

Comparative Study of the Constitutions of Indonesia and China Regarding the Existence of Atheists

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ABSTRACT (10PT)

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This research is based on comparing the Indonesian and Chinese constitutions regarding the existence of atheists and the factors that cause differences in the recognition of the Indonesian and Chinese states against atheism. This research uses normative legal research methods focusing on legal objects with a comparative approach to law and legislation. The existence of atheists in the Indonesian constitution originated from communism with an anti-God attitude contrary to the Indonesian constitution, which is by the first principle of Pancasila and article 29 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This is very contrary to the Chinese constitution, which regulates freedom of religion and gives the right to embrace or not embrace any religion, meaning that China recognizes the existence of atheists. The Chinese constitution acknowledges the existence of atheists based on the communist ideology adopted.

Introduction

The virtual world, especially the social media platform Facebook, was once shocked by a man from West Sumatra who claimed to be an atheist. Alexander Aan, a 30-year-old man, posted the words "God Does Not Exist" on his Facebook page and was finally found guilty of religious hatred based on the 2008 Electronic Transactions Law.¹ As a result of his actions, the Sumatra Court sentenced him to two and a half years and a fine of IDR 100 million. The verdict eventually became controversial. Few considered it unfair and did not reflect religious freedom as part of human rights or HAM.²

The main issue of the decision of the case above is human rights. This is because freedom of religion or not to embrace a religion is included in human

¹ Kate Lamb, "Mengaku Atheis Di Facebook, Seorang Pria Sumatera Divonis 2,5 Tahun," 16 Juni 2012, June 2012.

² Muwaffiq Jufri, "Pembatasan Terhadap Hak Dan Kebebasan Beragama Di Indonesia," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 1, no. 1 (2016): 40–47, <https://doi.org/10.17977/um019v1i12016p040>.

freedom. The concept of atheism is included in freedom of thought and conscience because atheism is the result of philosophical thinking related to the existence of God. However, about the incident of the atheist confession that shocked social media some time ago, it needs to be underlined that the first principle of Pancasila as the basis of the state affirms divinity, which reads "Belief in the One Almighty God".

Thus, it means that Indonesia is a country based on divinity. This is also contained in the 1945 Constitution as the state constitution, namely in Article 29 paragraph (1), which reads, "The state is based on the One Almighty God". What is meant by atheism itself is a view that rejects the existence of supernatural powers, life after death, or generally being in the realm of God.³ So atheism is a philosophical understanding that rejects the foundation or teachings of religion in morality and the existence of God, as well as the day of resurrection, miracles, or revelations and religious scriptures.⁴ In other words, they do not believe in God and do not have a religion. Therefore, a question arises, whether the concept of atheism violates Pancasila and the Constitution.

On the other hand, someone who claims to be an atheist can have an impact on several different areas. The identity card or KTP in Indonesia has a religion column. A person who is an atheist will have difficulty in the administration of their KTP. In addition, an atheist will also feel the impact in terms of marriage. In Law No. 1 of 1974 concerning Marriage, in Article 2 paragraph (1), marriage is considered valid if it is carried out according to the laws of each religion and belief. While atheists themselves do not have a faith and do not believe in the existence of God. From all these problems and the consequences felt by atheists, it can be said that the existence of atheists in Indonesia has not been recognized until now.⁵

The conditions in Indonesia are very different from the conditions in China. In China, everyone is given the freedom to embrace a religion or not to embrace a religion. China is the country with the highest population density and the most atheists in the world. Based on survey results and data from the World Population Review 2021,⁶ in China, the total number of atheists reached 91% (per cent) and of the total, almost 67% stated that they were atheists. The rest claimed to be non-religious⁷ One reason is that its constitution contains articles or regulations

³ Mila Rima Dani, "Konsep Ketuhanan: Ateisme," *Relinesia: Jurnal Kajian Agama Dan Multikulturalisme Indonesia* 1, no. 2 (2022): 2.

⁴ Jagok Halim Ramadani, "Perlindungan Hukum Terhadap Penganut Ateisme Di Indonesia," *Jurist-Diction* 1, no. 1 (September 18, 2018): 185, <https://doi.org/10.20473/jd.v1i1.9737>.

⁵ Muwaffiq Jufri, "Persoalan Hukum Pengakuan Hak-Hak Penganut Aliran Kepercayaan Di Bidang Administrasi Kependudukan," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 3 (2020): 461–75, <https://doi.org/10.33331/rechtsvinding.v9i3.470>.

⁶ Le Shi et al., "Prevalence and Correlates of Suicidal Ideation among the General Population in China During the COVID-19 Pandemic," *European Psychiatry* 64, no. 1 (February 3, 2021): e18, <https://doi.org/10.1192/j.eurpsy.2021.5>.

⁷ Pratitis Nur Kanariyati, "5 Negara Penganut Atheis Terbanyak, 2 Teratas Di Asia," *23 Desember 2021* (Sindo.News.com, 2021).

regarding the freedom not to embrace a religion and protects its citizens who do not adhere to a religion or declare themselves atheists from acts of discrimination.⁸

Therefore, with the protection of atheism, the existence of atheists in China has been recognized. In the Constitution of the People's Republic of China, Article 36 states that "citizens of the People's Republic of China enjoy freedom of religion. No state body, public organization or individual may force its citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in or do not believe in any religion. The state protects normal religious activities. No one may use religion to carry out activities that disrupt public order, harm citizens' health or disrupt the State's education system. Religious bodies and religious affairs shall not be subject to foreign domination."⁹

Unlike Indonesia, where someone who declares himself an atheist can be prosecuted and even found guilty. In addition, an atheist in Indonesia will also feel the impact when getting married and registering his ID card. In China, someone is prohibited from discriminating against someone who declares himself an atheist. China provides full guarantees and protection for religious freedom for its citizens.¹⁰ With the impact on the registration of ID cards and marriages, this can be said to be discrimination against atheists in Indonesia. While in China, discrimination against atheists is prohibited by the state. In other words, the existence of atheists in China is recognized and even protected. There is a striking difference in conditions here. This is influenced by several aspects, including the country's constitution.

In Indonesia itself, no written regulation directly states the prohibition of atheism. However, let's look at the first principle of Pancasila and Article 29 paragraph (1) of the 1945 Constitution, which states that the state is based on divinity. It can be said that atheism, which is disbelief in God, is not in line with the foundation of the state and the Indonesian constitution.¹¹ In addition, there is a prohibition on spreading atheism in Indonesia. However, if we talk about atheism in China, the state has given freedom, guarantees, and protection to its citizens as stated in the state constitution. There is no discrimination, which can interfere with its citizens' feeling of freedom of religion, non-religion, or even atheism. Between the two-state constitutions, there are striking differences regarding the recognition of atheism.

⁸ Zhibin Xie, "Religion and State in China: A Theological Appraisal," *Journal of Church and State* 63, no. 1 (February 12, 2021): 1–22, <https://doi.org/10.1093/jcs/csaa005>.

⁹ Songfeng Li, "Freedom in Handcuffs: Religious Freedom in The Constitution of China," *Journal of Law and Religion* 35, no. 1 (April 21, 2020): 113–37, <https://doi.org/10.1017/jlr.2020.1>.

¹⁰ Weixiang Luo and Feinian Chen, "The Salience of Religion Under an Atheist State: Implications for Subjective Well-Being in Contemporary China," *Social Forces* 100, no. 2 (October 11, 2021): 852–78, <https://doi.org/10.1093/sf/soab049>.

¹¹ Muwaffiq Jufri, "Regulation Model of Religious Rights and Freedoms for Local Religious Believers in the Majapahit Constitution," *HAM* 1, no. 1 (2022): 57–67, <https://ejournal.balitbangham.go.id/index.php/ham/article/view/3112>.

With the existence of different regulations in the form of constitutions between Indonesia and China, it has become an exciting topic to study. Here, the researcher is also interested in conducting research related to this. However, before the researcher researched the consistency of atheism, there had been previous research which discussed more or less the existence of atheism itself. In 2023, there was a study entitled "The Involvement of Santri in the Perception of Chinese Discourse". The authors are Anita Dewi, Feri Ansori, Saiful Hakam, Al Azhar University Indonesia. The formulation of the problem of the study is How is the existence and role of santri in Indonesian-Chinese cultural diplomacy?. While the legal issues raised are legal issues discussed regarding the existence and role of santri in Indonesian-Chinese cultural diplomacy. So that there is a difference between this previous research and the research that will be carried out by the researcher in the form of a discussion of the Existence of Atheists in the Constitutions of Indonesia and China.

In addition to the above research, another research that has been conducted previously is research entitled "Alexander Aan "Minang Atheist" in West Sumatra Province", which was conducted by Asnawati in 2012. The formulation of the problems raised was: a) Who spread Minang Atheism in Dharmasrayat?, b) When did the perpetrator spread Minang Atheism on his Facebook account?, c) What is the factual background for the perpetrator to become an Atheist follower?, d) Why did the perpetrator spread Minang Atheism on his Facebook account?, e) Where did the perpetrator obtain knowledge about atheism?, f) How did Islamic mass organizations, the MUI and local security forces respond to the case of the Minang Atheist perpetrator?. The discussion in the research was in the form of blasphemy committed by Aan which is regulated in Law No. 1 / PNPS / 1965 in conjunction with Law No. 5 of 1969 and violations of Information and Electronic Transactions (ITE) subject to Article 27 paragraph 3 of Law (UU) No. 8 of 2011. So, the difference between this research and the research conducted by the researcher is related to the comparison of the constitution; in the previous research, there was no comparison of the constitution of Indonesia and other countries.

Legal Protection for Indonesian Citizens to Have Religion Reviewed from the Constitution conducted by Dolvie Tanrian, Lendy Siar, and Anastasia E. Gerungan. The formulation of the problems raised include: a) How is the existence of a person's freedom to choose a religion based on the 1945 Constitution Article 28E paragraph 2? b) What is the form of human rights protection for Indonesian citizens who do not have a religion? Then, the legal issue related to the existence of a person's freedom to choose a religion in the 1945 Constitution Article 28E paragraph 2 and legal protection for Indonesian citizens who do not have a religion reviewed from the constitution. So the difference between this study and the research conducted by the researcher lies in

the existence and constitution of Indonesian religion which does not discuss the existence and constitution of Indonesian religion with other countries.

The above studies only focus on atheism and do not compare the Indonesian and Chinese constitutions regarding the existence of atheists. In this regard, the constitution, which is a collection of norms in running the state, needs to be studied first. The system for studying it is also diverse, one of which is using a comparative method by comparing it with the constitutions of other countries. Meanwhile, in Indonesia itself, there are no clear rules stated in the Indonesian constitution, namely the 1945 Constitution, regarding the existence of atheists. While in China, it is clearly stated. By conducting this study in the form of comparing the constitutions, it can be seen that in Indonesia there is a legal vacuum regarding the existence of atheists. So there needs to be further discourse in overcoming this. This research can be a suggestion and input for law enforcers to immediately overcome the legal vacuum that occurs.

Thus, there is a legal conflict or difference or conflict between the Indonesian and Chinese constitutions. So the researcher assumes that this is a problem related to the existence of atheists themselves. Because of the above thoughts, the researcher intends to conduct a more in-depth study related to the comparison of the constitutions of the two countries regarding the existence of atheists, by raising the title "Comparative Study of the Constitutions of Indonesia and China Regarding the Existence of Atheists".

Methods

The type of legal research used in this study is normative legal research focusing on positive law, legal principles and doctrines, legal discovery, legal systematics, comparative law and legal history¹². In this study, the researcher examines and analyzes the comparative constitutions in Indonesia and China regarding the existence of atheists to find out and explain the existence of atheists in Indonesia and China. The approach used in this study uses a comparative approach and legislation (statute approach). In the comparative approach, the researcher seeks information about the constitutions of Indonesia and China to be compared in terms of the constitutional basis for regulating the existence of atheists in the country. In the statutory approach, the researcher discusses the constitutions in Indonesia and China regarding the existence of atheists. The researcher uses the library study technique to collect legal materials in this study. In the form of writing, library studies are carried out by searching for library materials, such as books, journals, scientific works, and so on. The method of

¹² Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum*, Cet. 1 (Bandung: Bandung: Citra aditya bakti, 2004), 52.

analyzing legal materials in this study uses the prescriptive analysis method, namely, to provide arguments for the results of the research conducted.¹³

Discussion

Differences Between the Indonesian and Chinese Constitutions Regarding the Existence of Atheists

The emergence of atheism in Indonesia began in 1911 when a businessman from Solo founded Sarekat Dagan Islam (SDI), which was initially just a business organization based on Islam.¹⁴ Over time, this organization developed into a political movement and changed its name to 'Sarekat Islam'. The leader behind this change was H.O.S. Chokroaminoto (1882-1934), a politically active orator. Sarekat Islam experienced various political problems, which made Chokroaminot, as the supreme leader of Sarekat Islam, understand the concerns of Muslims. Another challenge faced by Sarekat Islam was related to the basic principles of its organization, whether to remain Islamic or change towards communism.¹⁵

In Solo, the relationship between Sarekat Islam and communism was very harmonious, but Hadji Misbach (died 1926), who was also an elder of Sarekat Islam Solo, considered that Islam and Communism were equally important. Therefore they must continue to go hand in hand. Datuk Batua and Haji Misbach were clerics who supported the communist movement. Batua became the engine of the communist movement in the West Sumatra region. Finally, the names Chokroaminot, Semaun, Haji Misbach, and Batua became essential figures in the Indonesian Islamic communist movement through the organisation they founded.¹⁶

Historically, atheism in Indonesia emerged since the founding of the past communist movement, namely "Sarekat Islam". The romanticism about the existence of anti-God groups indeed refers to the communist movement in the past. This is reflected in the assumption of many people who conclude that atheists come from the womb of communist ideology itself. The anti-God

¹³ Amiruddin dan Zainal Asikin, *Pengantar Penelitian Hukum* (Jakarta: Rajawali Pers, 2018), 79, <https://www.rajabrafindo.co.id/>.

¹⁵ Timo Duile, "Being Atheist in the Religious Harmony State of Indonesia," *The Asia Pacific Journal of Anthropology* 21, no. 5 (October 19, 2020): 450–65, <https://doi.org/10.1080/14442213.2020.1829022>.

¹⁶ Syaidina Sapta Wilandra, "Is Communism Incompatible with Religion?: Islam and Communism in Haji Misbach's Thoughts (1914-1926)," *NALAR: Jurnal Peradaban Dan Pemikiran Islam* 8, no. 1 (June 25, 2024): 24–53, <https://doi.org/10.23971/njppi.v8i1.7829>.

attitude also appears in communist dialectics, although it is not significantly related.¹⁷

Because the correlation between atheism and communism lies in the contents of the manifesto put forward by two people: Marx and Engels. The Communist Manifesto warns against "mystical projections" carried out by bourgeois groups to carry out exploitative actions in class conflicts.¹⁸ The mystical projection in question is that religion is used as a tool to mobilize society to submit to the will of the dominant group (capitalists).¹⁹

Although the communist movement existed before Indonesia's independence, it did not influence the formation of the Indonesian constitution. The Indonesian nation remains one that believes in God Almighty; this is reflected in the Constitution of the Republic of Indonesia. The Constitution of the Republic of Indonesia is the 1945 Constitution of the Republic of Indonesia, and its preamble contains the state ideology in the form of Pancasila, the first principle of which is "faith in God Almighty". Furthermore, Article 29 Paragraph 1 of the 1945 Constitution of the Republic of Indonesia states that "the state is based on the belief in God Almighty", and it can be concluded that Indonesia is a country that believes in God Almighty.²⁰

Although the Indonesian constitution states that Indonesia is a godly country, the atheist community in Indonesia still exists and continues to grow to this day. Atheis Indonesia is an Indonesian atheist community. This community has been online since 2008. The purpose of establishing this community is twofold. First, Atheis Indonesia wants to unite other atheists and agnostics. Second, we want to bridge the dialogue between atheists and theists in Indonesia and clarify the understanding of atheism developing in society. The activities of atheists in Indonesia are not the same as the activities of society in general. The atheist community in Indonesia focuses on online activities.

Online activities carried out by the Indonesian atheist community include the creation of virtual communities such as:²¹

¹⁷ Syaidina Sapta Wilandra and Imas Emalia, "Sarekat Islam Sebagai Gerakan Sosial: Dari Gerakan Ratu Adil Ke Sosialisme Islam," *Socio Historica: Journal of Islamic Social History* 1, no. 1 (2022): 54–72, <https://doi.org/10.15408/sh.v1i1.25918>.

¹⁸ Hairiyah Hairiyah, "Islam Dan Nasionalisme: Studi Atas Pergumulan Islam Dan Nasionalisme Masa Pergerakan Nasional Indonesia," *Staatsrecht: Jurnal Hukum Kenegaraan Dan Politik Islam* 2, no. 1 (May 31, 2022): 115–31, <https://doi.org/10.14421/staatsrecht.v2i1.2804>.

¹⁹ Wilandra and Emalia, "Sarekat Islam Sebagai Gerakan Sosial: Dari Gerakan Ratu Adil Ke Sosialisme Islam," 62.

²⁰ Dani Muhtada et al., "The Protection of Civil Rights for the Shi'ite Refugees of Sampang, East Java: A Systemic Governance Approach to Restore the Refugees' RightsThe Protection of Civil Rights for the Shi'ite Refugees of Sampang, East Java: A Systemic Governance Approach to R," *Indonesian Journal of Islam and Muslim Societies* 12, no. 2 (2022): 231–56, <https://doi.org/10.18326/ijims.v12i2.231-256>.

²¹ Karel K. Himawan et al., "Religion and Well-Being in Indonesia: Exploring the Role of Religion in a Society Where Being Atheist Is Not an Option," *Religion, Brain & Behavior* 13, no. 3 (July 3, 2023): 313–15, <https://doi.org/10.1080/2153599X.2022.2070266>.

- 1) The Facebook forum “You Ask Atheists Answer,” abbreviated as “ABAM,” has tens of thousands of pro-atheist and anti-atheist (theist) members and contains active daily dialogue between the atheist and theist communities.
- 2) Indonesian Atheist Facebook Forum. This forum includes internal dialogue by official Indonesian Atheist members.
- 3) Official website or blog of Atheis Indonesia This website contains the latest information on developments in Indonesian atheism and studies or summaries of answers obtained from several of the forums mentioned above (ABAM Facebook Forum and Atheis Indonesia Facebook Forum).

The atheist community in Indonesia continues to grow, but its legal existence is still unclear. There are no clear rules to recognize the existence of atheists in Indonesia. The 1945 Constitution of the Republic of Indonesia, which guarantees freedom of religion, is still based on divinity. On the other hand, atheists themselves do not believe in the existence of God.²²

Since the Constitution is the country's highest law, applying the principle of divinity in the Indonesian Constitution also has implications for other areas of law.²³ Just like the law of marriage based on religion. The residential area has a religious section on the Resident Identity Card (KTP). Meanwhile, in 2012, a man named Alexander Ang was arrested and had to be tried for uploading a confession to the social media platform Facebook that he was an atheist. In the incident, Alexander Anne was arrested on charges of blasphemy.

Some of these policies and events have given rise to interpretations regarding the recognition of the existence of atheists in Indonesia. There is a legal vacuum that regulates the existence of atheists in Indonesia. In Indonesia, being an atheist is not allowed or even prohibited. From the perspective of a divinely-based constitution, atheism (not believing in God) clearly violates the constitution. However, from a human rights perspective, deciding whether to adhere to a religion is everyone's business and there should be no interference from other parties.

In conditions like this, Indonesia must be more assertive in dealing with the emergence of atheism. Because the atheist community in Indonesia itself is growing and needs to be addressed, banned or recognized.²⁴ This legal gap must

²² Muwaffiq Jufri, “Potensi Penyetaraan Agama Dengan Aliran Kepercayaan Di Indonesia,” *Jurnal Yudisial* 13, no. 1 (2020): 21–36, <https://doi.org/10.29123/jy.v13i1.360>.

²³ Muwaffiq Jufri, “Urgensi Amandemen Kelima Pada Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Terkait Hak Dan Kebebasan Beragama,” *HAM*, no. 1 (2021): 636–37, <https://doi.org/http://dx.doi.org/10.30641/ham.2021.12.627-644>.

²⁴ Muwaffiq Jufri and Mukhlis Mukhlis, “Akibat Hukum Pemisahan Hak Beragama Dengan Hak Berkepercayaan Dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945,” *Jurnal Konstitusi* 16, no. 2 (2019): 274–87, <https://doi.org/https://doi.org/10.31078/jk1624>.

be immediately fixed and overcome. Furthermore, the existence of atheism in the Chinese constitution cannot be separated from the political life in China where the current structure and dynamics are the result of a long revolutionary period that lasted from at least 1911 to 1949 and included three major overhauls of the political system consisting of:

- 1) The first revolution occurred in 1911, replacing the imperial system that had lasted for thousands of years with a republican system of government.
- 2) The second revolution occurred in 1928, when the Kuomintang (KMT) succeeded in forming and controlling a new government. This replaced the fragmented “warlord” government in the early days of the Republic of China with an organized and centralized one-party domination system.
- 3) The third revolution occurred in 1949 with the founding of the People's Republic of China under the rule of the Chinese Communist Party.

Since the communists came to power in 1949 and especially since the Cultural Revolution in 1976, more than half of the population (59%) have become atheists or do not believe in God. Initially, the Chinese Communist Party considered religion, including Confucianism, a cultural spirit that opposed progress and supported feudalism and capitalism.²⁵ The CCP then pressured religious groups (beliefs) and banned non-governmental groups. In 1950, the CCP ordered every local government to ban all unrecognized beliefs and organizations that were considered illegal. In 1951, the government officially announced a threatening regulation that anyone who continued the activities of groups not recognized by the government would face life imprisonment or the death penalty.

Then, in 1982, the Central Committee of the Chinese Communist Party issued a new religious-issue policy. The basic policy taken by the Chinese Communist Party regarding religious issues is respect and protection of freedom of religious belief. What is meant is that every citizen has the freedom to practice religion and also the freedom not to practice religion, in accordance with the Chinese constitution. Article 36 of the Constitution of the People's Republic of China which was amended on March 14, 2004 states that:²⁶

“Citizens of the People’s Republic of China enjoy freedom of religious belief.

No State organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.

²⁵ Marika McAdam, *Freedom from Religion and Human Rights Law* (New York, NY: Routledge, 2017. | Series: Routledge research in human rights law: Routledge, 2017), 371, <https://doi.org/10.4324/9781315207957>.

²⁶ Shucheng Wang, “The Chinese Communist Party’s Atheistic Approach to Religious Freedom in China,” *Politics, Religion & Ideology* 23, no. 2 (April 3, 2022): 204–25, <https://doi.org/10.1080/21567689.2022.2090930>.

The State protects normal religious activities. No one may use religion to engage in activities that disrupt public order, impair citizens' health, or interfere with the state's educational system.

Religious bodies and religious affairs are not subject to any foreign domination.”

The constitution, which cites the leadership of the Chinese Communist Party and the guiding principles of Marxism-Leninism and Mao Zedong and Xi Jinping Thought, states that citizens “enjoy freedom of religion” but limits protection of religious practice to “normal religious activities” without defining normal. It says religion should not be used to disrupt public order, harm citizens’ health, or disrupt the education system. The constitution provides for the right to have or not to have a religious belief. It says state bodies, public organizations, and individuals should not discriminate against citizens “who do or do not believe in any religion.” The constitution states, “Religious bodies and affairs shall not be subject to foreign domination.”²⁷

The existence of the Constitution is an acknowledgement of the existence of atheism in China. So in China, atheism is allowed and recognized and allows it to be spread. There are no restrictions on atheism itself. Even if someone joins the Chinese Communist Party (CCP), it is required or obliged to be an atheist. With over 85 million members, the CCP is one of the largest political parties in the world. It is a monolithic and monopolistic party that dominates Chinese political life. It is China's main policy-making body, overseeing the central, provincial, and local government organs that implement these policies.

In addition to regulating its members' religious beliefs and activities, the CCP is officially atheist and promotes atheism in schools and other areas of public life. In speeches, President Xi Jinping and other officials have emphasized that CCP members must be “unyielding Marxist atheists.” As such, the Chinese government widely recognizes atheism.²⁸

Factors Causing Differences in State Recognition of Atheism in the Constitutions of Indonesia and China

This country has a strong foundation for carrying out political activities. This foundation is often in the form of a national ideology. Because it is generally known that the factors that unite a nation include beliefs such as religious beliefs and attitudes, values such as language, ethnicity/race, and ideology.²⁹ In the

²⁷ Luo and Chen, “The Salience of Religion Under an Atheist State: Implications for Subjective Well-Being in Contemporary China,” 861.

²⁸ Zhe Gao, “Is China Repressing or Moulding Religion? ‘Religious Freedom’, Post-Coloniality, and the Chinese State Building,” *Politics, Religion & Ideology* 23, no. 1 (January 2, 2022): 1–22, <https://doi.org/10.1080/21567689.2022.2057478>.

²⁹ Afriadi S Hasibuan and Djoko Sulistyono, “Peranan Ideologi Dalam Integrasi Nasional,” *Kebijakan Pemerintah* 1 (2018): 2.

dictionary, ideology is defined as a set of ideas that reflect the aspirations and social needs of an individual, group, class or culture. Or as a set of doctrines or beliefs that form the basis of a political, economic or other system of views.³⁰

The importance of ideology for a country is also reflected in its function. The function of ideology is:³¹

- 1) The formation of a group or becoming a national identity or character;
- 2) Uniting others;
- 3) A gathering of people of different religions;
- 4) Handling various social conflicts/tensions;
- 5) Building unity.

Therefore, it is unsurprising that a country's ideology influences the order of its national life.³² The existence of ideology and constitution occurs in a unitary order. There are two positions of ideology. First, ideology is located within the legal system but outside the normative legal system, and in this position, ideology functions constitutively and regulatively about the norms in the normative legal system. Second, ideology is the highest legal norm, which becomes the basic norm in the normative legal system because it is the main idea of the Constitution. Therefore, drafting a country's constitution is influenced by the ideology adopted by the government.³³ So, the main factor that allows the presence of atheism in the constitutions of Indonesia and China is the ideology of each country. So, the explanation of ideology as a factor that influences the perception of the existence of atheism in Indonesia and China is as follows:

Factors Influencing the Indonesian Constitution Regarding the Existence of Atheists

Article 29 of the 1945 Constitution of the Republic of Indonesia states, "The State is Based on Belief in One Almighty God." This provision is one of the meanings of the ideology adopted by the Indonesian people. Indonesia adheres to the Pancasila ideology, which includes five values: divinity, humanity, unity, democracy, and justice. These five values are stated in the 5 principles of Pancasila,

³⁰ Felix Tawaang, "Ideologi Dan Wacana Media," *Jurnal Studi Komunikasi Dan Media* 21, no. 1 (2017): 60, <https://doi.org/10.31445/jskm.2017.210105>.

³¹ Abdul Mu'ti and Ahmad Najib Burhani, "The Limits of Religious Freedom in Indonesia: With Reference to The First Pillar Ketuhanan Yang Maha Esa of Pancasila," *Indonesian Journal of Islam and Muslim Societies* 9, no. 1 (May 24, 2019): 111, <https://doi.org/10.18326/ijims.v9i1.111-134>.

³² Galina Oustinova-Stjepanovic, "End of Organized Atheism. The Genealogy of the Law on Freedom of Conscience and Its Conceptual Effects in Russia," *History and Anthropology* 31, no. 5 (October 19, 2020): 600–617, <https://doi.org/10.1080/02757206.2019.1684271>.

³³ Muhammad Lukman Hakim, Indah Dwi Qurbani, and Abdul Wahid, "A Paradox Between Religious Conviction and Recognizing The Freedom of Others on Measuring Religious (in)Tolerance Index in East Java, Indonesia," *Cogent Social Sciences* 9, no. 1 (2023): 1–16, <https://doi.org/10.1080/23311886.2023.2191443>.

namely:³⁴ 1) Ketuhanan Yang Maha Esa; 2) Kemanusiaan yang adil dan beradab; 3) Persatuan Indonesia; 4) Kerakyatan yang dipimpin oleh hikmat kebijaksanaan dalam permusyawaratan/perwakilan; 5) Keadilan sosial bagi seluruh rakyat Indonesia

Pancasila as a national ideology is mentioned in the opening of the 1945 Constitution of the Republic of Indonesia as the constitution of Indonesia.³⁵ From the first principle containing sacred values, we can see that the implementation of national life in Indonesia is based on divinity, so it cannot be separated from religion. This is one of the factors that recognizes the existence of atheists in Indonesia. Because atheism does not believe in the existence of God, whereas Indonesia is a country that believes in God, therefore, this pattern is contradictory. Atheism in Indonesia is contrary to the first principle.³⁶

However, since Alexander An's atheism confession came down in 2012, the existence of atheists has increasingly become a social issue. Mahfud MD argues that atheism is not prohibited by the constitution. According to him, the prohibition of the existence of atheists is a "violation of human rights".³⁷ The incident became a symbol of the recognition of atheist identity and then became an opportunity for the community to discuss atheism more freely. However, the recognition of the existence of atheists in Indonesia is still unclear, both in the country's constitution and other laws and regulations.³⁸

Factors Influencing the Chinese Constitution Regarding the Existence of Atheists

The Chinese Communist Party (CCP) is the ruling political party in China. The CCP influences many policies in China. Communist ideology effectively turns its adherents into atheists. Moreover, communist teachings create a society that

³⁴ Anthin Lathifah et al., "The Construction of Religious Freedom in Indonesian Legislation: A Perspective of Maqāṣid Ḥifẓ Al-Dīn," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 369, <https://doi.org/10.22373/sjhk.v6i1.10957>.

³⁵ Nuruz Zaman, "Constitution in Legal Political Perspective," *Trunojoyo Law Review* 4, no. 1 (August 8, 2022): 45–68, <https://doi.org/10.21107/tlr.v4i1.16487>.

³⁶ Mukhlis et al., "Rejection of Former Shia Community in Sampang Perspective on Human Rights Law: Discourse of Religious Rights and Freedom in Indonesia," *Lex Scientia Law Review* 7, no. 2 (2023): 237, <https://doi.org/https://doi.org/10.15294/lesrev.v7i2.72156>.

³⁷ Ali Nurdin dan Ridhoi Meilona Purba, "Menjadi Ateis: Pilihan 'Menghadirkan' Tuhan Vs Mengandalkan Logika," 18 Mei 2019, 2019.

³⁸ Agung Ali Fahmi, Muwaffiq Jufri, and Ansori, "The Implementation of Islamic Value Absorption in Regional Regulations on Districts at Madura," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, no. 1 (2020): 157–58, <https://doi.org/http://doi.org/10.19105/al-ihkam.v15i1.2682>.

hates religion and even tends to be hostile to religion.³⁹ Marx expressed his hatred for religion with his famous statement, “Religion is the opium of the masses.”⁴⁰

The Chinese government controls religious groups and restricts the free religious activities of individuals deemed to threaten the interests of the state or the Chinese Communist Party.⁴¹ The CCP considers religious practices heretical and can hinder law enforcement, threaten national security, and foster discord. The spread of communist ideology contains elements of socialism that depict the state as God. Therefore, it is not surprising that the People's Constitution of China recognizes the existence of atheists; even the state guarantees them. One of the factors that influences the Chinese constitution is the ideology adopted by the country, namely communism.

Conclusion

The emergence of Atheism in Indonesia began with several groups that adhered to religious-based ideologies. Still, over time there was an evolution of understanding that eventually gave rise to a communist movement that highly upheld an anti-God attitude. This contradicts the Indonesian Constitution, namely the 1945 Constitution of the Republic of Indonesia. Meanwhile, in China itself, historically there have been three Revolutions from 1911 to 1949. Which initially was from the imperial system to the establishment of the People's Republic of China which was under the rule of the Chinese Communist Party. The factor that can influence the Indonesian constitution regarding the existence of atheists is because the ideology adopted is the Pancasila ideology, which contains the value of divinity in the first principle. Meanwhile, in China, the Chinese Communist Party (CCP) is the party that holds power. So, many policies in China are influenced by the CCP. The Atheist community itself is growing and needs to be handled, prohibited or even recognized. Because this legal vacuum must be addressed immediately, so with this research, it can be a suggestion and input for law enforcers to immediately address the legal vacuum related to the existence of atheists.

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³⁹ Muhamad Yakub Mubaro, “Problem Teologis Ideologi Komunisme,” *Tsaqafah* 13, no. 1 (2017): 47, <https://doi.org/10.21111/tsaqafah.v13i1.976>.

⁴⁰ Mubaro, “Problem Teologis Ideologi Komunisme.”

⁴¹ Paul Cliteur and Afshin Ellian, “The Five Models for State and Religion: Atheism, Theocracy, State Church, Multiculturalism, and Secularism,” *ICL Journal* 14, no. 1 (June 25, 2020): 103–32, <https://doi.org/10.1515/icl-2018-0056>.

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