Sovereignty and Public Interest: Deconstructing Malay Statehood Thought Through the Lens of Contemporary Siyasah Shar'iyyah

Mohd Sufian Moktar*

Faculty of General Studies and Advanced Education, Universiti Sultan Zainal Abidin (UniSZA)

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ABSTRACT

This qualitative conceptual article examines how selected historical and contemporary materials illuminate the relationships among Malay political authority (Kedaulatan), customary practice (adat), Islamic legal-ethical reasoning and public welfare (Maslahah Am). Its historical focus is Pahang and the Hukum Kanun Pahang (HKP), while selected cases from other Southeast Asian settings are used as bounded comparisons. The study uses document analysis and thematic synthesis, distinguishing reported evidence from historical interpretation and normative inference. The analysis suggests that selected Malay legal materials brought authority, adat, Islamic legal concepts and administrative concerns into interaction; however, the article does not claim a comprehensive reconstruction of the HKP because the full 2003 edition was not independently verified clause by clause. It also treats classical Malay and modern state arrangements as context-dependent institutional tendencies rather than uniform opposites. The article proposes a Neo-Traditionalist Siyasah Shar'iyyah Model that combines ethical trusteeship, maqasid al-shari'ah, inclusive consultation, public reasons, accountability, equal citizenship and constitutional safeguards. Eight provisional decision rules and a hypothetical public-housing allocation example illustrate how the model might inform policy analysis. These are conceptual contributions, not evidence of implementation or empirical effectiveness. The article concludes that the model's value lies in making ethical and constitutional considerations analytically explicit; its practical adequacy requires future case-based and empirical evaluation.

Keywords: Sovereignty, Public Interest (Maslahah Am), Malay Statehood, Siyasah Shar'iyyah, Islamic Governance

INTRODUCTION

The discourse surrounding statehood in the Malay world involves the preservation and reinterpretation of indigenous political heritage alongside the adoption of external governance paradigms. In this article, "Malay statehood" is not treated as a timeless or homogeneous system. It refers to historically changing forms of political authority, allegiance, customary practice and Islamic legal-ethical reasoning associated with Malay polities. The principal historical focus is the Malay Peninsula, with particular attention to Pahang and the Hukum Kanun Pahang (HKP). References to Bali, Papua, Brunei and other parts of the Malay Archipelago serve as bounded comparisons that illuminate particular questions—such as customary land, institutional governance or colonial boundary-making—rather than proof that all these settings shared the same political experience. This distinction is important because the Malay Archipelago comprises different communities, legal traditions and colonial trajectories. Research on British Malaya, for example, shows how colonial rule reshaped social categories, urban organisation and political administration (Lees, 2017).

The article also considers the colonial and post-colonial transformation of political authority. Its temporal frame begins with the late sixteenth- and early seventeenth-century context commonly associated with the HKP, considers colonial boundary-making through the Anglo-Dutch Treaty of 1824, and then examines selected contemporary debates on Islamic governance, minority inclusion, land, technology and public policy. The year 1824 is used as a historical marker of colonial partitioning, not as the sole cause of every later political or social change. Research on the treaty identifies its significance for the division of the Malay world and the subsequent development of maritime boundaries, while also requiring careful attention to the legal and historical scope of

the treaty itself (Rusli, 2016). In the contemporary period, the "double-movement" described by Mohamad (2017)—the coexistence of state-led institutionalisation of Islam and pluralised political contestation—provides one lens for examining governance tensions in Malaysia. It is not assumed to describe every Malay-majority or Muslim-majority polity in the same way.

Against this background, the article addresses three questions: (1) how can selected historical materials on Malay statehood illuminate the ethical and relational dimensions of Kedaulatan; (2) how did colonial and post-colonial institutional changes reconfigure the relationship between authority, territory and public welfare; and (3) what conceptual contribution can contemporary Siyasah Shar'iyyah make to discussions of inclusive and accountable governance? The analysis is bounded in three ways. Geographically, Pahang and the Malay Peninsula form the principal historical focus, while evidence from other Southeast Asian settings is used only for specified comparisons. Temporally, the study spans the historical setting of the HKP, the colonial reordering marked by 1824, and selected contemporary debates represented in the literature reviewed up to 2026. Conceptually, Kedaulatan is examined as a historically situated form of political authority and legitimacy; Maslahah Am as public welfare assessed through Islamic legal-ethical principles; and Siyasah Shar'iyyah as the exercise of policy discretion for legitimate governance subject to Shari'ah constraints. These are analytical definitions for this article, not claims that the terms had one unchanging meaning across all periods and polities.

The article's contribution is not to claim that existing constitutional, public-policy or Islamic-governance frameworks are irrelevant, nor to present the proposed model as a substitute for constitutional law. Rather, it offers a bridge between three bodies of discussion that are often examined separately: historical Malay political thought, the normative resources of Siyasah Shar'iyyah and maqasid al-shari'ah, and contemporary concerns about inclusion, accountability and public welfare. For example, scholarship on maqasid and the Federal Constitution has already explored possible points of compatibility between Islamic objectives and constitutional provisions (Aziz, 2016), while Kamali (1989) explains Siyasah Shar'iyyah as a field that allows policy discretion in pursuit of good government, provided substantive principles of Shari'ah are not violated. The proposed Neo-Traditionalist Siyasah Shar'iyyah Model builds on, rather than replaces, these approaches by foregrounding the historical Malay concept of Kedaulatan and making the relationship among ethical trusteeship, consultation, constitutional safeguards and plural citizenship explicit. The interpretive standpoint is openly normative: the analysis is informed by a Tawhidic Islamic worldview, while drawing critically on historical and social-scientific scholarship. Accordingly, interpretations are treated as reasoned readings of selected sources, not as neutral or exhaustive reconstructions of all Malay political history. The article proceeds with a literature review, methodology, findings, discussion of the proposed model and conclusion.

LITERATURE REVIEW

The conceptual evolution of sovereignty in the Malay world requires attention to the historical contexts in which political authority, customary practice and Islamic legal-ethical ideas interacted. In this article, Kedaulatan is used as an analytical term for the exercise and legitimation of political authority in Malay polities; it is not assumed to have an identical meaning across all periods or communities. Likewise, Maslahah Am is understood as public welfare evaluated through Islamic legal reasoning, including the objectives of the Shari'ah, rather than as an unrestricted claim that any policy labelled "public interest" is justified. Kamali (1989) describes Siyasah Shar'iyyah as allowing rulers and public authorities to adopt measures and policies for good government, subject to substantive limits imposed by Shari'ah. The Hukum Kanun Pahang is therefore considered as a historically situated legal source that may illuminate aspects of Malay-Islamic governance, not as a modern constitution in the full contemporary legal sense. Claims about its contents and status must be grounded in the text and relevant historical scholarship, while avoiding anachronistic equivalence between early modern legal compilations and present-day constitutional systems.

Conversely, the imposition of European colonialism introduced a radically divergent ontological premise of spatial and political organisation. The Westphalian model, characterised by rigid territorial demarcation and the absolute monopoly of violence by the state, systematically dismantled the fluid, maritime-oriented sovereignty of the Malay Archipelago. The Anglo-Dutch Treaty of 1824 exemplifies this geopolitical violence, where the British and Dutch colonial powers partitioned the Malay world without the consent of local sovereign rulers, merely defining spheres of imperial influence rather than genuine sovereignty (Rusli, 2016). This artificial

partitioning severed centuries-old socio-political and economic networks. Furthermore, Reid (2010) critically unpacks how the European conceptualisation of "piracy" was weaponised as an imperial tool to delegitimise traditional Asian maritime statecraft. By imposing a restricted, Eurocentric definition of illegitimate armed robbery at sea, colonial powers criminalised indigenous modes of wealth accumulation and maritime control, thereby establishing a hegemony of European shipping under the guise of international law.

To systematically synthesize these divergent paradigms, the Table 1 delineates the fundamental philosophical and operational distinctions between the classical Malay-Islamic model, the colonial Westphalian imposition, and the contemporary bureaucratic approach to statehood.

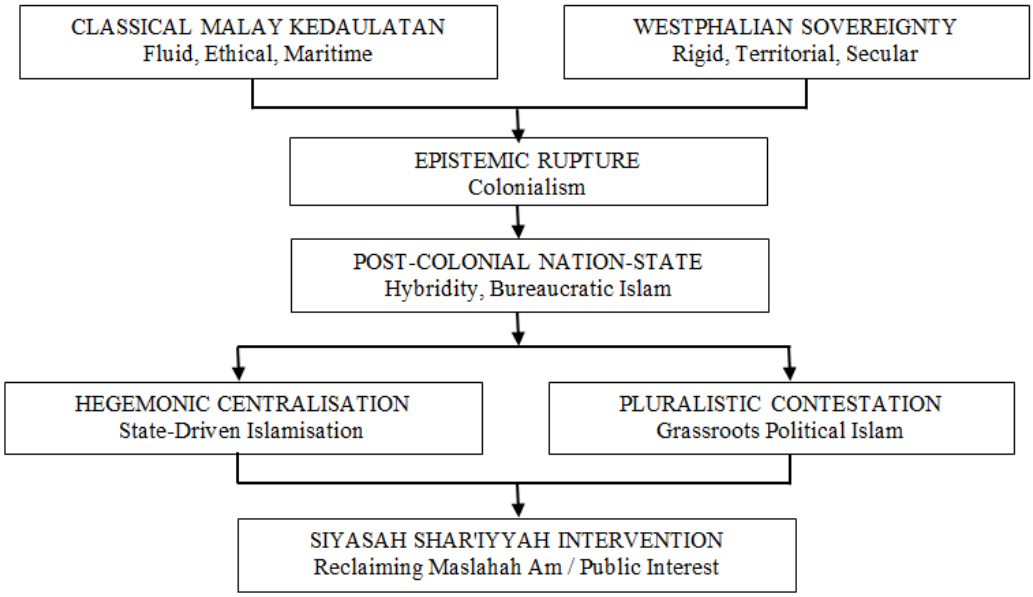
Table 1. Comparative synthesis of selected statehood paradigms (conceptual, not exhaustive).

Aspect of Comparison	**Classical Malay-Islamic (Siyasah Shar'iyyah)**	**Colonial Westphalian Imposition**	**Contemporary Bureaucratic State**	**Key Academic References**
Ontology of Power	Divine trusteeship (Khalifah); power bounded by ethics.	Absolute territorial dominion; monopoly on violence.	Secular-legalistic authority with compartmentalised religious bureaucracy.	Iskandar (2026); Reid (2010); Harding (1996)
Spatial Demarcation	Fluid, maritime-terrestrial continuum; network-based.	Rigid, cartographic borders; artificial partitioning.	Fixed national borders with international legal recognition (UNCLOS).	Rusli (2016); Johnson (2012); Andaya (2001)
Public Interest (Maslahah)	Holistic socio-spiritual welfare (Maqasid al-Shari'ah).	Imperial economic extraction and 'civilising mission'.	Neoliberal economic development and ethno-nationalist balancing.	Mohamad (2017); Lees (2017); Kamali (1989)
Symbolic Legitimacy	Ritual aesthetics, customary law (Adat), and spiritual aura.	Military supremacy and international treaties.	Constitutional law, democratic elections, and institutional performance.	Abdullah & Mohd Noor (2026); Milner (1982)

Contemporary scholarship highlights the difficulty of pursuing Islamic governance within inherited state institutions. Mohamad (2017), for example, describes a "double-movement" in Malaysian nation-building in which state-led institutionalisation of Islam coexists with plural and contested forms of political Islam. This framework is useful for analysing a particular tension, but it should not be generalised automatically to Brunei, Indonesia or all communities in the Malay Archipelago. Similarly, constitutional approaches and public-policy frameworks already offer tools for analysing rule of law, rights, accountability and welfare. The gap addressed here is narrower: the need for a conceptual framework that places historically situated Malay ideas of Kedaulatan into explicit dialogue with Siyasah Shar'iyyah and contemporary constitutional safeguards, without treating either historical Malay governance or modern constitutionalism as internally uniform.

To conceptualise the theoretical friction identified in the literature, the following ASCII Structural Model illustrates the epistemic conflict and the mediating role of Siyasah Shar'iyyah:

Figure 1: Conceptual relationship among historical Malay statehood, colonial and contemporary governance, and the proposed mediating role of Siyasah Shar‘iyyah. (The figure is a heuristic, not a causal model or empirical result).



The literature reviewed suggests a specific conceptual gap rather than a complete absence of scholarship. Existing studies address Malay political thought, Islamic governance, youth political orientations, and the relationship between maqasid al-shari‘ah and constitutional arrangements. The present article’s narrower contribution is to synthesise selected historical materials with a normative policy framework whose decision rules are made explicit. Because bibliographic details for some items in the initial reference list require confirmation against original publication records, claims dependent on those items are not treated as established evidence in this revision.

METHODOLOGY

This study adopts a qualitative conceptual and library-research design within a constructivist-interpretivist paradigm. Its interpretive standpoint is explicitly informed by a Tawhidic Islamic worldview, under which political authority is evaluated in relation to justice, responsibility and public welfare. This standpoint is normative rather than value-neutral; it is made explicit so readers can assess how it informs the interpretation of sources. At the same time, the analysis does not assume that historical actors used modern concepts in the same way as contemporary scholars, nor that all Malay polities shared one fixed model of governance. Historical texts are read in context and compared critically with secondary historical scholarship, contemporary policy debates and Islamic jurisprudential discussion.

The geographical scope is centred on the Malay Peninsula, especially Pahang and the Hukum Kanun Pahang (HKP) as the principal historical reference point. Material concerning the Anglo-Dutch Treaty of 1824 and selected cases from Malaysia, Brunei, Bali and Papua is included only where it illuminates a defined issue, such as colonial boundary-making, Islamic institutional governance or customary land. These cases are not treated as equivalent units or as representative of the entire Malay Archipelago. The temporal scope extends from the late sixteenth- and early seventeenth-century context associated with the HKP, through the colonial reorganisation marked by the 1824 treaty, to selected post-colonial and contemporary debates represented in the literature reviewed up to 2026. The conceptual scope is limited to three linked ideas: Kedaulatan as historically situated political authority and legitimacy; Maslahah Am as public welfare assessed through Islamic legal-ethical principles; and Siyasah Shar'iyyah as policy and governance action directed towards legitimate public interest within the limits of Shari'ah. These working definitions guide the analysis and do not claim to exhaust the meanings of these concepts across the Islamic legal tradition or Malay history.

Source selection followed a relevance-and-verifiability protocol. Sources were retained when they (a) addressed at least one of the three core concepts or a defined historical/policy question, (b) had identifiable authorship, publication or archival provenance, and (c) provided enough accessible text or bibliographic information to assess the claim for which they were cited. The source set was assembled from the references already used in the manuscript and targeted supplementary searches for accessible full texts; it is a purposive corpus, not an exhaustive systematic review. For each item, the working record distinguished document type, period and jurisdiction, relevance to the research question, whether the full text was accessible, and whether the item was a primary text, a published transcription/edition, or secondary analysis. Search-engine snippets, abstracts and catalogue records were used only to locate or verify bibliographic details, not as substitutes for full-text evidence in substantive interpretation. Where a full text could not be inspected, claims were narrowed to what the accessible record supported and the source was not treated as direct evidence of a specific textual provision.

The primary historical object is the HKP legal manuscript and its published/transliterated representations. The manuscript edition Hukum Kanun Pahang: Manuskrip Agung Negeri Pahang, edited by Yaakub Isa (2003), is identifiable through the Jabatan Kebudayaan dan Kesenian Negara library catalogue; the catalogue establishes bibliographic provenance and holdings but does not itself provide the full text online. An openly accessible study by Sazali (2025) examines the HKP manuscript and reports its commercial, taxation and port-regulation material. Accordingly, the present article uses that open-access study as a secondary textual guide where the 2003 edition or manuscript text could not be directly inspected online. The article does not represent those reported summaries as verbatim quotations from the manuscript, nor claim a complete collation of manuscript witnesses. Direct verification against the published edition and manuscript variants remains a necessary step for any future clause-by-clause legal-historical study. Secondary sources include peer-reviewed historical and social-science studies, legal scholarship and contemporary governance analyses. The inclusion of sources from different genres is deliberate, but their evidentiary functions are kept distinct.

Table 2 summarises the source roles and access limits relevant to the present analysis. It is intended to make the evidentiary basis traceable rather than to imply that every source was available in full text.

Table 2: Source roles, access status and permitted evidentiary use.

Source / source group	**Role in this article**	**Access status verified for this revision**	**Permitted evidentiary use**
Hukum Kanun Pahang; Yaakub Isa (ed.), 2003	Primary historical legal text / published edition	Library catalogue record verified; full edition not confirmed as freely accessible online	Defines the primary historical object; no unverified clause is quoted as if directly inspected.
Sazali (2025), "The Manuscript of Hukum Kanun Pahang…"	Open-access secondary textual study of HKP	Full-text PDF accessible	Used to identify reported subject matter and to demonstrate a transparent, provisional coding example.
Rusli (2016); studies of colonial history	Secondary historical/legal analysis	Bibliographic records and accessible scholarly material checked where available	Supports contextual interpretation of the 1824 treaty; not treated as a substitute for treaty text where wording matters.
Peer-reviewed studies on contemporary governance and Islamic political thought	Secondary conceptual/policy literature	Full-text status varies by item; inaccessible full texts are not used to support detailed claims beyond verifiable records	Provides comparative context and concepts; each claim remains limited to what the source supports.

To ensure systematic rigour and transparency in the research process, the Table 3 delineates the phased analytical approach employed in this study:

Table 3: Phases of the qualitative conceptual analysis.

Research Phase	Analytical Focus	Key Data Sources / References	Methodological Technique
Phase 1: Historical Epistemology	Classical Malay sovereignty, proto-constitutionalism, and ritual legitimacy.	Hukum Kanun Pahang; historical treatises on Malay kingship (Iskandar, 2026; Abdullah & Mohd Noor, 2026; Milner, 1982).	Hermeneutic text analysis; semiotic interpretation of state rituals.
Phase 2: Colonial Disruption	Epistemic rupture, spatial partitioning, and the imposition of Westphalian models.	Anglo-Dutch Treaty documents; literature on maritime violence and agrarian shifts (Rusli 2016; Reid, 2010; Zuchri et al., 2026).	Critical historical deconstruction; comparative spatial analysis.
Phase 3: Contemporary Governance	Post-colonial nation-building, bureaucratisation of Islam, and modern policy challenges.	Contemporary policy analyses; studies on youth politics and AI governance (Mohamad, 2017; Abdullah et al., 2026; Azeh et al., 2023).	Thematic synthesis; policy discourse analysis.
Phase 4: Theoretical Synthesis	Formulation of a Neo-Traditionalist Siyasah Shar'iyyah Framework.	Synthesised data from Phases 1-3; Islamic political philosophy texts (Kamali, 1989; Al-Attas, 1993).	Conceptual modelling; philosophical abstraction and framework design.

The coding scheme combined deductive categories derived from the research questions with inductive sub-categories arising from the texts. The initial deductive codes were: (1) authority/legitimacy, (2) law and institutional order, (3) public welfare or distributive effects, (4) consultation/accountability, and (5) territorial or customary relations. During reading, sub-codes such as trade regulation, taxation, jurisdiction, inclusion/exclusion and limits of inference were added where warranted. Each coded unit was recorded with a source identifier, page/section locator where available, a short evidence summary, an interpretive memo, and an access-status note. Coding was treated as an interpretive aid rather than a mechanical count of words. This procedure follows qualitative content-analysis guidance that categories, their origin and their relation to the research question should be made explicit (Hsieh & Shannon, 2005; Elo & Kyngäs, 2008).

Primary juristic materials are used to clarify the normative criteria through which the contemporary discussion evaluates governance; they are not treated as direct descriptions of how every Malay ruler historically governed. Two Qur'anic passages are especially relevant. Qur'an 4:58 states: "Indeed, Allah commands you to render trusts to whom they are due and, when you judge between people, to judge with justice". Qur'an 4:59 introduces obedience to God, the Messenger and those entrusted with authority, while directing disputes back to God and the Messenger. Read together, these passages provide a normative basis for public trust, justice and bounded authority; they do not by themselves specify a modern constitutional design. In juristic discussion, Kamali (1989) explains siyasah shar'iyyah as permitting discretionary measures for good government while warning that discretion can be abused and must remain constrained by substantive principles of Shari'ah and justice. The article therefore treats trusteeship and public welfare as normative criteria for evaluating governance, not as proof that a historical institution satisfied them in practice. The Qur'anic text is accessible through Qur'an 4:58–59 (e.g., Quran.com), and Kamali's article is available from the American Journal of Islamic Social Sciences (AJIS).

A worked example illustrates how the procedure operates. Sazali (2025, pp. 106–116), an accessible secondary study of the HKP manuscript, reports that its provisions discuss commodity categories, units of measurement, differentiated customs duties and port activity. Because the full text of the 2003 edition was not confirmed as

freely accessible online for this revision, the following is coded as a report about the manuscript in a secondary study—not as a direct quotation or a definitive coding of a particular HKP clause. The evidence summary is "the published study reports differentiated commercial and customs regulations"; the primary code is "law and institutional order"; the sub-code is "trade/tax regulation"; the provisional interpretation is that the legal text may indicate an administrative concern with predictability in commerce and public revenue. The inference is deliberately limited: this evidence alone does not prove how consistently the rules were enforced, who benefited from them, or that the whole polity was governed by a single coherent constitutional system. A direct clause-level analysis would require checking the relevant passage in the published edition or manuscript and recording its exact section/page reference.

Contrary or disconfirming evidence was assessed through a deliberate negative-case procedure. For each major interpretive claim, the analysis considered whether the source set contained evidence that qualified, contradicted or narrowed it. For example, evidence of codified rules was not treated as proof of uniform implementation: the literature itself records debate about the practical enforcement of Malay legal digests and the uneven incorporation of Islamic law across local settings (Sazali, 2025). Likewise, claims that colonial boundary-making wholly displaced relational or maritime forms of authority were treated as interpretive propositions, not universal facts; differences among polities, legal domains and periods were retained. When sources disagreed, the analysis compared genre, date, provenance, scope and whether the author was reporting a primary document or interpreting it. The stronger claim was not preferred merely because it fitted the proposed model. Instead, the finding was qualified, competing interpretations were noted, and unresolved questions were identified as limitations. This source-critical approach is consistent with historical source criticism and documentary analysis, which require attention to provenance, context, purpose and limitations of documents (Bowen, 2009; Mohd Noor, 2000).

Table 4 presents the worked coding example. The example is intentionally labelled provisional because it is derived from an accessible secondary study rather than a verified verbatim clause in the HKP edition.

Table 4: Provisional coding example based on Sazali's (2025) secondary report of the Hukum Kanun Pahang.

Evidence unit and status	**Initial code**	**Sub-code**	**Interpretive memo**	**Boundary / contrary evidence**
Sazali (2025) reports that HKP material addresses commodity categories, measurement units, customs duties and port activity; secondary report, not a verbatim HKP clause.	Law and institutional order.	Trade / taxation regulation.	Suggests that the text addressed commercial administration and differentiated obligations in trade.	Does not by itself establish actual enforcement, distributional outcomes, or a fully integrated constitutional system; direct edition-level verification remains required.

FINDINGS

Cross-regional examples were selected by analytical relevance rather than by an assumption of cultural equivalence. Each comparison is linked to a defined question: the Spanish Philippines to the gap between imperial claims and practical maritime control; Bali and South Sorong to the interaction of state regulation, markets and customary land; and Kelantan borderland studies to the negotiation of formal jurisdiction and lived identity. These cases differ in period, legal order, community structure and colonial/post-colonial history. Accordingly, they function as contrastive illustrations, not as a pooled comparative dataset. A claim is generalised across cases only at the level of the explicitly shared analytical question; the local findings themselves remain attributed to their respective studies.

The analysis is organised around three themes: the historical and legal-ethical dimensions of Kedaulatan in selected Malay materials; colonial reconfiguration of territorial and institutional authority; and post-colonial debates about Maslahah Am and governance. These themes reflect the article's defined scope and should not be read as an exhaustive history of every Malay polity or as a claim that all examples across the Malay Archipelago

followed the same trajectory. The findings summarised below are conceptual interpretations of the sources discussed, not results from a new empirical field study.

Table 5: Thematic synthesis of the documentary corpus.

Research Theme	Conceptual Definition	Sub-Dimensions Identified	Key Supporting Evidence (Citations)
1. Historical Epistemology of Kedaulatan	Indigenous-Islamic synthesis of sovereignty based on ethical trusteeship and fluid maritime control.	Proto-constitutionalism, symbolic ritual legitimacy, maritime-terrestrial continuum.	Iskandar (2026); Abdullah & Mohd Noor (2026); Crailsheim (2023).
2. Colonial Epistemic Rupture	The violent imposition of Westphalian territoriality and secular-legalistic governance.	Cartographic partitioning, criminalisation of maritime statecraft, agrarian dispossession.	Rusli (2016); Reid (2010); Zuchri et al. (2026); Suartika (2007).
3. Contemporary Manifestations of Maslahah Am	The modern bureaucratic attempt to institutionalise Islamic ethics amidst complex policy frontiers.	Institutional consolidation, AI and technological governance, strategic human capital development.	Ahmad & Rahim (2026); Abdullah et al. (2026); Damayanti et al. (2026); Md Ramli et al. (2026).

The Historical Epistemology of Kedaulatan

The historical materials suggest that political authority in selected Malay polities was expressed through several overlapping idioms, including the ruler's position, adat, Islamic legal reasoning, ritual and relations of allegiance. These features should not be treated as a single, timeless 'classical Malay' system, nor set against a supposedly uniform Westphalian model. The latter is itself a historically evolving family of ideas about territorial jurisdiction and state authority. The more defensible comparison is between particular institutional tendencies: some Malay political relationships were organised through personal allegiance, trade networks and layered jurisdictions, while modern state administration generally relies more heavily on territorial boundaries, written law and bureaucratic institutions. The extent of each tendency varied by period, polity and domain; the present article therefore treats 'relational' and 'territorial-bureaucratic' as ideal types for comparison rather than exhaustive descriptions.

Crucially, this traditional sovereignty was heavily reliant on symbolic performance and ritual aesthetics to manifest its authority. As demonstrated by Abdullah and Mohd Noor (2026), the utilisation of natural elements, particularly water, in royal celebrations such as the Istiadat Siram Tabal, served as a profound political language. Through these ablution rituals, the Sultan's body was consecrated as a sacred vessel of continuity and collective legitimacy. In the absence of absolute, bureaucratic executive machinery, these rituals functioned as the primary sites of symbolic power, structuring the intricate relations between the sovereign, the populace, and the heritage of the state. The governance was thus legalised not exclusively through penal codes, but through participatory public rituals and purification symbols, embedding the concept of Kedaulatan deeply into the socio-cultural psyche of the Malay world.

The Hukum Kanun Pahang (HKP) is evidence that legal codification, royal authority, customary norms and Islamic legal concepts interacted in Pahang's early modern governance. However, calling it a 'proto-constitutional' text is an analytical interpretation, not a claim that it was equivalent to a contemporary constitution. Muslim, Mohamed, and Arham (2024), in an accessible open-access study, describe a layered compilation: clauses 1–23 are treated as an earlier core, clauses 24–66 as later provisions with stronger Shafi'i legal influence, and clauses 67–93 as reflecting material associated with Johor and Melaka laws. This reported stratification cautions against treating the HKP as a single-authored, internally uniform code. Its provisions on royal duties and officials, criminal matters, muamalat, religious offences, taxation and maritime trade indicate a range of governance concerns; they do not, without clause-level contextual analysis, establish that the code operated uniformly or embodied modern constitutional accountability. Because this article has not independently

collated manuscript witnesses, these clause groupings are reported from the cited secondary study and should be verified against the relevant edition for any definitive textual claim.

The comparison with the Spanish Philippines is used for one bounded analytical purpose: to show that formal imperial claims did not necessarily translate into uniform practical control over maritime spaces. Crailsheim (2023) examines shelter-seeking and securitisation under Spanish colonial rule; this offers a comparative question about the gap between claims to sovereignty and the practical negotiation of security. It does not demonstrate that the Spanish Philippines and Malay polities had the same institutions, legal traditions or political trajectories. The comparison is therefore heuristic and asymmetrical: it identifies a potentially comparable problem while preserving differences in actors, chronology, colonial structure and evidence.

The Colonial Epistemic Rupture and Institutional Fragmentation

The Anglo-Dutch Treaty of 1824 is an important marker in the reorganisation of imperial relations and territorial claims in the Malay world, but it should not be presented as a single, sufficient cause of all subsequent boundary arrangements or as proof that every local network was immediately severed. Rusli (2016) discuss the treaty's legal and historical implications; those implications must be distinguished from broader interpretations of colonial partition. The present article uses 1824 as a turning point in a longer process involving treaties, later administrative practice and local responses. 'Epistemic rupture' is thus an interpretive term for changes in the dominant organisation and representation of territory, not a claim that relational forms of authority disappeared completely.

Concomitant with this spatial partitioning was the systematic criminalisation of traditional Malay maritime statecraft. The colonial powers, driven by the imperatives of global capitalist expansion and the protection of their shipping lanes, weaponised the concept of international law to delegitimise indigenous power structures. Reid (2010) critically unpacks how the European definition of "piracy"—characterised as illegitimate armed robbery at sea—was progressively imposed upon Asian waters. Activities that were historically recognised as legitimate state-building exercises, naval warfare, or the enforcement of trade monopolies by Malay polities were suddenly reclassified as piratical acts. This "organised hypocrisy" allowed European empires, led by the British, to justify relentless military campaigns to destroy "pirate nests," effectively dismantling the maritime sovereignty of indigenous states and establishing a hegemony of European maritime law that persists in contemporary United Nations conventions.

Suartika's (2007) study of Bali is used as a comparative case concerning tensions between adat-based land relations, state regulation and market-oriented property systems. It is not treated as direct evidence for the history of Pahang or as proof that all customary land systems experienced the same outcome. The comparison is justified by a shared analytical question—how state law and commercial development interact with locally grounded land institutions—while the differences in Indonesian legal context, Balinese customary institutions, historical period and political economy remain material. The article therefore speaks of a parallel problem, not an identical process or a general law of colonial and post-colonial governance.

Zuchri et al. (2026) discuss social and agrarian conflict associated with sago industrialisation in South Sorong Regency, Papua. This case broadens the article's comparative horizon to examine how concessions, resource development and customary claims may come into tension. It cannot establish that the same effects occurred in Pahang, nor that the legal status of customary communities is identical across Indonesia and Malaysia. The relevant comparison is limited to the governance question of how public-interest claims are assessed when development affects community access, livelihoods and land. Claims about gendered labour effects, environmental outcomes or FPIC implementation should be attributed to the study's own evidence and not generalised beyond its location without further comparative research.

Post-Colonial Manifestations of Maslahah Am and Institutional Governance

In the post-colonial era, the pursuit of Maslahah Am within the Malay-Islamic sphere has increasingly been channeled through the mechanisms of institutional consolidation and bureaucratic governance. Modern nation-states, grappling with the legacy of colonial legal duality, have sought to re-embed Islamic principles into their

administrative frameworks. The evolution of Shari'ah administration in Brunei Darussalam exemplifies this trajectory. Ahmad and Rahim (2026) illustrate how Islamic legal institutions transformed from a restricted jurisdiction—confined merely to personal status matters under the British Residency—into a highly structured and constitutionally embedded system. Driven by the ideology of Melayu Islam Beraja (Malay Islamic Monarchy), the gradual incorporation of Islamic legal principles into state legislation, culminating in the Syariah Penal Code Order, represents a deliberate process of institutional consolidation rather than abrupt Islamisation. However, this development operates within a continuing dual legal system, highlighting the enduring complexities of harmonising classical Shari'ah with modern bureaucratic statecraft.

The operationalisation of Islamic governance in contemporary settings extends far beyond traditional jurisprudence, increasingly intersecting with complex technological and social frontiers. The regulation of Artificial Intelligence (AI) presents a profound challenge to modern statehood, requiring a robust ethical framework to mitigate risks of bias, exclusion, and social disruption. Abdullah et al. (2026) provide critical insights by applying the Public Policy in Islam (PPI) framework—emphasising tawhid, maqasid, shura (consultation), and islah (reform)—to Brunei's governance of illicit drug use, subsequently extrapolating these lessons to AI regulation. The study reveals that while prohibition reflects the maqasid of preserving life and intellect, the lack of comprehensive shura and reintegration processes exposes the limitations of a purely punitive bureaucratic approach. Framing AI as "governed infrastructure" through the lens of Siyasah Shar'iyyah demands that technological advancement be meticulously aligned with the holistic welfare of the populace, moving beyond mere legislative control to encompass social equity and ethical accountability.

Furthermore, the intersection of international law, strategic investment, and national security in the region demands innovative policy mechanisms that reflect the principles of Maslahah Am. Damayanti et al. (2026) examine the implementation of the Golden Visa scheme for AI-driven investment in Indonesia’s new capital city, Nusantara. Positioned at the nexus of investment policy and defence governance, this scheme illustrates how modern Southeast Asian states attempt to leverage high-quality foreign human capital while safeguarding national sovereignty. The design of such policy models necessitates a delicate balancing act: attracting global technological expertise to fuel sustainable development goals, whilst rigorously defending the state against asymmetrical security threats. In this context, the contemporary state's role is to function as a strategic facilitator of Maslahah, ensuring that international cooperation does not compromise the intrinsic sovereignty and security of the nation.

Ultimately, the efficacy of institutional governance rooted in Islamic principles is inextricably linked to the quality of its human capital. The strategic human development within Islamic bureaucratic institutions is paramount for translating theoretical Maslahah into tangible socio-economic impact. Md Ramli et al. (2026) highlight this necessity in their analysis of the Majlis Agama Islam dan Adat Melayu Perak (MAIPk). The research underscores that human development in zakat administration must extend beyond operational efficiency to cultivate competent, visionary personnel imbued with the ethical values of Islamic governance. By aligning staff competencies with Shari'ah principles, strengthening leadership capabilities, and integrating professional training with spiritual reinforcement, such institutions can enhance their resilience, promote innovative wealth distribution, and solidify public trust. This holistic approach to human capital development is the critical nexus where the abstract ideals of Siyasah Shar'iyyah are actualised in the daily administration of the modern state.

DISCUSSION

The discussion returns to the three research questions and evaluates the proposed framework as a conceptual contribution. It distinguishes historical interpretation from contemporary policy inference and treats the relationship between classical Kedaulatan and modern state sovereignty as a problem requiring contextual analysis rather than as a simple opposition between two uniform systems. The discussion considers how Siyasah Shar'iyyah may provide ethical criteria for policy making while remaining attentive to constitutional institutions, plural citizenship and the limits of the source base.

Reconciling Kedaulatan with the Rigidities of Westphalian Sovereignty

The cases discussed in this section illuminate different ways that territorial borders, minority identities and local belonging are negotiated; they do not establish that the Westphalian state is uniformly incapable of accommodating plural identities. Johnson's (2012) ethnography of Thai Buddhist communities in Kelantan examines a specific borderland context, while the wider argument in this article concerns the analytical limits of treating state borders as complete descriptions of social life. The comparison is relevant because it asks how formal jurisdiction interacts with mobility, religious difference and local identity. It does not make Kelantan representative of all borderlands or imply that modern territorial states lack all mechanisms for accommodating cross-border affiliations.

Sathian and Ngeow (2014) analyse identity strategies among ethnic Chinese communities in Kelantan. Their case demonstrates that language, provincial belonging and ethnic identification may interact in locally specific ways; it should not be read as proof that all minorities assimilate linguistically or that shared local identity removes structural inequality. This comparison supports a limited claim: formal citizenship and everyday belonging do not always map neatly onto one another. Any broader policy inference about inclusion or exclusion requires additional evidence across groups, locations and periods.

The historical and contemporary materials invite a normative question about whether political authority should be assessed solely by control or also by justice, responsibility and public welfare. They do not establish that all classical Malay polities accommodated plural legal and cultural realities in the same way, or that modern states necessarily rely on exclusion. The HKP is one historically situated legal compilation, and contemporary citizenship is governed by constitutional provisions and institutional practices that differ from early modern arrangements. The proposed idea of 'sovereignty as trusteeship' is therefore a normative synthesis informed by a Tawhidic standpoint, not a direct historical description or a demonstrated linear transition from one model to another.

Consequently, the article proposes that contemporary Malay statehood be assessed through the normative idea of "sovereignty as trusteeship", rather than asserting that the state can simply transition from "control" to "trusteeship". In a Tawhidic framing of khilāfah, public authority carries duties of justice and responsible stewardship; in a constitutional state, however, those duties must be translated into lawful institutional practices rather than left to the discretion of a ruler or majority. The model therefore treats historical Malay political thought as an ethical resource, not as a legal authority that overrides the Federal Constitution. It asks whether policy making protects public welfare, gives affected communities a meaningful voice, explains the reasons for decisions and permits independent review. This approach may help identify tensions between formal jurisdiction and lived belonging, but whether it reduces alienation is a proposition for future empirical testing, not an established result.

Siyasah Shar'iyyah as a Decolonial Governance Framework

The application of Siyasah Shar'iyyah to contemporary statecraft raises questions about how ethical principles become accountable public decisions. The "double-movement" discussed by Mohamad (2017)—state-led institutionalisation of Islam alongside pluralised political contestation—offers one lens for examining these tensions in Malaysia. Scholarship on Islamic governance in Malaysia also documents institutional development, educational reform and Islamic finance, although broad claims that such initiatives necessarily marginalise non-Muslims or minority Muslim groups require case-specific evidence (Hosen & Shukri, 2024). For this article, the key normative issue is how to prevent any invocation of Shari'ah, adat, national identity or public interest from becoming an unreviewable justification for administrative discretion. Siyasah Shar'iyyah is therefore operationalised here through decision rules, inclusive consultation, reason-giving, accountability and constitutional safeguards—not through a presumption that a policy is legitimate merely because its proponents describe it as Islamic or decolonial.

Azeh, Yunus, and Yaakob (2023) surveyed 455 respondents aged 15–39 in the suburban district of Marang, Terengganu. They report that 85.3% agreed or strongly agreed that Islamic political values should be practised by political leaders, and 84% agreed or strongly agreed that relevant Islamic principles should be implemented

in ways acceptable to Muslim and non-Muslim communities. These are the study's reported questionnaire findings for its sample; they are not a national estimate of all Malaysian youth and do not measure support for authoritarianism or extremism. The present article infers only that the findings show both a strong stated preference for Islamic values and a reported openness among many respondents to principles acceptable across communities. The further claim that this preference necessarily signifies anti-corruption, a specific model of accountability, or rejection of religious bureaucracy is not directly established by those figures and is therefore treated here as a normative policy question, not as an empirical result.

These principles can also inform emerging areas such as artificial intelligence and digital public services. For example, a public authority considering an AI-supported system to prioritise applications for housing assistance could assess the proposal through shura (consultation), protection of dignity and intellect, and Maslahah Am. The authority should publish the purpose and criteria of the system; consult applicants, disability advocates, relevant community organisations and technical specialists; test for discriminatory effects; provide accessible explanations and a non-digital route; protect personal data; and ensure that a named official remains responsible for the final decision. Applicants should be able to correct inaccurate information and appeal to a human decision maker, with independent oversight available under applicable law. These are proposed safeguards for a conceptual example, not findings from an implemented programme and not evidence that the model has been empirically validated. Any deployment would still have to comply with the Federal Constitution and applicable legislation.

Ultimately, the successful deployment of this framework necessitates a radical reform in the state's approach to knowledge and administration. As Md Ramli et al. (2026) articulate regarding zakat institutions, strategic human development is paramount. The state apparatus must cultivate a cadre of technocrats and policymakers who are not only professionally competent but also deeply grounded in the ethical philosophy of Islamic governance. This requires dismantling the colonial-era educational dichotomy that separates secular sciences from religious studies. A decolonial Siyasah Shar'iyyah demands an integrated epistemology where public policy, economics, and technology are inherently understood as domains of ethical responsibility. By institutionalising this holistic worldview, the state can transcend the superficial bureaucratisation of religion, fostering a governance model that genuinely actualises the public interest and restores the profound dignity of the Malay-Islamic political tradition.

Towards a Neo-Traditionalist Model of Malay Statehood

Arosoaie and Osman's chapter (2019; reprinted in the volume published by Amsterdam University Press) analyses how the political competition between UMNO and PAS over the meaning and implementation of Islam helped normalise a public discourse in which Islamic governance became central to political legitimacy. The authors also discuss connections between this political context and the trajectories of some Malaysian recruits to ISIS. Their argument is a contextual analysis, not evidence that state-led Islamisation causes radicalisation in every case, that young Muslims generally are vulnerable to extremist recruitment, or that a preference for Islamic political values predicts violence. In this article, the reported evidence is the authors' analysis of political discourse and selected radicalisation trajectories; the inference is that exclusionary or absolutist narratives may be one factor worth examining alongside other individual, social, organisational and transnational influences. The causal relationship remains complex and should not be reduced to a single pathway without specific empirical evidence.

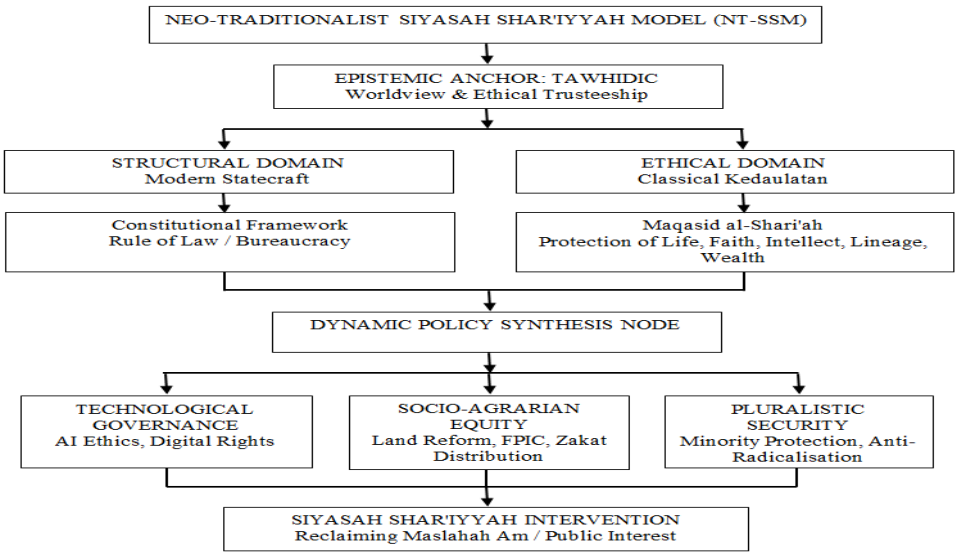
The Neo-Traditionalist Siyasah Shar'iyyah Model is proposed as a normative conceptual framework, not as a demonstrated mechanism that will automatically marginalise extremist ideologies or improve policy outcomes. Its contribution is to place ethical trusteeship, shura, maqasid al-shari'ah, constitutional safeguards, equal citizenship and public accountability in one analytical structure. To make the model usable for policy analysis, the article specifies the following provisional decision rules: (1) define the public problem and lawful jurisdiction; (2) identify the affected groups and assess the likely benefits, burdens and rights implications; (3) disclose the evidence, assumptions and alternatives; (4) conduct inclusive consultation before a decision, with accessible participation for minorities and groups likely to bear disproportionate costs; (5) assess the proposal against relevant maqasid and public-welfare considerations without treating maslahah as an unlimited override of rights or law; (6) check compatibility with the Federal Constitution, legislation, procedural fairness and

judicial review; (7) publish reasons, responsibilities, safeguards and an avenue of appeal; and (8) monitor outcomes and revise or suspend the policy if material harms emerge. These rules are an analytical proposal for further scrutiny, not a validated scoring instrument or substitute for legal advice.

Inclusive consultation means more than informing the public after a decision has been made. Consultation should occur early enough to affect the options under consideration; include people directly affected, including non-Muslim citizens and vulnerable or under-represented groups; provide relevant information in accessible forms; record material objections; and explain how those objections influenced the final decision. Consultation does not require unanimity, but a decision maker should publicly explain why a contested option was selected and how foreseeable burdens will be mitigated. Accountability should include a named decision-making authority, written reasons, transparent criteria, conflict-of-interest controls where relevant, accessible complaints and appeals, legislative or administrative oversight, and independent judicial review within the applicable constitutional framework.

The model also distinguishes equal citizenship in a contemporary constitutional state from the historical juristic category of ahl al-dhimma. Dhimmī status arose within particular premodern legal and political arrangements and was associated with a distinct set of rights, duties and status-based rules; it should not be treated as synonymous with modern citizenship or simply projected onto contemporary constitutional law. Historical discussions of protection for non-Muslims may offer ethical and procedural resources, but the model's contemporary normative starting point is the equal civic standing of citizens under the applicable constitutional order. In Malaysia, Articles 4(1) and 8(1) of the Federal Constitution establish, respectively, constitutional supremacy and equality before the law with equal protection; Article 8(2) prohibits specified forms of discrimination against citizens, subject to the Constitution's express provisions. These clauses must be read with the Constitution as a whole, including its specific arrangements and limitations, rather than presented as an absolute rule detached from context (Federal Constitution, arts. 8(1) (2); Shehata, 2026). Accordingly, the model does not claim that historical dhimmī doctrine and modern equal citizenship are identical. It asks how ethical commitments to justice, dignity and public welfare can be interpreted today in ways compatible with constitutional rights and institutional accountability.

A conceptual example illustrates the rules without claiming empirical validation. Suppose a local authority proposes to use an algorithm to rank applications for a public housing waiting list in order to allocate limited assistance more consistently. The authority would first establish its legal mandate and publish the criteria; assess whether the data could disadvantage applicants because of disability, household structure, language, income volatility or lack of digital access; and consult applicants and community representatives before procurement. It would compare the algorithm with a transparent non-automated alternative, publish an impact assessment and explain how priority criteria relate to the stated public purpose. No applicant should be rejected solely on the basis of an opaque automated score: a responsible officer should verify adverse decisions, applicants should be able to challenge inaccurate data and obtain a human review, and the authority should report aggregate outcomes while protecting personal information. If monitoring reveals unjustified disparate effects or procedural failures, the system should be corrected, suspended or withdrawn. This example shows how maslahah, shura and accountability could be translated into a policy workflow; it does not establish that the proposed model produces better results in practice. Whether the safeguards are adequate would depend on the governing law, institutional capacity, affected communities' experiences and future empirical evaluation. The structural interaction of the proposed framework is visualised in the following ASCII conceptual diagram:



In this revised formulation, the model's "Dynamic Policy Synthesis Node" is not a discretionary space in which an authority may override constitutional limits by invoking maqasid al-shari'ah. It represents a structured process through which a policy proposal is tested against public-welfare objectives, inclusive consultation, reason-giving, procedural fairness, constitutional compatibility and review mechanisms. Whether the policy concerns AI infrastructure, customary land, maritime cooperation or minority inclusion, the relevant jurisdiction, affected communities and applicable legal safeguards must be identified before a normative conclusion is drawn. The model is intended to make these considerations visible and contestable; it does not prove that the process will deliver a particular outcome.

CONCLUSION

This article has examined selected historical and contemporary discussions of Malay statehood through Kedaulatan, Maslahah Am and Siyasah Shar'iyyah. Its historical centre is the Malay Peninsula, particularly Pahang and the HKP, while other Southeast Asian cases serve as bounded comparisons. The accessible secondary literature indicates that HKP materials addressed legal, commercial and administrative matters, but this article has not independently verified every provision against the 2003 edition or a complete critical edition. The historical conclusions are therefore qualified and should not be read as a comprehensive reconstruction of the manuscript. Similarly, the classical–modern comparison identifies selected institutional tendencies and does not posit two homogeneous or wholly incompatible systems. Evidence about youth political attitudes and radicalisation is treated as context-specific scholarship; broader claims about national populations or causal pathways are not inferred from those sources.

The article's contribution is a Neo-Traditionalist Siyasah Shar'iyyah Model that brings selected Malay political thought into dialogue with maqasid al-shari'ah, inclusive consultation, accountability, equal citizenship and constitutional safeguards. It sets out provisional decision rules and illustrates them through a hypothetical public-housing allocation scenario. The example demonstrates the proposed analytical procedure only; it does not show that the model has been implemented, independently assessed or empirically validated. The model is therefore a conceptual heuristic rather than a predictive theory, a validated policy instrument or a substitute for constitutional institutions. Its practical contribution can only be assessed through further research in defined institutional settings, including analysis of participation, legal compliance, distributive effects and outcomes for affected groups.

The study is limited by its conceptual design, selective documentary corpus and uneven availability of full-text primary materials. It does not provide a comprehensive archival history, a systematic empirical comparison of Malay polities, or field-based validation of the model. Future studies should identify a bounded policy case, jurisdiction, time period and affected communities; verify primary documents against authoritative editions; predefine evaluation criteria; and examine both intended benefits and possible harms. The article's normative

standpoint is informed by a Tawhidic worldview, disclosed to make its assumptions available for critical assessment.

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