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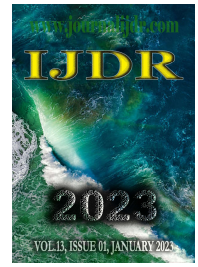
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RESEARCH ARTICLE

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RELIGIOUS FREEDOM AND RELIGIOUS TOLERANCE IN INDONESIAN LAW

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ABSTRACT

Religious tolerance is the path to religious freedom, and the right to practice one's religion is recognized as a human right that is protected by both national and international law. The goal of this normative study is to determine whether Indonesian law guarantees religious liberty and tolerance. The Republic of Indonesia's 1945 constitution includes a provision for the right to religion as a human right, allowing everyone to practice their faith in accordance with their beliefs. Tolerance among religious communities can foster religious freedom. Therefore, religious tolerance is an obligation to preserve national unity and the right of every individual to freedom of religion.

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INTRODUCTION

Humans have been entitled to fundamental rights ever since they were born. There are five categories of human rights that every person has, as stated in the Universal Declaration of Human Rights: a. Personal rights (security rights for personal needs); b. Legal rights (guaranteed rights to legal protection); c. Civil and political rights; d. Subsistence rights (guaranteed rights to resources to support life); and e. Economic, social and cultural rights.¹ Human rights have always been the core of a modern state Constitution, including the 1945 Constitution of the Republic of Indonesia post-amendment. The right to embrace a religion is recognized as a part of human rights guaranteed by both national and international law. As a result, officially, every person's constitutional rights include human rights.

METHODS

This is a normative legal study, and it is typically referred to as a study of documents. It uses a qualitative method to analyze data and draws on secondary data from books, regulations, court decisions, legal theories, and doctrines as its source. The goal of this normative study is to find out what Indonesian law says about the right to religious freedom and religious tolerance.

RESULT AND DISCUSSION

Indonesia is a plural country with the national motto "Bhinneka Tunggal Ika," which means "Unity in Diversity" in old Javanese.

The nation of Indonesia, which is made up of a variety of cultures, regional languages, races, ethnicities, religions, and beliefs, is the focus of the motto. The preceding diversity principle is in line with Pancasila, the fundamental principle of state life. As a fundamental state, Pancasila must be made a fundamental value for all legal products in Indonesia.² Pancasila is made up of five principles that work together to create unity in diversity: 1. The belief in one God; 2. A just and civilized humanism; 3. Unity of Indonesia; 4. Democratic citizenship lead by wise guidance born of representative consultation; 5. Social just for all the people of Indonesian.^{3,4} Soekarno came up with the first principle, "Belief in God," in recognition of the fact that Indonesians were religious, regardless of their religion. As a result, Indonesia is neither a secular nor a religious nation because it does not distinguish between religious and political matters. In Indonesia, it is impossible to say that religion and the state are secular because religion and the state represent the nation's shared values. It also does not establish a particular religion as the standard for nationality. However, as Pancasila explains, national dialogue is built by all religions. Similar to the first precepts, which establish divinity as the most fundamental principle of national life.^{4,5} Mahfud M.D. asserts that the Indonesia is a state that is able to safeguard and promote the growth of any and all religions held by its citizens regardless of their size. The state has a constitutional obligation (constitutional obligation/judicial review) to protect every citizen's freedom of religion, which also means that the state protects all religions and their beliefs. This is a departure from this concept.⁶ The 1945 Constitution recognizes, guarantees, and provides legal protection for the right to religion as a human right, ensuring that everyone is free to practice and worship in accordance with his or her religious beliefs. This makes it more important for society and the government to act in

a way that respects everyone's right to religion. All legal actions taken by the government—making laws and regulations (regeling) and issuing decrees or decisions (beschiking)—must ensure that a person is free to choose the religion he or she believes in and provide legal protection for the exercise of religious rights. It does not result in a breach of the aforementioned rights practice. However, many government actions are thought to restrict a person's ability to exercise his or her religious rights.^{1,3}

Article 28E, paragraphs 1 and 2, of the 1945 Constitution of the Republic of Indonesia, regulate arrangements regarding the right to religion as a human right, which states that:

- (1) *Every person shall be free to choose and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.*
- (2) *Every person shall have the right to the freedom to believe his/her faith, and to express his/her views and thoughts, in accordance with his/her conscience.*

In addition, the provisions of paragraph 1 of Article 28 I, which state that the rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances. Additionally, it is governed by Article 29 paragraph 2 of the 1945 Constitution, which states that the state guarantees all persons the freedom of worship, each according to his/her own religion or belief.³ The Republic of Indonesia has determined that the right to religion is a human right on the basis of the provisions of Article 28E paragraphs 1 and 2, as well as Article 28I paragraph 1 and Article 29 paragraph 2 of the 1945 Constitution, which must be guaranteed, respected, and protected by society as well as the government. According to article 28I paragraph 4 of the 1945 Constitution, the state, particularly the government, is responsible for the protection, promotion, enforcement, and fulfillment of human rights. Based on the TAP MPR Number XVII/MPR/1998 Concerning the View of the Indonesian Nation on Human Rights and the Human Rights Charter, Law Number 39 of 1999 concerning Human Rights further regulates freedom of religion and worship. The following is how the right to freedom of religion and worship is governed by Article 22 of the 1999 Human Rights Law:⁷

- (1) *Everyone has the right to freedom to choose his religion and to worship according to the teachings of his religion and beliefs.*
- (2) *The state guarantees everyone the freedom to choose and practice his religion and to worship according to his religion and beliefs.*

Additionally, the provisions of Law No. 12 of 2005, which deals with the ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights), state in paragraph (1) of Article 18 that Every person has the right to freedom of thought, conscience and religious. This right includes freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teach.⁸ There are two considerations that must be made within the framework of religious freedom: freedom to act as well as freedom to be. Fundamental religious freedom is connected to freedom to be. The state cannot prevent individuals from expressing their religious beliefs in the context of their own lives. For instance, Muslims are required to pronounce their God's name as "Allah," which differs from how Catholics, Protestants, Buddhists, and Hindus do so.⁹ The way people relate to their God through their religious rituals is the same. The state, for example, cannot intervene in any of this. However, "freedom to act," specifically freedom in relation to individuals or society, should not be overlooked. Respect for certain rights and responsibilities is required. Religious beliefs cannot be freely expressed in public or in society. In a similar vein, your actions

should not cause harm or tarnishment to other people. In this area, the state can intervene, for example through regulations and laws, to promote tolerance in Indonesia.^{10,11} Freedom of religion is a right that belongs to every individual and must be respected, whereas tolerance is an obligation of religions. Protecting the unity of the nation and fostering prosperity for all citizens are two of the goals that the state and the nation strive to achieve. The issue of national harmony, including interreligious relations and religious freedom is one of the most significant obstacle to realizing the welfare of all citizens.^{8,10} There are a lot of things that cause religious communities to be at odds. These things can be broken down into two categories: internal factors and external factors. A person's attitude is influenced by internal factors because of his religious understanding of his religious teachings, such as a tendency toward radicalism and extremism, as well as a subjective fundamental understanding of the religion practiced. In the mean time, different elements, like a disposition of chance for the sake of religion as an item of interest, have brought about a delayed compassionate calamity. The significance of these discordant factors to Indonesian religious relations must be investigated. This is based on the idea that understanding the conflict's origins is one step toward resolving disagreements.^{10,11} Tolerance refers to respecting and allowing for other religious beliefs, even if they differ from one's own, in relation to religion and belief. Tolerance does not necessitate abandoning one's religious teachings or beliefs because they differ from those of others; rather, it permits those differences to exist. Religious liberty can only be realized through tolerance. If religious freedom can include tolerance, religions will be more moderate. Tolerance is an obligation and freedom of religion is a right that every individual and group has that must be protected and respected.^{9,10}

Despite the fact that the right to religion is protected by law as one of the fundamental human rights that must be upheld, respected, and upheld. In a democratic society, the right to religion cannot, however, jeopardize peace, the support and security of society, public morality, public health, the interests of justice, and general welfare. As a result, in order to preserve harmony among religions, the state has the authority to impose penalties and prohibit their use.⁸ This is based on the provisions of paragraph 2 of Article 28J of the Constitution of 1945, which states:³

In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

CONCLUSION

Freedom of religion is one of the many human rights outlined in the Republic of Indonesia's constitution, particularly in articles 28A to 28J. These rights are further outlined in Law No. 39 of 1999 on Human Rights and Law No. 12 of 2005 on Ratification of the International Covenant on Civil and Political Rights. According to Article 28 I paragraph 1 and Article 29 paragraph 2 of the 1945 Constitution, this freedom is also protected. Religious freedom can be promoted by religious communities' tolerance. As a result, religious tolerance is an obligation to safeguard national unity and religious freedom for all.

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