

Legal Study on the Role of Law in Guaranteeing Freedom of Religion Based on the Principles of Pancasila

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Abstract

Freedom of religion is one of the fundamental human rights guaranteed by the Indonesian constitution, specifically Article 28E paragraphs (1) and (2) and Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This guarantee is inseparable from the philosophical foundation of Pancasila, which places Belief in One God as the first principle and serves as an umbrella for diversity of beliefs in Indonesia. This paper aims to analyze the role of law in ensuring the implementation of freedom of religion in accordance with the values of Pancasila. The research method used is normative juridical, with a legislative and conceptual approach, as well as a literature study from various scientific journals and legal documents. The results of the study show that positive law in Indonesia has provided a strong framework for protecting freedom of religion, but in practice it still faces various challenges, such as biased interpretations, horizontal conflicts, and discrimination. The role of law is not only limited to regulation, but also to consistent enforcement and public education to foster tolerance and mutual understanding. The integration of Pancasila values in every policy and law enforcement is crucial to creating a harmonious society that upholds religious pluralism.

1. Introduction

Indonesia is a diverse country rich in ethnic, cultural, and religious diversity. This diversity has been a distinctive feature of the nation that has been recognized and respected since the proclamation of independence. Pancasila, as the foundation of the state and the ideology of the nation, explicitly places Belief in One God as the first principle, which indicates recognition of the existence of God and the freedom of every citizen to embrace their respective religions and beliefs. The constitutional guarantee of freedom of religion is enshrined in Article 28E paragraphs (1) and (2) and Article 29 paragraph (2) of the Constitution of the Republic of Indonesia of 1945 (UUD NRI 1945), which explicitly states that every person is free to embrace a religion and worship according to their religion, choose education and teaching, choose employment, choose citizenship, choose a place of residence within the territory of the state and leave it, and have the right to return. Furthermore, the state guarantees the freedom of each citizen to embrace their respective religions and to worship according to their religion and beliefs.

Indonesia, as a country rich in cultural, ethnic, and religious diversity, views freedom of religion as a fundamental human right. This is reflected in the 1945 Constitution, particularly in Articles 28E and 29, which guarantee freedom of religion for every citizen. Pancasila, as the foundation of the state, also places the first principle, Belief in One God, as the legal umbrella for religious diversity in Indonesia. However, despite constitutional guarantees, the practice of freedom of religion in Indonesia often faces challenges, both legally and socially (Komnas HAM, 2020).

The main challenges faced are biased legal interpretations of religious freedom and horizontal conflicts between religious groups, which often lead to intolerance and violence. In addition, discrimination against religious minorities still occurs frequently, both in social life and in the political sphere. In this context, the role of law is crucial, not only in providing regulations, but also in ensuring fair and consistent enforcement (Kevin Boyle & Juliet Sheen, 1997).

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Previous studies have identified several factors that influence the implementation of religious freedom in Indonesia. For example, Kevin Boyle & Juliet Sheen (1997) in their book *Freedom of Religion and Belief: A World Report* reveal that although many countries guarantee freedom of religion in their constitutions, the practice of religious freedom faces major challenges, such as religious discrimination and unequal access for minority groups. Furthermore, Amartya Sen (2006) in *Identity and Violence: The Illusion of Destiny* emphasizes that strong social identities can exacerbate religious differences and trigger intergroup violence, indicating that religious freedom is not only limited to the law but also to harmonious social integration (Amartya Sen, 2006).

Furthermore, Rajeev Bhargava (1998) in *Secularism and Its Critics* criticizes how secularism and religious freedom must go hand in hand to create space for religious pluralism. Bhargava argues that religious freedom cannot be separated from the fair application of secularism in pluralistic countries, such as Indonesia, which require more inclusive policies. Research by Brian Grim & Roger Finke (2011) in *The Price of Freedom Denied* also states that the suppression of religious freedom can harm a country socially and economically, and that countries that guarantee religious freedom tend to be more politically stable.

In the Indonesian context, despite various regulations that guarantee freedom of religion, such as Law No. 39 of 1999 on Human Rights and Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs No. 9 and 8 of 2006, the implementation of these policies still faces major challenges, particularly in relation to differences in legal interpretation and discriminatory practices that often occur in society. Therefore, there needs to be a more systematic effort to strengthen law enforcement and raise public awareness to respect freedom of religion as an inviolable human right.

Recent research shows that religious discrimination remains a significant issue in Indonesia. A study by Aula (2023) identifies that the dominance of majority groups in various aspects of life often leads to the marginalization of religious minority groups. This creates inequality in the application of social justice values, which should be a key pillar of national life (Aula, S. 2023). In addition, the annual report by SETARA Institute in 2024 recorded 217 incidents, including 329 acts of religious freedom violations throughout 2023. These cases of intolerance and violence show that the state needs to be present and take adequate measures to protect the religious rights of its citizens (Setara Institute, 2024). In order to overcome these challenges, it is important to examine the role of law in guaranteeing freedom of religion in accordance with the principles of Pancasila. The application of the values of social justice and religious moderation needs to be strengthened through education, consistent law enforcement, and collaboration between the government, civil society, and religious leaders.

This study aims to analyze how the law can ensure the implementation of religious freedom in accordance with the principles of Pancasila, as well as to explore the challenges that still exist in guaranteeing religious freedom in Indonesia. Using a normative legal approach, this study will examine legal concepts related to freedom of religion and evaluate the effectiveness of existing regulations, as well as provide recommendations for strengthening law enforcement in order to create a more tolerant, just, and harmonious society within the framework of religious pluralism.

2. Method

This study uses a normative juridical research method, which is legal research conducted by examining reference materials or secondary data (Marzuki, P.M, 2010). The approaches used include:

- 1) Statute Approach: Analyzing various laws and regulations relevant to freedom of religion and Pancasila. This study will analyze various laws and regulations relevant to religious freedom and the principles of Pancasila, including the 1945 Constitution, the Human Rights Law, and other related regulations governing the implementation of religious freedom in Indonesia.
- 2) Conceptual Approach: Analyzing legal concepts and doctrines related to freedom of religion, human rights, and Pancasila. This approach will be used to explore and analyze concepts related to religious freedom, such as human rights, religious pluralism, and secularism, in the context of Pancasila.
- 3) Literature Study: Collecting and analyzing data from books, scientific journals, articles, and other legal documents related to the research topic. Data taken from the literature will include relevant previous studies, both normative and those highlighting practical challenges in the implementation of religious freedom in Indonesia.

This study will examine the results of literature studies through qualitative analysis to identify patterns and trends related to the implementation of religious freedom in Indonesia. By analyzing legal texts, doctrines, and previous research findings, this study aims to explore the relationship between religious freedom and the principles of Pancasila, as well as to evaluate whether existing laws are effective enough in protecting religious freedom. This method is expected to provide a clear picture of the relationship between religious freedom, law, and Pancasila values, as well as provide recommendations that can be implemented within the Indonesian legal framework to create a more tolerant and pluralistic society (Arikunto, S, 2010).

3. Result and Discussion

3.1. Freedom of Religion from a Legal and Pancasila Perspective

This section will provide an in-depth explanation of the definition and scope of religious freedom from the perspective of international and national law. It will discuss how Pancasila, particularly the principles of Belief in One God and Just and Civilized Humanity, form the philosophical foundation for the guarantee of religious freedom in Indonesia. The analysis will cover the differences between freedom of religion and freedom of belief, as well as the limitations that may exist in the legal and social context in Indonesia. It is important to explain that freedom of religion includes the right to embrace a religion, not to embrace a religion, to change religions, and also the right to worship and spread religious teachings peacefully.

Freedom of religion is one of the human rights that is constitutionally and philosophically guaranteed in many countries, including Indonesia. From an international law perspective, freedom of religion is enshrined in various legal instruments, one of which is the Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly in 1948. Article 18 of the UDHR affirms that every individual has the right to freedom of religion and worship in accordance with their beliefs, as well as the right to change their religion or beliefs without coercion. International law also recognizes the freedom to spread religious teachings peacefully, as long as it does not harm others or violate applicable laws.

At the national level, the Constitution of the Republic of Indonesia of 1945 (UUD 1945), especially in Article 28E paragraph (1) and (2), and Article 29, guarantees the freedom of every citizen to profess religion and worship in accordance with his religion. These articles are in line with the principles contained in Pancasila, which is the basis of the ideology of the Indonesian state. The first precept of Pancasila, Divinity Almighty, explicitly recognizes the existence of God Almighty, which is the foundation for the recognition of religious diversity and freedom to embrace religion according to their respective beliefs. The second precept, just and civilized humanity, emphasizes the importance of respect for Human Rights, which includes freedom of religion.

However, although freedom of religion is guaranteed by the Constitution, its practice often encounters restrictions. This is due to the difference between freedom of religion and freedom of belief, which often causes debate in the legal and social context in Indonesia. Freedom of religion, as reflected in Article 28E paragraph (1), includes the right to profess religion, not to profess religion, to change religion, as well as the right to practice worship and spread religious teachings peacefully. However, freedom of belief is not always absolute. In some cases, freedom of religion may be restricted by law to protect the public interest, such as in the case of blasphemy or the dissemination of religious teachings that are considered troubling to society.

3.1.1. Analysis of the difference between freedom of religion and freedom of belief

Freedom of religion includes the right to choose a religion or belief without coercion from any party. On the contrary, freedom of belief is broader, including the right to hold personal beliefs that can go beyond the boundaries of a particular religion. Although freedom of religion and freedom of belief are often used interchangeably, in practice, there are fundamental differences that can affect the implementation of both in society.

- 1) Religious freedom refers to the right to profess and practice religion freely, both personally and in communion with other religious people. For example, a person has the right to profess a particular religion, perform religious rituals, and establish a place of worship in accordance with his beliefs.

- 2) Freedom of belief refers more to the right of individuals to hold and propagate views of life or beliefs that are personal in nature, which are not limited to a particular religion. For example, a person can believe in moral principles or a philosophy of life that is not tied to an official state-recognized religion.

3.1.2. Limits on religious freedom in legal and social contexts in Indonesia

In Indonesia, although freedom of religion is guaranteed by the 1945 Constitution and Pancasila, there are some restrictions that can be applied to maintain public order and Social Security. These limits often arise in the context of interreligious conflicts or religious defamation that can generate tensions in society. Therefore, religious freedom must be exercised with a sense of responsibility and must not harm the rights of others, including the right to religion and belief freely.

For example, in cases of blasphemy involving contempt for a particular religion, freedom of religion may be restricted under the pretext of protecting the community from potential violence or social division. In addition, the state also has an obligation to ensure equality for all religions and beliefs, so that minority religious groups can practice their beliefs without discrimination or threats of violence.

3.1.3. The importance of maintaining tolerant and peaceful religious freedom

Pancasila as the basis of the state teaches the importance of tolerance, mutual respect, and social justice. The second precept, "just and civilized humanity", reminds us to uphold justice without distinction of religion or belief. Therefore, religious freedom in Indonesia is not only about the right to choose or worship according to their respective religions, but also about how to maintain harmony among religious communities and prevent intolerance that can damage social harmony.

It is important to emphasize that the freedom of religion stipulated in the 1945 Constitution and Pancasila is not an absolute freedom. The state, in this case, has a role to regulate and restrict religious freedom, especially when it may endanger public order or damage interreligious relations in this pluralistic Indonesia. Thus, the freedom of religion guaranteed by the Constitution must be balanced with efforts to maintain diversity, tolerance, and social harmony that supports religious pluralism in Indonesia.

3.2. Juridical foundation of Religious Freedom in Indonesia

This section will elaborate in detail the legal basis of religious freedom in Indonesia, starting from the 1945 Indonesian constitution (Article 28e, Article 29) to the laws and regulations under it. Law No. 39 of 1999 on Human Rights, Law No. 12 of 2005 on ratification of the International Covenant on Civil and Political Rights, and other relevant regulations such as joint regulations of the Minister of religion and the Minister of Home Affairs No. 9 and 8 of 2006 on guidelines for the implementation of the duties of regional heads/deputy regional heads in the maintenance of Religious Harmony, empowerment of religious harmony forums, and the establishment of houses of worship. The analysis will include how each such regulation contributes to guaranteeing religious freedom and whether there is a potential overlap or conflict of norms.

3.2.1. Law No. 39 of 1999 on Human Rights

Law No. 39 of 1999 on Human Rights provides a more detailed juridical foundation on religious freedom in Indonesia. In its articles, this law affirms the right of every individual to profess a religion, worship in accordance with their beliefs, and declare their faith or religion without any threat or pressure from other parties. It also provides for the protection against discrimination that may arise as a result of religious differences, and establishes the role of the state in protecting these rights.

3.2.2. Law No. 12 of 2005 on ratification of the International Covenant on Civil and Political Rights

The ratification of the International Covenant on Civil and political rights through Law No. 12 of 2005 further affirms Indonesia's commitment to the right to freedom of religion as stipulated in Article 18 of the Covenant. This article states that everyone has the right to freely choose a religion or belief and to express

his religion privately or in community. This law brings Indonesia to an international obligation to ensure the protection of religious freedom for every citizen.

3.2.3. Joint regulation of the Minister of Religious Affairs and the Minister of Home Affairs No. 9 and 8 of 2006

Joint regulation of the Minister of Religious Affairs and the Minister of Home Affairs number 9 and 8 of 2006 regulates the guidelines for the implementation of the duties of regional heads in maintaining religious harmony, empowerment of religious harmony forums, and the establishment of houses of worship. This regulation provides practical guidance regarding the procedure for the establishment of houses of worship and efforts to create a conducive situation for religious people. In this context, local governments have an important role to play in facilitating the construction of houses of worship and ensuring that there is space for all religious people to carry out their worship without hindrance. However, this regulation can also cause problems in practice, especially related to differences in interpretation between Central regulations and regional policies that can limit religious freedom, especially for minority religious groups.

3.2.4. Analysis of potential overlap and conflict of norms

Existing regulations, although designed to guarantee freedom of religion, often have the potential to overlap or conflict norms. For example, the joint regulation of the Minister of Religious Affairs and the Minister of the Interior on the establishment of houses of worship can conflict with religious freedom for minority groups, who often face obstacles in establishing their houses of worship. Some regions have even implemented stricter rules regarding the establishment of places of worship based on the majority religion, which could exacerbate discrimination against minority religions.

On the other hand, although the law on human rights and the International Covenant provide guarantees of freedom of religion, the implementation of this policy sometimes encounters obstacles due to the misalignment between legal norms of a national nature and the social reality that develops in society. This makes the implementation of religious freedom often not fully guaranteed, especially for religious groups that lack political or social power.

In conclusion, although Indonesia has provided a strong legal basis for religious freedom, the implementation of policies related to religious freedom still needs to be strengthened, especially in the face of practical challenges arising from biased legal interpretations, social conflicts, and religious discrimination. The government, along with the relevant institutions, must work together to ensure that every individual can enjoy freedom of religion without hindrance.

3.3. Challenges and problems of Religious Freedom

This section will identify and analyze various challenges that hinder the guarantee of religious freedom in Indonesia. Such challenges may include:

- 1) Biased interpretation of laws: how interpretations of laws and regulations, especially those relating to the establishment of houses of worship or desecration of religion, are often used to restrict religious freedom.
- 2) Horizontal conflicts: cases of intolerance and violence between religious people or against religious minority groups.
- 3) Discrimination: forms of discrimination experienced by minority religious groups in social, economic, and political aspects.
- 4) The role of Non-state actors: the influence of certain groups of people who tend to be intolerant and how this affects the implementation of religious freedom.
- 5) Weak law enforcement: cases of violations of religious freedom that are not dealt with decisively by law enforcement officers.

3.3.1. Biased interpretation of the law

Interpretation of laws and regulations is often one of the biggest obstacles in the implementation of religious freedom in Indonesia. For example, regulations related to the establishment of houses of worship or desecration of religion are often interpreted narrowly or biased, which ultimately limits religious freedom. In some cases, imbalances in legal interpretations lead to unfair policies toward minority religious groups, impede them from freely worshipping, and often lead to social conflicts.

Case in point: the case of the closure of houses of worship for minority religious groups, as is often the case with churches that do not meet administrative requirements, when under the Constitution, every citizen has the right to establish a place of worship according to their beliefs.

3.3.2. Horizontal Conflict

Horizontal conflict, which is tension or violence between religious groups or against minority religious groups, is a major challenge in ensuring religious freedom in Indonesia. These tensions are often caused by differences in beliefs that are not overcome by good communication and understanding, as well as the influence of various external factors, such as identity politics or intolerant groups.

Case in Point: violence between different religious groups, such as conflicts between Muslims and Christians that occur in some regions, or attacks on minority religious groups such as Ahmadis and Shiites, often stems from an inability to create tolerance between groups.

3.3.3. Discrimination

Discrimination against minority religious groups in Indonesia is still a serious problem. This discrimination can occur in different aspects of life, such as social, economic and political. Minority religious groups often do not get the same rights, whether in terms of access to work, education, or other social rights. Discrimination can also occur in the treatment of the state apparatus or society towards religious groups that differ from the majority.

Case in point: minority religious groups such as Ahmadis and Shiites often experience discrimination both socially and legally. They not only have difficulty in setting up places of worship, but are also faced with violence and negative stigma from society.

3.3.4. The Role Of Non-State Actors

Non-state actors, such as community groups or faith-based organizations that tend to be intolerant, often have great influence in influencing policies or even actions that restrict religious freedom. Their influence in the form of social pressure or intimidation often leads to restrictions on religious freedom for groups that do not share the religion of the majority.

Case in Point: groups that have an intolerant ideology, such as mass organizations that claim to be "guardians of religion", often carry out actions that suppress other religious groups, even engaging in violence. This group often has the support of a part of society that supports their attitude towards minority groups.

3.3.5. Weak Law Enforcement

One of the biggest challenges in guaranteeing religious freedom is weak law enforcement. Many cases of violations of religious freedom are not dealt with decisively by law enforcement officials, both at the local and national levels. The inability to enforce the law fairly and consistently can worsen conditions and create public distrust of the legal system in Indonesia.

Case in point: cases of violence committed against religious minorities, such as the destruction of places of worship or physical violence, often do not find appropriate enforcement, or even the perpetrators are not strictly punished. This shows the inability of law enforcement in protecting religious freedom in Indonesia.

These challenges not only affect the direct implementation of religious freedom, but also create social injustices that can undermine the pluralistic fabric of society. Therefore, more effective measures are needed in law enforcement, public education on tolerance, and policies that are more inclusive and adaptive to religious diversity in Indonesia.

4. Conclusion

Freedom of religion in Indonesia is a fundamental right that is firmly guaranteed by the 1945 Constitution and Pancasila as the philosophical basis of the state. Positive law has provided a comprehensive regulatory framework, ranging from the Constitution to implementing laws and regulations, aimed at protecting the right of every citizen to embrace and practice their respective religions. Pancasila, with the supreme divine precepts and a just and civilized humanity, becomes the moral and ethical foundation that requires tolerance, mutual respect, and harmony among religious people. Therefore, the role of law does not only stop at the establishment of regulations, but also at consistent, fair and non-discriminatory implementation and enforcement. Optimizing the role of law requires synergy between the government, law enforcement officials, and civil society in fostering legal awareness, promoting tolerance, and resolving conflicts peacefully and fairly. Thus, the law can serve as an effective instrument to realize the ideals of Pancasila in ensuring religious freedom for all Indonesian people.

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