SOCIETA

Journal of Society and Change

https://doi.org/10.67964/0z06nq72 Volume 1, Issue 2, July–December 2026

From constitutional rights to inclusive governance: Religious minority protection under majoritarian politics in Indonesia and Malaysia

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Abstract

Religious minority protection in Muslim-majority states faces tensions between constitutional guarantees and state politics and administration. This study compares the protection of religious freedom in Indonesia and Malaysia through the perspective of *siyāsah idāriyyah*. This normative-doctrinal legal study applies statutory, case, comparative, and conceptual approaches to constitutional provisions, legislation, court decisions, reports, and legal scholarship. The findings show that Indonesia guarantees religious freedom under Articles 28E, 28I, and 29(2) of the 1945 Constitution, yet administrative barriers remain, including house-of-worship requirements of 90 prospective users and support from 60 local residents. SETARA recorded 221 incidents and 331 acts violating religious freedom in 2025. In Malaysia, Articles 3(1), 8, 11, and 121(1A) of the Federal Constitution establish an asymmetrical framework and leave challenges concerning civil–Syariah jurisdiction. The study proposes four standards for inclusive governance: equal public services, procedural fairness, official accountability, and access to remedies.

Keywords: Non-Muslim minorities; Freedom of religion; Electoral majoritarianism; Civil–Syariah jurisdiction; *Siyāsah idāriyyah*.

Abstrak

Perlindungan minoritas agama di negara mayoritas Muslim menghadapi ketegangan antara jaminan konstitusional dan praktik politik serta administrasi negara. Penelitian ini membandingkan perlindungan kebebasan beragama di Indonesia dan Malaysia serta menilainya melalui perspektif *siyāsah idāriyyah*. Penelitian hukum normatif-doktrinal ini menggunakan pendekatan perundang-undangan, kasus, perbandingan, dan konseptual dengan menelaah konstitusi, regulasi, putusan pengadilan, laporan, dan literatur. Hasil penelitian menunjukkan bahwa Indonesia menjamin kebebasan beragama melalui Pasal 28E, Pasal 28I, dan Pasal 29 ayat (2) UUD 1945, tetapi menghadapi hambatan administratif, termasuk persyaratan pendirian rumah ibadah berupa 90 pengguna dan dukungan 60 warga. SETARA juga mencatat 221 peristiwa dan 331 tindakan pelanggaran pada 2025. Di Malaysia, Pasal 3 ayat (1), Pasal 8, Pasal 11, dan Pasal 121 ayat (1A) membentuk perlindungan yang asimetris serta menyisakan persoalan yurisdiksi sipil-Syariah. Penelitian ini menawarkan empat parameter tata kelola inklusif, yaitu kesetaraan pelayanan, keadilan prosedural, akuntabilitas pejabat, dan akses pemulihan hak.

Kata Kunci: Minoritas non-Muslim; Kebebasan beragama; Mayoritarianisme elektoral; Yurisdiksi sipil-Syariah; *Siyāsah idriyyah*.

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Introduction

At the normative level, Indonesia guarantees freedom of religion under Articles 28E and 29(2) of the 1945 Constitution of the Republic of Indonesia, while Article 28I(2) provides protection against discrimination. Malaysia designates Islam as the religion of the Federation under Article 3, while Articles 8 and 11 govern equality and religious freedom. However, these guarantees operate within different institutional arrangements. Harding et al. (2018) note that approximately 39 percent of Malaysia's population at the time was non-Muslim, while religious affairs were situated at the intersection of civil and Syariah court jurisdictions. Through the Lina Joy case, Nelson and Shah (2018) demonstrate that a woman who converted from Islam to Christianity encountered unclear and inadequately regulated procedures when seeking official recognition of her new religious identity. These circumstances highlight the importance of examining constitutional provisions through institutional practices.

In Indonesia, the dynamics of minority protection are shaped not only by constitutional provisions but also by how religious identity is mobilized in political competition. Ahnaf and Lussier (2019) examined the 2017 Yogyakarta mayoral election by analyzing sermons delivered at 12 mosques and churches during the month preceding the vote. They found that sectarian mobilization could be restrained when political elites perceived little electoral benefit, questioned the persuasive power of sectarian messages, and considered the prevailing culture of social harmony. In contrast, Qodir et al. (2022) show that the 2019 presidential election in West Kalimantan revealed differences in candidate support along ethnic and religious lines: Dayak, Javanese, and Chinese communities tended to support Jokowi–Ma'ruf, whereas Malay, Madurese, and Bugis communities tended to support Prabowo–Sandi. Although this contestation did not trigger violence, it nevertheless shaped political identities and polarization at the societal level.

Tensions between the guarantee of rights and legal practices are evident in blasphemy regulations and religious populist discourse. Drawing on document analysis and focus group discussions, Hasani and Halili (2022) argue that Indonesia's blasphemy provisions are vulnerable to politicization and place religious minorities in a precarious position. They also highlight concerns regarding the constitutionality of these provisions following the Constitutional Court's review of the relevant criminal provisions, particularly because considerations relating to the right to freedom of religion or belief were deemed inadequate. From the perspective of identity politics, Yilmaz et al. (2022) examine the discourse of the Islamic Defenders Front (FPI) during the 2010s and show how FPI portrayed Ahok, a Christian, as a foreign enemy allegedly spreading moral decay. This discourse divided society into a supposedly pious community, corrupt elites, and internal and external non-Muslim enemies,

particularly the West. These findings illustrate the risks associated with the politicization of religious identity.

Previous studies have examined minority protection through separate lines of inquiry. In Malaysia, Harding et al. (2018) highlight the intersection of civil and Syariah court jurisdictions, while Nelson and Shah (2018) demonstrate how procedures for recognizing religious conversion restrict individual freedom. In Indonesia, Ahnaf and Lussier (2019) document efforts to curb sectarian mobilization in Yogyakarta, whereas Qodir et al. (2022) show that identity-based contestation continued to shape political preferences in West Kalimantan. Hasani and Halili (2022) criticize the vulnerability of minorities arising from blasphemy laws, while Yilmaz et al. (2022) examine FPI's populism. Schäfer and Peterson (2026) compare the use of human rights discourse in both countries; however, their study does not specifically map the relationship between constitutional provisions, implementing institutions, and the effectiveness of minority protection. Therefore, a comparative examination of constitutional and institutional dimensions remains necessary.

In light of these issues, this study aims to compare constitutional protection for religious minorities in Indonesia and Malaysia by examining guarantees of religious freedom, the principle of equality, and the roles of law and state institutions in their implementation. This comparison is important because, although both countries incorporate religion into their constitutional systems, they differ in their constitutional arrangements, state–religion relations, and legal mechanisms. The study goes beyond examining constitutional provisions by investigating how these provisions relate to implementing regulations, institutional authority, and the actual practices of rights protection. Accordingly, this study seeks to identify similarities, differences, and protection gaps affecting religious minorities, while explaining the constitutional and institutional factors that influence the effectiveness of guarantees of religious freedom in both countries. The findings are expected to contribute to comparative constitutional law scholarship in Southeast Asia.

Method

This study employs a normative-doctrinal legal research design within the framework of *comparative constitutional law* (Deriza et al., 2026). It examines the coherence of constitutional norms, the harmonization of statutory regulations, and the consistency of legal provisions and their implementation concerning the protection of the civil rights of non-Muslims in Indonesia and Malaysia. Doctrinal legal research involves identifying, interpreting, and analyzing authoritative legal sources to address legal issues and formulate prescriptive arguments (Hutchinson & Duncan, 2012; Ali, 2021; Marzuki, 2021; Soekanto & Mamudji, 2015). Four approaches are employed to address the research questions: the statutory approach, the case approach, the comparative approach, and the conceptual approach. The statutory approach examines

constitutional guarantees and regulations concerning religious freedom in both countries; the case approach analyzes judicial reasoning and the *ratio decidendi* of court decisions; the comparative approach identifies similarities and differences in legal frameworks and rights protection mechanisms; and the conceptual approach examines the principles of *checks and balances*, *siyāsah idāriyyah*, *al-muwāṭanah*, and *maqāṣid al-sharīʿah*. The comparison is conducted functionally and contextually, taking into account the characteristics of each country's legal system rather than merely juxtaposing the wording of legal provisions (Van Hoecke, 2015; Siems, 2018).

The research materials were obtained through library research and classified into primary, secondary, and tertiary legal materials, as well as supporting institutional documents. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the *Federal Constitution of Malaysia*, particularly Articles 3(1), 11(1) and 11(4), and 121(1A), legislation concerning civil registration and the establishment of houses of worship, the Aceh Qanun, relevant state-level Islamic enactments in Malaysia, and selected court decisions, including Constitutional Court Decision No. 97/PUU-XIV/2016 and the cases of *Indira Gandhi*, *Iki Putra*, and *Titular Roman Catholic Archbishop of Kuala Lumpur*. The *ASEAN Human Rights Declaration* (Association of Southeast Asian Nations, 2012) is used as a regional human rights instrument with declaratory status. Secondary legal materials comprise books, scholarly journal articles, and literature on Islamic legal thought, including *al-Aḥkām al-Sulṭāniyyah* (Al-Mawardi, 1996), as well as works by Auda (2008) and Kamali (2002).

Tertiary legal materials include legal dictionaries and encyclopedias. To provide contextual insight into the implementation of religious freedom, the study also draws on reports by SETARA Institute (Kaur & Hasan, 2026) and the United States Commission on International Religious Freedom (USCIRF, 2026); these reports are not treated as primary legal materials. Research materials were collected through systematic searches of legislative databases, official court decision repositories, academic repositories, and publications issued by relevant institutions. The collected materials were classified according to the themes of constitutional guarantees, positive and negative religious freedom, administrative policies, judicial authority, and mechanisms for the redress of rights violations. The analysis was conducted qualitatively using deductive reasoning, systematic and teleological legal interpretation, and an examination of the *ratio decidendi* of court decisions. The validity of the analysis was ensured by verifying the authenticity of sources, the legal status and validity of regulations, the accuracy of judicial decisions, and cross-checking constitutional norms against court decisions and institutional documents.

Results and Discussion

Constitutional framework for protecting the right to religious freedom of minority groups in Indonesia and Malaysia

A constitutional comparison between Indonesia and Malaysia should begin with how each country positions religion within its state structure and guarantees citizens' rights. Although both countries have Muslim-majority populations, they have established fundamentally different constitutional models. Indonesia bases its state life on Pancasila and the principle of Belief in the One and Only God, whereas Malaysia designates Islam as the religion of the Federation. Accordingly, Article 29(1) of the 1945 Constitution of Indonesia is more appropriately compared with Article 3(1) of the *Federal Constitution of Malaysia*, while Article 29(2) should be examined alongside Article 11(1). This comparison examines differences in legal design without presupposing the superiority of either country. Asshiddiqie (2006) provides the context for institutional changes following the Reformasi era, while Lindsey (2012) maps the development of Islamic law and institutions in Indonesia. Harding (2012) and Shah (2017) explain Malaysia's federal framework and the relationship between its constitution, religion, and politics.

In Indonesia, Pancasila serves as the philosophical foundation of state life. Articles 29(1) and 29(2) of the 1945 Constitution affirm the principle of Belief in the One and Only God and guarantee the freedom to profess a religion and worship accordingly. These guarantees are further elaborated in Articles 28E(1) and 28E(2), while Article 27(1) and Article 28D(1) affirm equality before the law and the right to fair legal protection. Article 22 of Law No. 39 of 1999 reiterates the state's obligation to guarantee religious freedom. Giri Wardana et al. (2025) find that constitutional guarantees remain constrained by the requirement to state one's religion on identity documents and restrictive administrative interpretations. Chanifah (2025) identifies the rejection of houses of worship, the dissolution of minority religious activities, and social intimidation arising from regulatory weaknesses, majoritarian bias, and exclusive religious interpretations. These findings reveal a gap between formal constitutional guarantees and their administrative implementation.

Article 28I(1) of the 1945 Constitution recognizes the right to religion as a non-derogable right, while Article 28I(2) prohibits discrimination. The freedom to hold or adopt a religion (*forum internum*) must be distinguished from the manifestation of religion (*forum externum*). Article 28J(2) permits restrictions in the interests of the rights of others, morality, religious values, security, and public order. Meanwhile, Article 18(3) of the International Covenant on Civil and Political Rights (ICCPR) requires restrictions on the manifestation of religion to be prescribed by law and necessary for the protection of public safety, order, health, morals, or the fundamental rights and freedoms of others. Law No. 12 of 2005 ratifies the ICCPR, whereas Malaysia is not a

state party to the Covenant. General Comment No. 22 (Human Rights Committee, 1993) affirms that freedom of thought, conscience, and belief cannot be restricted. Butt (2020) finds that adherents of indigenous beliefs face discrimination in civil registration, education, and employment. Article 22 of the *ASEAN Human Rights Declaration* guarantees freedom of thought, conscience, and religion.

In Malaysia, Article 3(1) of the *Federal Constitution* establishes Islam as the religion of the Federation while recognizing the practice of other religions in peace and harmony. This provision must be read alongside Article 8: clause (1) guarantees equality before the law, while clause (2) prohibits religious discrimination against citizens in the fields specified by the Constitution. Article 12(1) prohibits discrimination in public education, while Article 12(2) recognizes the right of religious groups to establish their own educational institutions, although the state may continue to support Islamic educational institutions. Islamic affairs fall within the *State List* of the *Ninth Schedule*. Adil and Ahmad (2014) emphasize that Article 3 does not establish the comprehensive application of Islamic law throughout Malaysia; rather, Syariah jurisdiction is limited to specific areas, while human rights protection primarily falls within the federal civil legal system. Shah (2022) demonstrates how issues of race, religion, and monarchy shape the distribution of power and the protection of fundamental rights.

Malaysia's guarantee of religious freedom is provided under Article 11(1), which grants every person the right to profess and practise their religion. Clause (3) protects the autonomy of religious groups to manage their own affairs and establish institutions, while clause (4) permits state laws—or federal laws in the Federal Territories—to restrict the propagation of religious doctrines or beliefs among Muslims. This provision does not constitute a prohibition on the religious expression of non-Muslims. Clause (5) preserves the application of laws concerning public order, public health, and morality. Article 12(3) prohibits compelling individuals to receive instruction in or participate in ceremonies or acts of worship of another religion, while Article 12(4), for the purposes of clause (3), provides that the religion of a person under the age of eighteen shall be determined by their parent or guardian. Mohiuddin (2024) notes that restrictions on non-Muslim religious practices and social prejudice remain significant challenges. Legal pluralism and exemptions under personal law also contribute to inconsistencies in the application of the principle of equality (Shuaib, 2018).

The division of judicial authority in Malaysia must be understood in conjunction with Article 121(1A) and the *State List* in the *Ninth Schedule*. Article 121(1A) provides that the courts referred to in clause (1) have no jurisdiction over matters falling within the jurisdiction of the Syariah Courts; however, this provision does not transfer all religious disputes to the Syariah Courts. The *State List* limits the jurisdiction of the Syariah Courts to persons professing Islam and matters falling within the authority of

the respective states. Wan Muhammad (2011) traces the restructuring of the Syariah Courts following independence, noting that the process took more than four decades and proceeded gradually through legislative amendments and state enactments. Doctrinal analyses of contemporary religious disputes indicate that jurisdictional conflicts between civil and Syariah courts persist and require clearer mechanisms for resolution (Yussoff et al., 2022). These findings underscore the importance of clearly defined jurisdictional boundaries.

This comparison demonstrates that the fundamental difference between Indonesia and Malaysia does not lie in whether guarantees of religious freedom exist, but rather in how their constitutions position religion, formulate restrictions, and distribute authority for rights protection. Indonesia connects religious freedom with Pancasila, equal citizenship, and constitutional review within its national legal system. Malaysia combines guarantees of individual freedom with Islam's status as the religion of the Federation and state-level authority over religious affairs. Therefore, constitutional provisions alone are insufficient to determine which country provides greater protection for minorities. Such an assessment must consider who enjoys these rights, how strictly restrictions are applied, whether minorities have equal access to the courts, and whether administrative policies are consistent with constitutional guarantees. This synthesis provides the foundation for examining the implementation of rights protection and the challenges it faces in the subsequent discussion.

The implications of majoritarian dominance in electoral politics for civil rights and religious freedom guarantees

Electoral democracy does not automatically guarantee equal protection of rights. When political actors use religious identity to mobilize support, majority preferences may become embedded in public agendas and policies. Widian et al. (2023) examined the 2014 presidential election, the 2017 Jakarta gubernatorial election, and the 2019 presidential election. They found that Islamic narratives were increasingly employed as a populist strategy, although they did not always constitute the dominant political discourse. In Malaysia, Hamayotsu (2012) demonstrates that electoral competition among political elites also shapes Syariah enforcement, including in matters concerning religious conversion. Asia Centre (2023) identifies the bureaucratization of religion as a mechanism for restricting houses of worship, religious conversion, and religious propagation. These findings indicate that identity mobilization and administrative arrangements can reinforce one another, although the causal relationship underlying each policy must be established through specific contextual evidence.

In Indonesia, decentralization has expanded the scope for local governments to formulate policies, but it has also created opportunities for dominant group preferences to influence local regulations. Suroto (2018) finds that economic and

political interests exert considerable influence over the formulation of regional regulations concerning law and human rights, while public participation in Central Java remains elitist and fails to represent the interests of all citizens. These findings do not establish that every religion-based regional regulation is motivated by electoral interests, but they indicate a lack of inclusiveness in the legislative process. This risk is evident in the governance of house-of-worship establishment under the Joint Regulation of the Minister of Religious Affairs No. 9 of 2006 and the Minister of Home Affairs No. 8 of 2006. The requirements of 90 prospective users and support from 60 local residents may create barriers when majority approval is not forthcoming. Article 14(3) nevertheless requires local governments to facilitate the provision of a location under certain circumstances, making it necessary to assess its implementation in its entirety.

Reports by SETARA Institute indicate that violations of freedom of religion or belief (FoRB) continue to occur on a substantial scale. In 2023, 217 incidents and 329 acts were recorded, increasing to 260 incidents and 402 acts in 2024. The 2025 FoRB report, published in July 2026, recorded 221 incidents and 331 acts, including 128 acts attributed to state actors and 197 to non-state actors (SETARA Institute, 2024, 2025; Kaur & Hasan, 2026). Among state actors, local governments accounted for the largest number of actions, with 71 recorded cases. The decline in the figures for 2025 does not automatically indicate substantive improvement. This pattern suggests that the obstacles faced by minorities stem not only from social pressure but also from administrative actions. Constitutional Court Decision No. 97/PUU-XIV/2016 corrected discriminatory treatment of adherents of indigenous beliefs in civil registration; however, the effective realization of their rights still requires consistency in central and local bureaucratic practices.

The implementation of the Qanun Jinayat in Aceh illustrates the tension between the exercise of legal choice in practice and the normative principle of equality. Halim (2022) examined 40 cases across 14 Sharia Courts involving 52 non-Muslim defendants; some opted for the Qanun because the process was considered efficient, affordable, and expeditious. The study employed interviews, observations, and case documents collected between 2017 and March 2020. In contrast, Akbar et al. (2022) found that Aceh Qanun No. 6 of 2014 differentiates legal obligations according to religious affiliation, thereby raising concerns about equality before the law. Fuad et al. (2022) documented constitutional critiques of the Qanun and the unsuccessful attempt to annul it through judicial review before the Supreme Court. Aceh Qanun No. 12 of 2025 subsequently amended several provisions, particularly to strengthen protections for child victims of sexual violence. These differing findings, together with relevant cases in Malaysia, are summarized in Table 1.

Table 1. Comparison of the implications of majoritarian politics for minority rights protection in Indonesia and Malaysia

Indicator	Indonesia	Malaysia
Political mobilization and identity	The use of Islamic narratives in electoral contests and the influence of political interests on the formulation of local policies.	The mobilization of Malay-Islamic identity in political competition and electoral strategies to secure support from both Muslim and non-Muslim voters.
Policy and administrative instruments	Religion-based regional regulations, the 2006 Joint Regulation, and the Aceh Qanun Jinayat.	State-level religious enactments, religious bureaucracy, and restrictions on the propagation of religion to Muslims.
Forms of minority rights concerns	Barriers to establishing houses of worship, administrative discrimination against adherents of indigenous beliefs, and issues of equality in the implementation of the Qanun Jinayat.	Restrictions on non-Muslim religious expression, restrictions affecting certain Muslim groups, and disputes over the religious conversion of children.
Key data and cases	217 incidents and 329 acts of FoRB violations in 2023; 260 incidents and 402 acts in 2024; 221 incidents and 331 acts in 2025; and Constitutional Court Decision No. 97/PUU-XIV/2016.	The *The Herald* case, *Indira Gandhi* (2018), *Iki Putra* (2021), and USCIRF findings on religious freedom conditions throughout 2025.
Judicial responses	The Constitutional Court corrected discriminatory practices in civil registration affecting adherents of indigenous beliefs through constitutional review of legislation.	The Federal Court exercises judicial oversight over administrative actions by religious authorities and reviews the limits of state legislative authority.

Source: Compiled by the authors based on Widian et al. (2023), Suroto (2018), Hamayotsu (2012), Chin (2022), Neo (2014), Halim (2022), Akbar et al. (2022), Fuad et al. (2022), SETARA Institute (2024, 2025), Kaur and Hasan (2026), USCIRF (2026), as well as relevant primary legal materials and court decisions.

In Malaysia, the relationship between Malay identity and Islam has acquired constitutional status through Article 160(2), which incorporates Islam, the Malay language, Malay customs, and elements of descent or domicile into the definition of a Malay. Article 153 provides for the special position of Malays and the natives of Sabah and Sarawak while safeguarding the legitimate interests of other communities; therefore, the Bumiputera category is not synonymous with Muslims. Hamayotsu (2012) demonstrates that the electoral calculations of political elites contribute to shaping Syariah enforcement policies. Chin (2022) argues that the growing influence of political Islam has added a religious dimension to the institutional barriers experienced by the Chinese community. USCIRF (2026) also reports increased religious polarization throughout 2025, restrictions targeting Muslim groups considered deviant, and the association of Malay identity with Islam in public policy. The report further documents the enforcement of blasphemy laws and increasingly coercive forms of moral policing.

Restrictions on non-Muslim religious expression are evident in *The Herald* case. In 2013, the Malaysian Court of Appeal upheld the prohibition on using the word "Allah" in a Malay-language Catholic newsletter, while the Federal Court dismissed the application for leave to appeal in 2014 (Menteri Dalam Negeri & Ors v. Titular Roman Catholic Archbishop of Kuala Lumpur, 2013; Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Ors, 2014). Neo (2014) interprets this ruling as an example of the legal discourse linking Islamic identity with ethnic identity in Malaysia. A different issue arose in the *Indira Gandhi* case: in 2018, the Federal Court affirmed the authority of civil courts to review administrative actions by religious authorities and ruled that the consent of both parents was required for the religious conversion of a child. Ong (2026) demonstrates that disputes over child custody and jurisdiction continue to reveal gaps in the protection of children's best interests. In the *Iki Putra* case (2021), the court invalidated a state criminal provision that exceeded the state's legislative authority. This ruling concerned legislative competence rather than minority rights specifically; therefore, its relevance to minority protection must be considered within these limits.

Table 1 illustrates that the influence of majoritarian politics operates through different channels in Indonesia and Malaysia. In Indonesia, the main concerns involve local regulations, administrative requirements for establishing houses of worship, and the implementation of policies affecting adherents of indigenous beliefs. In Malaysia, the issues relate to the relationship between Malay-Islamic identity, the regulation of religious expression, and the division of jurisdiction between civil and Syariah courts. However, not every policy or dispute can be directly attributed to electoral strategies; such claims require evidence concerning the actors involved, policy-making processes, and the context of political competition. Reports, empirical studies, regulations, and judicial decisions indicate a gap between constitutional guarantees and the actual exercise of rights. Accordingly, majoritarianism becomes a concern when political support or the preferences of dominant groups are translated into disproportionate restrictions on minority rights in the actual functioning of the state in both countries.

Realizing the principle of inclusivity and protecting the civil rights of non-Muslims from the perspective of contemporary Islamic governance (*siyāsah idāriyyah*)

The protection of non-Muslims' civil rights in Muslim-majority countries cannot be secured solely through constitutional recognition or appeals for tolerance. Such guarantees must be reflected in equitable administrative decisions, non-discriminatory public services, official accountability, and access to remedies when rights are violated. Inclusivity is an active governmental obligation, not a concession granted by the majority. Al-Mawardi's (1996) views on the authority and responsibilities of public officials, together with Jordan's (2006) examination of administrative accountability in Islamic thought, provide a foundation for this obligation. Amedroz (1911) explains the

historical function of the *wilāyat al-maẓālim* in overseeing the actions of rulers. In the contemporary context, Ilhamuna (2025) connects *siyāsah idāriyyah* with responsive judicial governance. This framework is used to assess whether state administration genuinely protects all citizens in the actual practice of governance.

The ethical foundations of governance in a plural society can be traced to the Constitution of Medina. Arjomand (2009) interprets the document as a covenantal arrangement that established a political community and recognized religious freedom for Jewish groups affiliated with the Medinan community. Diab (2018) highlights the articulation of rights, justice, and mutual obligations among different groups within the Charter, while Osman (2016) cautions that modern interpretations of the document have evolved in response to historical contexts and intellectual interests. Mohd Fadzli et al. (2026) connect the Constitution of Medina with the concept of citizenship through a contemporary reassessment. Accordingly, *al-muwāṭanah* is employed here as an interpretation of shared political membership rather than as a term explicitly used in the Charter. The principle derived from the document is not the replication of Medina's institutional structure, but the recognition of distinct communities and the obligation to provide equal protection within an inclusive and plural political order.

This principle derives its normative orientation from *maqāṣid al-sharīʿah*, particularly the preservation of religion, life, intellect, lineage, and property. Auda (2008) advocates a systems-based understanding of *maqāṣid*, positioning justice, freedom, rights, public welfare, and tolerance as objectives of Islamic law. Kamali (2002) examines freedom, equality, and justice in religious, social, legal, and political contexts. In this study, *ḥifẓ al-dīn* is not understood as legitimizing the majority's control over the beliefs of other citizens, but rather as a foundation for protecting religious life. Meanwhile, *ḥifẓ al-nafs*, *ḥifẓ al-ʿaql*, *ḥifẓ al-nasl*, and *ḥifẓ al-māl* are translated into guarantees of security, access to knowledge, family protection, and certainty of ownership. Thus, *maqāṣid* serves as a framework for assessing the impact of public policies rather than merely as a list of normative objectives without concrete administrative implications at every stage of policy formulation and implementation.

In Indonesia, these principles are supported by the Constitution and oversight mechanisms that distribute authority among several institutions. Sufiarina and Fakhriah (2012) explain the one-roof judicial system as an arrangement that places the administrative and technical management of the judiciary under the Supreme Court, rather than as a merger of all judicial institutions. Article 24 of the 1945 Constitution establishes the Supreme Court and the Constitutional Court as judicial authorities with distinct powers. Wicaksono and Rahman (2022) explain the division of judicial review powers: the Constitutional Court reviews laws against the Constitution, while the Supreme Court reviews regulations below the level of statutes against statutes. In addition, the State Administrative Court provides a legal avenue for challenging

administrative decisions or actions within its jurisdiction. This institutional framework provides mechanisms for legal correction, but its existence does not automatically guarantee non-discriminatory public services. The effectiveness of rights protection also depends on the consistency of public officials in implementing policies.

The gap between legal norms and actual practice is evident in the administration of house-of-worship establishment. The Joint Regulation of the Minister of Religious Affairs No. 9 of 2006 and the Minister of Home Affairs No. 8 of 2006 stipulates requirements that include at least 90 prospective users and support from 60 local residents. These requirements should not be applied as a majority veto; Article 14(3) instead requires local governments to facilitate the provision of a location when the requirement concerning the number of prospective users has been met but local community support remains insufficient. Constitutional Court Decision No. 97/PUU-XIV/2016 also corrected differential treatment of adherents of indigenous beliefs in civil registration. Meanwhile, the SETARA Institute report recorded 221 incidents and 331 acts of violations of freedom of religion or belief in 2025 (Kaur & Hasan, 2026). These findings demonstrate that legal guarantees must be accompanied by oversight, facilitation, and official accountability for the effects of administrative decisions on minority groups.

Table 2. Realization of inclusivity principles in governance in Indonesia and Malaysia

Dimension assessed	**Indonesia**	**Malaysia**
Equality of citizenship	Constitutional guarantees of equality for citizens, including the protection of civil rights without religious discrimination.	Constitutional guarantees of equality coexist with religious regulations at both the federal and state levels.
Administrative justice	Local governments are obligated to implement the 2006 Joint Regulation proportionately and facilitate the provision of houses of worship in accordance with applicable requirements.	State religious authorities must exercise their powers within constitutional limits and ensure the legality of administrative actions.
Government accountability	Oversight is conducted through constitutional review, judicial review of regulations, and the resolution of administrative disputes within the jurisdiction of the relevant judicial institutions.	Civil courts retain the authority to review the legality of administrative actions by religious authorities within their respective jurisdictions.
Access to remedies	Constitutional Court Decision No. 97/PUU-XIV/2016 demonstrates the availability of corrective mechanisms against discriminatory treatment in civil registration.	The *Indira Gandhi* case demonstrates the importance of access to civil courts in disputes over the religious conversion of children and

		administrative actions by religious authorities.
Implementation challenges	The gap between legal guarantees and the implementation of administrative policies at the local level.	Uncertainty concerning jurisdictional boundaries and coordination in interreligious disputes.
Inclusivity criteria	Equal access to public services, proportionate procedures, official accountability, and access to remedies.	Clear jurisdictional boundaries, procedural protection, institutional accountability, and access to remedies.

Source: Authors' analysis and synthesis.

In Malaysia, challenges to the protection of civil rights are associated with the division of authority between civil courts and Syariah courts. Article 121(1A) of the Federal Constitution limits the jurisdiction of civil courts over matters falling within the jurisdiction of the Syariah courts, while the latter's jurisdiction is established through state laws and remains subject to the federal constitutional framework. Lim and Au (2019) interpret the *Indira Gandhi* ruling as a reaffirmation of constitutional supremacy in resolving jurisdictional conflicts. In its 2018 decision, the Federal Court affirmed that the consent of both parents is required for the religious conversion of a child and that administrative actions by religious authorities are subject to review by civil courts. Steiner (2013) examines the earlier development of the case, when the High Court set aside a unilateral conversion. This case demonstrates that the division of authority must not deprive affected parties of the opportunity to be heard and obtain effective legal remedies.

The comparison of the two countries reveals different challenges but points to a common requirement: governments must ensure that rights do not remain merely formal guarantees. Indonesia has mechanisms for constitutional review and administrative oversight, but continues to face challenges in implementing policies at the local level. Malaysia has a division of authority between civil and Syariah courts that requires clearer jurisdictional boundaries and better coordination to prevent interreligious disputes from creating uncertainty in access to justice. From the perspective of *siyāsah idāriyyah*, the realization of inclusivity can therefore be assessed through four parameters: equality in public service provision, transparent and proportionate procedures, official accountability, and access to complaints and remedies. These parameters do not require both countries to establish identical institutions, but rather to achieve equivalent standards of rights protection. From this perspective, the public welfare (*maṣlaḥah*) of governance is measured by its ability to protect all citizens, including non-Muslims.

Conclusion

This study finds that majoritarian political dominance in Muslim-majority countries can affect the protection of non-Muslims' civil rights when religious identity preferences are translated into unequal administrative policies and institutional practices. In Indonesia, the main challenges are evident in the implementation of regional regulations, requirements for establishing houses of worship, and administrative services for minority groups, despite the availability of constitutional review mechanisms. In Malaysia, the relationship between Malay-Islamic identity and the division of jurisdiction between civil and Syariah courts presents distinct challenges to legal certainty in rights protection, particularly in interreligious disputes. These conditions are shaped not merely by population-based dominance but also by political competition, regulatory design, and the consistency of state authority in practice. From the perspective of *siyāsah idāriyyah*, rights protection can be realized by treating equality in public service provision, procedural justice, official accountability, and access to legal remedies as governmental obligations.

This study contributes to scholarship on Islamic politics and constitutional law by integrating the perspectives of *siyāsah idāriyyah*, *maqāṣid al-sharīʿah*, and citizenship principles to analyze the protection of non-Muslims' civil rights from a comparative perspective. This framework demonstrates that the values of justice and public welfare in Islamic governance are not merely associated with the legitimacy of political authority but must also be reflected in the quality of public administration and the state's treatment of all citizens. Nevertheless, this study is limited to normative-comparative analysis based on selected literature, regulations, reports, and court decisions. Consequently, it does not fully capture the lived experiences of minority groups or bureaucratic practices at the local level. Future research is therefore encouraged to undertake field studies involving government officials, religious institutions, and non-Muslim communities to examine the application of inclusivity principles and the effectiveness of rights protection mechanisms in actual governance practices.

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