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Nur Ain Sofiyah binti Mohamed* , Arroyan Na'im , and Sakirman 

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Nur Ain Sofiyah binti Mohamed*, Arroyan Na'im, and Sakirman

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Abstract

The gender protection regimes in Malaysia and Indonesia through a comparative normative juridical framework, with particular attention to constitutional foundations, legislative architecture, and the internalization of international human rights norms. The research is grounded in the premise that formal commitments to gender equality do not automatically translate into substantive protection, especially within plural and decentralized legal systems. Using a doctrinal and comparative legal approach, the study analyzes primary legal sources including constitutional provisions, statutory instruments, and relevant international conventions such as CEDAW alongside secondary academic literature to assess the coherence, harmonization, and implementation capacity of gender-related legal frameworks in both jurisdictions. The findings reveal that while both countries have adopted significant sectoral reforms addressing gender-based violence and discrimination, structural differences in legal system design substantially influence normative integration and enforcement. Malaysia's dual civil Sharia legal system reflects institutionalized legal pluralism that may generate jurisdictional fragmentation and partial harmonization of gender norms, whereas Indonesia's relatively integrated constitutional structure supports stronger normative coherence but faces implementation challenges due to decentralization and uneven regional capacity. The study concludes that the effectiveness of gender protection is contingent not merely upon progressive legislation but upon the structural alignment between constitutional principles, statutory frameworks, and institutional coordination mechanisms. These findings carry important theoretical and policy implications, suggesting that future gender law reforms in plural legal systems should prioritize systemic coherence, inter-jurisdictional harmonization, and strengthened governance capacity to ensure the substantive realization of gender equality.

Keywords: Comparative Analysis; Gender Protection; Human Rights; Indonesia; Malaysia.

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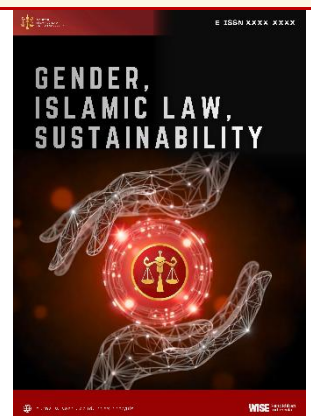
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INTRODUCTION

Gender protection has become a central pillar in contemporary human rights discourse, reflecting a paradigmatic shift from formal equality toward substantive justice in addressing structural inequalities embedded within legal and social systems. Contemporary scholarship emphasizes that gender equality cannot be reduced to the mere guarantee of equal treatment before the law, but must be understood as a transformative process aimed at dismantling systemic discrimination rooted in cultural norms, institutional arrangements, and power asymmetries [1], [2], [3]. In this context, substantive equality requires states not only to refrain from discriminatory actions but also to undertake positive obligations through legislative reform, institutional strengthening, and policy interventions designed to rectify historical disadvantages [4], [5], [6], [7]. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) further reinforces this framework by defining discrimination broadly to include both direct and indirect forms of exclusion, thereby positioning gender protection as an essential indicator of a state's commitment to human dignity and social justice [5], [8], [9], [10].

Within Southeast Asia, Malaysia and Indonesia present compelling comparative contexts for examining how gender protection is shaped by differing constitutional structures, legal traditions, and socio religious configurations. Both countries share strong religious influences and enduring patriarchal cultural norms that significantly affect legal interpretation and policy implementation [11], [12], [13], [14]. However, despite these similarities, their constitutional and institutional architectures diverge in ways that substantially influence the operationalization of gender equality principles. Malaysia adopts a dual legal system in which civil law coexists with state level Sharia law, particularly in matters of family and personal status, generating normative pluralism and jurisdictional fragmentation [15], [16], [17], [18]. In contrast, Indonesia operates under a relatively integrated national legal system grounded in the 1945 Constitution, which explicitly guarantees equality before the law and protection from discriminatory treatment as non derogable rights [19], [20], [21].

Legislative developments in both jurisdictions reflect efforts to align domestic frameworks with international human rights standards, particularly CEDAW. Malaysia has enacted sector specific statutes such as the Domestic Violence Act 1994 and the Anti-Sexual Harassment Act 2022, signaling responsiveness to gender-based violence and workplace discrimination [9], [22], [23], [24]. Nonetheless, scholars note that the effectiveness of these reforms is often constrained by the structural dualism of the legal system and varying standards across federal and state jurisdictions [25], [26], [27], [28]. Indonesia, meanwhile, has demonstrated progressive reform through the enactment of Law No. 23 of 2004 on the Elimination of Domestic Violence and Law No. 12 of 2022 on Sexual Violence Crimes, which adopt victim centered and restorative approaches to criminal justice [29], [30], [31], [32]. These developments illustrate an evolving orientation toward substantive protection and state accountability in preventing and addressing gender based violence [5], [33], [34], [35].

Despite these normative advancements, implementation challenges persist in both countries. Empirical and doctrinal analyses reveal that institutional capacity, coordination among enforcement agencies, and entrenched patriarchal attitudes significantly influence the realization of gender equality in practice [5], [36], [37], [38]. In Malaysia, federal state fragmentation and the interaction between civil and Sharia jurisdictions often create disparities

in access to justice, particularly in family law matters [39], [40]. In Indonesia, although the constitutional and statutory framework appears more unified, policy fragmentation and uneven regional implementation under decentralization continue to limit consistent protection standards [41], [42], [43], [44]. These dynamics underscore that ratification of international instruments and enactment of progressive legislation do not automatically translate into substantive equality without coherent institutional integration and socio-cultural transformation [45], [46].

Although prior studies have examined gender legislation, CEDAW implementation, and sectoral reforms in Malaysia and Indonesia, most analyses remain compartmentalized focusing either on normative doctrinal review or on isolated policy sectors without systematically integrating constitutional structure, institutional configuration, and socio-cultural context within a unified comparative framework. Moreover, limited scholarship has explicitly analyzed how differences between Malaysia's dual legal system and Indonesia's integrated national system structurally condition the consistency and effectiveness of gender protection across normative and implementation levels. This constitutes a significant research gap in comparative gender law studies in Southeast Asia.

Accordingly, this article aims to conduct a multidimensional comparative analysis of gender protection in Malaysia and Indonesia by examining constitutional foundations, legislative developments, institutional mechanisms, and policy implementation within a human rights framework. By directly linking CEDAW obligations with domestic legal practices and structural configurations, this study seeks to elucidate how legal system design influences the realization of substantive gender equality. In doing so, it aspires to contribute theoretically to comparative gender law scholarship and practically to the formulation of more coherent and transformative gender protection policies in plural and post-colonial legal systems.

METHODS

This study employs a normative juridical research design combined with a comparative legal approach to systematically examine gender protection frameworks in Malaysia and Indonesia. The normative juridical method is utilized to analyze legal norms, principles, and doctrines governing gender equality and protection within each country's constitutional and statutory architecture. The research focuses on primary legal materials, including constitutional provisions, national statutes, delegated legislation, and relevant judicial decisions, as well as international legal instruments particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that shape state obligations in the field of gender protection. These primary sources are complemented by secondary legal materials, such as peer-reviewed journal articles, academic monographs, policy reports, and official government documents, in order to situate the legal analysis within broader theoretical and socio legal debates.

The comparative legal approach is applied to identify convergences and divergences between Malaysia's dual legal system characterized by the coexistence of civil and Sharia jurisdictions and Indonesia's relatively integrated national legal system. The comparison is conducted across three interrelated dimensions: (1) constitutional foundations of gender equality, (2) legislative and policy frameworks addressing gender-based discrimination and violence, and (3) institutional mechanisms and implementation practices. Rather than merely juxtaposing statutory

provisions, the analysis critically evaluates how structural features of each legal system influence normative coherence, policy harmonization, and the practical realization of substantive equality.

Data analysis is undertaken qualitatively using descriptive analytical and interpretative techniques. The descriptive component maps the evolution and content of gender related legal instruments in both jurisdictions, while the analytical component assesses their alignment with international human rights standards and examines their internal consistency within domestic legal hierarchies. An interpretative human rights framework is employed to evaluate the extent to which national legal systems fulfill the tripartite obligations to respect, protect, and fulfill gender based rights. Through this framework, the study moves beyond formal doctrinal exposition to assess the transformative capacity of legal norms in addressing structural discrimination. By integrating doctrinal analysis, comparative evaluation, and a human rights based interpretative lens, this methodological design ensures analytical rigor and provides a comprehensive foundation for assessing the effectiveness and limitations of gender protection regimes in Southeast Asia.

RESULTS AND DISCUSSION

Constitutional and International Foundations of Gender Protection

The findings demonstrate that both Malaysia and Indonesia constitutionally recognize the principle of equality before the law; however, the structural configuration of their respective legal systems significantly affects the coherence and operationalization of gender protection. In Malaysia, Article 8 of the Federal Constitution guarantees equality and prohibits discrimination on the basis of gender in specific contexts, particularly employment and public administration [47], [48], [49], [50]. Nevertheless, this constitutional guarantee operates within a dual legal structure in which civil courts coexist with state level Sharia courts in matters of family and personal law. Such pluralism generates normative fragmentation and jurisdictional divergence, potentially resulting in differentiated protection standards for women, particularly Muslim women [51], [52], [53], [54].

Indonesia, in contrast, embeds equality and non discrimination principles more comprehensively within the 1945 Constitution, particularly under Articles 27(1), 28D(1), and 28I(2), which position freedom from discrimination as a fundamental constitutional right [55], [56], [57]. This relatively integrated constitutional framework facilitates harmonization between domestic law and international human rights standards. Both countries have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); however, Malaysia entered reservations reflecting tensions between international gender norms and domestic constitutional religious considerations [58]. Indonesia ratified CEDAW through Law No. 7 of 1984 without major substantive reservations, demonstrating stronger normative alignment with international gender equality obligations [50], [59].

Legislative Framework and Substantive Legal Reform

The legislative findings indicate progressive yet fragmented statutory development in both jurisdictions. Malaysia has enacted the Domestic Violence Act 1994 and the Anti Sexual Harassment Act 2022, reflecting increasing state responsiveness to gender-based violence and workplace harassment [24], [60]. These statutes introduce procedural safeguards such as protection orders and complaint mechanisms, thereby strengthening formal access to remedies. However, scholars emphasize that the absence of a comprehensive gender equality act limits systemic harmonization and results in sectoral rather than structural reform [5], [61], [62].

Indonesia similarly demonstrates legislative progress through Law No. 23 of 2004 on the Elimination of Domestic Violence and Law No. 12 of 2022 on Sexual Violence Crimes. The latter represents a paradigmatic shift by broadening the legal definition of sexual violence, recognizing victims' rights to restitution and recovery, and imposing preventive obligations upon the state [63]. The victim centered orientation aligns with contemporary critiques of retributive criminal justice and supports restorative approaches to gender based harm [64], [65], [66]. Nonetheless, as in Malaysia, Indonesia lacks an overarching gender equality statute capable of consolidating dispersed sectoral regulations into a coherent normative framework [67].

Institutional Mechanisms and Policy Implementation

Institutionally, Malaysia coordinates gender-related policies primarily through the Ministry of Women, Family and Community Development, which functions as the central administrative body for policy design, service provision, and international reporting obligations [9], [68], [69]. However, federal state decentralization and the autonomy of Syariah Courts produce implementation disparities, particularly in family law and post divorce rights [70]. Consequently, the realization of substantive equality often depends on jurisdictional context and local institutional capacity.

Indonesia's institutional framework is led by the Ministry of Women's Empowerment and Child Protection (KPPPA), supported by integrated service units and regional protection mechanisms [71], [72], [73]. While Indonesia's institutional structure appears more centralized in normative design, implementation remains uneven due to decentralization, limited law enforcement capacity, and persistent patriarchal norms influencing reporting and adjudication processes [74], [75]. In both contexts, a gap persists between progressive statutory commitments and effective enforcement, confirming that institutional coordination and socio cultural transformation are indispensable to substantive gender equality [76], [77].

Discussion

The findings of this study resonate with, yet also extend beyond, several strands of existing scholarship on gender protection and legal pluralism in Southeast Asia. Prior research has emphasized that Malaysia's dual civil Sharia legal structure generates jurisdictional complexities that may affect women's access to justice and consistency in rights protection [76], [78]. The present study confirms these structural tensions but advances the discussion by demonstrating how institutional fragmentation not only affects adjudication but also shapes the harmonization of statutory reforms with international obligations such as CEDAW. In contrast, earlier analyses of Indonesia have highlighted the country's constitutional commitment to equality and its progressive legislative reforms addressing domestic and sexual violence [79], [80]. While these studies tend to portray Indonesia's framework as comparatively coherent, the present research reveals that decentralization and uneven regional implementation significantly mediate the practical realization of these normative commitments. Thus, the study moves beyond doctrinal comparison to incorporate structural and governance dimensions into the evaluation of gender protection effectiveness.

Comparative scholarship has also noted that both Malaysia and Indonesia rely heavily on sectoral legislation rather than comprehensive gender equality statutes [9], [10], [81]. The present findings substantiate this observation but contribute a deeper analytical synthesis by showing how sectoral approaches, while politically feasible, may inadvertently limit normative coherence and cross sector policy integration. Furthermore, earlier human rights based analyses have argued that ratification of CEDAW does not automatically ensure substantive gender equality in domestic

practice [82], [83], [84]. This study corroborates that position and refines it by comparatively mapping how constitutional hierarchy, reservation practices, and institutional coordination mechanisms influence the internalization of international norms. In doing so, it situates Malaysia and Indonesia within broader debates on legal transplantation and norm diffusion in plural legal systems.

The novelty of this research lies in its integrated comparative-structural framework. Unlike prior studies that focus primarily on doctrinal exposition or single-country analysis, this study systematically links constitutional design, legislative architecture, international norm incorporation, and institutional governance into a unified analytical model. By combining normative juridical analysis with comparative institutional assessment, the study demonstrates that the effectiveness of gender protection is not solely determined by the presence of progressive statutes but by the interaction between legal structure and implementation capacity. This multidimensional approach offers a more holistic understanding of how gender equality norms operate within complex legal systems in Southeast Asia.

The implications of this research are both theoretical and practical. Theoretically, it contributes to comparative constitutional and socio legal scholarship by highlighting the centrality of structural coherence in the realization of substantive equality. It suggests that future gender law reform must address not only normative content but also jurisdictional integration and inter-institutional coordination. Practically, the findings underscore the need for enhanced harmonization mechanisms between federal and state authorities in Malaysia and strengthened capacity-building and monitoring frameworks in Indonesia to reduce regional disparities. The study also supports the policy argument for the adoption of comprehensive gender equality legislation to ensure normative consistency and systematic alignment with international human rights standards.

Notwithstanding its contributions, this study has several limitations. First, as a normative juridical and document-based analysis, it relies primarily on statutory texts, constitutional provisions, and secondary academic sources, without incorporating empirical fieldwork or stakeholder interviews that could capture lived experiences of rights holders. Second, the comparative scope is limited to two Southeast Asian jurisdictions, which constrains the generalizability of findings to other plural legal systems. Third, the analysis focuses predominantly on formal legal and institutional structures, potentially underrepresenting socio cultural, economic, and political dynamics that also influence gender protection outcomes. Future research should therefore incorporate empirical socio legal methodologies, expand comparative coverage to additional jurisdictions, and examine the intersection of law with cultural and socio-economic factors to produce a more comprehensive assessment of gender equality implementation.

CONCLUSION

This study concludes that the effectiveness of gender protection regimes in Malaysia and Indonesia is fundamentally shaped by the interaction between constitutional design, legislative architecture, international norm internalization, and institutional coordination. Although both countries have formally committed to gender equality through constitutional guarantees and the ratification of CEDAW, their legal system structures produce distinct patterns of normative integration and implementation. Malaysia's dual civil-Sharia framework reflects a model of legal pluralism that accommodates religious diversity but simultaneously generates jurisdictional fragmentation and

uneven harmonization of gender related norms. Indonesia, by contrast, demonstrates stronger constitutional coherence and broader statutory consolidation; however, decentralization and disparities in regional governance capacity significantly influence enforcement outcomes. The findings underscore that progressive legislation alone is insufficient to ensure substantive gender equality without structural coherence and effective institutional mechanisms. Accordingly, the study affirms that advancing gender protection in Southeast Asia requires not only normative reform but also systemic alignment between constitutional principles, statutory frameworks, and implementation capacity. By offering an integrated comparative-structural analysis, this research contributes to the broader discourse on legal pluralism, human rights internalization, and the realization of substantive equality in complex legal systems.

AUTHOR INFORMATION

Corresponding Author

Nur Ain Sofiyah binti Mohamed – Universiti Sains Islam Malaysia (Malaysia).

 orcid.org/0009-0004-8987-1108

Email: sofiyahmohamed@gmail.com

Authors

Nur Ain Sofiyah binti Mohamed – Universiti Sains Islam Malaysia (Malaysia).

 orcid.org/0009-0004-8987-1108

Email: sofiyahmohamed@gmail.com

Arroyan Na'in – Lab for Democracy Studies Indonesia (Indonesia).

 orcid.org/0009-0001-6448-1427

Email: royaneltholab313@gmail.com

Sakirman – Universitas Islam Negeri Jurai Siwo Lampung (Indonesia).

 orcid.org/0000-0002-9867-6505

Email: sakirman@metrouniv.ac.id

AUTHOR CONTRIBUTION

N.A.S. was responsible for the conceptualization of the study, the development of methodology, data collection, validation, drafting the original manuscript, and overall supervision of the project. A.N. contributed to data analysis, methodology development, writing the results and discussion sections, and editing the manuscript for academic clarity. S. contributed to qualitative analysis, interpretation of the research findings, and reviewing and editing the final manuscript.

CONFLICT OF INTEREST

The authors declare no conflict of interest.

DECLARATION OF USE OF AI IN SCIENTIFIC WRITING

The authors used several generative AI tools in the process. ChatGPT was used to help organise complex concepts, while Grammarly was employed to enhance the grammar, style, readability of

the text and improve the overall clarity of the writing. Although these tools provided valuable support, the researcher wrote all the content and conclusions.

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