



Samarah: Jurnal Hukum Keluarga dan Hukum Islam
Volume 7 No. 3, November 2023
ISSN: 2549 – 3132; E-ISSN: 2549 – 3167
DOI: 10.22373/sjhk.v7i3.17736

**Sharia and Monarchs in Southeast Asia:
Political Legitimation in Brunei Darussalam**

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Abstract: In this modern era, sharia is still relevant in the monarchy system. Brunei Darussalam is a country that places sharia in a political monarchy that is prone to orthodoxy. This study analyzes the policy of implementing sharia in Brunei Darussalam in a monarchical political configuration. This study uses qualitative research that analyzes the phenomenon of the application of sharia in Brunei with a sociological and political approach. The research data comes from a number of documents in the form of the Brunei Constitution, Sharia Penal Code Order 2013 (SPCO), other royal regulations, and online media. Data collection was carried out using documentation techniques which were analyzed by applying the theory of political determination of law developed by Nonet and Selznick and the theory of legitimacy developed by Weber. This study found that the policy of implementing sharia in Brunei through SPCO, under a monarchical political system produced responsive legal products. This policy is based on the people's aspirations as a manifestation of the culture and religious practices of the people of Brunei. The implication is that international attacks on the implementation of sharia in Brunei have met with resistance from the people. The application of sharia nationally further strengthens the political legitimacy of the Sultan of Brunei in maintaining and preserving his power. The people were increasingly loyal to the Sultan, so there was social order without popular opposition.

Keywords: Sharia penal code, monarchy, political legitimacy, Brunei Darussalam

|| Submitted: April 11, 2023 || Accepted: September 29, 2023 || Published: November 30, 2023

<http://jurnal.ar-raniry.ac.id/index.php/samarah>

Abstrak: Di masa modern ini, syariah masih relevan diterapkan dalam sistem politik kerajaan. Brunei Darussalam adalah satu negara yang meletakkan syariah dalam politik monarkhi yang rentan terhadap ortodoksi. Studi ini menganalisis kebijakan penerapan syariah di Brunei Darussalam dalam konfigurasi politik monarkhi. Studi ini menggunakan penelitian kualitatif yang menganalisis fenomena penerapan syariah di Brunei Darussalam dengan pendekatan sosiologi dan politik. Data penelitian ini berasal dari sejumlah dokumen berupa Konstitusi Brunei, Perintah Kanun Hukuman Jenayah Syariah, 2013, peraturan raja lainnya, dan media online. Pengumpulan data dilakukan dengan teknik dokumentasi yang dianalisis dengan menerapkan teori determinasi politik atas hukum yang dibangun Nonet dan Selznick dan teori legitimasi yang dikembangkan Weber. Studi ini menemukan bahwa kebijakan penerapan syariah di Brunei melalui Perintah Kanun Hukuman Jenayah Syariah, 2013 di bawah sistem politik monarkhi menghasilkan produk hukum yang responsif. Kebijakan ini didasarkan pada aspirasi rakyat sebagai perwujudan dari budaya dan praktik agama rakyat Brunei. Implikasinya, serangan internasional terhadap penerapan syariah di Brunei mendapatkan perlawanan dari rakyat. Penerapan syariah secara nasional ini semakin memperteguh legitimasi politik sultan Brunei dalam mempertahankan dan melestarikan kekuasaannya. Rakyat pun semakin setia kepada sultan sehingga terjadi keteraturan sosial tanpa adanya oposisi rakyat.

Kata Kunci: Hukum pidana Islam, monarkhi, legitimasi politik, Brunei Darussalam

Introduction

Sharia and politics have been debated in Muslim countries. Most Muslim countries debate the position of sharia in the constitution.¹ A number of Muslim countries, such as Indonesia, Malaysia, Iraq, Egypt and Tunisia, do not integrate sharia in their constitutions. Meanwhile, other Muslim countries, such as Iran, Pakistan, and Sudan,² impose sharia a state law in the constitution. Position as an Islamic state requires that Sudan, Iran, and Pakistan integrate sharia

¹ Masykuri Abdillah, "Sharia and Politics in the Context of Globalization and Society 5.0," *AHKAM : Jurnal Ilmu Syariah* 22, no. 1 (2022).

² Dawood I Ahmed and Moamen Gouda, "Measuring Constitutional Islamization: The Islamic Constitutions Index," *Hastings Int'l & Comp. L. Rev.* 38 (2015), p. 1. Ahmed El-Sayed, "Post-Revolution Constitutionalism: The Impact of Drafting Processes on the Constitutional Documents in Tunisia and Egypt," *Electronic Journal of Islamic and Middle Eastern Law (EJIMEL)* 2, no. 10 (2014), p. 39–62. Monica Marks, *Convince, Coerce, or Compromise?: Ennahda's Approach to Tunisia's Constitution* (Brookings Doha Center, 2014), p. 7.

into the constitution.³ The integration of Sharia into this constitution is intended to uphold the supremacy of Sharia in the country's legal system.⁴

Just as Saudi Arabia chose monarchy as its political system⁵, Brunei strengthened its Islamic position by integrating ethnically and royally. Sultan Haji Hassanal Bolkiah Brunei then made the three main identities of Brunei, Malay, Islam, and kingdom as the state ideology, namely Malay Islam Beraja (MIB).⁶ This is intended so Brunei's people obey their king, apply Islam and have Malay characteristics.⁷ MIB, established by the Sultan in 1984 as the main guideline of Brunei, emphasizes the recognition that the roots of culture, language and the nation of Brunei are Malay, Islam is the official religion of the citizens of Brunei, and the monarchy is a political system. Islam, This is what positions Malay, Islam and the monarchy as the framework of the social and political system of Brunei.

The total implementation of sharia evidence proves Brunei's seriousness in integrating Islam and the monarchy. On May 1, 2014, Brunei began to enforce sharia as national law⁸ after being declared by the Sultan in October 2013.⁹ This sharia expansion policy was then stipulated in SPOC to prevent people from committing crimes prohibited by sharia.¹⁰ This policy is not new because previously, policies with sharia nuances have been regulated, which are still local and specifically for Muslims. This limited application of sharia makes sharia apply more broadly regarding the substance of sharia rules and its legal subject.

The phenomenon of Brunei seeking to expand the application of Islamic criminal law is in line with the tendency of Muslim-majority countries in Southeast Asia to apply Islamic criminal law. However, this trend has not previously occurred in Southeast Asia. In the past, the governments of Muslim-majority countries in Southeast Asia were very reluctant to implement hudūd, but

³ Nathalie Bernard-Maugiron, "La Place de La Charia Dans La Hiérarchie Des Normes," *La Charia Aujourd'hui, Dupret (Hrsg.)*, (2012), p. 51–64.

⁴ Ann Elizabeth Mayer, "Law and Religion in the Muslim Middle East," *The American Journal of Comparative Law*, 1987, p. 127–84.

⁵ Iris Wurm, *Report Part Title: Saudi Arabia: In Doubt for the Monarchy; Autocratic Modernization in Saudi-Arabia* (Peace Research Institute Frankfurt: JSTOR, 2008), p. 3.

⁶ Abdurrahman Raden Aji Haqqi, "Islamic Law In State Life Of Brunei Darussalam," *Journal of Malay Islamic Studies* 1, no. 2 (2017): 81–92; Abd Ghofur, "Islam Dan Politik Di Brunei Darussalam (Suatu Tinjauan Sosio-Historis)," *TOLERANSI: Media Ilmiah Komunikasi Umat Beragama* 7, no. 1 (2015), p. 55.

⁷ Ghofur, "Islam Dan Politik Di Brunei Darussalam (Suatu Tinjauan Sosio-Historis)."

⁸ Ghofur, "Islam Dan Politik Di Brunei Darussalam (Suatu Tinjauan Sosio-Historis)."

⁹ "Laman Sesawang Perintah Kanun Hukuman Jenayah Syar'iah," *Jabatan Penerangan*, 2013. <https://www.pelitabrunei.gov.bn/Lists/Berita/NewDisplayForm.aspx?ID=9211&ContentTy peId=0x0100BC31BF6D2ED1E4459ACCF88DA3E23BA8>.

¹⁰ Tun Abdul Hamid Mohamad, "Implementation of Hudud in Brunei: Differences between Brunei and Malaysia," *ICR Journal* 5, no. 2 (2014), p. 149–61.

this has begun to change in the last few decades.¹¹ For example, Indonesia, particularly in Aceh, has implemented Islamic criminal law since 2000.

There have been many studies on sharia and politics in Brunei. An earlier study on the dynamics of sharia in Brunei was conducted by Mansurnoor (2008), who questioned the influence of Islam on the MIB declaration as the state ideology of Brunei.¹² However, Haqqi (2017) found that this policy was relatively successful in bringing Brunei to prosperity, security and peace based on the MIB philosophy.¹³ Another study related to politics was carried out by Lindsey and Steiner, who emphasized that Brunei placed the Sharia Penal Code Order, 2013 as a conservative political Islamic law to maintain the legitimacy of the monarchical state ideology.¹⁴ In line with this, Müller finds this phenomenon as an effort to consolidate power to gain divine legitimacy.¹⁵

Another study relates to foreign intervention in sharia enforcement policies. A number of studies related to this were carried out by Bin Noordin (2013), who emphasized that Sultan's firm steps in implementing sharia had implications for international attacks that cornered Brunei Darussalam.¹⁶ Furthermore, Müller (2020) contrasts international criticism with local responses¹⁷ that defend Sultan's policies.¹⁸ However, Keasberry (2021) instead questions how to measure whether more Bruneians support sharia or not based on social media posts.¹⁹

Unlike previous studies, this study focuses on the political configuration of the Bruneian monarchy, which gave birth to sharia law policies responsive to the people's aspirations. This study investigates the expansion of sharia at three

¹¹ Tim Lindsey and Kerstin Steiner, "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013," *Griffith Law Review* 25, no. 4 (2016), p. 552–80.

¹² Iik Arifin Mansurnoor, "Formulating and Implementing a Sharia-Guided Legal System in Brunei Darussalam: Opportunity and Challenge," *Sosiohumanika* 1, no. 2 (2008), p. 219.

¹³ Haqqi, "Islamic Law In State Life Of Brunei Darussalam," 91.

¹⁴ Lindsey and Steiner, "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013."

¹⁵ Dominik M Müller, "Sharia Law and the Politics of 'Faith Control' in Brunei Darussalam. Dynamics of Socio-Legal Change in a Southeast Asian Sultanate," *Internationales Asienforum* 46, no. 3–4 (2015), p. 313–45.

¹⁶ Abdul Mohaimin bin Noordin Ayus, "Shariah Penal Code Order, 2013 of Negara Brunei Darussalam: Its Implementation and Challenges" (International Conference and Reference Publication, 2013).

¹⁷ Dominik Müller, "Brunei's Sharia Penal Code Order: Punitive Turn or the Art of Non-Punishment?: Symposium on Brunei's New Islamic Criminal Law Code," in *Symposium on Brunei's New Islamic Criminal Law Code*, 2020.

¹⁸ Ocktoberinsyah Ocktoberinsyah, "Kanun Jenayah Syariah Brunei Darussalam 2013 Dan Relevansinya Dengan Delik Agama Dalam RUU KUHP Indonesia," *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 51, no. 1 (2017), p. 95–115.

¹⁹ Chester Keasberry, "Local Social Media Responses to Sharia Law in Brunei," *Engaging Modern Brunei: Research on Language, Literature, and Culture*, (2021), p. 255–67.

primary levels, namely *qisas*, *hudud*, and *ta'zir* as legal policies under the Brunei monarchy that the people accepted.

This study uses a qualitative method²⁰ which analyzes social phenomena of sharia implementation in Brunei Darussalam. The political approach is used in this study to analyze the political interests of the Brunei monarchy represented by the government. A sociological approach analyzes the people's aspirations (represented by religious elites and grassroots people) towards implementing sharia in Brunei. Sociological and political approaches will produce the people's political motives and social aspirations towards implementing sharia in Brunei. , and online media. Documentation techniques do data collection. Data analysis was carried out qualitatively by classifying, describing and linking the collected data relating to the phenomenon of the application of sharia in Brunei, especially on aspects of legal policy and people's acceptance. Data analysis was carried out by applying the theory of the political determination of law developed by Philippe Nonet and Philip Selznick and the theory of legitimacy developed by Max Weber.

Political Configuration, Authority, and Sharia

Law is an order from a sovereign ruler expressed through legislation and supported by sanctions determined by the state. Sharia applied in Brunei is state law, so there are legal, political and social relations. On the one hand, sharia was promulgated by the Sultan as a state law formed by an authorized state body. On the other hand, people's support for developing Sharia-based state law is significant as a face of social reality.

One of the theories of legal and political relations is the theory of the political determination of law which states that politics always influences the formation of law because the law is a form of political interaction.²¹ For this reason, in this theory, the law is seen as a political product.²² As stated by Hans Kelsen in the pure theory of law, the strong political position on law makes law no longer free from elements of political interests.²³

This political interest becomes even more evident in monarchical systems of government. This system produces unresponsive-orthodox laws. In the theory of Philippe Nonet and Philip Selznick, the law is divided into three categories: repressive law, autonomous law, and responsive law. Responsive law serves as a tool of the ruling power. It is developed as part of an absolute power system aimed at maintaining authority that demands the loyalty of the people. Law then

²⁰ Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, Bandung: Remaja Rosdakarya, 2002.

²¹ Moh Mahfud Md, *Politik Hukum Di Indonesia*, Jakarta: Rajagrafindo Persada, 2009, p. 8.

²² Mahfud Md, *Membangun Politik Hukum, Menegakkan Konstitusi*, Jakarta: Pustaka LP3ES, 2006, 289.

²³ Hans Kelsen, *General Theory of Law and State*, Routledge, 2017.

becomes subordinate to political power. Autonomous law, on the other hand, aims to limit power to prevent abuse, especially in maintaining or overthrowing authority. Its legitimacy lies in procedural truth, restricting public participation in the legal system to established procedures. Unlike the previous two types, responsive law is developed to fulfill the aspirations of society, it represents both political will and societal desires.²⁴

In line with the above conception, legitimacy theory explains the socio-political intent of implementing sharia in Muslim countries. Max Weber's legitimacy theory is the most influential in explaining legitimacy, focusing on political authority and obligation. According to Weber, political regimes have legitimacy when certain beliefs about the system of authority exist. In other words, the regime has legitimacy when it has authority. This authority affects the people's willingness to obey to produce a more stable social order. Legitimacy, according to Weber, comes from tradition, charisma, and legality (rationality).²⁵ This legitimacy is also related to domination²⁶ when the regime, with its authority, dominates interests other parties do not share. Another view, put forward by John Rawls (1993), states that normatively, the ruler then claims the right to govern the people and creates an obligation to be obeyed by his authority.²⁷ With their authority, the legitimate ruler has to regulate the political obligations of the people.

Sharia under Monarch

The political system in Brunei is similar to that of Saudi Arabia. Both implement the royal system. However, in implementing sharia, these two countries are different. As Tahir Mahmood categorization, Brunei is a royal state that implements sharia through codification. At the same time, Saudi Arabia uses another method, namely the implementation of non-codified sharia, which directly makes the Al-Qur'an and Hadith the state constitution. Brunei is following the path taken by Libya, Pakistan and Iran by codifying sharia.²⁸

The expansion of sharia implementation in Brunei is a legal reform that the Sultan has long worked on. The Sultan declared on May 19 1996 that Brunei

²⁴ Philippe Nonet, et.al., *Law and Society in Transition: Toward Responsive Law*, Routledge, 2017.

²⁵ Hans Heinrich Gerth and C Wright Mills, *From Max Weber: Essays in Sociology*, Routledge, 2014.

²⁶ Arild Wæraas, "On Weber: 19 Legitimacy and Legitimation in Public Relations," *Public Relations and Social Theory*, 2018, 4.

²⁷ Jon Mandle, *Rawls's 'A Theory of Justice': An Introduction*, Cambridge University Press, 2009.

²⁸ Syed Tahir Mahmood, "Criminal Law in Islam and the Muslim World: A Comparative Perspective," (*No Title*), 2012, p. 312. Frank E Vogel et al., *Shari'a Politics: Islamic Law and Society in the Modern World* (Indiana University Press, 2011), 24–25; Mayer, "Law and Religion in the Muslim Middle East," p. 170–74.

should have an Islamic penal code. State elites have lobbied for a long time to make Islamic criminal law totally state law. They have also successfully pushed through many other Islamization policies since the 1990s. In 2011, after a meeting of the Brunei Islamic Religious Council (MUIB) chaired by the Sultan, he confirmed plans to enforce sharia.²⁹

Under the monarchy, Brunei stipulated qisas, hudud, and ta'zir as codified state laws in SPOC³⁰ a legal reform that has been prepared since the 1990s.³¹ The code regulates murder, wounding (qisas), sariqah, adultery (including viat), qadzaf, hirabah, drinking khamr (hudud), and khalwat, ghasab, and magic (ta'zir).³² This does not include bughat as part of the hudud. Whereas fiqh scholars, such as Zahrah and 'Awdah made bughat a hudud law.³³

The totality of this sharia implementation policy is part of efforts to adapt the legal system in Brunei to Islam as it was implemented during the Islamic empire. Before British colonization, the sultanate of Brunei had sharia rules in the form of Kanun Law in the 15th and 16th centuries A.D. At the time of Sultan Saiful Rijal, law violations were decided based on Kanun and Resan Law, which contained many sharia elements based on the Koran and Sunnah. Then during the time of Sultan Muhammad Hasan (1605-1619 AD), the law in force in Pahang (an adaptation of the law in Malacca) was implemented in Brunei. This Kanun covers all aspects of sharia, including Islamic criminal law (hudud, qisas, and ta'zir), muamalah law, family law. This law was later perfected during the reign of Sultan Jalilul Akbar (1619-1652 AD).³⁴

The Sultan's policy of totally implementing sharia answers Mansurnoor's (2008) criticism that the alignment of state law with sharia in Brunei is partial, not yet totally implementing sharia.³⁵ With SPCO, the implementation of sharia in Brunei is total. If previously only family law, economic law, and other laws (ta'zir), Brunei has now regulated Islamic criminal law (qisas, hudud, and ta'zir) as it was once applied during the Islamic empire.

²⁹ Müller, "Brunei's Sharia Penal Code Order: Punitive Turn or the Art of Non-Punishment?: Symposium on Brunei's New Islamic Criminal Law Code."

³⁰ Robin Ramcharan, "Internal Political Conflict in Southeast Asia: The Root Causes of Conflict during Transitions to Democracy," *Geopolitics, History, and International Relations* 8, no. 2 (2016), p. 192–213.

³¹ Müller, "Sharia Law and the Politics of 'Faith Control' in Brunei Darussalam. Dynamics of Socio-Legal Change in a Southeast Asian Sultanate."

³² *The Kanun Enakmen Jinayah Syariah Brunei*, 2013.

³³ Muhammad Abu Zahrah, *Al-Jarimah Wa Al-Uqubah Fi Al-Fiqh Al-Islami* (Kairo: Ma'taba'ah al-Madan, 1998), p. 19; Abd al-Qadir Awdah, "Al-Tashri' Al-Jina'i Al-Islami Muqaranat Bi Al-Qanun Al-Wad'i," in *I*, XIV (Baerut: al-Risalah, 1998), p. 40–51.

³⁴ Samsudin Aziz, "Kanunisasi Fikih Jinayat Kontemporer Studi Materi Muatan Qānūn Jināyat Aceh Dan Brunei Darussalam," *Al-Ahkam* 24, No. 2 (2014), p. 175.

³⁵ Mansurnoor, "Formulating and Implementing a Sharia-Guided Legal System in Brunei Darussalam: Opportunity and Challenge," p. 219.

Even though the implementation of sharia is total, The Sultanate of Brunei chooses a gradual path so the people can understand it. The selected stages by The Sultanate of are the stages of time, not the stages of the substance of the rules as in applying jinayah law in Aceh (Qanun No. 6 of 2014 concerning Jinayat Law). The Aceh government chose a roadmap for phasing in the implementation of sharia in Aceh since 2000 which began with regulations relating to faith, worship and Islamic symbols. Next, regulations relating to moral protection are stipulated, including the prohibition of intoxicants, gambling, adultery and rape. This regulation was refined with regulations regarding ten aspects of Islamic criminal law (*ahkam al-jinayat*), namely khamar, maisir, khalwat, ikhtilath, adultery, qadzaf, sexual harassment, liwath, musahaqah, and rape. The Jinayat Procedural Law regulates the aspect of litigation in Islamic criminal law (*ahkam al-jinayat*). The next stage is regulations related to Islamic economics, namely zakat management, Baitul Mal, Halal Product Guarantee System, and Islamic Financial Institutions.^{36,37} In the context of legal politics, the Jinayat Qanun in Aceh, born from a democratic legal configuration, creates fair and non-discriminatory laws. Similarly, in the context of zakat laws, Islamic laws applied in Aceh are influenced by democratic political configurations.³⁸

Implementing SPCO is carried out in stages³⁹ to provide opportunities for the people to understand more deeply about the content and wisdom or benefits behind this Order. It is also hoped that gradual implementation will provide space for dealing with possible misunderstandings. With a good appreciation and belief regarding the virtues of sharia law, it is hoped that it will be maintained and avoid misunderstandings. It is hoped that people's understanding and appreciation will support the code according to their respective capabilities.⁴⁰

³⁶ Muhammad Amin Suma, et.al., "The Implementation of Shari'a in Aceh: Between the Ideal and Factual Achievements," *Ahkam: Jurnal Ilmu Syariah* 20, no. 1 (2020).

³⁷ Khamami Zada, et. al. 'Muslim Youth Under Sharia Regime in Aceh: From Accommodation to Resistance', *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, No. 2 (2022), p. 412–433. Muhammad Amin Suma, et.al., 'The Implementation of Shari'a in Aceh: Between the Ideal and Factual Achievements', *AHKAM: Jurnal Ilmu Syariah* 20, No. 1 (2020).

³⁸ Mahdi Syahbandir et al., "State and Islamic Law: A Study of Legal Politics on Zakat as a Tax Deduction in Aceh," *Ahkam: Jurnal Ilmu Syariah* 22, No. 1 (2022), p. 161. Syahbandir, Mahdi, et.al., "State Authority for Management of Zakat, Infaq, and Sadaqah as Locally-Generated Revenue: A Case Study at Baitul Mal in Aceh," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, No. 2 (2022).

³⁹ Compare to Aceh, see Salma Salma et al., "The Other Side of the History of the Formulation of Aceh Jinayat Qanun," *AHKAM: Jurnal Ilmu Syariah*, (2022).

⁴⁰ Tun Abdul Hamid Mohamad, "Development of the Implementation of Hudud in Brunei," *ICR Journal* 11, no. 2 (2020): 193–203; Ocktoberrinsyah, "Kanun Jenayah Syariah Brunei Darussalam 2013 Dan Relevansinya Dengan Delik Agama Dalam RUU KUHP Indonesia."

Table 1: Stages of SPOC Implementation

Stage	Severity	Punishment
The first stage was implemented on May 1, 2014.	The lightest punishment	Imprisonment and fines
The second stage was implemented on May 1, 2015.	The heavier punishment than the first stage	Amputation, flogging, imprisonment, and fines
The third stage was implemented on May 1, 2016.	The heaviest punishment	Death penalty by stoning or beheading

The first phase was implemented on May 1, 2014, which regulates Islamic law, specifically the types of uqubat/the lightest punishments, such as imprisonment and monetary fines. Among them are rules for opening restaurants during Ramadan, Friday prayers for men, propagating religions other than Islam, getting pregnant out of wedlock, celebrating other religions, insulting state religious institutions, and publishing Islamic discourses without the permission of the Royal Religious Council. The second stage was implemented on May 1 2015, which regulated uqubat/penalties more severe than the first. Among them are stealing, drinking khamr (liquor), and adultery (for non-Muslims). Punishment at this stage is amputation, flogging, imprisonment, and fines. The third stage was implemented on May 1 2016, regulating the uqubat/the most severe punishment. Among them are insulting Islam, insulting the holy book and humiliating the Prophet Muhammad, adultery (for Muslims), homosexuals or lesbians, claiming to be God and Prophet, and not recognizing the truth of hadith. The punishment applied at this stage is death by stoning or beheading.⁴¹

The comprehensive implementation of sharia in Brunei has been carried out seriously. This is evidenced by the Minister of Religious Affairs of Brunei's report regarding implementing SPCO. Statistical data for the Sultanate of Brunei reported that around 652 violated Am's Misconduct. Twenty-three (23) of them were cases of theft (sariqah), which were charged with ta'zir and fines, imprisonment, or both. One case on charges of injuring (injuring) a person will be sentenced in prison and "Arash" (a kind of fine that the perpetrator must pay to the victim). Apart from that, violations related to general mistakes, namely 15 cases of pregnancy out of wedlock; 17 cases of men impregnating Muslim women

⁴¹ Bin Noordin Ayus, "Shariah Penal Code Order, 2013 of Negara Brunei Darussalam: Its Implementation and Challenges," 201–3; Müller, "Brunei's Sharia Penal Code Order: Punitive Turn or the Art of Non-Punishment?: Symposium on Brunei's New Islamic Criminal Law Code"; Fadila Syahada and Efendi Efendi, "Penerapan Syari'ah Islam Di Brunei Darussalam; Antara Identitas Dan Realita Serta Respon Dunia," *Hadharah: Jurnal Keislaman Dan Peradaban* 15, no. 2 (2021), p.172–74.

out of wedlock; two cases of disrespect for the month of Ramadan; 268 cases of seclusion for Muslims; 13 cases of khalwat committed by non-Muslims; 7 cases of indecent acts; 2 cases of men who look like women or vice versa; and 1 case of insulting religion.⁴²

The sentencing of SPCO is proof of Sultan's seriousness in making Brunei the only country that implements sharia. Other Muslim countries, such as Indonesia, only apply sharia in Aceh, not nationally. The criminal law material is still limited to khamr, qadzaf, and adultery, while theft, robbery, apostasy (hudud) and qisas are not applied. Even Malaysia, another Muslim country in Southeast Asia, does not apply sharia because it only applies to caning.

Monarch and Sharia: Law and Political Legitimation

Brunei, as a monarchy, is unified through a social contract between the government and its people. The government provides extensive social welfare in the fields of education, economy, and healthcare for its citizens. This helps maintain social cohesion, ensuring that the society accepts the monarchy's rule. The implementation of SPCO is seen as further strengthening MIB as the main pillar of state to apply Islamic teachings under the monarchy. Political and legal policies in Brunei were then based on the MIB. The implementation of sharia through SPCO is based on the political will of the king for Malays to implement sharia.⁴³ The code is an order from the sovereign Sultan expressed through legislation with the support of the people.

Politics in the monarchy system in Brunei influenced the formation of SPCO, as a form of political interaction and product.⁴⁴ The strong political position on sharia in Brunei makes the application of sharia no longer free from elements of political interests.⁴⁵ This political interest becomes increasingly evident in the monarchical system of government.

⁴² Khartini Hamir, "Pelaksanaan Perintah Kanun Hukuman Jenayah Syariah," 2009, <https://www.pelita-brunei.gov.bn/Lists/Berita,2009/NewDisplayform.aspx?ID=32513&ContentTypeId=0x01003909fafc2c52c240bd1ccedf92ac1bae>. See also, Mursyid Djawas, et.al., "The Position of Non-Muslims in the Implementation of Islamic Law in Aceh, Indonesia," *Ahkam: Jurnal Ilmu Syariah* 23, No. 1 (2023).

⁴³ Ann Black, "Ideology and Law: The Impact of the MIB Ideology on Law and Dispute Resolution in the Sultanate of Brunei Darussalam," *Asian Journal of Comparative Law* 3 (2008), p. 1–41.

⁴⁴ Moh. Mahfud MD, *Politik Hukum Di Indonesia*, Jakarta: LP3S, 1998. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi*.

⁴⁵ Kelsen, *General Theory of Law and State*.

Table 2. Political Configuration and Legal Product Characteristics in Brunei

Political Configuration	Legal Product Characteristics	SPOC (Single Point of Contact)
Absolute Monarchy	Repressive Laws	SPOC refers to Islamic laws aimed at maintaining power.
	Autonomous Laws	SPOC denotes Islamic laws legitimized by procedural truth.

According to the Nonet and Selznick theory, SPOC (Single Point of Contact) represents repressive law and autonomous law. On one hand, SPOC serves as a political product used as a tool to maintain authority. The Brunei monarchy's governance system emphasizes the people's loyalty to the ruler, making SPOC a political instrument through which the Brunei government demands citizen allegiance in its implementation, as an expression of loyalty to the king. On the other hand, SPOC embodies autonomous law that restricts authority to prevent arbitrariness based on procedural truth. Although SPOC is born from an absolutist and repressive monarchy, the ruler does not intend for the laws outlined in SPOC to reflect repressive laws. The monarchy also aims to ensure that SPOC represents autonomous law legitimized by procedural truth, emphasizing the supremacy of law.⁴⁶

However, the political configuration of the monarchy in Brunei produces responsive law. Implementing SPCO is the people's aspiration as a continuation of political policies during the pre-colonial Islamic empire. This can be seen from the high awareness of the people of Brunei in appreciating sharia. This tendency manifests their understanding of carrying out all religious obligations within the state system. They believe Islam is inseparable from the state, so the state is obliged to implement sharia as the national law as a whole.⁴⁷

People's acceptance of the implementation of sharia in Brunei is influenced by adequate dissemination of monarchical policies, strong Malay traditions, and people's adherence to Islamic teachings.⁴⁸ This is reinforced by the empirical fact that this policy was relatively successful in bringing Brunei towards prosperity, security and peace based on the philosophy of the MIB, with Islamic

⁴⁶ M. Müller Dominik, "Brunei Darussalam in 2016," *Asian Survey*, University of California Press January 57, no. 1. (2017), p. 202.

⁴⁷ Leon Carl Brown, *Religion and State: The Muslim Approach to Politics* (Columbia University Press, 2000); L Esposito John and John O Voll, "Demokrasi Di Negara-Negara Muslim: Problem & Prospek," *Alih Bahasa Rahmani Astuti, Mizan, Cet I, Bandung*, 1999.; Ali Ali Mansur, *Muqaranat Bayna Al-Shari'at Al-Islamiyyah Wa Al-Qanun Al-Wad 'Iyyah* (Beirut: Dar al-Fath, 1970), p. 18.

⁴⁸ Ocktoberriyayah, "Kanun Jenayah Syariah Brunei Darussalam 2013 Dan Relevansinya Dengan Delik Agama Dalam RUU KUHP Indonesia."

teachings as a guideline for the country. This condition of a prosperous and safe country makes Muslims apply Islamic teachings to the best of their ability, without fear and anxiety.⁴⁹ This condition has made all the kingdom's policies not to be rejected by the people.

However, in international relations, the Sultanate of Brunei has received international criticism due to implementing sharia, contrary to human rights values.⁵⁰ The people of Brunei responded to this international attack. The educated elite and social media influencers in Brunei support implementing SPCO under the monarchy.⁵¹ The strong defence of the local people against implementing the code is supported by high awareness of people's laws, Malay culture, and strong Islamic religious practices.⁵² The people are aware that the code was enacted for the benefit of the people, so they voluntarily implement it. As Malays who are Muslim, the people are aware of the obligation to apply Islamic religious teachings, which are contained in the code.

Local responses that are often positioned as a rejection of international intervention are further investigated by Keasberry (2021). Keasberry then questioned the data on Bruneians who support sharia. Keasberry says few Bruneians agree with the global opinion on human rights and concerns about sharia punishment.⁵³ Local people's support for the West to reject the strict implementation of sharia in Brunei Darussalam is not part of the majority group. The people generally accept the implementation of sharia as a religious obligation and a state obligation.

In the *siyasaḥ syar'iyah's theory*, religion orders strict implementation of sharia, and the Sultan legislates religious orders. As al-Farabi argued, the task of the ruler is to determine the conditions that make it possible to apply moral rules and embody them in a legal order. The ruler then ruled according to the written law accepted by the previous rulers.⁵⁴ In Brunei, the Sultan stipulated the implementation of sharia through SPCO, as a sharia-based moral code. This is based on the concept that the Sultan must uphold sharia as a fundamental religious rule. This aligns with al-Ghazali's thought that religion is the foundation and the Sultan is the guard. That which is bottomless will collapse, and a foundation without any guards will disappear. Therefore, the Sultan is needed to ensure world

⁴⁹ Haqqi, "Islamic Law In State Life Of Brunei Darussalam."

⁵⁰ Bin Noordin Ayus, "Shariah Penal Code Order, 2013 of Negara Brunei Darussalam: Its Implementation and Challenges."

⁵¹ Müller, "Brunei's Sharia Penal Code Order: Punitive Turn or the Art of Non-Punishment?: Symposium on Brunei's New Islamic Criminal Law Code," p. 167–87.

⁵² Ocktoberinsyah, "Kanun Jenayah Syariah Brunei Darussalam 2013 Dan Relevansinya Dengan Delik Agama Dalam RUU KUHP Indonesia."

⁵³ Keasberry, "Local Social Media Responses to Sharia Law in Brunei," p. 15.

⁵⁴ Antony Black, *Pemikiran Politik Islam: Dari Masa Nabi Hingga Masa Kini* (Penerbit Serambi, 2006), p. 137–39.

order.⁵⁵ Thus, sharia, as the Sultan, guards the basic teachings of Islam by passing the the code.

Since the authorities legislate sharia, the political aspect is not lost because law is a political product to gain political advantage. This also happened in Brunei when the Sultan implemented SPCO. The policy of implementing sharia nationally in Brunei contains the interests of power politics. In the position of Islam as the religion of the majority of citizens apply sharia as state law has political interests. The Sultan uses sharia as a political tool to legitimize his power further so that his power will become more solid in the long term. In this perspective, the application of sharia in Brunei is intended to preserve and maintain the power and legitimacy of state ideology.⁵⁶

The application of sharia in Brunei has proven effective in making the people loyal to the Sultan without any significant resistance. Müller frankly concluded that the policy of Islamization of law eliminated the potential for future Islamic opposition.⁵⁷ It is difficult for groups that are critical of the Sultan to gain support from the general public because they believe that the Sultan protects religious teachings. With Sultan's policy of implementing sharia, the people supported him and legitimized his power.

In line with Weber's conception, the Sultan has legitimacy when he has authority that the people trust. This authority has implications for the people's willingness to obey. With the observance of SPCO, Brunei has created a more stable social order. Brunei has hardly any major events, such as demonstrations and conflicts. The source of Sultan's legitimacy comes from tradition and charisma as the Sultan makes the people obey. Another source of legitimacy in the form of legality (rationality)⁵⁸ in the form of the Sharia Criminal Penal Order, 2013 further strengthens the position of the Sultan. In the next phase, the Sultan has a dominant position over interests other parties do not own.⁵⁹

With their authority, as stated by Rawls (1993), the Sultan claims the right to govern the people and creates an obligation to obey his authority.⁶⁰ SPCO proves that Sultan's order is a form of a legitimate ruler. Such a position gave birth to the people's obedience and loyalty to the Sultan's orders to implement sharia widely—qualifications of strength (*al-quwwah*) and integrity (*al-amanah*). The Sultan of Brunei, who strictly implements sharia, makes him stronger and more

⁵⁵ Al-Ghazali, *Al-Iqtishad Fi Al-I'tiqad* (Cairo: Maktabat al-Jun, 1972), p. 105–7.

⁵⁶ M Barry Hooker, "Southeast Asian Shari 'Ahs," *Studia Islamika* 20, no. 2 (2013), p. 209; Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, Rajawali pers, 2020, p. 13; Lindsey and Steiner, "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013."

⁵⁷ Müller, "Sharia Law and the Politics of 'Faith Control' in Brunei Darussalam. Dynamics of Socio-Legal Change in a Southeast Asian Sultanate," p. 341–42.

⁵⁸ Gerth and Mills, *From Max Weber: Essays in Sociology*.

⁵⁹ Wæraas, "On Weber: 19 Legitimacy and Legitimation in Public Relations."

⁶⁰ Mandle, *Rawls's 'A Theory of Justice': An Introduction*.

authoritative as a ruler. Thus, the application of sharia in Brunei becomes a political tool for the Sultan to strengthen authority and legitimacy.

Therefore, efforts to expand the implementation of Islamic criminal law in Muslim-majority countries such as Brunei do not pose the difficult choices as stated by Lindsey & Steiner. Instead, the Brunei government utilizes this expansion as political legitimacy to sustain power amidst the global push for democracy as a political system. SPOC serves as a tool of authority to counter the growth of democracy in Muslim nations. The Brunei government has achieved a balance between legitimacy, cooptation, and repression as the three pillars of a stable governance.⁶¹

Conclusion

Brunei is a Muslim country in the form of a sultanate expanding the implementation of sharia nationally through Brunei's Syariah Penal Code Order 2013. The code contains qisas, hudud and ta'zir as part of ahkam al-jinayat, which is always debated in international circles. The totality of sharia implementation in Brunei reflects the kingdom's seriousness in upholding sharia in Brunei's national legal system. These policies are not implemented all at once. The application of sharia is carried out in stages so that people understand and implement it voluntarily. The policy of implementing sharia within the framework of the monarchy system in Brunei produces responsive legal products. This policy is in line with the awareness of the people of Brunei, who are religious and obey religious laws. This responsive Islamic criminal law signifies that sharia is the law that the people of Brunei voice. This is contrary to the theory of monarchical political configuration, which usually gives birth to the character of orthodox legal products. In the context of Brunei, sharia under the monarchy regime gave birth to laws that aligned with the people's aspirations. Although the people support the implementation of sharia, this policy cannot be separated from the political interests of the Sultan to gain legitimacy for the predominantly Muslim people. With this political legitimacy, the people will obey and be loyal to the Sultan as the leader of the Muslim community. In the long term, applying sharia will minimize the strengthening of people's opposition.

⁶¹ Aurel Croissant, "Brunei Darussalam: Malay Islamic Monarchy and Rentier State," in *Comparative Politics of Southeast Asia: An Introduction to Governments and Political Regimes* (Springer, 2022), p. 21–38.

References

Journals and Books

- Abdillah, Masykuri, "Sharia and Politics in the Context of Globalization and Society 5.0." *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (2022). <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/28959>.
- Ahmed, Dawood I, and Moamen Gouda. "Measuring Constitutional Islamization: The Islamic Constitutions Index." *Hastings Int'l & Comp. L. Rev.* 38 (2015).
- Al-Ghazali, Muhammad bin Muhammad, *Al-Iqtishad Fi Al-I'tiqad*. Cairo: Maktabat al-Jun, 1972.
- Awdah, Abd al-Qadir, "Al-Tashri' Al-Jina'i Al-Islami Muqaranat Bi Al-Qanun Al-Wad'i." In *I*, XIV. Baerut: al-Risalah, 1998.
- Aziz, Samsudin, "Kanunisasi Fikih Jinayat Kontemporer Studi Materi Muatan Qānūn Jināyat Aceh Dan Brunei Darussalam." *Al-Ahkam* 24, no. 2 (2014).
- Bernard-Maugiron, Nathalie, "La Place de La Charia Dans La Hiérarchie Des Normes." *La Charia Aujourd'hui, Dupret (Hrsg.)*, 2012.
- Black, Ann, "Ideology and Law: The Impact of the MIB Ideology on Law and Dispute Resolution in the Sultanate of Brunei Darussalam." *Asian Journal of Comparative Law* 3 (2008).
- Black, Antony, *Pemikiran Politik Islam: Dari Masa Nabi Hingga Masa Kini*. Penerbit Serambi, 2006.
- Brown, Leon Carl, *Religion and State: The Muslim Approach to Politics*. Columbia University Press, 2000.
- Croissant, Aurel, "Brunei Darussalam: Malay Islamic Monarchy and Rentier State." In *Comparative Politics of Southeast Asia: An Introduction to Governments and Political Regimes*, 21–38. Springer, 2022.
- Djawas, Mursyid, et.al., "The Position of Non-Muslims in the Implementation of Islamic Law in Aceh, Indonesia," *Ahkam: Jurnal Ilmu Syariah* 23, No. 1 (2023). DOI: 10.15408/ajis.v23i1.32127.
- El-Sayed, Ahmed, "Post-Revolution Constitutionalism: The Impact of Drafting Processes on the Constitutional Documents in Tunisia and Egypt." *Electronic Journal of Islamic and Middle Eastern Law (EJIMEL)* 2, no. 10 (2014).
- Gerth, Hans Heinrich, and C Wright Mills, *From Max Weber: Essays in Sociology*, Routledge, 2014.
- Ghofur, Abd, "Islam Dan Politik Di Brunei Darussalam (Suatu Tinjauan Sosio-Historis)." *TOLERANSI: Media Ilmiah Komunikasi Umat Beragama* 7, no. 1 (2015).
- Haqqi, Abdurrahman Raden Aji, "Islamic Law In State Life Of Brunei Darussalam." *Journal of Malay Islamic Studies* 1, no. 2 (2017).

- Hooker, M Barry. "Southeast Asian Sharī 'Ahs." *Studia Islamika* 20, no. 2 (2013).
- John, L Esposito, and John O Voll. "Demokrasi Di Negara-Negara Muslim: Problem & Prospek." *Alih Bahasa Rahmani Astuti, Mizan, Cet I, Bandung*, 1999.
- Keasberry, Chester. "Local Social Media Responses to Sharia Law in Brunei." *Engaging Modern Brunei: Research on Language, Literature, and Culture*, 2021.
- Kelsen, Hans. *General Theory of Law and State*. Routledge, 2017.
- Lexy, J. Moleong, "Metodologi Penelitian Kualitatif." *Bandung: Remaja Rosdakarya*, 2002.
- Lindsey, Tim, and Kerstin Steiner. "Islam, the Monarchy and Criminal Law in Brunei: The Syariah Penal Code Order, 2013." *Griffith Law Review* 25, no. 4 (2016).
- M. Müller Dominik. "Brunei Darussalam in 2016,." *Asian Survey, University of California Press January* 57, no. 1. (2017).
- Mahfud, MD. Moh., *Politik Hukum Di Indonesia*, Jakarta: Rajagrafindo Persada, 2009.
- Mahfud, MD. Moh., *Politik Hukum Di Indonesia*. Jakarta: LP3S, 1998.
- Mahfud, MD. Moh., *Membangun Politik Hukum, Menegakkan Konstitusi.* Jakarta: LP3ES, 2006.
- Mahmood, Syed Tahir. "Criminal Law in Islam and the Muslim World: A Comparative Perspective." (*No Title*), 2012.
- Mandle, Jon. *Rawls's 'A Theory of Justice': An Introduction*. Cambridge University Press, 2009.
- Mansur, Ali Ali. *Muqaranat Bayna Al-Shari'at Al-Islamiyyah Wa Al-Qanun Al-Wad 'Iyyah*. Beirut: Dar al-Fath, 1970.
- Mansurnoor, Iik Arifin. "Formulating and Implementing a Sharia-Guided Legal System in Brunei Darussalam: Opportunity and Challenge." *Sosiohumanika* 1, no. 2 (2008).
- Marks, Monica. *Convince, Coerce, or Compromise?: Ennahda's Approach to Tunisia's Constitution*. Brookings Doha Center, 2014.
- Mayer, Ann Elizabeth. "Law and Religion in the Muslim Middle East." *The American Journal of Comparative Law*, 1987.
- Mohamad, Tun Abdul Hamid. "Development of the Implementation of Hudud in Brunei." *ICR Journal* 11, no. 2 (2020).
- Mohamad, Tun Abdul Hamid. "Implementation of Hudud in Brunei: Differences between Brunei and Malaysia." *ICR Journal* 5, no. 2 (2014).
- Müller, Dominik. "Brunei's Sharia Penal Code Order: Punitive Turn or the Art of Non-Punishment?: Symposium on Brunei's New Islamic Criminal Law Code." In *Symposium on Brunei's New Islamic Criminal Law Code*, 2020.
- Müller, Dominik M. "Sharia Law and the Politics of 'Faith Control' in Brunei

- Darussalam. Dynamics of Socio-Legal Change in a Southeast Asian Sultanate.” *Internationales Asienforum* 46, no. 3–4 (2015).
- Nonet, Philippe, Philip Selznick, and Robert A Kagan. *Law and Society in Transition: Toward Responsive Law*, Routledge, 2017.
- Noordin Ayus, Abdul Mohaimin bin. “Shariah Penal Code Order, 2013 of Negara Brunei Darussalam: Its Implementation and Challenges.” International Conference and Reference Publication, 2013.
- Oktoberrinsyah, Oktoberrinsyah. “Kanun Jenayah Syariah Brunei Darussalam 2013 Dan Relevansinya Dengan Delik Agama Dalam RUU KUHP Indonesia.” *Asy-Syir’ah: Jurnal Ilmu Syari’ah Dan Hukum* 51, no. 1 (2017).
- Ramcharan, Robin. “Internal Political Conflict in Southeast Asia: The Root Causes of Conflict during Transitions to Democracy.” *Geopolitics, History, and International Relations* 8, no. 2 (2016).
- Salma, Salma, et.al., “The Other Side of the History of the Formulation of Aceh Jinayat Qanun.” *AHKAM: Jurnal Ilmu Syariah*, (2022).
- Soekanto, Soerjono, *Pokok-Pokok Sosiologi Hukum*, Jakarta: Rajawali Pers, 2020.
- Suma, Muhammad Amin, et. al., “The Implementation of Shari’a in Aceh: Between the Ideal and Factual Achievements.” *Ahkam: Jurnal Ilmu Syariah* 20, no. 1 (2020).
- Syahada, Fadila, and Efendi Efendi, “Penerapan Syari’ah Islam Di Brunei Darussalam; Antara Identitas Dan Realita Serta Respon Dunia.” *Hadharah: Jurnal Keislaman Dan Peradaban* 15, no. 2 (2021).
- Syahbandir, Mahdi, et.al., “State and Islamic Law: A Study of Legal Politics on Zakat as a Tax Deduction in Aceh.” *Ahkam: Jurnal Ilmu Syariah* 22, No. 1 (2022). DOI: 10.15408/ajis.v22i1.26200.
- Syahbandir, Mahdi, et.al., “State Authority for Management of Zakat, Infaq, and Sadaqah as Locally-Generated Revenue: A Case Study at Baitul Mal in Aceh,” *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, No. 2 (2022). <https://doi.org/10.19105/al-lhkam.v17i2.7229>.
- The Kanun Enakmen Jinayah Syariah Brunei*, 2013.
- Vogel, Frank E, et.al., *Shari’a Politics: Islamic Law and Society in the Modern World*. Indiana University Press, 2011.
- Wæraas, Arild, “On Weber: 19Legitimacy and Legitimation in Public Relations.” *Public Relations and Social Theory*, (2018).
- Wurm, Iris, *Report Part Title: Saudi Arabia: In Doubt for the Monarchy; Autocratic Modernization in Saudi-Arabia*. Peace Research Institute Frankfurt: JSTOR, 2008.
- Zahrah, Muhammad Abu, *Al-Jarimah Wa Al-Uqubah Fi Al-Fiqh Al-Islami*. Kairo: Ma’taba’ah al-Madan, 1998.

Internet Data

“Laman Sesawang Perintah Kanun Hukuman Jenayah Syar’iah.” *Jabatan Penerangan*, 2013. <https://www.pelitabrunei.gov.bn/Lists/Berita/Newdisplayform.aspx?ID=9211&Contenttypeid=0x0100bc31bf6d2ed1e4459accf88da3e23ba>.

Hamir, Khartini. “Pelaksanaan Perintah Kanun Hukuman Jenayah Syariah,” 2009. <https://www.pelitabrunei.gov.bn/Lists/Berita2009/NewDisplayForm.aspx?ID=32513&Contenttypeid=0x01003909fafc2c52c240bd1ccedf92ac1bae>.