing Islamic law with European civil codes, creating a unified secular legal system. Malaysia, conversely, maintained legal pluralism from independence in 1957, establishing parallel Shariah and civil court systems that operate simultaneously with constitutionally defined jurisdictional boundaries.

The divergent paths of Türkiye and Malaysia raise critical questions about legal pluralism management in contemporary Muslim societies. How do countries with similar religious demographics and development levels construct such fundamentally different legal systems? What constitutional, institutional and ideological mechanisms enable or prevent the coexistence of religious and civil law? What are the practical consequences of legal monism versus legal pluralism for citizens navigating family disputes, inheritance, criminal offences and commercial transactions? How do competing principles of secularism in Türkiye, Islamic identity in Malaysia shape legal development, judicial interpretation, and political contestation over law?

These questions are not merely academic but have profound implications for millions of citizens whose daily lives are shaped by these legal arrangements. Women seeking divorce, families dividing inheritances, religious minorities protecting their rights and businesses

structuring transactions all navigate legal frameworks profoundly influenced by each country's approach to religious law. Understanding how Türkiye and Malaysia balance Shariah and civil law illuminates broader debates about religion's role in modern governance, constitutional design in pluralistic societies and the relationship between legal systems and national identity.

This research contributes to several important scholarly and practical domains. Theoretically, it advances understanding of legal pluralism by demonstrating that outcomes are determined not primarily by socioeconomic development or religious devotion, but by foundational ideological choices embedded in constitutional frameworks. The Türkiye-Malaysia comparison challenges deterministic narratives suggesting that modernization inevitably produces secularization or that Muslim-majority countries must choose between religious authenticity and economic development. Comparatively, this study fills a gap in existing literature, which tends to examine either secularization in Türkiye or Islamic law in Malaysia separately, rarely placing them in systematic comparative dialogue. By analyzing both cases through identical analytical frameworks, constitutional structures, institutional mechanisms, substantive law areas and ideological foundations, the research reveals patterns and trade-offs invisible in single-country studies.

Practically, the findings offer valuable lessons for other Muslim-majority nations grappling with similar challenges. Countries from Indonesia to Pakistan, from Egypt to Bosnia face questions about how to accommodate Islamic law within modern constitutional frameworks. The experiences of Türkiye and Malaysia, their successes, failures, and ongoing struggles provide empirical evidence about the consequences of different institutional designs, illuminating options available to policymakers and constitutional drafters.

This study pursues four primary objectives: (1) to analyze the constitutional and legislative frameworks governing the relationship between Shariah and civil law in both countries; (2) to examine the institutional structures and judicial mechanisms managing legal system coexistence; (3) to investigate substantive law areas where Shariah principles intersect with civil law provisions; and (4) to evaluate the role of secularism and Islamic identity in shaping legal pluralism approaches. The central research question guiding this inquiry is: How do Türkiye and Malaysia balance Shariah and civil law within their legal systems and what mechanisms do they employ to

manage potential conflicts arising from legal pluralism? Subsidiary questions address constitutional provisions, institutional arrangements, jurisdictional boundaries, substantive law applications and ideological foundations shaping each country's distinctive approach.

This research focuses specifically on the constitutional, legislative and institutional dimensions of Shariah-civil law relationships in contemporary Türkiye and Malaysia. While acknowledging historical developments that shaped current arrangements, the analysis emphasizes present-day legal frameworks, institutional operations, and ongoing debates. The study examines four substantive law areas, family law, inheritance, criminal law and commercial transactions as these represent domains where religious and civil law most frequently interact or conflict. The research article is organized into four main findings chapters followed by a conclusion. Finding I examines constitutional and legislative frameworks, establishing the formal legal architecture in each country. Finding II analyzes institutional structures and judicial mechanisms, exploring how legal systems operate in practice. Finding III investigates substantive law areas, demonstrating practical consequences of each approach for citizens' lives. Finding IV evaluates ideological foundations, examining how secularism and Islamic identity shape legal development. The conclusion synthesizes findings, draws comparative insights and reflects on implications for understanding legal pluralism in Muslim-majority democracies.

## **2.0 METHODOLOGY**

This study employs a qualitative comparative research design to examine how Türkiye and Malaysia balance Shariah and civil law within their legal systems. The comparative method allows for systematic analysis of similarities and differences between the two jurisdictions, identifying patterns, divergences and underlying factors shaping their distinct approaches to legal pluralism. The research relies primarily on documentary analysis of secondary sources, including academic literature, legal scholarship, constitutional texts, statutory provisions, case law and government reports. Key constitutional documents analyzed include the Turkish Constitution of 1982 and the Malaysian Federal Constitution of 1957, along with relevant legislative enactments such as Turkish Civil Code, Malaysian Islamic Family Law Acts and Shariah Criminal Offences Enactments. Judicial decisions from both countries' apex courts were examined to understand practical application and jurisdictional conflicts. The study applies thematic comparative analysis

across four dimensions: (1) constitutional and legislative frameworks governing Shariah-civil law relationships; (2) institutional structures and judicial mechanisms managing dual or unified legal systems; (3) substantive law areas where Shariah principles intersect with civil law and (4) the role of secularism and Islamic identity in shaping legal pluralism approaches. This multi-dimensional framework enables comprehensive understanding of each country's model while facilitating systematic comparison. The research employs contrasting case comparison, deliberately selecting Türkiye and Malaysia as representing opposite poles of legal pluralism management legal monism versus legal dualism. This methodological choice illuminates the full spectrum of approaches available to Muslim-majority nations and reveals how foundational ideological principles produce divergent legal outcomes despite similar religious demographics. The study acknowledges limitations inherent in qualitative documentary research, including reliance on published sources without primary fieldwork, potential language barriers in accessing original Turkish and Malay legal texts and the rapidly evolving nature of legal pluralism in both jurisdictions requiring continuous updating.

### **3.0 FINDING**

This section presents the key findings derived from the comparative analysis of Türkiye and Malaysia. It highlights the constitutional foundations, institutional arrangements and substantive legal intersections between Shariah and civil law, emphasizing areas of harmony and tension shaped by differing historical, political and religious contexts in both jurisdictions.

#### **3.1 CONSTITUTIONAL AND LEGISLATIVE FRAMEWORKS GOVERNING SHARIAH AND CIVIL LAW**

The constitutional and legislative frameworks of Türkiye and Malaysia represent two distinct models of legal pluralism in Muslim-majority nations. While both countries maintain dual legal systems incorporating Shariah and civil law, their constitutional foundations, historical trajectories and operational mechanisms differ significantly. This finding examines the legal architecture that governs the relationship between religious and civil law in both jurisdictions.

### 3.1.1 Constitutional foundations

Türkiye operates under a strictly secular constitutional system established after the abolition of the Ottoman Caliphate in 1924. The Turkish Constitution of 1982 explicitly defines the state as secular in Article 2, stating that the Republic of Türkiye is a "democratic, secular and social state governed by the rule of law." This constitutional secularism (*laiklik*) represents a complete separation between religion and state affairs, distinguishing it fundamentally from Malaysia's approach. The constitutional framework in Türkiye abolished Shariah courts in 1924 through the Law on the Unification of Education (*Tevhid-i Tedrisat Kanunu*) and subsequently eliminated all official religious legal institutions. Article 24 of the Constitution guarantees freedom of religion and conscience but strictly confines religious practice to the private sphere. The Directorate of Religious Affairs (*Diyanet İşleri Başkanlığı*), established under Article 136, manages religious services but has no legislative or judicial authority. Critically, Article 174 of the Constitution invalidates any laws contradicting secularism, creating a constitutional firewall against religious law's reintroduction into the formal legal system.

In stark contrast, Malaysia's Federal Constitution of 1957 establishes a sophisticated dual legal framework that formally recognizes both civil and Islamic law. Article 3(1) declares Islam as "the religion of the Federation," while simultaneously guaranteeing that "other religions may be practised in peace and harmony." This constitutional arrangement creates a unique legal pluralism where Shariah law operates as a parallel system within constitutionally defined boundaries. The Malaysian Constitution allocates legislative competence between federal and state levels through the Ninth Schedule. List II (State List) grants state legislatures exclusive authority over Islamic law matters, including "creation and punishment of offences by persons professing the religion of Islam against precepts of that religion" (Item 1) and "constitution, organization and procedure of Syariah courts". This federal-state division creates thirteen separate Shariah legal systems corresponding to Malaysia's thirteen states, each with its own Islamic laws and judicial structures. Article 121(1A), inserted through a 1988 constitutional amendment, fundamentally altered the relationship between civil and Shariah courts by providing that civil courts "shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts." This provision has generated significant jurisprudential debates about jurisdictional boundaries and conflicts between the two court systems.

### 3.1.2 Legislative frameworks

Türkiye adopted the Swiss Civil Code in 1926 (Turkish Civil Code No. 743, replaced by Law No. 4721 in 2001), completely replacing Ottoman Islamic family law. This represented one of the most radical legal secularization projects in the Muslim world. The Turkish Civil Code governs all aspects of personal status law, including marriage, divorce, inheritance, and child custody, without reference to religious principles. The Turkish Code of Obligations (2011) and the Turkish Commercial Code (2011) similarly apply uniformly to all citizens regardless of religious affiliation. The Turkish Penal Code (2004) contains no provisions based on Islamic criminal law (hudud or qisas), operating entirely on secular Western legal principles. This legislative uniformity means that Shariah law has no formal recognition or application in any substantive area of Turkish law. However, informal religious practices persist. Religious marriages (imam nikahı) conducted without prior civil registration are criminalized under Article 230 of the Turkish Penal Code, carrying imprisonment of two to six months. Despite this prohibition, such marriages remain common in rural and conservative communities, creating a gap between formal legal requirements and social practice.

Malaysia operates a complex dual legislative structure in which federal civil law coexists with state-level Islamic legislation. At the federal level, Parliament enacts civil laws applicable to all citizens, such as the Civil Law Act 1956, Contracts Act 1950, Evidence Act 1950, and the Penal Code, all of which are derived from English common law and applied uniformly nationwide. At the same time, each of Malaysia's thirteen states has enacted its own Islamic legislation within state competence. Key examples include the Syariah Criminal Offences Enactments, which vary by state and criminalize acts such as khalwat (close proximity between unmarried persons), alcohol consumption by Muslims, sexual misconduct and religious deviance. Penalties for these offences are constitutionally limited to a maximum of three years' imprisonment, six strokes of caning or a fine of RM5,000 under Article 121(1A). The Islamic Family Law Enactments govern marriage, divorce, maintenance, custody, and inheritance for Muslims, modeled largely on the Islamic Family Law (Federal Territories) Act 1984, which outlines polygamy regulation, divorce procedures (talaq, khuluk) and division of matrimonial property. Meanwhile, the Administration of Islamic Law Enactments establish Shariah courts, define their jurisdiction and regulate Islamic religious officials and institutions.

At the federal level, the Syariah Courts (Criminal Jurisdiction) Act 1965 limits state Shariah courts' criminal jurisdiction, preventing them from imposing hudud punishments that exceed constitutional limits. This federal constraint has prevented states like Kelantan and Terengganu from implementing comprehensive Islamic criminal codes despite legislative attempts.

### 3.1.3 Judicial architecture

Türkiye maintains a single, integrated judicial hierarchy with no separate religious courts. The Constitutional Court (*Anayasa Mahkemesi*) sits at the apex, ensuring all legislation complies with constitutional secularism. The Court of Cassation (*Yargıtay*) serves as the supreme appellate court for civil and criminal matters, while the Council of State (*Danıştay*) handles administrative disputes. All judges are appointed through the Council of Judges and Prosecutors (*Hâkimler ve Savcılar Kurulu*), established under Article 159 of the Constitution. Judges receive secular legal education and must apply civil codes uniformly without consideration of religious affiliation. This unified system eliminates jurisdictional conflicts between religious and civil courts because no religious courts exist. Religious scholars (imams, muftis) employed by the Diyanet have no judicial authority. They may provide non-binding religious opinions (*fetva*) on personal matters, but these carry no legal force. Citizens seeking religious guidance on marriage, inheritance, or other personal matters may consult religious authorities privately, but all legally binding decisions must come from civil courts applying secular law.

Malaysia operates parallel court hierarchies. Civil courts established under federal law and Shariah courts created by state legislation. The civil court system consists of the Federal Court as the apex court for constitutional and civil matters, followed by the Court of Appeal, the High Courts (separate for Peninsular Malaysia and for Sabah and Sarawak) and the Sessions and Magistrates' Courts. The Shariah court hierarchy, which varies by state, generally comprises the Syariah Appeal Court (*Mahkamah Rayuan Syariah*), the Syariah High Court (*Mahkamah Tinggi Syariah*) and the Syariah Subordinate Court (*Mahkamah Rendah Syariah*).

Shariah courts have jurisdiction only over Muslims in matters of Islamic personal law and religious offences as defined by state enactments. Article 121(1A) creates a jurisdictional barrier preventing civil courts from hearing matters within Shariah court competence. However, this

provision has generated significant controversy in cases involving constitutional rights, non-Muslim parties, or contested jurisdiction. Shariah judges (Hakim Syarie) must possess qualifications in Islamic jurisprudence and are appointed by state religious authorities. They apply Islamic law (fiqh) based on the Shafi'i school of jurisprudence, which predominates in Malaysia, though judges may reference other schools when appropriate

### 3.1.4 Comparative analysis: points of convergence, divergence and conflict

Aspect	Türkiye	Malaysia	Analysis
Constitutional Status of Islam	Secular state; no official religion (Art. 2)	Islam as religion of Federation (Art. 3)	Fundamental divergence in state-religion relationship
Shariah Court System	Abolished (1924); no religious courts	Parallel Shariah courts in all states	Complete vs. partial legal pluralism
Legislative Competence	Unified federal system; no religious legislation	Divided: federal (civil) and state (Islamic)	Centralized vs. decentralized approach
Personal Status Law	Uniform civil code for all citizens	Dual system: civil for non-Muslims, Islamic for Muslims	Universal vs. communal application
Religious Law Scope	No formal recognition	Family law, inheritance, religious offences (limited)	Complete exclusion vs. limited recognition
Criminal Law	Entirely secular penal code	Civil penal code + limited Shariah criminal jurisdiction	Uniform vs. dual criminal systems
Constitutional Safeguards	Secularism is unamendable (Art. 174)	Shariah jurisdiction cannot exceed constitutional limits	Both systems have constitutional constraints

Judicial Independence	Unified secular judiciary	Dual judiciary: civil and Shariah courts	Single vs. parallel judicial structures
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Table 1: Constitutional and Legislative Framework Comparison

Despite fundamentally different approaches, several convergences exist between Türkiye and Malaysia. Both uphold constitutional supremacy, where constitutional provisions override religious law. Article 174 in Türkiye makes secularism unamendable, while Article 4(1) in Malaysia affirms constitutional supremacy and limits the scope of Shariah through federal civil court authority. Both countries also require modern legal education for judges. In Türkiye, all judges study secular law, whereas in Malaysia, Shariah judges must hold recognized Islamic jurisprudence qualifications, often from universities rather than traditional madrasah education. Religious authority remains limited in both. Türkiye excludes Islamic law entirely from its formal system and Malaysia restricts it to personal status and minor religious offences, excluding hudud and serious crimes. Both constitutions protect fundamental rights. Türkiye’s Articles 10–40 safeguard civil liberties and Malaysia’s Part II ensures fundamental liberties, including equality under Article 8, though its application to Islamic law issues is debated. Finally, both states exercise strong control over religious institutions; Türkiye’s Diyanet functions under state authority without legal power, while Malaysia’s State Islamic Religious Councils (Majlis Agama Islam Negeri) operate as government bodies within state legislative frameworks.

The fundamental divergences reveal radically different philosophies of legal pluralism between Türkiye and Malaysia. Türkiye’s constitution explicitly rejects any religious foundation for the state, while Malaysia’s constitution recognizes Islam’s special status, creating distinct legitimacy frameworks. Turkish secularism is grounded in national sovereignty and modernization, whereas Malaysian legal pluralism stems from constitutional accommodation of religious identity. Malaysia practices legal dualism with parallel civil and Shariah systems, while Türkiye maintains legal uniformity under a single secular framework, influencing all aspects of legal administration. Religious identity determines legal subjectivity in Malaysia, as Muslims follow Shariah law in personal matters, while in Türkiye, all citizens are governed equally under civil law regardless of faith. Malaysia’s federal structure allows thirteen different state-level Islamic legal regimes, promoting internal diversity, whereas Türkiye’s unitary system enforces nationwide uniformity.

Judicial authority also differs. Malaysian Shariah judges rely on Islamic jurisprudence expertise, while Turkish judges base their rulings solely on secular legal training. Lastly, in Malaysia, state legislatures can enact Islamic laws with guidance from Shariah Advisory Councils, whereas in Türkiye, no legislative body may introduce religious law without violating constitutional secularism.

Both systems generate internal conflicts, though of different natures. In Türkiye, tensions arise between formal law and social practice, as the total exclusion of Shariah clashes with enduring religious customs such as informal Islamic marriages and inheritance practices, revealing a gap between “law in books” and “law in action.” The strict enforcement of secularism also conflicts with claims of religious freedom, with controversies over dress restrictions, religious education and prosecution of religious marriages sparking human rights debates. Another tension lies in constitutional immutability versus democratic change, as Article 174 prevents any amendment to secular principles, challenging democratic sovereignty and fueling conflict between the AKP government and secular institutions. Türkiye also faces European Court of Human Rights challenges concerning religious freedom, particularly headscarf bans and religious education, exposing friction between domestic secularism and international rights obligations.

In Malaysia, conflicts center on the coexistence of civil and Shariah systems. Jurisdictional ambiguity under Article 121(1A) leads to disputes when constitutional rights and Islamic law overlap, as seen in cases like *Lina Joy* (2007) and *Indira Gandhi* (2018). Issues of religious freedom and conversion persist, as apostasy requires Shariah court approval rarely granted, conflicting with Article 11’s guarantee of religious liberty. Unilateral conversion of children by one Muslim parent causes legal deadlock between civil and Shariah courts, leaving non-Muslim parents without remedies. Gender equality concerns also emerge from Islamic family law on polygamy, divorce and inheritance, which critics argue conflict with Article 8 and CEDAW, though religious authorities defend them as divine principles. The balance between constitutional supremacy and Shariah autonomy remains unsettled since Article 121(1A) limits civil courts’ power to review Shariah decisions. Federal-state tensions further arise as states enact varying Islamic criminal laws with differing penalties and federal limits on Shariah jurisdiction frustrate efforts to implement hudud. Lastly, non-Muslims affected by Islamic law such as in custody or inheritance cases often struggle for equal protection and access to justice when civil courts decline jurisdiction.

### 3.2 INSTITUTIONAL STRUCTURES AND JUDICIAL MECHANISMS

This finding examines the operational machinery through which Türkiye and Malaysia manage their legal systems in practice. While Finding I established the constitutional frameworks, this section focuses on how institutions function, courts operate and conflicts are resolved on the ground.

Institution Type	Türkiye	Malaysia
Religious Affairs Body	Diyamet İşleri Başkanlığı (Directorate of Religious Affairs) - advisory only, no legal power	Majlis Agama Islam Negeri (State Islamic Religious Councils) - legal authority over Islamic matters
Legal Education	Single system: Law faculties (civil law only)	Dual system: Law faculties (civil law) + Islamic Studies faculties (Shariah law)
Judge Appointment	Council of Judges and Prosecutors - unified secular process	Separate: Judicial Appointments Commission (civil) / State Sultans or Chief Ministers (Shariah)
Legal Profession	Single bar association - all lawyers practice civil law	Dual practice: Civil lawyers + Shariah legal practitioners (Peguan Syarie)
Dispute Resolution	Courts only - no religious arbitration authority	Courts + Sulh (Islamic mediation) + Religious arbitration councils

Table 2: Institutional Comparison

Türkiye operates a centralized institutional model where religious and legal functions are clearly separated. The *Diyamet İşleri Başkanlığı* (Directorate of Religious Affairs) manages mosques, employs imams and issues non-binding religious opinions (fetva), but it holds no judicial or legislative authority. Despite its large budget of about \$2.5 billion in 2024 exceeding that of many ministries, it cannot enforce religious rulings or create binding legal obligations; only civil

courts have such authority. Türkiye also maintains a unified legal profession, where all lawyers receive the same secular legal education, pass a single bar examination, and practice under civil law without any category of “religious lawyer.” Judicial appointments are centrally administered by the Council of Judges and Prosecutors (HSK), which selects judges through merit-based examinations and evaluations with religious knowledge and affiliation constitutionally excluded from consideration.

Malaysia operates a bifurcated institutional structure that separates civil and Islamic legal authorities. Each state has a State Islamic Religious Council (MAIN), which holds real legal authority to issue binding fatwas, manage Islamic properties and finances, regulate religious teachers, prosecute Shariah offences and advise Shariah courts. Unlike Türkiye’s Diyanet, the MAINs have enforcement powers supported by state legislation. The dual legal profession further reflects this divide: civil lawyers qualify through the Legal Profession Qualifying Board and practice in civil courts, while Shariah legal practitioners are separately accredited by state Islamic authorities, practice exclusively in Shariah courts and must possess Islamic jurisprudence qualifications. This results in two distinct professional communities with different training, ethics and jurisdictions. Judicial appointments are likewise bifurcated. Civil judges are appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister and Judicial Appointments Commission, whereas Shariah judges are appointed by state Sultans or Chief Ministers upon the recommendation of the MAINs, typically requiring formal qualifications in Islamic law from institutions such as Al-Azhar, the University of Malaya or the International Islamic University Malaysia.

Court Level	Türkiye	Malaysia - Civil Courts	Malaysia - Shariah Courts
Apex Court	Constitutional Court (constitutional review) + Court of Cassation (civil/criminal)	Federal Court	Shariah Appeal Court (state level - no federal apex)
Appellate Level	Regional Courts of Appeal	Court of Appeal	Shariah High Court (appellate function)

First Instance	Civil Courts of First Instance, Criminal Courts	High Court	Shariah High Court
Lower Courts	Magistrate Courts, Peace Courts	Sessions Court, Magistrate Court	Shariah Subordinate Court
Jurisdiction	Universal - all persons, all matters	Non-Muslims + Muslims (non-religious matters)	Muslims only (religious matters only)

Table 3: Judicial Structure Comparison

Türkiye’s judicial system functions as a single integrated hierarchy with no separation between civil and religious law. At the top sits the Constitutional Court (Anayasa Mahkemesi), which reviews legislation for constitutional compliance and can annul laws that violate secular principles. The Court of Cassation (Yargıtay) serves as the supreme appellate court for civil and criminal matters, with 15 civil chambers and 23 criminal chambers ensuring uniform application of civil codes nationwide. Regional Courts of Appeal, established in 2004, handle appeals from lower courts to ease the Court of Cassation’s workload. At the base are the First Instance Courts, which include Civil Courts (covering family, inheritance and contracts), Criminal Courts (handling all offences), Commercial Courts (for business disputes) and Labor Courts (for employment cases). A defining feature of this system is that no case involves religious law whether parties are devout Muslims or atheists, all disputes are adjudicated in the same courts under the same secular laws and procedures.

Malaysia operates parallel judicial hierarchies separating civil and Shariah jurisdictions. The civil court system, established under federal authority, hears all matters involving non-Muslims, as well as criminal cases under the Penal Code for all persons, including Muslims. It also handles commercial, constitutional and administrative cases but cannot hear matters within Shariah court jurisdiction as stipulated by Article 121(1A). The Shariah court system, on the other hand, is state-based, with thirteen distinct systems and separate courts for the Federal Territories. Its jurisdiction is limited to Muslims and covers Islamic family law (marriage, divorce, custody, maintenance, inheritance), Islamic criminal offences under state enactments and religious disputes involving

issues such as deviant teachings or religious status. A critical distinction is that Malaysia has no single “Supreme Shariah Court.” Each state’s Shariah Appeal Court serves as the highest authority for that state, while the Federal Court, part of the civil hierarchy, cannot hear Shariah appeals but may decide constitutional questions concerning Shariah jurisdiction.

In Türkiye, jurisdictional boundaries are clear due to the complete absence of religious courts. All legal disputes regardless of religious content are handled solely by civil courts applying civil codes. Marriage disputes fall under Family Courts using the Turkish Civil Code (Articles 185–281), inheritance cases are governed by Civil Courts under Articles 495–682, contracts are handled by Commercial or Civil Courts under the Code of Obligations, and criminal cases are prosecuted in Criminal Courts under the Turkish Penal Code. Even if individuals privately consult imams or resolve disputes according to Islamic principles, such arrangements have no legal standing; only civil court decisions are legally enforceable. In Malaysia, jurisdictional demarcation is far more complex. For personal status matters, Shariah courts have exclusive jurisdiction over Muslims (covering marriage, divorce, custody, and maintenance), while civil courts handle cases involving non-Muslims. Mixed cases involving both Muslims and non-Muslims fall into a jurisdictional “conflict zone.” For criminal matters, serious crimes such as murder, theft and fraud are tried in civil courts under the Penal Code for all persons, whereas Shariah offences like *khalwat*, alcohol consumption by Muslims, and religious deviance are handled in Shariah courts for Muslims only. Commercial and constitutional matters belong exclusively to civil courts regardless of religion, while property matters are generally under civil court jurisdiction except for Islamic religious property (*wakaf*), which is managed by the State Islamic Religious Councils (MAINs).

### 3.2.1 Conflict Resolution Procedures

In Türkiye, no inter-system conflicts occur because only one unified legal system exists. Any disputes arise solely between different civil courts or levels within the same hierarchy. Jurisdictional conflicts between civil courts. For example, determining whether a case belongs to a civil, criminal, commercial or labor court is resolved by the relevant chambers of the Court of Cassation. Constitutional challenges are brought before the Constitutional Court, which has the authority to annul legislation that violates constitutional provisions, including the principle of secularism. For instance, a party cannot claim that Islamic law should apply to their inheritance

case. The straightforward response is that the Turkish Civil Code applies uniformly to all citizens, regardless of religion.

Malaysia faces multiple layers of inter-system conflict due to the coexistence of civil and Shariah jurisdictions. Type 1: Jurisdictional Conflicts (Muslim vs. Muslim in Islamic Matters). These are clearly resolved, as Shariah courts hold exclusive jurisdiction. Civil courts will decline to hear such cases and refer them to Shariah courts. Example: A divorce dispute between two Muslims is handled by the Shariah Court under the relevant Islamic Family Law Enactment. Type 2: Mixed Cases (Muslim vs. Non-Muslim). These represent the most complex and contentious category. In *Indira Gandhi v. Pengarah Jabatan Agama Islam Perak (2018)*, a Hindu mother's husband converted to Islam and unilaterally converted their children. The Federal Court ruled that the civil High Court retained jurisdiction because the non-Muslim parent could not be subjected to Shariah authority, establishing that civil courts retain jurisdiction where non-Muslim constitutional rights are affected despite Article 121(1A). Conversely, in *Lina Joy v. Majlis Agama Islam Wilayah (2007)*, a Muslim-born woman who converted to Christianity was denied the right to change her religious status without a Shariah court apostasy certificate. The Federal Court majority upheld this requirement, while the dissent argued it violated Article 11 on religious freedom, leaving converts without an effective legal remedy. Type 3: Constitutional Rights vs. Islamic Law Provisions. The Federal Court can examine whether Shariah jurisdiction was properly invoked but generally refrains from reviewing the merits of Shariah court decisions. A key tension remains between Article 121(1A), which bars civil court interference and Article 4, which establishes constitutional supremacy. In practice, civil courts assess jurisdictional propriety and intervene when non-Muslims' constitutional rights are involved, but they avoid substantive review of Shariah law itself. Type 4: Federal-State Conflicts. The Federal Court resolves disputes where state Islamic enactments may exceed constitutional limits. For example, if a state introduces Shariah criminal penalties exceeding three years' imprisonment, six strokes of caning or a RM5,000 fine, the Federal Court can declare such provisions unconstitutional. Type 5: Internal Shariah System Conflicts. Conflicts between state Shariah systems lack a formal resolution mechanism. Each state applies its own interpretations without binding precedent from others, meaning a Muslim may face different outcomes for similar acts in different states (e.g., Kelantan

vs. Selangor). Within a state, appeals proceed only up to the Shariah Appeal Court, with no further appeal to the Federal Court on matters of Islamic law.

Procedure	Türkiye	Malaysia - Civil Courts	Malaysia - Shariah Courts
Evidence Rules	Civil/Criminal Procedure Codes (secular)	Evidence Act 1950 (based on English law)	Shariah court enactments + Islamic jurisprudence (fiqh)
Representation	Mandatory lawyer representation in many cases	Lawyer representation standard	Varies by state; some allow self-representation
Language	Turkish exclusively	Malay and English	Malay primarily; Arabic for Quranic references
Appeals	Automatic right to appeal in most cases	Right to appeal with conditions	Limited appeals; some states restrict further appeal
Enforcement	Unified enforcement through civil execution offices	Civil court orders enforced through bailiffs	Shariah court orders enforced through Islamic enforcement officers

Table 4: Procedural Comparison

In Türkiye, enforcement operates under a unified system through the Execution and Bankruptcy Code, where all court decisions whether family, commercial or criminal fines are enforced by execution offices (İcra Daireleri), with no role for religious authorities in enforcing legal obligations. Criminal sanctions are applied uniformly by police and prosecutors under the Turkish Penal Code and there is no religious police or enforcement of religious duties. In Malaysia, enforcement follows a dual system. Civil courts rely on bailiffs and enforcement officers to execute judgments according to civil procedures, while Shariah courts operate through Islamic Religious Departments (such as JAIS, JAKIM and state equivalents) whose enforcement officers investigate and prosecute Shariah offences. These officers, often referred to as religious police, have powers to enter premises with restrictions, detain suspects, and enforce Shariah court orders. Shariah

courts can also order wage garnishment for unpaid maintenance to Muslim ex-wives. However, religious enforcement officers' raids on hotels for *khalwat* offences have sparked public controversy over intrusion and profiling.

In Türkiye, practical challenges include underground religious practices such as informal marriages, inheritance divisions according to Islamic rules and religious dispute resolutions that occur outside the legal framework, creating parallel “shadow” systems without legal protection. Conservative religious communities may distrust secular courts, avoiding the formal legal system and relying on community religious authorities, which often leaves parties, especially women, without legal recourse. Additionally, judges trained exclusively in secular law may lack understanding of religious contexts, missing cultural nuances relevant to disputes. In Malaysia, challenges arise from forum shopping, where parties strategically choose which court system to approach first, leading to jurisdictional conflicts. Enforcement gaps occur when civil or Shariah court orders are ignored due to jurisdictional claims, while jurisdictional deadlocks leave parties without remedy, particularly in mixed-religion family cases. The inconsistent application of Islamic law across thirteen states results in geographical inequality. Converts also face legal limbo, as Shariah courts rarely approve apostasy and civil courts defer to Shariah authority on religious status. Moreover, prolonged jurisdictional disputes can delay justice for years while courts determine the applicable system.

### 5.3 SUBSTANTIVE AREAS OF SHARIAH AND CIVIL LAW INTERSECTION

This finding examines specific legal areas where Shariah principles either intersect with or are excluded from civil law in Türkiye and Malaysia. It focuses on the practical application of laws in four key domains: family law, inheritance, criminal law and commercial transactions.

#### 3.3.1 Family Law

Aspect	Türkiye	Malaysia
Marriage	Civil registration only; religious ceremonies have no legal effect	Muslims: Shariah requirements + registration; Non-Muslims: Civil registration

Minimum Age	18 years (exceptions require court approval)	Muslims: 18 (boys), 16 (girls) with Shariah court approval; Non-Muslims: varies by state
Polygamy	Prohibited for all citizens (Penal Code Art. 230)	Muslims: Allowed with Shariah court permission (max 4 wives); Non-Muslims: Prohibited
Divorce	Court-based, equal grounds for both spouses	Muslims: Talaq (husband), Khuluk (wife), judicial divorce; Non-Muslims: Civil divorce
Custody	Best interest of child principle	Muslims: Islamic principles (mother until age 7/9); Non-Muslims: Best interest principle
Matrimonial Property	Equal division unless proven otherwise	Muslims: Harta Sepencarian (joint property divided); Non-Muslims: Civil law

Table 5: Family Law Comparison

In Türkiye, family law is fully secularized under the Turkish Civil Code (Articles 134–161), recognizing only civil marriages. Both parties must appear before a civil registrar, and religious ceremonies (imam nikahı) conducted without prior civil registration are criminal offences punishable by imprisonment of two to six months. These requirements apply equally to all citizens regardless of religion. In practice, religious ceremonies remain culturally significant with most couples holding a civil ceremony followed by a religious celebration; however, only the civil ceremony has legal effect. In conservative rural areas, some couples conduct only religious marriages to avoid dowry or divorce obligations, resulting in “invisible marriages” that leave women without legal protection, maintenance or inheritance rights and may cause legitimacy issues for children. Polygamy is absolutely prohibited and a second marriage while the first remains valid constitutes bigamy, punishable by six months to two years of imprisonment. Either spouse can initiate divorce on grounds such as adultery, desertion, mental illness or irreconcilable differences. The court decides custody based on the child’s best interests, divides property equally

unless unequal contributions are proven, and awards maintenance (nafaka) based on need and earning capacity. Religious considerations like idda, mut'a, or religious divorce pronouncements hold no legal weight, as only civil law applies.

In Malaysia, family law operates under a dual system separating Muslim and non-Muslim marriages. Muslim marriages are governed by State Islamic Family Law Enactments, requiring Shariah court approval, the consent of a wali, agreement and documentation of mahr, proper witnesses, and registration with the Islamic Religious Department. Polygamy is permitted but strictly regulated, as husbands must obtain court permission, prove financial capability and show just and necessary reasons such as infertility or medical issues. Existing wives are notified and may object, with the court considering their welfare and that of the children. However, some men evade these regulations by entering polygamous marriages abroad or in other states without approval. Divorce for Muslims can occur through talaq (husband's pronouncement before a Shariah registrar), khuluk (wife-initiated with husband's consent and return of mahr), fasakh (judicial divorce for specific causes like cruelty or neglect), or ta'liq (conditional divorce for breach of marriage terms). Custody (hadhanah) typically grants mothers custody until sons reach seven and daughters nine, after which fathers may assume custody unless the court rules otherwise with all decisions guided by Islamic principles. Custodial parents must be Muslim and of good character. Controversy arises when a father converts to Islam and seeks custody, as Shariah courts may favor him over a non-Muslim mother, conflicting with civil law's "best interest of the child" standard. Non-Muslim marriages, governed by the Law Reform (Marriage and Divorce) Act 1976 are strictly monogamous, allow civil divorce on fault or separation grounds and apply gender-neutral custody and equal property division principles.

### 3.3.2 Inheritance Law

Aspect	Türkiye	Malaysia
System	Civil Code (testamentary freedom + statutory shares)	Muslims: Faraid (Islamic fixed shares); Non-Muslims: Civil law
Gender Equality	Equal inheritance rights for sons/daughters	Muslims: Son receives 2x daughter's share; Non-Muslims: Equal

Spousal Share	Spouse receives 1/4 to 1/2 depending on other heirs	Muslims: Varies (1/4 to 1/2 for wife, 1/4 to 1/2 for husband); Non-Muslims: Civil law
Will Freedom	Can dispose 1/4 freely; remaining 3/4 to statutory heirs	Muslims: Max 1/3 to non-heirs; Non-Muslims: Full testamentary freedom
Non-Muslim Heirs	All heirs inherit equally regardless of religion	Muslims: Non-Muslim relatives cannot inherit under faraid

Table 6: Inheritance Law Comparison

In Türkiye, inheritance is governed uniformly by the Turkish Civil Code (Articles 495–682), which applies to all citizens regardless of religion. Under intestate succession, descendants such as children and grandchildren inherit equally without gender distinction, followed by parents and their descendants and then grandparents and their descendants. The spouse receives one-fourth of the estate if there are children, one-half if there are parents but no children, and three-fourths if only distant relatives exist. Sons and daughters inherit identical shares, reflecting complete gender equality. The law allows limited testamentary freedom, permitting individuals to dispose of one-fourth of their estate freely, while the remaining three-fourths must go to statutory heirs such as children, spouse or parents. Statutory heirs may challenge a will if their shares fall below the legal minimum. There are no religious distinctions. Non-Muslim children can inherit from Muslim parents. Adopted children possess full inheritance rights. Courts strictly apply the civil code regardless of religious background. However, some families still practice informal Islamic divisions by voluntarily allocating shares according to religious rules, such as sons receiving double the daughters’ portion. These arrangements are only legally recognized if executed through valid civil mechanisms like wills, gifts or sales.

In Malaysia, inheritance follows a dual system separating Muslim and non-Muslim laws. Muslim inheritance is governed by state Islamic inheritance enactments and applied by Shariah courts under the faraid system, which allocates fixed Quranic shares. For example, a husband receives half the estate if there are no children and one-fourth if there are; a wife receives one-fourth if there are no children and one-eighth if there are; daughters receive half if alone or two-

thirds collectively if more than one, sharing with sons at a 1:2 ratio; and parents each receive one-sixth if the deceased has children. Males receive double the share of females in the same degree and non-Muslims or apostates cannot inherit from Muslims. Through a wasiat (Islamic will), up to one-third of an estate may be given to non-faraid heirs or charities, but shares for legal heirs cannot be altered without consent. For example, if a Muslim man leaves a wife, two sons and a daughter with an estate of RM900,000, the wife receives RM112,500 (1/8), and the remaining RM787,500 is divided so each son gets RM315,000 and the daughter RM157,500. Controversies include non-Muslim relatives being excluded from inheritance when a person converts to Islam late in life, though hibah (lifetime gifts) offer a partial remedy. The 2:1 gender ratio has also drawn criticism as discriminatory, while religious authorities uphold it as divine law. Additionally, sudden conversions before death can disinherit non-Muslim children, raising legal complications. Non-Muslim inheritance, on the other hand, is governed by the Distribution Act 1958 and Wills Act 1959, ensuring gender-neutral inheritance, full testamentary freedom, equal rights for spouses and children, and no religious restrictions on heirs.

### 3.3.3 Criminal Law

Aspect	Türkiye	Malaysia
Criminal Code	Turkish Penal Code (entirely secular)	Penal Code (secular, applies to all) + Shariah Criminal Offences (Muslims only)
Hudud Crimes	Not recognized; secular equivalents apply	Not implemented (constitutional restrictions prevent it)
Religious Offences	None; private religious practice	Muslims: Khalwat, alcohol, gambling, deviant teachings, sexual misconduct
Punishment Types	Imprisonment, fines (no corporal punishment)	Civil: Imprisonment, fines; Shariah: Max 3 years imprisonment, 6 strokes caning, RM 5,000 fine

Jurisdiction	Universal for all persons	Serious crimes: Civil courts (all persons); Religious offences: Shariah courts (Muslims only)
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Table 7: Criminal Law Comparison

In Türkiye, the criminal law is fully secular under the Turkish Penal Code (Law No. 5237, 2004), which applies uniformly to all citizens and includes no religious offences or punishments. There are no Islamic criminal law elements. Hudud crimes such as theft, adultery, alcohol consumption or apostasy are either decriminalized or handled under secular provisions, and there is no qisas (retaliation) or ta'zir (discretionary punishment) system. Adultery was decriminalized in 1996 and now serves only as a ground for divorce. Alcohol is fully legal but regulated by licensing laws, age restrictions (18+) and drunk driving rules. Apostasy is not a crime, as freedom of religion is constitutionally protected, allowing citizens to change their religious status freely. Blasphemy falls under Article 216, which criminalizes “publicly denigrating religious values,” though prosecutions are rare and often criticized as threats to free speech. Sexual offences like rape and assault are prosecuted as violations of bodily integrity and sexual freedom, with gender-neutral provisions recognizing all victims. Punishments include imprisonment and fines calculated in daily units, with no corporal punishment permitted whipping, stoning or amputation are constitutionally banned. The death penalty was abolished in 2004 during EU accession reforms. Although “honor crimes” still occur in some southeastern regions, the law classifies them as aggravated murder. Earlier judicial leniency for “provocation” has been eliminated through 2005 amendments, which explicitly reject custom or honor as mitigating factors.

In Malaysia, the criminal justice system is dual in nature, with the Federal Penal Code applying to all citizens and Shariah criminal laws applying only to Muslims. The Federal Penal Code governs serious crimes such as murder, assault, rape, kidnapping, theft, robbery, fraud, corruption, drug offences, treason and terrorism, with punishments including imprisonment, fines, caning for certain offences and the death penalty for crimes like murder and drug trafficking. Muslims who commit these serious crimes are prosecuted in civil criminal courts, not Shariah courts. Shariah criminal offences, enacted by individual states, criminalize violations of Islamic precepts and apply only to Muslims. Common offences include khalwat (close proximity), zina (illicit sexual

intercourse), liwat (sodomy) and musahaqah (lesbian acts), with penalties of fines, imprisonment and limited caning. Enforcement often involves religious officers conducting hotel raids, which critics argue invade privacy and disproportionately stigmatize women. Muslims are also prohibited from consuming alcohol or gambling, with fines and imprisonment as penalties. Notably, in 2009, model Kartika Sari Dewi Shukarno’s caning sentence for drinking beer was converted to community service after public backlash. Other offences include teaching deviant doctrines, insulting Islam, defying religious authorities, indecent behavior, cross-dressing by male Muslims, pregnancy out of wedlock, failing to attend Friday prayers and breaking fast publicly during Ramadan. However, Article 121(1A) of the Federal Constitution limits Shariah courts’ sentencing powers to a maximum of three years’ imprisonment, a RM5,000 fine, and six strokes of caning, preventing the enforcement of hudud punishments such as amputation for theft, stoning for adultery, or death for apostasy. Attempts by Kelantan (1993, 2015) and Terengganu (2002) to introduce hudud criminal codes have remained unimplemented due to constitutional constraints and federal supremacy of the Penal Code. A 2016 Private Member’s Bill by the PAS president sought to expand Shariah court powers to allow harsher punishments but failed following strong opposition from coalition partners, human rights groups and constitutional concerns.

### 3.3.4 Commercial Transactions

Aspect	Türkiye	Malaysia
Commercial Code	Turkish Commercial Code (entirely secular)	Companies Act, Contracts Act (secular) + Islamic Banking & Finance Acts
Islamic Banking	No Islamic banking system	Parallel Islamic banking system regulated by Bank Negara
Islamic Finance Products	Not officially recognized	Sukuk, Murabaha, Ijarah, Takaful officially regulated
Shariah Advisors	None	Mandatory Shariah Advisory Council for Islamic financial institutions

Contractual Freedom	Full freedom within civil code limits	Full freedom + option for Shariah-compliant contracts
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Table 8: Commercial Law Comparison

In Türkiye, the commercial system operates under a fully secular framework governed by the Turkish Commercial Code (Law No. 6102, 2011), modeled after Swiss and German laws. Conventional interest-based banking is standard, with no official recognition of “Islamic banking.” All financial institutions fall under the same Banking Law and are regulated by the Banking Regulation and Supervision Agency. However, since 1985, Türkiye has allowed participation banks (Katılım Bankaları) to operate on Islamic finance principles, avoiding explicit interest (riba) and instead using profit-sharing (mudaraba, musharaka), trade-based (murabaha), and leasing (ijara) models. These banks are not legally termed “Islamic” but are integrated within the same regulatory framework as conventional banks. Major participation banks include Albaraka Türk, Kuveyt Türk, Türkiye Finans, Ziraat Katılım and Vakıf Katılım, holding around 6–7% of the banking market as of 2024. Unlike Malaysia, Türkiye does not require Shariah boards by law; banks may consult Islamic scholars voluntarily for product development without formal regulatory oversight. Türkiye has also issued sovereign sukuk (Islamic bonds) since 2012 under the secular Capital Markets Law, structuring them to meet Islamic principles within a conventional securities framework. Similarly, takaful (Islamic insurance) has no separate legal category, though some conventional insurers offer Shariah-compliant products under the same Insurance Law. All commercial contracts are governed by the secular Code of Obligations, meaning Islamic-compliant transactions must conform to civil law structures and courts interpret them using secular contract principles. In conclusion, Türkiye integrates Islamic finance practices through secular mechanisms and alternative structuring rather than through a distinct religious legal system.

Malaysia operates under a dual commercial framework combining conventional and Islamic systems. The Conventional Commercial Law applies to all general transactions under the Contracts Act 1950, Sale of Goods Act 1957, Companies Act 2016 and securities laws. Meanwhile, the Islamic Banking and Finance System functions under the Islamic Financial Services Act 2013 (IFSA), governing Islamic banking, takaful, and financial institutions. Its key features include a dual banking system, where conventional banks offer interest-based products and Islamic banks

offer Shariah-compliant ones, with some institutions providing both through Islamic windows. Major Islamic banks include Bank Islam Malaysia, CIMB Islamic, Maybank Islamic, Public Bank Islamic and RHB Islamic, holding around 40% of total banking assets as of 2024. The Shariah Governance Framework is led by the Shariah Advisory Council (SAC) at Bank Negara Malaysia, the ultimate authority on Shariah matters whose rulings are binding under IFSA Sections 56–57. Each Islamic financial institution also has its own Shariah Committee of at least three qualified members to approve and review compliance. Common Islamic financial products include Murabaha (cost-plus sale), Ijarah (leasing), Musharaka (partnership), Mudaraba (profit-sharing), Sukuk (Islamic bonds) and Takaful (Islamic insurance), with Malaysia recognized as a global leader in sukuk issuance. In terms of legal recognition and enforcement, civil courts can apply Islamic finance contracts, while Shariah compliance issues are referred to the SAC, whose rulings are binding on all courts. Regulatory oversight is provided by Bank Negara Malaysia, which supervises both systems through dedicated Islamic finance departments and by the Securities Commission, which oversees Islamic capital markets and sukuk issuance. The Islamic capital market on Bursa Malaysia includes a Shariah-compliant securities screening and the FTSE Bursa Malaysia Hijrah Shariah Index, with over 70% of listed securities meeting Shariah criteria, excluding companies involved in riba, gambling, alcohol, tobacco, pork or excessive debt. Lastly, zakat (Islamic wealth tax) is integrated into the financial system, collected by State Islamic Religious Councils on income, wealth and business, with some states allowing zakat payments to offset income tax and financial institutions facilitating zakat deduction and payment.

Legal Area	Türkiye Approach	Malaysia Approach	Key Difference
Family Law	Complete civil code uniformity	Parallel systems (Islamic for Muslims, civil for non-Muslims)	Monism vs. pluralism
Inheritance	Equal, gender-neutral shares	Faraid (2:1 male-female) for Muslims; civil law for non-Muslims	Equality vs. religious rules

Criminal Law	Entirely secular, no religious offences	Dual system (serious crimes under Penal Code, religious offences under Shariah)	Secular monopoly vs. limited religious jurisdiction
Commercial Law	Secular framework accommodating Islamic finance within civil law	Separate Islamic finance legal framework with Shariah governance	Integration vs. separation

Table 9: Substantive Law Intersection Summary

#### 5.4 ROLE OF SECULARISM AND ISLAMIC IDENTITY IN SHAPING LEGAL PLURALISM

This finding evaluates how foundational principles secularism in Türkiye and Islamic identity in Malaysia shape each country's approach to legal pluralism. It examines the ideological, political and social dimensions that underpin the legal frameworks analyzed in previous findings.

Element	Türkiye	Malaysia
State Ideology	Kemalism (secular nationalism)	Rukunegara (multiculturalism with Malay-Islamic primacy)
Constitutional Identity	Secular, democratic republic	Constitutional monarchy with Islam as official religion
Religion-State Relationship	Strict separation (laïcité model)	Accommodation and regulation
National Identity Formula	Civic nationalism (Turkish citizenship regardless of ethnicity/religion)	Ethnic-religious formula (Malay = Muslim = privileged status)
Head of State	President (elected)	Yang di-Pertuan Agong (rotating among 9 Sultans)

Symbolic Religious Authority	None (abolished Caliphate 1924)	Sultans as "Heads of Islam" in respective states
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Table 10: State Identity and Governance Models

Türkiye adopts secularism as the foundation of the state, rooted in Kemalist ideology established by Mustafa Kemal Atatürk during the 1920s–1930s. Guided by the Six Arrows of Kemalism Republicanism (cumhuriyetçilik), Secularism (laiklik), Nationalism (milliyetçilik), Populism (halkçılık), Statism (devletçilik) and Reformism (inkılâpçılık), secularism stands as its core principle. Its main purpose was to transform Türkiye from the Ottoman Islamic Empire into a modern, unified nation-state, as religion was seen as an obstacle to modernization and progress. Historically, the country underwent major reforms. In 1924, the Caliphate was abolished, Shariah courts were closed and education was unified. In 1926, the Swiss Civil Code and Italian Penal Code were adopted. In 1928, Islam was removed as the state religion. In 1934, religious dress was banned in public institutions and in 1937, secularism was officially added to the constitution. Philosophically, Türkiye followed the French laïcité model, which confines religion to the private sphere and excludes it from state affairs, with the state maintaining control over religious expression to prevent its interference in governance. The nation’s civic identity is expressed in the formula “Ne mutlu Türküm diyene” (“Happy is the one who says I am a Turk”), emphasizing citizenship-based unity over ethnicity or religion, treating Kurds, Arabs, Muslims, Christians and Jews equally as Turkish citizens.

Malaysia upholds Islam as the official religion with multiculturalism, shaped by a constitutional compromise in 1957 that balanced the interests of Malay rulers seeking to preserve Islamic and Malay privileges, non-Malay communities (Chinese and Indian) desiring equal citizenship and the British ensuring a stable democratic transition. This resulted in Article 3, declaring that “Islam is the religion of the Federation; but other religions may be practised in peace and harmony.” Following the 1969 racial riots, the Rukunegara (National Principles, 1970) was introduced to strengthen national unity through five pillars: belief in God, loyalty to King and country, supremacy of the constitution, rule of law and good behavior and morality. Malaysia’s identity formula is multi-layered, where Malay identity is tied to Islam under Article 160, a Malay is defined as a Muslim who speaks Malay and practices Malay customs. Bumiputera privileges under

Article 153 provide constitutional advantages for Malays and indigenous peoples in education, employment and business, while non-Malay communities, Chinese (22%) and Indians (7%) maintain their religious and cultural distinctiveness. Islam thus serves as a symbolic unifying force for the Malay majority while allowing pluralism to flourish. The Sultans play a key constitutional and religious role, as the nine hereditary rulers rotate as the Yang di-Pertuan Agong (King) every five years, each serving as the Head of Islam in their respective states, linking political sovereignty with Islamic identity.

#### 5.4.1 Secularism's role in shaping Türkiye's legal approach

Ideological rejection of religious law under Kemalist secularism views religious law as backward, divisive and oppressive blamed for Ottoman decline, social fragmentation and gender inequality through practices like polygamy and unequal inheritance. Secularism promotes legal monism, adopting a single, modern, European-inspired legal system that ensures equality before the law and individual freedom, especially for women. Article 174 of the Constitution makes secularism unamendable, preventing any reintroduction of religious law and entrenching secularism as a core, irreversible state principle.

Evolution and Tensions emerged as the military positioned itself as the guardian of secularism, staging interventions in 1960, 1971, 1980 and the 1997 “postmodern coup,” which forced Islamist Prime Minister Necmettin Erbakan to resign, banned his party, restricted religious schools, and prohibited headscarves in universities. Under the AKP era (2002–present), the Justice and Development Party rooted in Islam but professing secular democracy expanded religious freedoms by lifting the headscarf ban (2010), broadening religious education, increasing the Diyanet budget from \$500 million (2002) to \$2.5 billion (2024), and promoting Islamic heritage through mosque construction and religious rhetoric. Yet, the secular legal framework remains intact, with no move to reintroduce Shariah courts or Islamic family law due to constitutional barriers (Article 174), institutional resistance, EU requirements, public support for secularism, and Türkiye’s desire to project itself as a “moderate Muslim democracy.” The AKP’s “conservative democracy” blends religious values with legal secularism, fostering social Islamization without formal legal change, resulting in tension between a secular state and a more religious society where citizens often practice Islamic norms informally outside the legal system.

Secularism's Impact on Stakeholders varies: religious conservatives feel restricted by secular law but some accept it for stability, while others reject it as a Western imposition. Secularists fear erosion of Kemalist values and rely on the military, judiciary and opposition parties to defend secularism. Women's rights advocates support secularism for safeguarding equality but express concern over conservative pressures reducing real autonomy. The international community remains divided. The EU views secularism positively as aligning with democratic norms, Muslim-majority countries are split between admiration and criticism and Western observers debate whether Türkiye exemplifies a successful "secular Muslim democracy" or an authoritarian system using secularism to control religion.

### 3.4.2 Islamic identity's role in shaping Malaysia's legal approach

Article 3's constitutional recognition of Islam gives Malaysia legitimacy for a parallel Shariah system, unlike Türkiye's prohibition and the Ninth Schedule assigns Islamic law to state authority so 13 different state systems exist states like Kelantan, Terengganu and Kedah enact stricter laws while Penang and Selangor take a moderate approach. Political competition between UMNO (moderate, Malay-nationalist) and PAS (advocating comprehensive Islamic law, including hudud) drives an "Islamization race" as both expand Shariah jurisdiction and institutions to win Malay-Muslim votes. Article 160 links Malay identity to Islam, so Malays cannot leave Islam without losing bumiputera privileges and non-Malays do not gain Malay status by converting, making Shariah an ethnic-privilege mechanism applied mainly to Malays. The nine Sultans, as constitutional "Heads of Islam" (Article 3(2)–(3)), appoint judges, assent to state Islamic laws, chair religious councils, pardon Shariah offenders and thus symbolically legitimize Islamic law while making criticism politically sensitive. Historically, Shariah grew from limited personal status rules (1950s–70s) to expanded jurisdiction in the 1980s–2000s and high-profile prosecutions and hudud attempts in the 2010s–present, fueled by politics, globalization backlash, Middle East influences and faster Muslim demographic growth. Proposals to limit or liberalize Shariah face charges of being "anti-Islam," anti-Malay or Western, creating a ratchet effect that makes expansion easy but contraction politically difficult. Debates over Article 121(1A) focus on whether to increase Shariah punishments and hudud powers or to clarify protections for constitutional and non-Muslim rights, yet amendments remain explosive and stalled. Stakeholders are split: many

Malay Muslims support Islamic law (some favor strict hudud, others prefer moderation), liberal Muslims fear public opposition to criticism, women are particularly affected by gendered provisions, non-Muslims worry about rights and rely on federal courts, Islamic authorities gain power and resist oversight and the federal government must balance Malay-Muslim demands, civil rights, and international expectations while often using rhetorical support and limited practical expansion.

### 3.4.3 Comparative analysis: ideological drivers of legal pluralism

Dimension	Türkiye	Malaysia
Core Principle	Secularism prevents legal pluralism	Islamic identity mandates legal pluralism
Historical Origin	Deliberate break from Islamic past (1920s reforms)	Constitutional compromise preserving Islamic heritage (1957)
Ideological Direction	Religion → Private sphere; Law → Secular	Religion → Public and legal sphere; Law → Dual system
Change Mechanism	Secularism entrenched; change highly restricted	Islamic law expandable through political process
Political Legitimacy	Derived from secular nationalism and modernization	Derived from Islamic-Malay identity and traditional authority
Social Cohesion Strategy	Uniformity (same law for all) creates unity	Pluralism (different laws for different groups) manages diversity

Table 11: Ideological Foundations Comparison

Both began as Muslim-majority societies governed by traditional Islamic law. The Ottoman Empire with Shariah courts, Islamic personal status law and the millet system and the Malay Sultanates with Islamic law enforced by Sultans and Shariah courts for Muslims. However, they took opposite trajectories from these similar origins. Türkiye chose rupture, rejecting its Islamic

legal heritage as incompatible with modernity, replacing it entirely with European legal codes and constructing a secular national identity based on Turkish citizenship. The state through the military, judiciary, and bureaucracy actively enforced secularism. In contrast, Malaysia chose continuity, preserving elements of its Islamic legal heritage within a constitutional framework that accommodates both Islamic and civil law for a multicultural society. Its national identity combines Islamic-Malay primacy with diversity, while the state uses its authority to regulate and gradually expand Islamic law.

Both developed distinct modernization narratives from their Islamic pasts. Türkiye's narrative asserts that "modernization requires secularization," equating European legal codes with civilization, progress, and gender equality, while viewing Islamic law as backward and restrictive. Secular law is seen as essential for national unity and economic growth, supported by evidence such as Türkiye's industrialization, NATO membership, EU candidacy, women's participation in education and politics and relatively stable democratic institutions despite periodic military coups. In contrast, Malaysia's narrative maintains that "modernization is compatible with Islamic identity," emphasizing that a nation can achieve development while retaining Islamic law. Through *ijtihad*, Islamic law is presented as adaptable to contemporary needs and Malaysia's pluralism is portrayed as a sophisticated model of coexistence. Evidence includes Malaysia's economic growth since independence, the global success of its Islamic finance sector, democratic governance with peaceful power transitions and sustained multicultural harmony since 1969. Ultimately, both narratives hold partial truth. Each country has achieved modernization and development through different paths, demonstrating that there is no single model of progress or superiority in outcomes.

Türkiye and Malaysia differ fundamentally in their constitutional design regarding religion and law. In Türkiye, secularism is entrenched as a form of constitutional immutability, intended to guard against democratic regression toward theocracy. Article 174 prevents any amendment of secular provisions, meaning even overwhelming political majorities cannot Islamize the legal system. This design ensures that constitutional law constrains political will, justified as a safeguard for fundamental rights and the republican character of the state against temporary populist pressures. In contrast, Malaysia's constitution makes Islam a constitutional mandate, aimed at preserving Malay-Islamic identity while accommodating a multicultural society. Article 3 declares

Islam the religion of the Federation, while the Ninth Schedule grants states authority over Islamic law. This structure allows constitutional law to enable political will, giving elected majorities the power to expand Islamic law within defined limits. The key distinction lies in their constitutional philosophy: Türkiye’s constitution restrains religious law, whereas Malaysia’s constitution empowers it within the framework of historical compromise and cultural identity.

Factor	Türkiye	Malaysia
Military Role	Guardian of secularism; intervened to prevent Islamization	Professionally neutral; no guardian role
Judiciary	Secular; protects secular constitutional order	Dual judiciary; civil courts balance Shariah expansion
Religious Authorities	State-controlled (Diyanet); no political power	State agencies (JAKIM, MAINs) with legal authority and political influence
Electoral Competition	Secular vs. Islamist parties (AKP vs. CHP/MHP)	Competing Islamization (UMNO vs. PAS)
Civil Society	Secular NGOs vs. Islamic organizations	Multi-ethnic coalition (Chinese, Indians, liberal Malays) vs. conservative Muslims

Table 12: Political Factors Shaping Legal Pluralism

Türkiye’s political landscape reflects a constant tension between the secular establishment comprising the military, judiciary, bureaucracy, secular parties (CHP, MHP) and the educated urban elite and the Islamic challenge represented by the AKP, religious communities (including the Gülen movement until the 2013 split) and the conservative Anatolian middle class. This ongoing struggle centers on Turkey’s identity as either a secular republic or an Islamic democracy. Historically, Islamic parties gain power and introduce conservative policies, prompting fears of Islamization that lead to military intervention or judicial bans, after which a new Islamic party

emerges with more moderate rhetoric, continuing the cycle. The AKP's strategy has been to avoid direct confrontation with secularism by refraining from Islamic legal reforms, gradually expanding religious influence through administrative measures, education and social policy, and weakening the secular establishment via constitutional changes and purges, especially after the 2016 coup attempt. Power has become concentrated in the presidency, reducing checks and balances, resulting in an authoritarian drift defined more by Erdoğan's personalist rule than by Islamic law. Secularism has been weakened not through formal Islamization, but through the erosion of rule of law and democratic institutions.

Malaysia's political system is defined by competing Islamization within the system, driven by the power struggle among Malay-Muslim parties. UMNO (moderate), PAS (Islamist), and Bersatu (Malay nationalist) alongside the multi-ethnic coalition Pakatan Harapan, which includes DAP (Chinese), PKR (multiracial), and Amanah (moderate Islamic). The Sultans, as constitutional monarchs with Islamic authority and institutions like JAKIM and state religious councils also play key roles in shaping Islamic governance. The dynamic revolves around competition within Malay-Muslim politics over who best represents Islam, pushing all sides toward greater Islamization. With Malay votes comprising about 60% of the electorate, Islamic credentials are essential for political survival, as neither major bloc can win without Malay-Muslim support. Consequently, both sides strive to appear "more Islamic," leading to expanded Shariah jurisdiction. The 2018 political shift, when Pakatan Harapan defeated Barisan Nasional for the first time since independence, raised hopes for reform to limit Shariah overreach and protect constitutional rights. However, reforms were minimal due to Malay-Muslim backlash, accusations of betraying Islam from PAS and a fragile coalition unwilling to alienate moderate Muslims. The 2020 government collapse, partly from Malay-Muslim voters deserting the coalition, demonstrated that even reformist governments cannot significantly reduce Islamic legal influence without losing critical Malay-Muslim support.

In Türkiye, urban-rural, class, and regional divides strongly shape social and cultural dynamics. Western regions such as Istanbul, Izmir and Ankara are urban, educated and secular-oriented, supporting the Kemalist legacy, while the Anatolian heartland remains rural, conservative and religious, favoring Islamic-oriented parties like the AKP. The class dimension further deepens the

divide: the upper and middle classes, being university-educated and globally connected, tend to support secularism, whereas the working class and rural population, with limited education and traditional values, often view secularism as an elite imposition. A generational shift adds complexity. Some young people embrace conservative Islamic identities, while others adopt more liberal views shaped by social media and global culture. The result is growing social polarization along secular-religious lines, making national consensus on religion's role in law nearly impossible. Consequently, legal secularism in Türkiye endures not through social agreement but through constitutional entrenchment.

In Malaysia, ethnic and religious intersectionality defines the social fabric, where Malay identity is inseparable from Islam, granting Malays a privileged status. The Chinese community, largely Buddhist, Christian, or Taoist, holds strong economic influence but faces political marginalization, while the Indian community, comprising Hindus, Muslims and Christians, is smaller and more marginalized. The indigenous peoples of Sabah and Sarawak show greater religious diversity, including Christianity, Islam, and animist traditions, differing from the Peninsula. A growing Malay-Muslim middle class adds new layers of complexity: conservative professionals support Islamic law as an identity marker, while liberal Muslims prefer Islam's moral framework without strict enforcement; meanwhile, non-Muslim professionals, largely secular, express concern over Islamic expansion. Since the Islamic resurgence of the 1970s, dakwah movements have revived Islamic consciousness among educated Malays, influenced by Middle Eastern thought. This has led to visible Islamization, with widespread hijab adoption, expanded Islamic education, and pervasive halal certification, alongside cultural shifts such as gender segregation, Islamic advertising, and heightened Ramadan observance. The overall result is that social Islamization reinforces legal Islamization as public life becomes more visibly Islamic, political pressure increases to expand Shariah jurisdiction.

#### **4.0 CONCLUSION**

This comparative study reveals that Türkiye and Malaysia represent fundamentally opposite approaches to balancing Shariah and civil law, shaped by divergent constitutional foundations and historical choices. Türkiye's radical secularization has produced legal monism, completely excluding Shariah from formal law through constitutional entrenchment of secularism, adoption

of European civil codes, and elimination of religious courts. All citizens are subject to identical secular laws regardless of religious identity, delivering legal certainty, procedural simplicity and formal gender equality. However, this creates persistent tensions between state law and religious practice, with conservative communities maintaining informal Islamic arrangements outside the formal legal framework.

Conversely, Malaysia's constitutional accommodation has created genuine legal pluralism through parallel Shariah and civil court systems. With Islam as the official religion and state-level Islamic legislation, Muslims are governed by Islamic law in personal status matters and religious offences, while non-Muslims remain under civil law. This model respects religious identity and cultural diversity but generates jurisdictional conflicts, procedural inconsistencies, rights protection challenges and gender disparities under Islamic family and inheritance law.

Both countries demonstrate important convergences: constitutional supremacy over religious law, state control of religious institutions, modern legal education requirements and constitutional constraints preventing full implementation of classical Islamic law. Yet their divergences are profound. Türkiye's challenge lies in managing the gap between formal secular law and persistent informal religious practices, while Malaysia's challenge involves managing conflicts between two formal legal systems operating simultaneously.

This study demonstrates that legal pluralism is not determined by economic development or religious devotion alone, but by foundational ideological choices about national identity and state-religion relationships. Neither legal monism nor legal pluralism perfectly resolves tensions inherent in modern Muslim-majority nation-states. Both systems face ongoing contestation and continue evolving incrementally, suggesting that managing the relationship between Shariah and civil law is not a problem to be definitively solved, but rather an ongoing process of negotiation reflecting the evolving values and aspirations of diverse populations. The choice between legal monism and legal pluralism ultimately reflects different visions of what it means to be a modern Muslim-majority democracy in the 21st century.

## 5.0 ACKNOWLEDGEMENT

This research was made possible through the invaluable support and guidance of several institutions and individuals. The author wishes to express sincere appreciation to the Embassy of the Republic of Türkiye in Malaysia for facilitating access to relevant legal and policy resources as well as for the monthly stipend and academic opportunities provided under the Diyanet Fellowship Programme. Deep appreciation is also extended to the Department of Fiqh and Usul al-Fiqh, International Islamic University Malaysia (IIUM), for providing academic supervision, scholarly insights and institutional encouragement throughout the study, particularly under the subjects *Turuq Istinbat al-Ahkam*, *Fiqh al-Jinayat wa al-'Uqubat*, *al-Siyasah al-Syariyyah*, *al-Qawa'id al-Fiqhiyyah*, *Usul al-Fiqh* and *al-Fiqh al-Islami*. The author also wishes to extend heartfelt gratitude to friends from *Kelab Debat Bahasa Melayu UIAM* for their intellectual companionship, encouragement and constructive discussions that enriched the development of this research. Special thanks are due to the reviewers, proofreaders and academic mentors whose insightful feedback strengthened the analytical depth and clarity of this work. The author further acknowledges the assistance of research assistants and fellow students who contributed to the collection, translation and comparative legal analysis of the documents. Finally, sincere appreciation goes to the author's family for their unwavering moral support, patience and continuous encouragement throughout the research and writing process.

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