

SIYASAH SYAR'IYYAH AND ISLAMIC CONSTITUTIONALISM IN SOUTH-EAST ASIA

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ABSTRACT

This study examines the manifestation of siyasah syar'iyah (Islamic constitutional politics) within the constitutional frameworks of three Muslim-majority states in Southeast Asia, namely Indonesia, Malaysia, and Brunei Darussalam. Employing a comparative legal research design with normative, historical, and doctrinal approaches, the study analyzes the constitutional provisions governing Islam and state governance, the architecture of Islamic judicial institutions, the mechanisms of legislative consultation (shura), and the treatment of non-Muslim minority rights in each jurisdiction. The findings reveal three distinct constitutional models. Indonesia adopts a Pancasila-based pluralist model in which siyasah syar'iyah principles are selectively integrated through Islamic personal law jurisdiction and regional autonomy. Malaysia operates a dual legal system in which Article 3(1) of the Federal Constitution declares Islam as the religion of the Federation, creating a constitutional framework of structured Islamic legal pluralism. Brunei Darussalam operationalizes siyasah syar'iyah most comprehensively through the Melayu Islam Beraja (MIB) ideology and an absolute Islamic monarchy that integrates Malay identity, Islamic values, and monarchical authority into a single state philosophy. The comparative analysis demonstrates that despite their doctrinal divergence, all three states draw selectively on siyasah syar'iyah principles, particularly *maslahah* (public interest), *shura* (consultation), and *'adl* (justice), while adapting these principles to distinct historical, demographic, and political contexts. The study contributes to the comparative Islamic constitutional law literature and offers normative recommendations for the progressive harmonization of siyasah syar'iyah principles with contemporary human rights standards across Southeast Asian jurisdictions.

Keywords: *Siyasah Syar'iyah; Islamic Constitutionalism; Southeast Asia; Comparative Law; Indonesia; Malaysia; Brunei.*

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I. INTRODUCTION

The relationship between Islamic political thought and modern constitutional governance represents one of the most consequential and contested intellectual terrains in contemporary Islamic legal studies. *Siyasah syar'iyah*, the doctrine of Islamic governance or legal politics derived from the principles of divine revelation and juristic reasoning, has served as the classical foundation for Muslim political theory from the period of the early caliphate through the age of the Ottoman sultanate. In the post-colonial twentieth and twenty-first centuries, however, Muslim-majority states have been compelled to negotiate the legacy of *siyasah syar'iyah* within the institutional structures of the modern nation-state, the written constitution, parliamentary democracy, and international human rights law, producing a rich diversity of constitutional arrangements that defy simple classification along a secular-theocratic axis (Moustafa, 2020; As-Siyasi, 2023).

Southeast Asia presents a particularly instructive laboratory for the comparative study of *siyasah syar'iyah* and Islamic constitutionalism. The three Muslim-majority states of the region, namely Indonesia, Malaysia, and Brunei Darussalam, each represent a distinct constitutional model for organizing the relationship between Islam and state authority. Indonesia, the world's largest Muslim-majority democracy, adopted a Pancasila-based constitutional framework that deliberately avoided a formal Islamic state designation while gradually integrating Islamic family law, Islamic courts, and Islamic advisory institutions into the national legal architecture. Malaysia constructed a dual legal system that officially recognizes Islam as the religion of the Federation under Article 3(1) of the Federal Constitution while maintaining a parallel civil court system and a competitive electoral democracy in which Islamist and secular-nationalist parties contest for power. Brunei Darussalam, by contrast, operationalized the most comprehensive expression of Islamic state ideology in the region through its *Melayu Islam Beraja* (MIB) national philosophy, which fuses Malay ethnic identity, Islamic religious values, and absolute monarchical authority into a single governing framework that eschews liberal democratic competition (Croissant, 2022; Thoriquityas et al., 2021; Müller, 2022).

The comparative legal analysis of these three constitutional models has attracted growing scholarly interest. However, most existing studies examine each country in isolation, focus primarily on descriptive constitutional provisions rather than the underlying *siyasah syar'iyah* doctrinal principles, or approach the comparison from political science rather than Islamic legal perspectives (Moustafa, 2020; Kolawole and Ting, 2022). Studies that systematically apply the framework of *siyasah syar'iyah* doctrine, with its specific categories of *shura* (consultation), *'adl* (justice), *maslahah* (public interest), and the rights and obligations of non-Muslim subjects (*ahl al-dhimma*), to a structured three-country comparison of contemporary Southeast Asian constitutional law remain scarce in the English-language literature.

This study addresses this gap through a systematic comparative legal analysis grounded in *siyasah syar'iyah* doctrine as the normative analytical framework. The central research questions are as follows. First, how do the constitutional frameworks of Indonesia, Malaysia, and Brunei Darussalam each reflect and adapt the classical principles of *siyasah syar'iyah*? Second, what are the structural convergences and divergences among the three constitutional models in terms of legislative consultation mechanisms, Islamic judicial architecture, and non-Muslim rights? Third, what normative lessons and reform directions does the comparative analysis generate for the progressive harmonization of *siyasah syar'iyah* principles with contemporary human rights standards in the Southeast Asian context?

The article proceeds as follows. Section II reviews the theoretical and empirical literature on *siyasah syar'iyah*, Islamic constitutionalism, and comparative Islamic law in Southeast Asia. Section III presents the comparative legal research design and methodology. Section IV analyzes each country's constitutional framework through the *siyasah syar'iyah* lens and then synthesizes

the three-country comparison along key analytical dimensions. Section V discusses the normative implications and policy recommendations. Section VI concludes.

II. LITERATURE REVIEW

2.1. *Siyasah Syar'iyah*: Classical Doctrine and Contemporary Relevance

The doctrine of *siyasah syar'iyah* originates in the juristic tradition of Ibn Taymiyyah (1263-1328 CE), whose foundational work *al-Siyasah al-Syar'iyah fi Islah al-Ra'iy wa al-Ra'iyah* (Islamic Governance in Reforming the Ruler and the Ruled) established the theoretical architecture that subsequent scholars elaborated and refined. Ibn Taymiyyah defined *siyasah syar'iyah* as the governance of public affairs through the implementation of justice and the promotion of human welfare, grounded in divine revelation (sharia) and practical juristic reasoning (ijtihad). His framework emphasized the interdependence of religious authority (ulama) and political authority (umara) and insisted that legitimate governance must pursue *maslahah* (public interest) while avoiding *mafsadah* (harm), an anticipation of the proportionality principle that modern constitutional law would later theorize independently (Taimiyyah, as cited in As-Siyasi, 2023; Abd al-Rahman Taj, as cited in As-Siyasi, 2023).

Contemporary Muslim scholars have engaged in sustained effort to relate the classical doctrine to the institutions of the modern nation-state. Three dominant approaches have emerged in the literature. The first, associated with scholars such as Rashid al-Ghannushi and Muhammad Iqbal, argues that *siyasah syar'iyah* is fully compatible with democratic constitutionalism because *shura* (consultation) is functionally equivalent to parliamentary representation, and the objectives of *maslahah* and *'adl* are substantively equivalent to the rule of law. The second, associated with traditionalist scholars in the Gulf and South Asia, insists that *siyasah syar'iyah* requires a degree of formal Islamic state authority that liberal constitutional democracy cannot provide, making the two frameworks structurally incompatible at the level of constitutional design. The third, increasingly dominant in Southeast Asian Islamic scholarship, argues for a contextual and pragmatic interpretation of *siyasah syar'iyah* that permits a wide variety of constitutional arrangements insofar as they advance the higher objectives of sharia (*maqasid al-shariah*), even without a formal designation of Islamic statehood (Iswanto and Hadinatha, 2023; As-Siyasi, 2023; Marzuki, 2021).

The Indonesian scholarly tradition has been particularly influential in developing the third approach. Scholars affiliated with the Nahdlatul Ulama (NU) and Muhammadiyah organizations have argued that the Pancasila state, which grounds its legitimacy in five principles including belief in One God without specifying Islam, is itself consistent with *siyasah syar'iyah* insofar as it protects religious freedom, promotes justice, and maintains social order for all citizens including Muslims. This interpretation enabled Indonesian Muslim intellectuals to embrace constitutional democracy as an authentic expression of Islamic governance principles rather than a Western imposition, a development that contrasts sharply with the resistance to democratic constitutionalism exhibited by influential Islamic scholars in the Middle East during the same period (Zada et al., 2023; Iswanto and Hadinatha, 2023).

2.2. Islamic Constitutionalism: Theoretical Framework

Islamic constitutionalism refers to the body of theory and practice concerned with organizing state governance in accordance with Islamic principles through written constitutional instruments or equivalent fundamental normative frameworks. Scholars have distinguished several modalities of Islamic constitutionalism, reflecting different degrees of formal Islamic state designation, different institutional arrangements for Islamic law, and different approaches to the

relationship between constitutional rights and Islamic obligations (Moustafa, 2020; Ahmed and Abbasi, 2023).

The first modality is the formally Islamic constitution, in which the constitution explicitly designates Islam as the religion of the state, identifies sharia as a source or the primary source of law, and creates institutional mechanisms for ensuring that legislation conforms to Islamic principles. Saudi Arabia's Basic Law, Iran's 1979 Constitution, and Pakistan's 1956 and 1973 Constitutions exemplify this modality at varying degrees of intensity. The second modality is the pluralist Islamic constitution, in which Islam holds a privileged constitutional position but coexists with civil legal norms, multi-religious social arrangements, and democratic competitive politics. Malaysia's Federal Constitution represents this modality in Southeast Asia. The third modality is the secularist Islamic constitution, in which the state is formally secular or neutral with respect to religion but Islamic law operates as a sub-constitutional personal status system for Muslim citizens. Indonesia's Pancasila constitution and, in a different way, Turkey's constitution exemplify this approach. The fourth modality, most distinctively represented by Brunei Darussalam, might be termed the monarchical theocratic constitution, in which Islamic authority, ethnic identity, and hereditary monarchical legitimacy are fused into a comprehensive state ideology that lacks competitive electoral mechanisms (Croissant, 2022; Moustafa, 2020).

The analytical framework applied in this study draws on the *siyasah syar'iyah* doctrine's four core normative dimensions to evaluate and compare these constitutional modalities. First, the *shura* dimension examines how each constitution provides for consultation and popular participation in governance, whether through democratic elections, appointed advisory councils, or other mechanisms. Second, the *'adl* dimension examines how each constitution structures the principles of justice, equality before the law, and non-discrimination. Third, the *maslahah* dimension examines how each constitution's Islamic governance provisions are oriented toward public welfare and harm prevention. Fourth, the *ahl al-dhimmah* dimension examines how each constitution addresses the rights and obligations of non-Muslim minority citizens within the Islamic constitutional framework.

2.3. Comparative Islamic Law in Southeast Asia: Prior Studies

The comparative study of Islamic law in Southeast Asia has generated a substantial body of scholarship, though it remains unevenly distributed across the three countries of this study. Malaysia has attracted the most extensive comparative legal attention, particularly regarding the jurisdictional tensions between civil and syariah courts, the evolving interpretation of Article 3(1) of the Federal Constitution, and the governance implications of bodies such as JAKIM (Department of Islamic Development Malaysia). Moustafa's (2020) comprehensive overview in the *Annual Review of Law and Social Science* identified Malaysia as a paradigmatic case for understanding how Islamic institutional development within a formally secular constitutional order can progressively expand the reach of Islamic law through judicial interpretation and legislative initiative rather than constitutional amendment. Kolawole and Ting (2022), comparing sharia politics in Nigeria and Malaysia, found that both contexts demonstrate how sub-constitutional Islamic legal expansion can occur through state-level legislation and regulatory action without requiring formal constitutional redesignation as an Islamic state.

Indonesia's comparative Islamic law literature has focused substantially on the implementation of Islamic law in Aceh Province, the status of the Compilation of Islamic Law (KHI), and the constitutional basis of Religious Courts (Pengadilan Agama). Zada et al. (2023), published in *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, analyzed Aceh's implementation of full sharia governance within Indonesia's constitutional democracy, finding that the Aceh experience demonstrates the viability of meaningful Islamic legal implementation within a formally pluralist constitutional framework, subject to constitutional and human rights constraints. Iswanto and Hadinatha (2023), in *Ahkam: Jurnal Ilmu Syariah*, argued that Indonesia's approach to Islamic

economic law legislation represents a distinctive form of sharia constitutionalism in which Islamic regulatory objectives are pursued through ordinary legislative processes rather than constitutional religious clauses.

Brunei Darussalam has received significantly less comparative Islamic legal scholarly attention than Indonesia or Malaysia, possibly because its absolute monarchy and small population reduce its political salience for scholars focused on democratic institutional reform. The most analytically rigorous work on Brunei's Islamic constitutional framework has focused on the MIB ideology and the Syariah Penal Code Order 2013, the introduction of which generated intense international attention. The ResearchGate study of the Application of Malay Islamic Beraja in Brunei (2023) provided a historical-political analysis of how MIB ideology structures Brunei's legal and political order, finding that the fusion of Malay identity, Islamic values, and monarchical authority creates a distinctive form of Islamic governance that cannot be straightforwardly evaluated through either liberal democratic or classical Islamic constitutional criteria.

2.4. Research Gap and Contribution

The review of existing literature identifies three research gaps that this study addresses. First, systematic three-country comparisons applying a unified *siyasah syar'iyah* doctrinal framework to the constitutional analysis of Indonesia, Malaysia, and Brunei simultaneously are absent from the literature, which tends toward either single-country analysis or broader regional surveys with limited doctrinal depth. Second, comparative studies that specifically apply the *siyasah syar'iyah* categories of *shura*, *'adl*, *maslahah*, and *ahl al-dhimmah* as structured analytical dimensions for constitutional comparison rather than as rhetorical background references are rare in the English-language academic literature. Third, normative recommendations for the harmonization of *siyasah syar'iyah* principles with international human rights standards, grounded in comparative analysis rather than purely doctrinal argumentation, are underrepresented in the existing scholarship. This study contributes to each of these gaps, advancing both the descriptive understanding and the normative evaluation of Islamic constitutionalism in Southeast Asia.

Table 1. Summary of Key Prior Comparative Studies on Islamic Law and Constitutionalism in Southeast Asia

Author (Year)	Approach	Countries	Key Finding
Moustafa (2020)	Institutional-comparative	Southeast Asia (region)	Islamic institutional expansion occurs through sub-constitutional mechanisms without formal redesignation
Kolawole and Ting (2022)	Comparative politics-law	Malaysia (and Nigeria)	Sharia politics advance through state-level legislation independent of constitutional revision
Iswanto and Hadinatha (2023)	Doctrinal-normative	Indonesia	Indonesia's Islamic economic law represents sharia constitutionalism through ordinary legislation
Zada et al. (2023)	Empirical-historical	Indonesia (Aceh)	Aceh demonstrates Islamic sharia governance viability within pluralist constitutional democracy
As-Siyasi (2023)	Conceptual-normative	Indonesia	<i>Siyasah syar'iyah</i> applies as constitutional barometer for justice in Indonesian political context

Author (Year)	Approach	Countries	Key Finding
Harding and Whiting (2023)	Comparative law	Southeast Asia	Constitutional design of religious courts reflects distinct national balancing of secular-Islamic authority
MIB Application ResearchGate (2023)	Historical-political	Brunei Darussalam	MIB ideology creates coherent but non-democratic Islamic governance integrating ethnicity and religion
Samarah (2023)	Socio-legal	Brunei Darussalam	Monarchical legitimation through Islamic sharia produces stable but politically closed governance
Djawas et al. (2023)	Normative-empirical	Indonesia (Aceh)	Position of non-Muslims under Acehese sharia reveals tensions between Islamic and human rights norms
Marzuki (2021)	Doctrinal-historical	Indonesia	Contemporary fiqh siyasah scholarship reconstructs classical caliphate doctrine for nation-state context
Nurozi (2022)	Comparative legislation	Indonesia and Malaysia	Islamic law legislation processes differ in formality but converge in outcome of expanding Islamic scope

Source: Compiled by authors from reviewed literature, 2023.

III. METHODOLOGY

3.1. Comparative Legal Research Design

This study employs a qualitative comparative legal research design, drawing on the established methodology of comparative law as systematized by Zweigert and Kotz (1998) and applied to Islamic legal contexts by scholars including Moustafa (2020) and Harding and Whiting (2023). Comparative legal research involves the systematic identification and analysis of similarities and differences among legal systems by reference to a structured set of analytical dimensions, enabling the generation of insights that single-jurisdiction doctrinal analysis cannot produce. The comparative approach is particularly appropriate for this study because the three jurisdictions under examination, Indonesia, Malaysia, and Brunei Darussalam, share the overarching doctrinal framework of *siyasah syar'iyah* but have instantiated it through profoundly different constitutional arrangements, making comparison the only method that can reveal both the shared normative foundations and the divergent institutional expressions.

The study employs three complementary legal research approaches within the comparative framework. First, the statutory approach examines the primary constitutional texts of each jurisdiction, including Indonesia's 1945 Constitution (as amended through 2002), Malaysia's Federal Constitution of 1957 (as amended), and Brunei Darussalam's Constitution of 1959 (as amended). Second, the historical approach contextualizes each constitutional arrangement within its colonial, independence, and post-independence political history, illuminating why specific constitutional choices were made and how they have evolved. Third, the conceptual approach applies the *siyasah syar'iyah* doctrinal framework as a normative lens for evaluating the constitutional arrangements identified through the statutory and historical approaches.

3.2. Analytical Framework: The Four Dimensions of Siyasah Syar'iyah

The analytical framework operationalizes siyasah syar'iyah through four constitutional dimensions, each derived from a core classical doctrine and applied to the constitutional texts and institutional arrangements of each jurisdiction.

The first dimension is constitutional shura (consultation and participation). Drawing on the Quranic injunction to conduct affairs by mutual consultation (Surah al-Shura, verse 38) and the classical scholarly consensus that rulers must consult the learned and representative members of the community (ahl al-hall wa al-'aqd), this dimension examines the constitutional mechanisms through which each state provides for popular or representative input into governance decisions, including electoral systems, parliamentary arrangements, advisory councils, and fatwa institutions.

The second dimension is constitutional 'adl (justice and equality). Drawing on the Quranic command that rulers implement justice among the people (Surah al-Nisa', verse 58) and the classical political jurisprudence's treatment of judicial independence, equal application of law, and accountability of rulers, this dimension examines how each constitution structures its justice delivery system, the independence of its courts, the equality provisions applicable to citizens, and the accountability mechanisms for executive authority.

The third dimension is constitutional maslahah (public interest and welfare). Drawing on the ushul al-fiqh doctrine of maslahah mursalah (unrestricted public interest) as the basis for state legislation in domains not explicitly covered by divine texts, this dimension examines how each constitution's Islamic governance provisions are oriented toward social welfare, economic justice, environmental protection, and the prevention of harm, assessing the degree to which the Islamic institutional architecture of each state generates concrete public goods for its Muslim and non-Muslim populations.

The fourth dimension is the treatment of non-Muslim citizens (ahl al-dhimma norms). Drawing on the classical Islamic jurisprudence's doctrine of protection and regulated coexistence for non-Muslim subjects of an Islamic state, and on contemporary debates about whether this classical doctrine is compatible with international human rights norms, this dimension examines how each constitution defines and protects the rights of non-Muslim citizens, the extent of their access to civil courts versus religious courts, and the degree to which constitutional Islamic provisions intrude on non-Muslim personal law, employment rights, and civil liberties.

3.3. Data Sources and Scope

The primary data sources for this study are the constitutional texts of the three jurisdictions, major legislative instruments governing Islamic law and courts, and landmark judicial decisions interpreting the constitutional position of Islam. Secondary sources include academic journal articles, edited book chapters, official government reports, and legal commentary published through December 2023. The study does not engage in field research or primary interview data collection, operating entirely within the doctrinal comparative legal research tradition that treats legal texts, judicial decisions, and authoritative scholarly commentary as the primary objects of analysis. This is consistent with the research approach validated by Moustafa (2020), Harding and Whiting (2023), and Iswanto and Hadinatha (2023) in their respective comparative Islamic legal studies.

IV. RESULTS AND ANALYSIS

4.1. Indonesia: Pancasila, Pluralism, and Selective *Siyasah* Integration

Indonesia's constitutional framework for the relationship between Islam and the state reflects the outcome of a foundational political compromise reached at independence in 1945 and refined through four constitutional amendments between 1999 and 2002. The decision to adopt Pancasila, the five principles (belief in One God, just and civilized humanity, the unity of Indonesia, democracy guided by deliberation among representatives, and social justice for all) as the ideological foundation of the state rather than Islam represented a settlement between Islamic political parties, which sought an Islamic state foundation, and nationalist parties, which sought a religiously neutral state. The resulting constitutional framework has been characterized as a pluralist model of *siyasah syar'iyah* integration, in which Islamic principles are selectively incorporated into the constitutional order through multiple institutional channels without formal designation of the state as Islamic (Zada et al., 2023; Iswanto and Hadinatha, 2023).

The *shura* dimension of Indonesia's constitutional framework is expressed through its presidential democratic system, in which the People's Representative Council (DPR), the Regional Representative Council (DPD), and the People's Consultative Assembly (MPR) constitute the legislative and deliberative institutions. The DPR includes political parties with explicit Islamic platforms, including the Prosperous Justice Party (PKS), the National Awakening Party (PKB), and the United Development Party (PPP), which collectively represent a significant if not majority bloc in the national legislature. The Indonesian Ulama Council (Majelis Ulama Indonesia, MUI), established in 1975, serves as the preeminent fatwa-issuing body and functions as an informal but practically influential interface between Islamic scholarly authority and government policy-making. While MUI fatwas are not legally binding as such, they exercise substantial normative influence on both popular Muslim behavior and regulatory decisions of government agencies, particularly regarding halal certification, banking practices, and family law (As-Siyasi, 2023; Moustafa, 2020).

The *'adl* dimension of Indonesia's Islamic constitutional framework is expressed through the Constitutional Court (Mahkamah Konstitusi), established by the Third Amendment (2001), which exercises judicial review over all national legislation for conformity with the 1945 Constitution. The Religious Courts (Pengadilan Agama), which exercise exclusive jurisdiction over Muslim family law matters including marriage, divorce, inheritance, and charitable endowment (*waqf*), constitute the primary institutional expression of Islamic adjudicative justice within the pluralist framework. The Supreme Court has appellate jurisdiction over both civil courts and religious courts, creating a unified judicial hierarchy that integrates Islamic and civil legal streams under a single constitutional roof (Harding and Whiting, 2023; Djawas et al., 2023).

The *maslahah* dimension of Indonesia's Islamic constitutionalism is most visible in the legislative integration of Islamic economic principles into the national regulatory framework. Laws governing Islamic banking (Law No. 21 of 2008), zakat management (Law No. 23 of 2011), and *waqf* (Law No. 41 of 2004) represent the progressive incorporation of Islamic welfare finance instruments into the national regulatory framework, motivated explicitly by the principle of *maslahah* in directing economic resources toward social welfare objectives. The Aceh Province's special autonomy under Law No. 11 of 2006, which grants Aceh the authority to implement full sharia governance including criminal penalties (*jinayah qanun*), represents the most comprehensive expression of *maslahah*-based Islamic governance at the sub-national level in Indonesia (Zada et al., 2023; Djawas et al., 2023).

The *ahl al-dhimmah* dimension in Indonesia's pluralist constitutional framework reflects the fundamental principle that all Indonesian citizens enjoy equal civil rights regardless of religion under Article 28 and Article 29 of the 1945 Constitution. Non-Muslims are not subject to the

jurisdiction of Religious Courts and are governed entirely by civil courts in personal status matters. In the Acehnese context, the application of *jinayah qanun* to non-Muslim residents (which was briefly attempted) was constitutionally contested and subsequently clarified to exempt non-Muslims from Islamic criminal penalties. This pattern of constitutional Islamic jurisdiction bounded by civil equality norms represents a significant partial alignment with the classical *dhimma* doctrine's protective intent while departing from its discriminatory dimensions in a human rights-compatible direction (Djawas et al., 2023; Iswanto and Hadinatha, 2023).

4.2. Malaysia: Dual Legal System and Constitutional Islam

Malaysia's Federal Constitution of 1957 represents the most extensively debated and litigated Islamic constitutional arrangement in Southeast Asia, generating a decades-long scholarly and judicial discourse about the proper meaning and effect of Article 3(1)'s declaration that 'Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation.' The historical context of this provision's adoption reflects the multicultural social contract negotiated at the Federation's founding, in which the Malay-Muslim majority's demand for formal recognition of Islam was balanced against the Chinese and Indian minority communities' insistence on guaranteed religious freedom and civil rights equality. The Reid Commission that drafted the Constitution understood Article 3(1) to carry primarily ceremonial and symbolic significance, a position that was judicially affirmed in the foundational case of *Che Omar bin Che Soh v. Public Prosecutor* [1988], in which the Supreme Court held that Islam in the constitutional context referred only to matters of ritual and ceremony (IIUMLJ, 2023; Moustafa, 2020).

The *shura* dimension of Malaysia's Islamic constitutionalism operates through a competitive parliamentary democracy in which the Malay-Muslim political identity has been historically dominant through the United Malays National Organisation (UMNO) and its coalition partners. The National Fatwa Council (Jawatankuasa Fatwa Kebangsaan) and the Department of Islamic Development Malaysia (JAKIM) serve as the principal advisory and regulatory institutions for Islamic affairs at the federal level, while State Islamic Religious Councils (SIRC) exercise extensive powers over Islamic personal law, religious education, and the management of mosques and *waqf* assets at the state level. The constitutional allocation of Islamic law matters to the State List of the Federal Constitution means that SIRC effectively exercise legislative power over a substantial domain of Islamic personal and religious life without recourse to the federal parliament (IIUMLJ, 2023; Kolawole and Ting, 2022).

The *'adl* dimension of Malaysia's dual legal system presents the most significant constitutional tension in the country's Islamic governance framework. The amendment of Article 121(1A) in 1988, which removed civil courts' jurisdiction over matters within the jurisdiction of Syariah courts, created a constitutional boundary that has generated persistent jurisdictional conflicts in cases involving apostasy, child custody disputes across religious lines, conversion of minors, and inheritance disputes where one party has converted to or from Islam. The Federal Court's 2021 decision in *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri*, which upheld a ban on non-Muslims using the word 'Allah', illustrated the continuing constitutional volatility of the *'adl*-related tensions between civil rights protections and Islamic constitutional privileges (Moustafa, 2020; Harding and Whiting, 2023).

The *maslahah* dimension of Malaysia's Islamic constitutionalism is visible in the extensive legislative and regulatory Islamization program pursued by successive governments since the 1970s, encompassing Islamic banking (the Islamic Banking Act 1983 was Malaysia's pioneering legislation in this field), Islamic education, halal food certification, mosque regulation, and the progressive expansion of Syariah court jurisdiction and sentencing powers through the Syariah Courts (Criminal Jurisdiction) Act 1965 and its subsequent amendments. Malaysia's Islamic

finance industry, which has grown to represent a significant share of total banking assets, represents the most commercially developed expression of *maslahah*-based Islamic economic governance in Southeast Asia, attracting global capital flows and positioning Malaysia as a leading international Islamic finance hub (IIUMLJ, 2023; Nurozi, 2022).

The *ahl al-dhimmah* dimension of Malaysia's dual legal system reveals the most complex and contested intersection of Islamic constitutional provisions with human rights standards. Non-Muslim Malaysians are technically not subject to Syariah court jurisdiction but encounter Islamic constitutional norms in multiple practical domains, including civil court decisions influenced by religious considerations in custody disputes with Muslim former spouses, employment restrictions in government positions requiring Islamic religious competence, and social norms enforced through regulations such as dress codes and alcohol restrictions in Malay-majority areas. The progressive elevation of Article 3(1) from a symbolic declaration to a substantive constitutional principle, as argued by prominent Islamist scholars and increasingly reflected in judicial discourse if not yet in binding decisions, poses a significant normative challenge to the equal civil rights of non-Muslim citizens and requires careful doctrinal assessment from the perspective of *siyasah syar'iyah*'s own *'adl* principle (Moustafa, 2020; IIUMLJ, 2023).

4.3. Brunei Darussalam: MIB and the Comprehensive Islamic Constitutional State

Brunei Darussalam's constitutional framework for Islamic governance represents the most comprehensive and explicit institutionalization of *siyasah syar'iyah* principles in the Southeast Asian region, reflecting the country's unique combination of Islamic monarchical tradition, hydrocarbon-funded fiscal independence from popular taxation, Malay ethnic homogeneity of the politically dominant population, and the post-independence political project of consolidating MIB (Melayu Islam Beraja) as the national ideology. The Constitution of Brunei Darussalam 1959, substantially amended since independence in 1984, vests supreme executive authority in the Sultan as the constitutional Head of State, Prime Minister, Defense Minister, and Finance Minister, concentrating governmental power to a degree unparalleled in the other two jurisdictions (Croissant, 2022; Thorikuttyas et al., 2021).

The *shura* dimension of Brunei's Islamic constitutional framework operates through an appointed rather than elected consultative mechanism. The Legislative Council (Majlis Mesyuarat Negara), which had elected members from 1959 to 1962, has operated since 1970 as an entirely appointed body, with the Sultan appointing all members from among nominated representatives of government agencies, business associations, and community organizations. The Religious Council (Majlis Ugama Islam) provides formal Islamic advisory functions, issuing *fatwa* on religious matters and advising the Sultan on Islamic governance questions. This advisory structure reflects the classical *siyasah syar'iyah* model of *ahl al-hall wa al-'aqd* (those who bind and loose), which identified consultation with learned and representative figures rather than popular electoral participation as the appropriate mechanism for Islamic governance deliberation. However, critics from within the *siyasah syar'iyah* tradition have noted that the complete absence of electoral accountability removes an important check on executive power that even classical Islamic political jurisprudence acknowledged (Müller, 2022; Samarah, 2023).

The *'adl* dimension of Brunei's Islamic constitutional framework is expressed through a unified judicial system in which Syariah courts exercise jurisdiction over Muslim personal law matters and, since the phased implementation of the Syariah Penal Code Order (SPCO) 2013, over Islamic criminal matters as well. The civil court system, inherited from the British colonial period and operating through the Supreme Court and Magistrates' Courts, exercises jurisdiction over commercial, civil, and criminal matters not covered by the SPCO. The introduction of the SPCO, which prescribes *hudud* (fixed) penalties including amputation and stoning for certain offenses, generated significant international criticism regarding its compatibility with international human rights obligations under the ICCPR and the ICESCR, to neither of which Brunei is a party.

Domestically, the SPCO has been defended by the government and by the Religious Council as an expression of authentic Islamic justice ('adl) mandated by divine command, illustrating the fundamental philosophical divergence between the siyasah syar'iyah tradition's own 'adl concept and international human rights law's understanding of just punishment (Croissant, 2022; Müller, 2022).

The *maslahah* dimension of Brunei's Islamic constitutionalism is most prominently expressed in the state's provision of comprehensive social welfare, including free education, heavily subsidized healthcare, and extensive public employment, funded by oil and gas revenues. The MIB ideology justifies this welfare provision not primarily through fiscal or redistributive arguments but through the Islamic concept of the ruler's obligation to provide for the material welfare of subjects (*ri'ayah*), a classical *siyasah syar'iyah* concept. The Brunei Economic Development Board has pursued a strategy of economic diversification toward an Islamic financial center and halal industry hub, seeking to translate the MIB ideology's economic governance dimensions into concrete developmental outcomes beyond petroleum dependency (Thoriquttyas et al., 2021; ResearchGate MIB Application, 2023).

The *ahl al-dhimmah* dimension of Brunei's Islamic constitutional framework is perhaps the most structurally complete in the Southeast Asian context. Non-Muslims in Brunei, who constitute approximately 35 percent of the citizen population, primarily Chinese Buddhists and Christian Dayaks, enjoy full civil rights including property ownership, educational access, and civil court access for non-Muslim personal matters. They are not subject to Syariah court jurisdiction in personal law or criminal matters under the SPCO, and religious freedom for non-Muslims is formally guaranteed by Article 3 of the Brunei Constitution. However, restrictions on public religious expression by non-Muslims, including the prohibition of public Christian celebrations and the ban on importing or publicly displaying non-Islamic religious materials, represent significant constraints on non-Muslim civil liberties that the classical *dhimmah* framework permitted but that contemporary international human rights standards do not (Croissant, 2022; Müller, 2022).

4.4. Comparative Synthesis: The Three Models of Siyasah Syar'iyah Constitutionalism

Table 2 presents a structured comparative analysis of the three constitutional models across the four *siyasah syar'iyah* dimensions identified in the analytical framework. This synthesis enables identification of both convergences, areas in which all three constitutions reflect common *siyasah* principles, and divergences, areas in which the three models embody fundamentally different constitutional choices.

Table 2. Comparative Constitutional Analysis Across Four Siyasah Syar'iyah Dimensions

Siyasah Dimension	Indonesia	Malaysia	Brunei Darussalam
Constitutional Foundation	Pancasila (pluralist, non-Islamic state)	Article 3(1) Federal Constitution (Islam as religion of Federation)	MIB ideology (Malay-Islamic-Monarchy, integrated state)
Shura Mechanism	Competitive democracy; DPR multi-party; MUI as informal fatwa council	Competitive democracy; Federal Parliament; National Fatwa Council; State SIRC	Appointed Legislative Council; Religious Council; Sultan as supreme authority
'Adl (Justice Architecture)	Dual system: Civil courts + Religious Courts (Pengadilan Agama); Constitutional Court judicial review	Dual system: Civil courts + Syariah courts; Article 121(1A) jurisdictional division; Federal Court apex	Unified system: Civil courts + Syariah courts; SPCO 2013 includes hudud penalties

Siyasah Dimension	Indonesia	Malaysia	Brunei Darussalam
Maslahah (Public Welfare)	Islamic banking, zakat, waqf laws; Aceh sharia; Islamic finance regulation	Leading Islamic finance industry; Islamization of public institutions; Syariah banking dominant	MIB welfare state; free education/healthcare; Islamic financial center development
Non-Muslim Rights	Equal civil rights; exempt from Religious Court; Acehnese non-Muslims exempt from jinayah	Civil rights formally equal; Article 121(1A) creates conversion/apostasy rights gaps	Civil rights formally guaranteed; restricted public religious expression; SPCO exemption for non-Muslims
Level of Siyasah Integration	Selective/partial integration	Moderate/dual system integration	Comprehensive/holistic integration

Source: Authors’ compilation from constitutional texts and reviewed literature, 2023.

4.5. Judicial Architecture and Islamic Courts: A Three-Country Comparison

The judicial architecture of Islamic courts in the three jurisdictions reveals structurally significant differences that reflect the broader constitutional models. Table 3 provides a systematic comparison of the Islamic judicial institutions across the three countries.

Table 3. Islamic Judicial Architecture Comparison Across Indonesia, Malaysia, and Brunei Darussalam

Dimension	Indonesia	Malaysia	Brunei Darussalam
Primary Islamic Court	Pengadilan Agama (Religious Court)	Mahkamah Syariah (Syariah Court, state-level)	Mahkamah Syariah (Syariah Court, unified system)
Jurisdictional Scope	Muslim personal law: marriage, divorce, inheritance, waqf; no criminal jurisdiction nationally (Aceh exception)	Muslim personal law plus selected criminal offenses under state law (max 3 years, RM5,000 fine, 6 strokes)	Muslim personal law plus hudud criminal offenses under SPCO 2013 (phased implementation)
Apex Review	Supreme Court (Mahkamah Agung) for cassation	Civil courts have no jurisdiction post-Article 121(1A) amendment; internal Syariah appeal structure	Internal Syariah appeal structure; Civil courts separate
Non-Muslim Access	No access (matters handled by civil courts)	No Syariah court jurisdiction over non-Muslims	No Syariah court jurisdiction over non-Muslims
Appointment Authority	Minister of Religious Affairs (judges)	Yang di-Pertuan Agong on state recommendation	Sultan of Brunei (judges and prosecutors)
Constitutional Basis	Article 24 + Law No. 7/1989 (amended 2006)	State List, Federal Constitution; Article 121(1A)	Constitution of Brunei 1959; SPCO 2013

Source: Authors’ compilation from constitutional texts and reviewed literature, 2023.

The judicial comparison reveals a clear progression from partial to comprehensive Islamic court jurisdiction across the three models. Indonesia's Religious Courts exercise the narrowest jurisdiction, limited to Muslim personal law with no national criminal jurisdiction, reflecting the

pluralist constitutional model's commitment to equal civil legal standards for all citizens. Malaysia occupies an intermediate position, with state-level Syariah courts empowered to impose limited penalties under the Syariah Courts Criminal Jurisdiction Act but constitutionally constrained from imposing hudud penalties at the federal level. Brunei's Syariah court system is most expansive, with the SPCO 2013 granting authority to impose hudud-level criminal penalties following phased implementation, representing the most complete expression of classical *siyasah syar'iyah*'s 'adl principle in the region, even as this expression conflicts with international human rights standards on punishment (Harding and Whiting, 2023; Moustafa, 2020; Djawas et al., 2023).

4.6. Convergences and Divergences: Normative Assessment

Across the four *siyasah syar'iyah* dimensions, the comparative analysis identifies three significant convergences among the three constitutional models that illuminate the shared normative foundations of Islamic governance in Southeast Asia despite their structural differences. First, all three constitutions recognize Islam as occupying a privileged but not exclusionary constitutional position, whether through the Pancasila principle of belief in One God (which accommodates Islam without mandating it), through Article 3(1)'s formal recognition of Islam as the religion of the Federation, or through MIB's explicit fusion of Islamic identity with the governing ideology. This convergence reflects the shared commitment of all three states to Islamic governance principles while rejecting the complete exclusion of non-Muslim citizens from civic participation.

Second, all three states have established Islamic advisory institutions that operate alongside the formal legislative and executive structures, reflecting the *siyasah syar'iyah* principle that Islamic governance requires the input of religious scholars (*ulama*). MUI in Indonesia, the National Fatwa Council and JAKIM in Malaysia, and the Religious Council in Brunei each perform advisory and regulatory functions that translate Islamic scholarly authority into state policy, though the binding effect of their output varies dramatically from non-binding (MUI fatwas) to effectively mandatory (Brunei's Religious Council advice to the Sultan).

Three significant divergences emerge that reflect fundamental differences in constitutional philosophy. First, the *shura* dimension reveals a deep divergence between the two competitive democratic models (Indonesia and Malaysia) and Brunei's appointed consultative model, with the democratic models providing substantially greater institutional mechanisms for popular accountability of Islamic governance decisions. Second, the *ahl al-dhimmah* dimension reveals divergences in the practical effect of Islamic constitutional provisions on non-Muslim civil liberties, with Indonesia providing the most comprehensive civil rights protection and Brunei providing the most restrictive public religious expression environment, while Malaysia occupies a contested intermediate position. Third, the 'adl dimension reveals divergence in the criminal justice implications of Islamic constitutional authority, with Brunei's SPCO 2013 representing a qualitative departure from the Malaysia and Indonesia approaches in its authorization of corporal and capital penalties derived from classical hudud doctrine (Harding and Whiting, 2023; Croissant, 2022; Moustafa, 2020).

V. DISCUSSION AND POLICY IMPLICATIONS

The comparative analysis of Indonesia, Malaysia, and Brunei Darussalam through the *siyasah syar'iyah* lens generates four principal implications for Islamic constitutional theory and practice in Southeast Asia and beyond.

First, the comparative analysis confirms that *siyasah syar'iyah* is a sufficiently flexible doctrinal framework to accommodate a wide range of constitutional arrangements without requiring any

single institutional model. The pluralist, dual-system, and comprehensive-Islamic models each find doctrinal grounding in *siyasah syar'iyah* principles, even though they produce dramatically different constitutional outcomes. This observation validates the Southeast Asian Islamic scholarly tradition's argument for a contextual and pragmatic approach to *siyasah syar'iyah* that privileges *maslahah* outcomes over formal structural requirements, and challenges the position of scholars who insist on a single authentic constitutional model for Islamic governance. The diversity of Southeast Asian constitutional arrangements demonstrates that the classical doctrine's own internal pluralism, reflected in the divergent positions of its major classical jurists, has produced a corresponding diversity of modern constitutional applications (As-Siyasi, 2023; Iswanto and Hadinatha, 2023).

Second, the comparison reveals that the *shura* principle faces the most fundamental constitutional tension in contemporary Islamic governance. All three models acknowledge the principle of consultation but operationalize it through mechanisms that range from competitive multi-party democracy (Indonesia and Malaysia) to appointed advisory councils (Brunei). The *siyasah syar'iyah* tradition itself offers no clear resolution to the question of whether electoral democracy is a modern equivalent of classical *shura* mechanisms or a qualitatively different political system that requires Islamic juristic reassessment. The Southeast Asian experience suggests that the pragmatic adoption of democratic mechanisms by Indonesia and Malaysia has been institutionally stable and politically productive, while Brunei's avoidance of electoral democracy, while doctrinally defensible, has constrained the accountability mechanisms that the *siyasah syar'iyah* tradition itself values as checks on executive power (Kolawole and Ting, 2022; Moustafa, 2020; Zada et al., 2023).

Third, the comparison reveals the *ahl al-dhimmah* dimension as the most significant normative challenge for Islamic constitutionalism in contemporary Southeast Asia. All three models maintain formal commitments to non-Muslim civic participation and equal civil rights while in practice creating differential constitutional environments for Muslim and non-Muslim citizens. The challenge is not the existence of Islamic constitutional provisions, which all three states maintain in various forms, but the degree to which those provisions intrude on the civil rights of non-Muslim citizens in ways that cannot be justified by the *siyasah syar'iyah* principle of '*adl* itself. The progressive narrowing of civil courts' jurisdiction in Malaysia following the Article 121(1A) amendment, and the public religious expression restrictions in Brunei, both represent instances in which Islamic constitutional provisions produce outcomes that are difficult to justify even within the *siyasah syar'iyah* tradition's own normative framework, because they impair the equal treatment of all subjects that '*adl* requires (Djawas et al., 2023; Moustafa, 2020).

Fourth, the comparison generates important lessons regarding the relationship between Islamic constitutionalism and international human rights law. All three states are parties to selected international human rights instruments, though Brunei has not ratified the ICCPR or the ICESCR. The progressive expansion of Syariah court jurisdiction in Malaysia, the implementation of hudud penalties in Brunei, and the local application of Islamic criminal penalties in Aceh have each generated international human rights scrutiny. The *siyasah syar'iyah* tradition's own commitment to *maslahah* and to the protection of the fundamental interests of all subjects provides the basis for an internal Islamic argument that constitutional provisions producing systematic harm to non-Muslim citizens or disproportionate criminal penalties require juristic reassessment rather than simple doctrinal reaffirmation. This internal Islamic critique, pursued through the methodological resources of *maqasid al-shariah* and the *maslahah* doctrine, represents the most promising avenue for the progressive harmonization of Islamic constitutionalism with international human rights standards that does not require the abandonment of *siyasah syar'iyah* as the governing framework (Iswanto and Hadinatha, 2023; Marzuki, 2021; As-Siyasi, 2023).

5.1. The Role of Fatwa Institutions in Comparative Perspective

A dimension of *siyasah syar'iyah* that the four-dimensional framework partially captures but merits separate elaboration is the role of fatwa-issuing institutions in the three constitutional models. The classical *siyasah syar'iyah* tradition assigned the task of advising rulers on the Islamic legitimacy of their governance decisions to the 'ulama, embodying the principle that political authority (*mulk*) must be guided by religious scholarly authority (*ilm*). The three Southeast Asian constitutional models have institutionalized this principle through very different structural arrangements, with significant consequences for the direction and pace of Islamic legal development.

In Indonesia, the MUI (Majelis Ulama Indonesia) was established in 1975 as an umbrella organization for Islamic scholars from diverse orientations, including both traditionalist (NU-affiliated) and modernist (Muhammadiyah-affiliated) scholars. MUI fatwas cover a wide range of doctrinal and contemporary issues, from the permissibility of specific food products and financial instruments to political matters such as the obligation to vote in elections and the impermissibility of electing non-Muslim leaders. While MUI fatwas lack formal legal force, they exercise substantial normative authority over Muslim popular practice and, increasingly, over regulatory decisions of government ministries regarding halal certification and Islamic banking standards. The 2016 MUI fatwa characterizing pluralism, liberalism, and secularism as contrary to Islamic principles generated significant political controversy, illustrating the power of fatwa institutions to shape public discourse in ways that the formal constitutional text cannot.

Malaysia's National Fatwa Council operates within a more formally structured constitutional framework, with state-level fatwa councils issuing binding fatwas on Islamic personal law matters within each state's jurisdiction. Federal and state fatwas, once gazetted, carry the force of law for Muslim citizens in the relevant jurisdiction, with non-compliance potentially actionable in Syariah courts. This formal legal status of fatwas in Malaysia represents a significantly more comprehensive institutionalization of the *siyasah syar'iyah* principle of 'ulama guidance to political authority than the Indonesian model, where MUI fatwas remain advisory. The system is not without tension, however; competing fatwas across different state councils on matters such as the permissibility of yoga, Halloween celebrations, and interfaith dialogue have created normative inconsistency that undermines the authority and predictability of the Malaysian fatwa system as a whole (Moustafa, 2020; Kolawole and Ting, 2022).

Brunei's Religious Council (Majlis Ugama Islam) operates as the Sultan's primary advisory body on Islamic matters, with its fatwa opinions effectively carrying the force of royal command when endorsed by the Sultan. This arrangement most closely mirrors the classical *siyasah syar'iyah* model of the 'ulama serving as advisors to the ruler, with the crucial difference that the Sultan of Brunei's absolute authority means that the Religious Council cannot effectively constrain executive power in the way that the classical *siyasah* tradition envisioned. The council's role is more accurately described as religious legitimization of executive authority than as independent scholarly guidance of governance, a distinction that reveals a structural tension within the Bruneian MIB model between the *siyasah syar'iyah* principle of scholarly guidance and the practical reality of absolute monarchical authority (Müller, 2022; Samarah, 2023).

5.2. Lessons for the Progressive Development of Islamic Constitutional Law

The comparative analysis generates four specific lessons for the progressive development of Islamic constitutional law that are applicable not only within the three studied jurisdictions but across the broader range of Muslim-majority states navigating the relationship between *siyasah syar'iyah* and modern constitutional governance.

The first lesson concerns the constitutive rather than merely regulative role of *siyasah syar'iyah* in contemporary Muslim governance. The three Southeast Asian models demonstrate that

siyasah syar'iyah does not merely provide a normative standard against which existing governance can be evaluated but actively constitutes the institutional architecture and self-understanding of Islamic constitutional arrangements. This constitutive role is most visible in Indonesia, where siyasah syar'iyah reasoning has been used to justify the adoption of democratic institutions as authentic Islamic governance, and in Brunei, where MIB ideology draws directly on siyasah syar'iyah principles to legitimate absolute monarchical authority. Recognizing this constitutive role implies that Islamic legal scholars engaged in constitutional reform must engage with the productive and not merely the critical dimensions of siyasah syar'iyah doctrine.

The second lesson concerns the importance of institutional design in translating siyasah syar'iyah principles into durable constitutional outcomes. The comparison between Indonesia's MUI, Malaysia's National Fatwa Council and SIRC system, and Brunei's Religious Council demonstrates that the institutional architecture of Islamic advisory bodies profoundly shapes the practical impact of siyasah syar'iyah on constitutional governance. Institutions that are inclusive in their scholarly composition, transparent in their deliberative processes, and accountable to the communities they serve tend to produce more legitimate and durable siyasah guidance than institutions that are narrowly composed, opaque in their reasoning, or exclusively advisory to concentrated executive authority.

The third lesson concerns the relationship between the *maslahah* principle and constitutional self-assessment. All three Southeast Asian models invoke *maslahah* as a justification for their respective Islamic constitutional arrangements, but none has developed systematic mechanisms for empirically assessing whether their arrangements actually produce superior social welfare outcomes for their Muslim and non-Muslim populations. The development of Islamic constitutional impact assessment frameworks, grounded in the *maslahah* doctrine's requirement that governance choices demonstrate concrete benefit rather than merely assert doctrinal compliance, would provide a powerful tool for progressive Islamic constitutional development in the region (As-Siyasi, 2023; Iswanto and Hadinatha, 2023).

The fourth lesson concerns the potential for intra-regional scholarly exchange among Southeast Asian Islamic constitutionalists. The diversity of constitutional models in Indonesia, Malaysia, and Brunei represents an extraordinary natural experiment in Islamic governance design, yet systematic scholarly exchange between jurists, constitutional lawyers, and Islamic scholars across these three countries remains underdeveloped. Institutionalized platforms for comparative Islamic constitutional scholarship, such as joint research programs, academic journals dedicated to Southeast Asian comparative Islamic law, and regional Islamic constitutional courts of opinion modeled on the International Court of Justice's advisory opinion function, would provide the institutional foundation for a distinctively Southeast Asian contribution to global Islamic constitutional theory (Nurozi, 2022; Moustafa, 2020).

VI. CONCLUSION AND RECOMMENDATION

6.1. Conclusion

This study has employed a comparative legal research design to analyze the constitutional frameworks of Indonesia, Malaysia, and Brunei Darussalam through the lens of siyasah syar'iyah doctrine across four analytical dimensions, namely *shura* (consultation), *'adl* (justice), *maslahah* (public interest), and the treatment of non-Muslim citizens. The comparative analysis has produced four principal findings.

First, the three Southeast Asian constitutional models represent distinct but doctrinally legitimate expressions of siyasah syar'iyah: the pluralist Pancasila model of Indonesia, the dual-system

constitutional Islam model of Malaysia, and the comprehensive MIB monarchical model of Brunei Darussalam. No single model can claim exclusive doctrinal authenticity, and the diversity of constitutional arrangements reflects the doctrinal pluralism within the *siyasah syar'iyah* tradition itself.

Second, the *shura* dimension reveals the most significant divergence among the three models, with Indonesia and Malaysia providing institutional mechanisms for popular accountability through competitive elections while Brunei relies on appointed consultative bodies. The democratic models have proven institutionally stable and have produced progressive Islamic legal development through ordinary legislative processes, challenging arguments that electoral democracy is incompatible with *siyasah syar'iyah* governance principles.

Third, the *ahl al-dhimmah* dimension reveals the most significant normative challenge for Islamic constitutionalism in the region. The progressive narrowing of non-Muslim civil rights through expanding Islamic court jurisdiction and religious expression restrictions cannot be fully justified within the *siyasah syar'iyah* tradition's own 'adl principle, which requires equal treatment of all subjects under the ruler's governance. This internal tension between Islamic constitutional expansion and the *siyasah syar'iyah* 'adl principle constitutes the most pressing doctrinal challenge for Islamic constitutionalism in contemporary Southeast Asia.

Fourth, the *maslahah* dimension provides the most productive internal Islamic framework for the progressive harmonization of *siyasah syar'iyah* with international human rights standards, because it requires Islamic constitutional jurisprudence to demonstrate that Islamic governance provisions actually produce superior social welfare outcomes rather than merely asserting their doctrinal authenticity.

6.2. Recommendations

For Islamic constitutional scholars and jurisprudential bodies, the comparative analysis recommends the development of a shared regional framework for evaluating Islamic constitutional provisions through the *maslahah* and 'adl criteria of *siyasah syar'iyah*, providing an internal Islamic standard against which constitutional Islamic provisions can be evaluated without recourse to external international human rights law as the sole normative benchmark. This would require collaborative scholarly engagement among Islamic legal scholars from Indonesia, Malaysia, and Brunei, ideally institutionalized through joint academic programs at institutions such as UIN Syarif Hidayatullah Jakarta, IIUM, and Universiti Brunei Darussalam.

For constitutional lawmakers in Malaysia, the study recommends consideration of legislative solutions to the jurisdictional gaps created by Article 121(1A) that disadvantage non-Muslim parties in cases involving conversion, child custody, and inheritance disputes. A specialized inter-court mediation mechanism or a parliamentary standing committee on civil-syariah jurisdictional coordination would provide institutional channels for addressing these gaps without requiring constitutional amendment. Such a mechanism would better reflect the *siyasah syar'iyah* 'adl principle by ensuring that all citizens, regardless of religion, have access to effective and non-discriminatory dispute resolution.

For the Brunei government, the study recommends a sustained scholarly review of the Syariah Penal Code Order 2013's provisions, particularly those prescribing hudud penalties, through the framework of *maqasid al-shariah* and *maslahah mursalah*. International legal scholarship on Islamic criminal law has generated substantial argument that the classical conditions for hudud implementation are effectively unachievable in contemporary social conditions, making *maslahah*-based alternatives the more authentically Islamic approach to serious criminal offenses. An internal Bruneian scholarly review process, drawing on the classical jurisprudential tradition's own *maslahah* methodology, could provide a doctrinally grounded pathway for revising the SPCO without the perception of external human rights pressure.

For future researchers, this study recommends extension of the *siyasah syar'iyah* comparative constitutional analysis to include the Philippines' Bangsamoro Autonomous Region, Thailand's deep south Muslim-majority provinces, and Singapore's Muslim minority constitutional framework, all of which present distinct variations on the relationship between Islam and state authority in Southeast Asian constitutional contexts. Such an expanded regional comparison would provide the most comprehensive analytical basis available for the development of a distinctively Southeast Asian approach to *siyasah syar'iyah* constitutionalism that can serve as a model for Muslim-majority communities in other world regions grappling with similar challenges of Islamic governance in the modern constitutional state.

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