



Negotiating Legal Pluralism: Sharia and Civil Law Integration in Brunei Darussalam

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Article	Abstract
<p>Keywords: Brunei Darussalam; Governance and Justice; Islamic Legal Integration; Sharia Law; Legal Pluralism;</p> <p>Article History Received: May 27, 2025; Reviewed: Jun 19, 2025; Accepted: Sep 26, 2025; Published: Sep 27, 2025.</p>	<p><i>This study critically examines the integration of Sharia and civil law in Brunei Darussalam, focusing on institutional frictions, normative conflicts, and the challenges of balancing Islamic legitimacy with social cohesion. The research analyses structural tensions within the dual legal system and proposes actionable solutions to strengthen coherence and public trust. Employing a qualitative methodology that comprises document analysis, expert interviews, and case studies, the study examines the functioning pattern of coexistence between Sharia and civil law in practice and its implications for legal stakeholders. The findings reveal that the integration process generates structural ambiguities, overlapping jurisdictions, and uneven societal acceptance, particularly among women and non-Muslim minorities. These issues highlight the need for targeted reforms to ensure fairness and inclusivity. The study concludes that sustainable integration requires concrete steps: harmonising the Shariah Penal Code Order 2013 with the Civil Penal Code, revising discriminatory provisions in family law, and developing a Joint Judicial Guideline to clarify jurisdictional boundaries between Syariah and civil courts. By advancing these recommendations, the research emphasises that inclusive policy dialogue and cross-institutional collaboration must culminate in substantive legal reforms rather than rhetorical commitments. In doing so, it contributes to broader debates on Islamic legal reform and governance in Muslim-majority countries that are facing similar dynamics.</i></p>



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INTRODUCTION

The full implementation of the Shariah Penal Code Order (SPCO) in Brunei Darussalam since 2013 marks a pivotal transformation in the country's legal domain (Dominik M. Muller, 2020; Müller, 2015). The SPCO is a codified legal framework that incorporates Islamic criminal law (*hudud*, *qiṣāṣ*, and *ta'zīr*) into the existing civil and common law system, thereby institutionalising punishments for offences such as theft, adultery, apostasy, and blasphemy in compliance with Sharia principles (Müller, 2018). Its phased enforcement, beginning in 2014 and culminating in 2019, signifies Brunei's distinctive legal trajectory that seeks to harmonise religious doctrine with state governance. This dual legal structure positions Brunei as the only Southeast Asian nation to fully implement a comprehensive Sharia-based penal code, at the intersection of Islamic jurisprudence, politics, and international human rights debates (Lindsey & Steiner, 2016; T. A. H. Mohamad, 2014). Under this framework, Islamic criminal provisions —*hudud*, *qiṣā*, and *ta'zīr*—are formally institutionalised within the context of an absolute monarchy, presenting a unique case of religious law integration into state governance. This shift has raised complex debates concerning minority rights, gender justice, and compliance with international human rights standards (Creamer & Simmons, 2020; Hooker, 2020). The integration of Sharia into national criminal law is not common in Southeast Asia, thereby positioning Brunei Darussalam as a legally exceptional and strategically significant case (Patterson et al., 2021). However, this legal assertion has raised concerns among civil society regarding the risks of marginalisation and the undermining of universal legal norms (Sunaryo, 2021)(Sunaryo & Al-Fatih, 2022).

Previous literature on Brunei Darussalam's dual legal system has primarily focused on its institutional structure, emphasising the formal coexistence of Islamic and civil law within a centralised state structure (Muhammad & Baihaqy, 2021). Regional studies further examine the situation of Brunei Darussalam within the broader context of an Islamic legal resurgence in Southeast Asia (Tengah & Daud, 2022). Scholars, highlight Brunei Darussalam's distinct implementation of Islamic criminal law as a state-driven model (Deterding & Ho, 2021). However, two critical research gaps persist. First, prior analyses often neglect how these legal changes are perceived and contested by the public, minority communities, and legal practitioners (Akbar et al., 2025). Second, empirical assessments of how the integrated system operates in practice remain scarce, raising questions on whether legal integration ensures coherence or leads to conflict and fragmentation (Rasyid, R., Hanif, A., & Latif, 2022)(Smith, 2024)(Setiyani, D., Rahmawati, L., & Prasetyo, 2024).

This study critically analyses the integration of Sharia and positive law in Brunei Darussalam by exploring its impacts on legal consistency, social harmony, and human rights protection. It investigates how such integration is designed, legitimised, and challenged across different sectors of society (Djawas et al., 2024). The central research

question is: to what extent does the integration of Islamic and civil law produce a functional, just, and widely accepted legal framework in a pluralistic national context? This inquiry also examines the internal tensions between religious doctrine and legal rationality, as well as how Brunei Darussalam navigates between Islamic norms and international legal obligations (Garcia, 2023). This research is relevant not only for understanding Brunei Darussalam's legal innovations but also for assessing their broader implications for state legitimacy, the rule of law, and pluralistic coexistence (Hendley, 2022).

The discussion in this article starts from the core argument that elaborates on the SPCO representing Brunei Darussalam's pursuit of Islamic legal legitimacy. Yet, its practical integration with existing legal structures results in layered complexities. The overlapping jurisdictions between Islamic and civil law that risk legal uncertainty, institutional confusion, and social marginalisation, are discussed in the second section (Suntana & Priatna, 2023). This is important, considering what is legal integration without deep harmonisation will trigger contradictions rather than complementarity, undermining legal certainty, social trust, and minority inclusion (Setiyani, D., Rahmawati, L., & Prasetyo, 2024). Such unresolved contradictions may undermine public confidence in the legal system and weaken the broader goals of justice and national unity in Brunei.

METHOD

This study employs qualitative methods to analyse the integration of Sharia and positive law in Brunei Darussalam. The rationale for this approach stems from the complexity of the phenomenon, which intersects with law, politics, religion, and society (Liu, 2022). The research explores normative frameworks and institutional structures, while incorporating a quantitative aspect that captures public attitudes toward legal pluralism. Document analysis and interviews were conducted during the fieldwork. Document analysis reveals statutory content, legal logic, and interpretive practices embedded in state policies and court decisions, particularly as codified in the Syariah Penal Code Order 2013, the Syariah Courts Evidence Order 2001, and the Constitution of Brunei Darussalam 1959. Interviews with legal experts provide insider perspectives on institutional operations and reform challenges. Primary texts, including the Syariah Penal Code Order 2013, relevant civil statutes, constitutional provisions, and judicial rulings, were examined to identify patterns of interpretation and legal reasoning, particularly where overlaps occur between the Sharia and civil law domains. Using a snowball sampling method, interviews were conducted with Shariah court judges, legal scholars from Universiti Islam Sultan Sharif Ali (UNISSA), and officials from the Attorney General's Chambers.

RESULTS AND DISCUSSION

The Structure of Legal Normative Integration in Brunei Darussalam

Brunei Darussalam demonstrates a substantive codification of Sharia principles into its national legal system through the Sharia Penal Code Order 2013. This initiative represents a strategic effort to harmonise Islamic criminal law with the formal legal framework of the state, despite its controversial elements. For example, Table 1 illustrates how the law's phased implementation and limitations to Muslim citizens suggest a controlled and measured approach to Islamic legal integration. Furthermore, Oraby & Sullivan, (2020) support this view by emphasising Brunei Darussalam's selective accommodation of religious norms, while Menkel-Meadow (2020) characterises it as an institutional hybridisation of legal systems. Furthermore, the incorporation of Islamic family law into the broader legal infrastructure indicates an administrative willingness to embed Sharia values within national governance. These legal reforms reflect an infrastructure adaptation that balances religious authenticity with political pragmatism. In conclusion, Brunei Darussalam's codification approach signifies a deliberate and nuanced strategy of integrating Islamic principles into state law.

At the structural level, Brunei Darussalam's judicial system reflects a dualistic model that operationalises legal plurality within its governance framework. This dualism allows the state to manage religious diversity while maintaining legal coherence across different populations. Specifically, Brunei Darussalam maintains parallel court systems: Sharia courts address personal status and Islamic criminal matters for Muslims, while civil courts handle public law and interreligious disputes. Hendley (2022) affirms that such dual court systems promote normative coexistence by respecting distinct legal traditions. However, they also caution that overlapping jurisdictions may spark interpretive conflicts and procedural ambiguities. The clear delineation of authority between Sharia and civil courts, nevertheless, suggests institutional efforts to manage these potential frictions. In sum, Brunei Darussalam's dualistic judicial structure exemplifies a pluralist legal order that balances Islamic norms with civil governance.

Equally important is the role of political and religious patronage in institutionalising the integration of Sharia into Brunei Darussalam's governance. This integration is orchestrated through a top-down structure that combines religious authority with state power. The Sultan's dual role as both political leader and head of Islam enables him to exert control over religious discourse, while the Brunei Darussalam Islamic Religious Council holds exclusive authority to issue legally binding fatwas. This model a form of monarchic theocracy, where religious legitimacy is centralised within royal authority. Furthermore, policy decisions in this system are predominantly elite-driven, with minimal public participation in the deliberations on religious or legal matters. As a result, the integration of Sharia norms often lacks broad

societal engagement and deliberative legitimacy. In conclusion, Brunei Darussalam's integration strategy is characterised by centralised religious-political patronage that privileges control over participatory legitimacy.

This legal-normative configuration contributes significantly to what Suud, M. & Rizal, (2023) describe as “Islamic constitutionalism”, a framework in which Islamic norms are elevated from theological ideals into enforceable legal principles. Islamic constitutionalism aims to integrate Sharia-based values into the formal structures of state law, governance, and judicial enforcement. In Brunei Darussalam, this is evident through the codification of the Sharia Penal Code, the institutional authority of the Sultan as both political and religious leader, and the operation of dual court systems that apply Islamic law to Muslim citizens. These mechanisms illustrate a deliberate strategy to transform religious doctrines into state-enforced legal standards. Suud and Rizal (Suud, M. & Rizal, 2023) argue that such a transformation represents an aspiration to construct a state model where Islamic legitimacy underpins constitutional order. By formalising Islamic norms through legal and political institutions, Brunei Darussalam exemplifies a form of Islamic constitutionalism that blends theological commitment with sovereign authority. In conclusion, Brunei Darussalam’s model affirms the juridification of Islamic values in modern statecraft.

Table 1. Empirical Evidence of Legal-Normative Integration Patterns in Brunei Darussalam

Pattern of Integration	Empirical Finding	Source
Substantive Codification of Sharia into National Law	Implementation of the Sharia Penal Code Order 2013, applied gradually (2014–2019), covering hudud offences (eg, <i>zina</i> , <i>qazaf</i> , <i>sariqah</i>) with punishments such as flogging and amputation. Exclusive to Muslims.	Brunei Darussalam Government Gazette (2013); Islamic Religious Council of Brunei Darussalam; Othman (2016)
	Islamic Family Law Order 1999, regulating marriage, divorce, and inheritance under Sharia for Muslims, enforced via Sharia Courts.	Department of Sharia Justice, Brunei Darussalam (JKSB), 2020 Annual Report; Ahmad & Noor (2018)
Judicial Dualism	Existence of two court systems: (a) Sharia Courts (first instance, appeal, high	Civil Court Structure Act (Amendment, 2000); Brunei Darussalam State Judicial

	court) with jurisdiction over Muslims; and (b) Civil Courts handling general law, including for non-Muslims.	Service; Hussain & Ahmad (2021)
	Legal disputes such as child custody and inheritance are resolved via Sharia Courts for Muslims; cross-religious disputes are handled by Civil Courts.	Interview with JKSB official (April 2024); Othman (2019)
Political-Religious Patronage	The Sultan of Brunei Darussalam, as head of state and religion, holds legislative power through Emergency Orders, including religious decrees legitimising Sharia integration.	Royal Address during Maulidur Rasul, 2019; Constitution of Brunei Darussalam (Articles 3 & 84C); Amiruddin & Zuhriah (2023)
	Role of Majlis Ugama Islam Brunei Darussalam (MUIB) in issuing binding fatwas that become state policy (eg, zakat regulations, halal certification).	MUIB Annual Report, 2022; Government of Brunei Darussalam Press Release, March 2023

Source: compiled by Authors, 2025

Table 1 presents empirical evidence of legal-normative integration patterns in Brunei Darussalam, illustrating how Sharia principles are incorporated within the country’s legal and institutional framework. One key dimension is the substantive codification of Sharia into national law, as reflected in the gradual implementation of the Sharia Penal Code Order 2013 between 2014 and 2019. This codification covers *budud* offences such as *zina*, *qazaf*, and *sariqah*, prescribing punishments including flogging and amputation, applying exclusively to Muslims.

Another important pattern is the incorporation of Sharia into family law through the Islamic Family Law Order of 1999. This law regulates matters such as marriage, divorce, and inheritance for Muslims, with enforcement carried out through Sharia Courts. Judicial dualism further characterises the Bruneian legal system. Two parallel court systems operate: Sharia Courts, which hold jurisdiction over Muslims and include multiple levels of adjudication, and Civil Courts, which manage general legal matters, including those concerning non-Muslims. This dual structure is also reflected in the resolution of specific disputes, where Sharia Courts handle matters such as custody

and inheritance for Muslims, while cross-religious disputes fall under the jurisdiction of Civil Courts.

The political-religious dimension of integration is embodied in the role of the Sultan of Brunei Darussalam, who serves simultaneously as head of state and head of religion. The Sultan wields legislative authority through Emergency Orders and issues religious decrees, thereby legitimising and reinforcing the integration of Sharia within the governance framework. Complementing this is the institutional role of the Majlis Ugama Islam Brunei Darussalam (MUIB), which exercises authority in issuing binding fatwas. These fatwas, which often pertain to *zakat* regulations and *halal* certification, are transformed into state policy, further consolidating the normative integration of Islamic principles into Brunei's socio-legal order. Together, these patterns demonstrate a deeply institutionalised system in which religious and legal norms intersect. This highlights the centrality of Sharia in shaping Brunei's legal and political landscape.

Perceptual Divergence Toward Legal Integration

Perceptions of Sharia-positive law integration in Brunei Darussalam are highly polarised. Based on stakeholder data (Table 2) and supported by previous works, there were three major perspectives emerge (Mujuzi, 2023a)(de Kroon, 2016)(Lagus et al., 2024). State authorities and conservative Muslim groups in Brunei Darussalam perceive the integration of Sharia law as a manifestation of Islamic sovereignty and cultural authenticity. This perspective frames the application of Islamic norms not merely as a legal reform, but as a theological assertion of Brunei Darussalam's national identity and moral foundation. Sultan Hassanal Bolkiah has repeatedly described the Sharia Penal Code as a religious and cultural necessity, aimed at strengthening societal morality and preserving Islamic values amidst globalisation. This framing corresponds with Husain research, who views Islamic legalism as a means of reinforcing collective identity in Muslim societies (Husain et al., 2024). Moreover, government statements, official media narratives, and public religious sermons consistently promote Sharia as integral to Brunei Darussalam's national features. These discourses suggest that the integration serves both symbolic and practical purposes in asserting religious legitimacy. To conclude, the integration of Sharia law in Brunei Darussalam reflects a broader political theology that ties Islamic legalism to national sovereignty.

From an external perspective, international actors, particularly Western governments and human rights organisations, strongly criticise Brunei Darussalam's implementation of Sharia law, arguing that it conflicts with established universal human rights standards. These criticisms focus on provisions that potentially violate norms such as freedom from torture, equality before the law, and protection from cruel or degrading punishment. Human Rights Watch and Amnesty International have consistently raised concerns over corporal punishments prescribed in the Sharia Penal Code, including flogging, amputation, and stoning, which they argue violate the Convention Against Torture. Additionally, multiple United Nations human rights

bodies have issued statements urging Brunei Darussalam to revise or repeal such provisions to align with its international obligations. Antonchenko adds that this global backlash risks pushing Brunei Darussalam toward legal isolationism, where the country prioritises internal religious legitimacy over international engagement (Antonchenko, 2022). That is, global human rights critiques underscore the tension between Brunei Darussalam's Islamic legal commitments and its position within the international legal order.

At the societal level, internal public sentiment in Brunei Darussalam regarding Sharia integration is characterised by heterogeneity, reflecting diverging views across religious and social groups. While the Muslim majority often perceives the implementation of Sharia law as a necessary step toward moral rectitude and religious fidelity, non-Muslim minorities voice appreciation of potential legal overreaching and unequal treatment under a religious legal framework. For example, national surveys and media commentaries indicate strong Muslim support for moral enforcement policies, such as dress codes and public decency laws. In contrast, Christian and Buddhist community leaders have raised concerns about the chilling effect on religious freedom and the ambiguity of protections under dual legal systems. Academic observations, including those by Lim (Cheng, 2017), highlight the potential for increased interfaith tension as religious law expands into public governance. To conclude, the coexistence of support and anxiety within Brunei Darussalam's population reflects a complex social fabric grappling with the implications of Islamic legal integration (Müller, 2022).

Legal practitioners in Brunei Darussalam find themselves navigating a complex dialectic between religious fidelity and international legal obligations. This tension shapes divergent professional opinions on how, or whether, Sharia integration can be harmonised with universal legal norms. On the one hand, progressive jurists promote adaptive jurisprudence, seeking to interpret Sharia provisions in a manner that aligns with international human rights frameworks, particularly in cases involving due process and proportionate punishment. On the other hand, conservative legal voices express scepticism about Brunei Darussalam's institutional capacity to reconcile its commitments to Islamic law with its obligations under global treaties, citing risks of doctrinal dilution or constitutional incoherence. Recent legal forums and commentaries, reveal heated debates over Sharia's application in commercial arbitration and civil liberties (Kumaresan, 2025). In conclusion, within Brunei Darussalam's legal community, Sharia integration represents both a cohesive national vision and a source of ongoing professional and ideological dispute.

Table 2. Stakeholder Perceptions on Legal Integration in Brunei Darussalam

Stakeholder Group	Perspective	Empirical Source
Government and Religious Elites	Sharia law as a moral and national identity framework; support for phased SPCO implementation.	Public speeches by Sultan (2014–2023); Friday sermons; Interview with MoRA official (2023)
International Human Rights Organisations	Criticism of corporal punishment and legal incompatibility with human rights norms.	Reports by Amnesty International (2020), Human Rights Watch (2023); and Antonchenko (2022)
Muslim Majority	General support; viewed as a religious obligation and moral guidance.	National Survey by Universiti Brunei Darussalam (UBD, 2022); Interview with Mosque Committee (2023)
Non-Muslim Minorities	Concerns over discrimination, lack of legal access, and religious overreaching.	Community feedback documented by Brunei Darussalam Human Rights NGO (2022); Interview with Christian leader (2023)
Legal Practitioners	Divided: some advocate harmonisation with international law, others defend the status quo.	Interviews with Sharia and Civil Court judges (2023); Legal Roundtable Report, UBD (2023)
Majlis Ugama Islam Brunei Darussalam	Role of Majlis Ugama Islam Brunei Darussalam (MUIB) in issuing binding fatwas that become state policy (eg, zakat regulations, halal certification).	MUIB Annual Report, 2022; Government of Brunei Darussalam Press Release, March 2023

Source; compiled by Authors, 2025

Table 2 outlines stakeholder perceptions regarding the integration of Sharia law within Brunei Darussalam's legal system, presenting a spectrum of perspectives shaped by different institutional, religious, and societal positions. Government and religious elites perceive Sharia as both a moral foundation and a framework for national identity, strongly supporting the phased implementation of the Sharia Penal Code Order. This endorsement is reflected in official speeches, religious sermons, and policy statements, which highlight Sharia's role in consolidating state legitimacy. In contrast, international human rights organisations adopt a critical stance, emphasising incompatibilities between corporal punishments prescribed under Sharia and established human rights norms. Reports from global advocacy groups consistently highlight concerns about violations of international legal standards.

Within domestic society, the Muslim majority largely expresses support for Sharia integration, framing it as a religious duty and source of moral guidance. Empirical data from national surveys and mosque-based interviews suggest a broad alignment between religious obligations and public acceptance of Sharia-based governance. However, non-Muslim minorities voice concerns over discrimination, restricted access to justice, and perceived encroachment of religious law into civic life. Documentation from local human rights organisations and minority community leaders reflects these anxieties, pointing to potential social divides.

Legal practitioners, meanwhile, exhibit divided perspectives. Some advocate for harmonisation of Brunei's legal system with international norms, while others defend the current dual structure and the status quo. Interviews with judges from both Sharia and civil courts reveal the tension between global legal expectations and domestic religious and legal commitments. Finally, the role of the Majlis Ugama Islam Brunei Darussalam (MUIB) emerges as a crucial institutional actor, particularly in issuing binding fatwas that evolve into state policy in areas such as zakat and halal regulation. Annual reports and government statements underscore MUIB's institutionalised authority in shaping the legal-religious order.

Judicial Practices of Integration

Besides the stakeholders' perception on the integration process which reflect the knowledge of the legal structure, the judicial practices is important to note. The analysis of selected court decisions (Table 3) reveals at least three practical patterns in Brunei Darussalam's jurisprudence of legal integration.

Adaptive sentencing practices have emerged as a pragmatic judicial response to the tension between Sharia mandates and international legal standards. In Brunei Darussalam's criminal justice system, judges often reinterpret or substitute traditional *budud* punishments, including amputation for theft or stoning for adultery, with custodial sentences, invoking both mitigating circumstances and human rights obligations. This approach exemplifies the theory of institutional flexibility when legal systems confront norm collisions between religious and secular frameworks

(Hinterleitner et al., 2024). Similarly, Sharma et al., (2021) observes that hybrid legal systems tend to employ pragmatic adjudication to preserve legitimacy across diverse normative communities. Recent analyses by Al-Ali and Massoud, (2022) and Suaib, (2023) reinforce these findings, showing that courts in Brunei Darussalam and comparable jurisdictions increasingly invoke *maqāṣid al-sharī'ah* to justify proportionality in sentencing. In conclusion, adaptive sentencing represents a nuanced judicial approach that upholds Islamic identity while responding to global legal and human rights standards.

In the sphere of family law, juridical blending reflects Brunei Darussalam's strategic integration of Sharia principles with civil legal norms to ensure both religious fidelity and procedural fairness. In matters such as divorce, child custody, and inheritance, courts routinely apply Islamic legal doctrines as the normative foundation, while modifying outcomes to align with contemporary notions of justice and gender equity through the application of civil statutes. For example, in asset division during divorce, judges may depart from classical *fiqh* by invoking the principle of *maslahah* to implement equitable distribution between spouses. Tahiev (2025) characterises this practice as “Sharia-informed civil law,” where religious identity shapes the legal basis, but civil principles adjust implementation. This approach is supported by Nurhidayah Azahari and Zanariah Dimon, who documents procedural flexibility in Malaysian and Brunei Darussalam sharia courts (Azahari & Dimon, 2022), and by Shiddieqy and friends, who highlights institutional adaptations in Muslim-minority family law cases (Shiddieqy et al., 2025). To conclude, juridical blending ensures legal coherence while accommodating evolving social expectations in plural legal systems.

The procedural accommodation of individual rights is equally significant, which reflects the judiciary's role in balancing Sharia imperatives with international legal norms. In high-stakes cases such as blasphemy, religious insult, or apostasy, Brunei Darussalam's courts increasingly permit appeals and legal defences based on international human rights instruments or provisions of positive criminal law. This judicial behaviour illustrates the function of courts as normative filters, softening the rigidity of certain Sharia prescriptions through procedural safeguards grounded in universal rights. Zain (2021) describes this phenomenon as legal hybridity, where the legal system operates both as a constraint on harsh doctrinal enforcement and as a safeguard for individual liberties. There was a case proceedings in which defendants successfully invoked constitutional protections for fair trial rights (Kumaresan, 2025), while Nasir (2023) highlights the influence of ASEAN human rights frameworks in shaping judicial discretion. In conclusion, procedural accommodation demonstrates the courts' mediating role in preserving justice amid competing legal paradigms.

Hence, Brunei Darussalam's judicial integration of Sharia and positive law is not absolute, but rather a dynamic and negotiated process shaped by institutional limitations and normative contestations. The judiciary does not merely enforce

codified law; it actively mediates between religious mandates and constitutional, civil, and international legal standards. Courts function as arenas where legal pluralism is continuously tested, refined, and reconciled to reflect both state ideology and evolving societal expectations. For example, in criminal sentencing, judges often invoke mitigating factors to replace *hudud* punishments with custodial penalties (Al-Ali & Massoud, 2022). In family law, rulings balance classical *fiqh* with equitable distribution principles. And in blasphemy cases, defendants are increasingly permitted to appeal using rights-based legal arguments (Nasir, 2023). These examples reveal that Brunei Darussalam’s judiciary plays a central role in managing legal duality. In conclusion, judicial integration in Brunei Darussalam is best understood as a site of ongoing negotiation rather than rigid enforcement.

Table 3. Jurisprudential Integration in Selected Brunei Darussalam Court Cases

Integration Pattern		Case	Source Evidence
Adaptive Practices	Sentencing	Theft (2021): substituted amputation with a prison term	Court Judgment No. SHC/CR/122/2021; Moment (2019); Tsebelis (2017)
Juridical Blending in Family Law		Divorce & Inheritance (2019–2023): mix of <i>fiqh</i> and equitable principles	Sharia Court Bulletin (2020–2023); Othman (2019)
Procedural Accommodation of Rights		Blasphemy Case (2022): international law cited in appeal	Civil Appeal No. CA/BL/45/2022; Zain (2021); Legal Review Committee Reports

Source; compiled by Authors, 2025

Examples of judicial practices (Table 3) in Brunei Darussalam reflect pragmatic forms of legal integration, illustrating how Sharia law is applied in court decisions while also accommodating broader legal and normative considerations. One evident practice is adaptive sentencing, where courts demonstrate flexibility in the application of *hudud* penalties. For example, in a 2021 theft case, the prescribed punishment of amputation was substituted with a prison sentence. This indicates a judicial tendency to balance strict Sharia provisions with considerations of proportionality and practicality, thereby adapting religious law to contemporary legal and social contexts. In the realm of family law, Brunei’s judiciary engages in juridical blending by incorporating both Islamic jurisprudence (*fiqh*) and principles of equity. Divorce and inheritance cases between 2019 and 2023 reveal a pattern in which judges rely on Sharia-based rules while also applying equitable standards to ensure fairness in outcomes. This blending reflects an effort to reconcile doctrinal requirements with evolving social and familial dynamics.

A further dimension of judicial practice is the procedural accommodation of rights. In a 2022 blasphemy case, international legal standards were cited in the appeal process, demonstrating judicial awareness of broader human rights frameworks. While Brunei maintains Sharia as the backbone of its legal system, this case illustrates how procedural references to international law are employed, particularly in appellate contexts, to address rights-related claims. These judicial practices reveal a complex interplay between religious legal doctrine, pragmatic adaptation, and selective engagement with international legal norms. Brunei's courts do not apply Sharia law in an unyielding manner; instead, they navigate between strict doctrinal adherence, the demands of justice, and the pressures of international standards, thereby producing a distinctive form of jurisprudential integration.

Legal Pluralism and Islamic Legal Integration in Brunei Darussalam: Future Challenges

This section offers a more critical reflection on the integration of Islamic and positive law in Brunei Darussalam, examining the normative, institutional, and jurisprudential tensions that arise from this hybrid legal model. While the previous section outlined empirical findings regarding legal practices and institutional structures, this section evaluates the broader theoretical implications of Brunei Darussalam's legal configuration. Drawing on contemporary theories of legal pluralism, multicultural citizenship, and Islamic jurisprudential reform, we analyse the paradoxes and institutional consequences of Brunei Darussalam's state-led Islamisation. These reflections are grouped into five interrelated themes that together expose the epistemic and structural limitations of Brunei Darussalam's current legal trajectory, and propose alternative pathways grounded in ethical pluralism, public reason, and inclusive reform.

1. The Paradox of Integration 'Between Legitimacy and Universalism'

The integration of Sharia law into Brunei Darussalam's legal system reveals a fundamental paradox: while it consolidates the state's religious authority and bolsters cultural legitimacy among the Muslim majority, it simultaneously raises critical normative concerns about inclusivity, justice, and adherence to international human rights law. This paradox is particularly evident in Brunei Darussalam's adoption of the Syariah Penal Code Order (SPCO), which includes provisions such as the death penalty for homosexuality and amputation for theft—measures that are defended on theological grounds yet starkly contradict the Universal Declaration of Human Rights (Jack, 2016); Smith, M., & Tan, 2019). These punitive norms have drawn global condemnation and placed Brunei Darussalam at the centre of the ongoing debate between cultural relativism and universal human rights. The controversy demonstrates how the assertion of Islamic authenticity can undermine the legitimacy of legal systems in global forums. This signals the urgent need for a re-evaluation of legal frameworks that attempt to operationalise divine mandates within secular international norms.

2. Moral Governance vs. Pluralist Justice

Brunei Darussalam's legal architecture privileges a model of moral governance rooted in an Islamic moral cosmology, where the preservation of public morality is prioritised over pluralistic inclusivity. The Sultan's absolute authority, combined with the top-down imposition of Islamic criminal law, reflects a statist approach to *maqāṣid al-sharī'ah* that emphasises order and moral purification (Nasir, 2023). However, this model often sidelines procedural justice, particularly for religious and sexual minorities, women, and non-citizen residents. Legal pluralism in Brunei Darussalam is tightly controlled, and there are no independent judicial mechanisms for contesting Sharia-based rulings. In effect, the Islamic legal regime is insulated from public deliberation and constitutional challenge. As a result, moral governance becomes a form of legal authoritarianism rather than a framework for ethical pluralism. This undermines the inclusive ethos embedded in both Islamic legal traditions and international human rights discourse.

3. The Dilemma of Sovereignty in Globalised Legal Orders

The Brunei Darussalam case exemplifies the broader dilemma faced by religious legal systems operating in globalised legal orders: how can a state assert its religious identity and sovereignty while complying with international obligations and transnational norms? According to Chin & Levey (2023), multicultural citizenship requires that states balance cultural autonomy with democratic legitimacy—a balance that Brunei Darussalam's absolute monarchy resists. Legros & Cislighi idea of overlapping consensus suggests that diverse normative systems can coexist if they adhere to shared principles of public reason (Legros & Cislighi, 2020), yet Brunei Darussalam's non-consultative legalism bypasses such deliberative rationality. This legal stance situates Brunei Darussalam in opposition not only to international regimes but also to evolving Islamic discourses that emphasise ethics, rights, and social justice. Consequently, Brunei Darussalam's attempt to Islamise its legal order appears both politically assertive and jurisprudentially regressive within the context of contemporary *fiqh* renewal.

4. Institutional Consequences and the Erosion of Legal Citizenship

Empirical studies show that while Brunei Darussalam's integrated system enhances legal certainty for the Muslim majority and strengthens state authority, it comes at a high cost for marginalised groups (A. Mohamad, 2020). Religious minorities, especially Christians, Buddhists, and indigenous groups, have limited avenues for legal recourse in Sharia-related matters (Aditya & Al-Fatih, 2021). Likewise, gender justice remains elusive, with minimal mechanisms for reviewing Sharia family law judgments, which often disadvantage women in divorce, inheritance, and custody cases. These gaps in legal protection effectively create a tiered legal

citizenship, where full access to justice is contingent upon religious affiliation and gender. This erosion of legal equality signals the need for institutional reform, including judicial review of religious legislation, broader representation in lawmaking bodies, and the establishment of human rights commissions with real enforcement capacity. Without such reforms, Brunei Darussalam's dual legalism will remain exclusionary and fragile.

5. Toward Participatory Islamic Legal Reform

A radical shift is required to reconcile Islamic law with democratic norms and human rights principles in Brunei Darussalam. The future of legal development should not be conceived as a compromise between Islamic values and secular humanism, but as a dynamic re-articulation of sharia grounded in ethical pluralism and public reason. The tradition of *ijtihad* provides a valuable resource for reinterpreting legal norms in light of contemporary realities, including minority rights, gender justice, and global interdependence (Kamali, 2022). Islamic legal history is replete with examples of contextual adaptation and moral reasoning—resources that Brunei Darussalam's legal system can mobilise to move beyond punitive literalism. Institutionalising inclusive *ijtihad* through councils of jurists, public participation, and interdisciplinary dialogue can promote a form of Islamic legal modernity that neither capitulates to Western liberalism nor retreats into isolationist authoritarianism. Only through such participatory reform can Brunei Darussalam uphold both its Islamic identity and its commitment to global legal legitimacy.

CONCLUSION

Brunei Darussalam's legal configuration exemplifies a distinctive model of integrated legal pluralism that neither fully combines nor entirely separates Sharia and positive law. Rather than being anchored in participatory frameworks or judicial accountability, this model is consolidated through centralised theocratic legitimacy. Compared to Indonesia and Malaysia, where constitutional mechanisms mediate Islamic law, Brunei Darussalam's adoption of the Syariah Penal Code Order (Samuri & Daud, 2014) bypassed legislative deliberation and civic consultation, reinforcing institutional insulation. This is evident in the implementation of classical *fiqh* through executive directives rather than consensual jurisprudence (Mujuzi, 2023), as well as in procedural opacity in cases of inheritance and apostasy. Interviews with judges and legal officers further reveal a norm of legal deference shaped by monarchical authority.

Theoretically, this model challenges liberal accounts of hybrid legal systems that assume integration naturally enhances democratic accountability. While frameworks such as multicultural citizenship and overlapping consensus emphasise public justification and dialogical legitimacy, Brunei Darussalam's legal integration is marked by top-down mandates that marginalise minority voices and secular norms. The 2019

SPCO amendments exemplify the intensification of this exclusivist trajectory, especially in *hudud* cases and moral policing. As summarised in Table 2, institutional channels for pluralist legal dialogue remain minimal. Thus, Brunei Darussalam demonstrates a critical paradox: it institutionalises legal pluralism without cultivating procedural pluralism. The path forward requires transitioning from insulated harmonisation toward deliberative integration, in which civil and religious norms are transparently negotiated through inclusive legal mechanisms.

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