

State Power Limitations on Religion for The Fulfillment of The Constitutional Rights of Indigenous Religion Believers in Indonesia

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ABSTRACT

This article examines the importance of state power in regulating religion in a limited scope. This is intended to solve classic problems, such as the state immediately fulfilling the constitutional rights of local religious adherents. Even though the Constitutional Court partially recognizes the existence of local religions through decision No.97/PUU-XIV/2016, this decision does not change the legal status of local religions, which are not considered official state religions. This research contributes to efforts to fulfill the right to freedom of religion for followers of Indigenous religions through policy design that does not restrict local religions from becoming official state religions. This study employed a normative legal research method, which concludes that the state's involvement in limiting local religions is by issuing various rules that distinguish religion from belief and standardizing religion, which closes the opportunity for local religions to be recognized as an official state religion. Limitations on state power can be carried out by issuing state regulations in religion, which limits to regulate fostering harmony of religious life and upholding the freedom of religion and avoiding regulatory patterns that classify religions and standardize religion because it will hinder the fulfilment of the constitutional rights of belief adherents.

Introduction

Although the Constitutional Court partially recognizes the existence of local religions through decision No.97/PUU-XIV/2016, its existence only recognizes the

rights of local religious adherents in population administration.¹ This is considered reasonable because the examined object is related to filling out religious identity in several population documents.² However, the existence of this decision has not significantly impacted the position of local religions to be equally recognized as the official state religions. The existence of local religions after the issuance of the decision also remains under the guidance of the Ministry of Education and Culture because they are seen as mere culture. Local religions are not under the guidance of the ministry of religion as the concept of guidance has been carried out for the official state religions.³

The presence of this decision has no significant effect on the legal status of local religious adherents that are still not recognized as a religion by the state. Thus, discriminations and coercion towards the local religious adherents still frequently happen in some areas of this country. Some of this discrimination and coercion include: First, the future graves of Sunda Wiwitan elders and/or religious leaders were sealed on July 22, 2020, by the Kuningan Regency Government in West Java. Several sources of this action stated that the sealing was carried out because of the rejection of several community organizations against this building.⁴

Second, in 2021, there was a discrimination case against three students who adhered to Jehovah's Witnesses in Tarakan, North Kalimantan. These three students were not graded by the school and stayed at the same level for three years. The reason was that these three students adhered to an unofficial religion, unlike other students. This condition should not have happened in the education world which upholds academic values and noble character. Move-up grade standards should be measured by the level of students' understanding of the learning process that has been carried out, not on personal issues related to religion and/or beliefs.⁵

One thing that also needs to be considered in discussing the issue of state recognition of local religions is the state's major role in the emergence of cases and discrimination against local religious adherents. The state's role is to create various regulations and policies that distinguish religions and beliefs.⁶ Whereas the term

¹ Adelia Kartika et al., "Comparative Study of the Constitutions of Indonesia and China Regarding the Existence of Atheists," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 40–47, <https://doi.org/https://ejournal.pustakaparawali.com/index.php/jicl/article/view/19/4>.

² Muwaffiq Jufri, "Metode Penyelesaian Konflik Agama; Optik Hukum, HAM, Dan Nilai Kearifan Lokal" (2021), 35.

³ 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>.

⁴ Redaksi, "Makam Sesepuh Sunda Wiwitan Disegel, Dianggap Tugu Dan Akan Dibongkar Jika Tak Berizin," *Kompas*, 2020, <https://regional.kompas.com/read/2020/07/22/06160021/makam-sesepuh-sunda-wiwitan-disegel-dianggap-tugu-dan-akan-dibongkar-jika?page=all>.

⁵ Redaksi, "Ironi 3 Kakak Adik Siswa Penganut Saksi Yehuwa Tinggal Kelas Tiga Kali," *Detik.com*, 2021, <https://news.detik.com/berita/d-5822835/ironi-3-kakak-adik-siswa-penganut-saksi-yehuwa-tinggal-kelas-3-kali>.

⁶ Samsul Maarif, *Pasang Surut Rekognisi Agama Leluhur Dalam Politik Agama Di Indonesia* (Yogyakarta: CRCS Universitas Gadjah Mada, 2017).

belief is the state's designation of local religions that cannot meet the elements of a religious standard set by the government.⁷ This standardization creates the perspective of official and unofficial religions in Indonesia.⁸

The author realizes that this paper is not the first to discuss the issue of local religion, both in terms of fulfilling the constitutional rights of its adherents and state involvement in regulating the religious system. Some writings that discuss this theme include a journal article by Fajar Khaswara (2021), which examines the efforts made by the state government to fulfill the constitutional rights of local religious adherents in the field of population administration.⁹ The article has a similar topic to research by Sukirno (2019), which also questions the seriousness of the state in fulfilling the constitutional rights of believers in the field of population administration. However, Sukirno discusses it from the perspective of the legal politics behind the regulation of the distinction between official religions and local religions in Indonesia, which is a result of the intervention of the majority religion in creating various policies that discredit the existence of local religions.¹⁰

A similar theme was also found in Moh. Fadli's research (2017) revealed legal issues related to protecting the Tengger and Baduy tribes so they can carry out religious activities freely as mandated by the constitution. Currently, they cannot freely display their religious expressions because the local religion they follow is not officially recognized by the state, which has implications for the prohibition of the religion being displayed in the population's identity.¹¹ This research has similarities with research conducted by Bowo Sugiarto (2014), which discusses the existence of policy discrimination in the recognition of official state religions so that local religious adherents such as the Baduy community cannot freely embrace the Sunda Wiwitan religion, especially freedom in expressing their worship rituals.¹²

Previous research has also discussed restrictions on freedom of religion as researched by Zainal Abidin Bagir (2020), which states that the pattern of restrictions on freedom of religion by the state is not by the values regulated by several instruments of international human rights law because many are based on

⁷ Anisya Murdani et al., "Significance of Comparing Electoral Systems: Indonesia and the United Kingdom," *Journal of Indonesian Constitutional Law* 1, no. 2 (2024): 112–25, <https://doi.org/ejournal.pustakaparawali.com/index.php/jicl/article/view/6>.

⁸ 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>.

⁹ Fajar Khaswara et al., "Pengakuan Agama Lokal Sebagai Bentuk Pemenuhan Hak Warga Negara," *Jurnal Riset Agama* 1, no. 3 (December 15, 2021): 199–211, <https://doi.org/10.15575/jra.v1i3.15174>.

¹⁰ Sukirno, "Politik Hukum Pengakuan Hak Atas Administrasi Kependudukan Bagi Penganut Penghayat Kepercayaan," *Administrative Law & Governance Journal* 2, no. 2 (2019): 268–81.

¹¹ Moh. Fadli, "Constitutional Recognition and Legal Protection for Local Religion in Indonesia: A Discourse on Local Religion of the Tengger and Baduy People," *Pertanika Journal of Social Sciences & Humanities* 25, no. 2 (2017): 601–14, <http://www.pertanika.upm.edu.my/>.

¹² Bowo Sugiarto and Novia Anggarina Hapsari, "The Issue of Official Religions and The Need for Multicultural Policy in Indonesia," in *Proceedings of the Third International Conference on Public Management 2014* (Paris, France: Atlantis Press, 2014), <https://doi.org/10.2991/icpm-14.2014.72>.

considerations of religious values according to the interpretation of adherents of religious majority groups. The pattern of restrictions is increasingly tightened by the elements of security, order, and morals, which are some of the reasons legalized in the effort to limit religious rights and freedoms. As a result, many religious groups freely carry out restrictions on religious minority groups because the regulations do provide opportunities for these restrictions.¹³

The novelty in this research is the attempt to reconstruct an ideal system of restrictions on state power over the existence of religion, including indigenous religions. The pattern of state power in regulating religion should be by providing various regulations that protect religion and revive religious activities, not producing policies and laws that limit the space for religion to move and even make distinctions between official and unofficial religions because the Pancasila rule of law defines the relationship between religion and the state as a mutually beneficial position. Thus, they can mutually reinforce each other.

Methods

This research employed normative legal research, also known as the doctrinal research method.¹⁴ Normative legal research is a method for analyzing and discussing legal issues using a legal framework based on statute regulation and concepts and principles in law science.¹⁵ Meanwhile, the approaches used were conceptual, statute, and historical.¹⁶

The primary legal materials used in this research included the 1945 Constitution of the Republic of Indonesia; Law No. 39 of 1999 concerning Human Rights; Law Number 1/PNPS/1965 Concerning the Prevention of Religious Abuse and/or Defamation; Regulation of the Minister of Religion Number 9 of 1952 concerning Recognition of a Belief as a Religion. Other legal materials were also included for analysis, such as secondary and tertiary legal materials involving scientific books, scientific journals, proceedings, papers, internet sources, and legal dictionaries that specifically discuss local religions, restrictions on state power, and freedom of religion. The aforementioned legal sources were then analyzed using the prescriptive-analytical analysis technique to find answers about the ideal model of asserting the limits of state power in religion to fulfill local religious adherents' constitutional rights in believing, adhering, and practicing their religion.

¹³ Zainal Abidin Bagir et al., "Limitations to Freedom of Religion or Belief in Indonesia: Norms and Practices," *Religion & Human Rights* 15, no. 1–2 (April 23, 2020): 39–56, <https://doi.org/10.1163/18710328-BJA10003>.

¹⁴ Pradeep M.D., "Legal Research- Descriptive Analysis on Doctrinal Methodology," *International Journal of Management, Technology, and Social Sciences* 4, no. 2 (2019): 95–103, <https://doi.org/10.47992/ijmts.2581.6012.0075>.

¹⁵ Amiruddin dan Zainal Asikin, *Pengantar Penelitian Hukum* (Jakarta: Rajawali Pers, 2018), <https://www.rajagrafindo.co.id/>.

¹⁶ Teddy Asmara, "Penelitian Budaya Hukum: Konsep Dan Metodologi," *Masalah-Masalah Hukum* 43, no. 3 (2014): 445–52, <https://doi.org/https://doi.org/10.14710/mmh.43.3.2014.445-452>.

Discussion

Regulatory Differences between Legalized Religions and Indigenous Religions in the Indonesian Legislative System

It must be admitted that the issue of fulfilling the rights of local religious adherents in adhering to and carrying out their religious teachings is an important issue that was overlooked in the national development agenda after the reformation was rolled out in 1998. This can be proven by the delay in recognizing local religions as one of the official religions recognized by the state.¹⁷ Until now, the position of local religion has been limited to being recognized as mere teachings and cultural traditions of the nation, not as a religion that must receive protection and guarantees like the official religions.¹⁸

The constitutional amendments made after the Reformation have guaranteed the freedom of religion, as well as the freedom to carry out religious teachings in various forms of worship. Some of the rules being discussed are presented in the following table.

Table 1. Constitutional Guarantees on Freedom of Religion and Belief

No	Article Constitution of the Republic of Indonesia)	(1945 of the Text
1	Article 28E Paragraph (1)	“Every person shall be free to choose and to practice the religion of his/her choice.....“.
2	Article 28E Paragraph (2)	“Every person shall have the right to the freedom to believe his/her belief, and to express his/her views and thoughts, in accordance with his/her conscience”.
3	Article 29 Paragraph (2)	“The State guarantees all persons the freedom of worship, each according to his/her own religion or belief.”

Source: 1945 Constitution of the Republic of Indonesia

However, the distinction between religion and belief (*kepercayaan*) generates the perspective that there are religions that meet the criteria to become the official state religion, and there are also religions that do not meet the criteria for an official state religion, which are commonly referred to as belief and/or mysticism. The distinction in referring to religion and belief in the aforementioned articles is considered a triggering factor of the emergence of all regulations and state policies that discredit the existence of local religions in Indonesia.¹⁹

¹⁷ Berlian Three et al., “A Comparison of Religious Freedom Guarantees for Adherents of Local Religions Between Indonesia and Japan,” *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 15–28, <https://doi.org/https://ejournal.pustakaparawali.com/index.php/jicel/article>.

¹⁸ Moh. Soleh et al., “Handling and Recovery of Religious Conflict Victims by Local Governments in Indonesia; A Study of Sunni-Shi’a Conflict in Sampang and Pasuruan,” *Trunojoyo Law Review* 6, no. 2 (2024): 159–88, <https://doi.org/https://doi.org/10.21107/tlr.v6i2.26254>.

¹⁹ Fadli, “Constitutional Recognition and Legal Protection for Local Religion in Indonesia: A Discourse on Local Religion of the Tengger and Baduy People.”

The state might argue that through distinction, the distribution of constitutional rights of the two groups (religions and belief systems) can be properly guaranteed and protected, especially concerning the rights to worship according to their religious teachings. So that this regulatory distinction will not cause problems because the aim is to give legal protection to the local religious adherents. This distinction will not be a serious problem if the proportions of both groups can be done fairly. However, problems will arise when there is inconsistency in implementing the constitutional mandate. The distribution of these rights is not maximally conveyed because of the restriction policy from the state and the community's rejection of the existence of local religions.²⁰

This regulatory distinction provokes different perspectives (agreement and disagreement) in society about the terminology of religion and beliefs that appeared in the constitution. The group that agrees with the regulatory distinction between religions and beliefs has several arguments. One of the reasons is that the regulation of religion and beliefs in several international legal instruments is distinguished.²¹ This can be traced in several international legal instruments, as presented in the following table:

Table 2. Terminology Differences between Religion and Belief in International Legal Instruments

No	Article and Instrument	Text
1	Article 18 of The Universal Declaration of Human Rights, 1948	“Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”
2	Article 18 Paragraph (1) International Covenant on Civil and Political Rights, 1966	“Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include 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 teaching”
3	Article 3 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981	“Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations”

²⁰ Johanis Putratama Kamuri, “Menimbang Posisi Penganut Kepercayaan Marapu Di Hadapan Pemerintah Negara Kesatuan Republik Indonesia,” *Societas Dei: Jurnal Agama Dan Masyarakat* 7, no. 1 (2020): 73, <https://doi.org/10.33550/sd.v7i1.129>.

²¹ Rurin Sisilia Prasetyani and Shally Saniyya Novina, “The Interpretation of Freedom of Religion and Believe: How Do University Understand This to Society?,” *The Indonesian Journal of International Clinical Legal Education* 2, no. 1 (2020): 15–28, <https://doi.org/10.15294/ijicle.v2i1.37325>.

4	Article paragraph 3	14 (3)	“Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others”
	Convention on The Rights of the Child, 1989		
5	Article Paragraph 12	(1)	“Migrant workers and members of their families shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice, and teaching.”
	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990		

Source: Summarized by the authors from various international human rights law instruments.

Meanwhile, the group that disagrees with the regulatory distinction of terms religion and belief sees that their disagreement is more about the paradigm difference between the concept of belief in Western literature and Indonesian literature. In Western tradition, belief is considered part of a religious system; this term is also used to refer to various sects within a religion. Therefore, in several international human rights legal instruments, the terminology of religion and belief is arranged differently.²²

However, in the context of Indonesian literature, belief is devoted to mentioning local religions, which are the indigenous religions adopted by the people of Nusantara before the presence of religions that are now officially recognized by the state.²³ Suppose the state pays more attention to the existence of indigenous religions. In that case, the regulatory model in some of its legal products does not need to distinguish between religion and belief. The legal implications that arise from these differences create various policies and interpretations that manifest local religion as an unofficial religion but only as a legacy of traditional and cultural values whose existence is excluded from religion.²⁴

State Limitations on the Adherence of Indigenous Religions in Indonesia

Regarding the two points of view above, the authors support the second opinion, in which the differences in constitutional terminology have indeed created a variety of legal products and policies under the constitution that harm the rights

²² Syahril Siddik, “Cursing the Sacred: Debates on Islam and Blasphemy in Indonesia,” *Tebuireng: Journal of Islamic Studies and Society* 2, no. 1 (December 31, 2021): 1–29, <https://doi.org/10.33752/tjiss.v2i1.2241>.

²³ 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>.

²⁴ M. Syafi’ie, “Ambiguitas Hak Kebebasan Beragama Di Indonesia Dan Posisinya Pasca Putusan Mahkamah Konstitusi,” *Jurnal Konstitusi* 8, no. 5 (May 20, 2016): 675, <https://doi.org/10.31078/jk853>.

of local religious adherents to practice their religious teachings based on their beliefs.²⁵ Some of these legal products include First, The State Policy Guidelines (GBHN) starting from 1977 concerning Guidelines, Understanding, and Practice of Pancasila (P4), which were proposed during the inauguration ceremony of members of the DPR/MPR who won the general election on October 1, 1977. In this GBHN proposal, a statement emerged that belief in God Almighty is not part of religion.²⁶ This statement implies that the opportunities for beliefs to gain recognition from the state are increasingly challenging to implement. Moreover, in the following policy, there was an obligation for local religious adherents to affiliate with several religions that officially met the standard of religion as determined by the Ministry of Religion, including Islam, Christianity, Catholicism, Hinduism, and Buddhism.²⁷

The statement in the GBHN then led to a definition in the *"Ensiklopedi Kepercayaan Terhadap Tuhan Yang Maha Esa"* which emphasized that belief in God Almighty is one of the elements of culture and is an ancestral heritage which is then commonly known as mysticism (kebatinan), spirituality, and preservation of national culture.²⁸ Based on this, the guidance of religious beliefs will no longer be under the supervision of the Ministry of Religion, because according to the government's interpretation, religious beliefs are mysticism in the form of syncretism, which is apart from divine revelation and only comes from the customs, habits, teachings of the ancestors, and the culture of the nation.²⁹

This principle, which states that beliefs differ from religions, was then repeated in other GBHN, including the 1978 GBHN, 1983 GBHN, and 1988 GBHN. Later, the religious beliefs were gathered in several forums, associations, communities, solidarity, clubs, or other associations that specifically accommodated the adherents of the Belief in God Almighty.³⁰ Even though some of the GBHN mentioned above have been revoked because of the reformation, the content of the material is still considered to be valid today, where the existence of local religions is still considered a syncretistic teaching that is excluded from religion.

²⁵ 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>.

²⁶ Hurriyah, "Asserting Civic Space of Micro Religious Minorities: Evidence from Indonesia," *Asian Politics & Policy* 15, no. 2 (April 13, 2023): 185–204, <https://doi.org/10.1111/aspp.12685>.

²⁷ Hasse J. Hasse J., "Diskriminasi Negara Terhadap Agama Di Indonesia, Studi Atas Persoalan Posisi Hukum Towani Tolotang Pasca Pengakuan Agama Resmi," *Jurnal Kawistara* 1, no. 2 (2011): 180–90, <https://doi.org/10.22146/kawistara.3918>.

²⁸ Ridwan Arifin et al., "The Adversity on Establishing Places of Worship: Has Religious Freedom Failed in Indonesia?," *Legality: Jurnal Ilmiah Hukum* 29, no. 1 (February 15, 2021): 93–113, <https://doi.org/10.22219/ljih.v29i1.15317>.

²⁹ Three et al., "A Comparison of Religious Freedom Guarantees for Adherents of Local Religions Between Indonesia and Japan."

³⁰ Agung Ali Fahmi, *Implementasi Jaminan Hukum HAM Atas Kebebasan Beragama Di Indonesia* (Yogyakarta: Interpena, 2011). 63.

Second, the Decree of the President of the Republic of Indonesia Number 1/PNPS of 1965 Concerning the Prevention of Religious Abuse and/or Defamation (UU PNPS) Law explicitly provides a distinction between religion and belief. Article 1 of the PNPS Law states that what is meant by religion is the religion professed by the majority of the Indonesian population, consisting of Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucius. The existence of the six religions is guaranteed protection and legal assistance. This provision discredits religions outside of those six official state religions and generates the assumption that there are official and unofficial religions in Indonesia.³¹

The existence of the PNPS Law has increasingly raised new problems by providing discriminatory regulation for the existence of religious beliefs by defining them as sects that are contrary to the religions that have been recognized by the state (Islam, Buddhism, Hinduism, Christianity, Catholicism, and Confucius).³² Whereas the existence of several of these beliefs has been considered, adhered to, believed in, and trusted as a religion by its adherents.³³ This is based on the fact that adherents of the Kejawen will never want to be categorized as Muslims, as well as adherents of the Aluk To Dolo in Toraja who are still unwilling to be considered followers of the Hindu Dharma religion, even though in their national ID card they are forced to nominally identify with Islam for adherents of Kejawen and Hindu Dharma for adherents of Aluk To Dolo.³⁴

Even though in the following explanation it was stated that religions such as Shinto, Thao, Judaism, and others still received legal protection and guarantees from the state.³⁵ However, this provision is very weak considering that recently many religious beliefs have different views from the majority religion, and even their existence is rejected by the parent religion, as happened to followers of the Ahmadiyya, Shia, Baha'i, Kejawen, and many other religions or religious beliefs that do not have freedom in adhering their religions. In addition, this provision states that society is free to choose its religion as long as it does not conflict with existing laws and regulations. This means that even the existence of religions such as Shinto and Thao, which have been mentioned in this explanation, can only be guaranteed

³¹ See Explanation of Article 1 of the 1965 PNPS Law.

³² See General Section point 2 Explanation of the 1965 PNPS Law

³³ Ahmad Baso, *NU Studies; Pergolakan Pemikiran Antara Fundamentalisme Islam Dan Fundamentalisme Neo-Liberal* (Jakarta: Erlangga, 2006). 488.

³⁴ Ahmad Baso revealed that apart from being shackled by population data forcing him to be affiliated with certain religions that the state has officially recognized, there are other aspects of religious activity that make adherents of religious beliefs find it difficult to carry out their religious teachings, such as issues of religious broadcasting, marriage, education of children, adoption of children, burial of bodies, establishment of houses of worship, up to the threat of punishment because they are considered to have tarnished the purity of religion. It is because of this complex problem that Ahmad Baso suggested that the policy on discriminating between faiths and beliefs needs to be reviewed, bearing in mind that these beliefs are believed to be religions by their adherents.. (Baso, page. 488-499).

³⁵ 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/sjkh.v6i1.10957>.

by the state if their existence does not conflict with the applicable laws and regulations.³⁶

Third, the policy of standardizing religion contained in the Regulation of the Minister of Religion Number 9 of 1952 regulates the recognition of a belief as a religion. Under this rule, state recognition of religion is based on requirements that bias in favor of monotheistic religions and cause local religions to have difficulties in fulfilling requirements such as the recognition of one God Almighty, possessing holy books, having prophets, and teaching universal ethics.³⁷

In this context, the existence of the Minister of Religion on Standardization of Religion has exceeded the limits of the state's authority in regulating religion. Because from a human rights perspective, the state's involvement in regulating religious rights and freedoms is limited to ensuring the protection and state legal guarantees for the existence of religion and the freedom of its citizens to adhere to and practice religion. Meanwhile, the regulation pattern applied in the Ministry of Religion Regulation is a manifestation of the assessment of religious teachings to be called official state religion.

Based on the description and explanation above, the role of the state in limiting the rights of adherents of local religions is through various regulations that limit the rights of adherents of local religions in accessing their civil liberties in religion. In brief, the description and various types of regulations as described above can be seen in the main points in the table below:

Table 3. State Limitations on the Rights of Local Religion Adherents

No	Regulations	Brief Explanations
1	The 1945 Constitution of the Republic of Indonesia	Article 28E paragraph (1), Article 28E paragraph (2), and Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia provide different terminology between religion and belief. Even though the purpose of the distinction is to guarantee the freedom of its adherents to embrace one of the two groups of teachings, this distinction justifies the distinction between religion and local religion in several regulations under the constitution.
2	The State Policy Guidelines (GBHN) Year 1978	The GBHN explicitly states that religious beliefs are not a religion, but teachings and traditions that come from our ancestors. This belief was the original religion of the Indonesian nation long before the presence of religions that are now officially recognized by the state.
3	Law Number 1/PNPS/1965	Article 1 of the PNPS Law ensnares the perpetrators of religious defamation, where in its explanation, the perpetrators of religious defamation are closely related to adherents of religious belief. This can also be seen in the general section of

³⁶ Ayub Mursalin, "La Législation Sur Le Blasphème et Le Rétrécissement Progressif Du Champ de La Liberté Religieuse En Indonésie Depuis 1965," *Archipel* 98 (2019): 151–76, <https://doi.org/10.4000/archipel.1349>.

³⁷ Muchamad Ali Safa'at, *Dinamika Negara Dan Islam Dalam Perkembangan Hukum Dan Politik Di Indonesia* (Jakarta: Konstitusi Press, 2018). 79.

		the elucidation of this law, which states that the existence of a religious belief is against the teachings of the majority religion.
4	Regulation of the Minister of Religion Number 9 of 1952 concerning Standardization of Religion	This regulation provides conditions that are biased in favour of monotheistic religions and closes the opportunity for local religions to be officially recognized by the state.

Source: Compiled by authors from various laws and regulations in Indonesia.

The Limitation of State Power in Religion to Fulfill The Constitutional Rights of Indigenous Religion Adherents in Indonesia

1) The Faulty Model of Restrictions on Religious Rights and Freedoms in Indonesia

The Universal Declaration of Human Rights (UDHR) provides concessions to each country through its various legal products to limit the freedom of religion. Still, the concept of limitation referred to by the UDHR is solely to guarantee the upholding of the principles of freedom of religion that other people own.³⁸ This means that in practice, in the rights and freedoms of religion, a person is not allowed to disturb, deprive, or reduce the rights of others. Such a concept aims to achieve an orderly, peaceful social order and avoid disturbances threatening unity and security.³⁹

On the contrary, the context of limitation on freedom of religion in Indonesia is implemented differently. The limitation patterns imposed by the state have resulted in the state's dominant position over religion. Through various policies, the state can determine which religious teachings can be included in the criteria of religion and which are not. Thus, whether or not a teaching is called a religion depends on the state's assessment, not on the beliefs of its adherents.

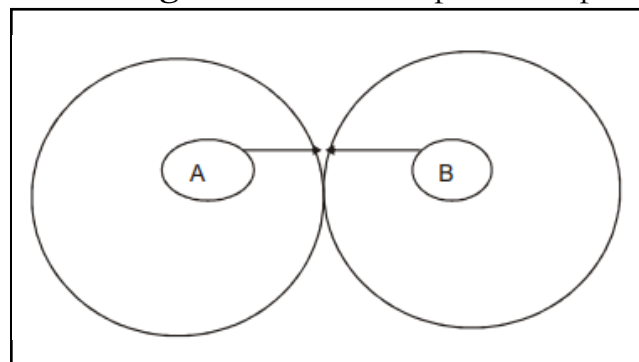
As a matter of consideration in applying the rules regarding the limitations of religious freedom, John Stuart Mill put forward his idea of "harm-principle". This idea emphasizes that an individual is free to act based on what he believes as long as he does not violate the rights of others. It means that freedom is given with limitations in its implementation. Freedom stops when there is a conflict with the rights of others. The provision limits a person's freedom not to interfere with or harm the rights and freedoms of others. In the context of freedom of religion, the harm principle means that everyone is free to express their beliefs as long as they do

³⁸ Ainun Najib et al., "Regulation on Freedom of Expression on Social Media in Indonesia and Malaysia," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 46–60, <https://doi.org/https://ejournal.pustakaparawali.com/index.php/jicl/article>.

³⁹ Pay attention to the provisions of Article 29 paragraph (2) of the UDHR. [https://www.komnasham.go.id/files/1475231326-deklarasi-universal-hak-asasi--\\$R48R63.pdf](https://www.komnasham.go.id/files/1475231326-deklarasi-universal-hak-asasi--$R48R63.pdf).

not interfere with others' beliefs.⁴⁰ In simple terms, the concept of harm principle can be seen in the chart below:

Figur 1. Harm Principle Concept



Source: Adam Muhshi, Teologi Konstitusi, 52.

In line with what was conveyed by John Stuart Mill, John Rawls believed that freedom is the most important right and all other rights are its complement. Freedom can and must be limited by freedom itself, only if: First, it strengthens the entire system of freedoms received by all people; and second, to ensure that equal or different fundamental liberties are properly protected. On the contrary, there should not be limitations other than these two things. According to this theory, one's rights and freedom of religion can be limited to ensure that the rights to freedom of religion of other people or the different rights of other people can be fulfilled. In other words, freedom of religion can be limited by the freedom of religion itself.⁴¹

2) The Relationship between Religion and the State and the Concept of Limitation

To overcome this problem, it is appropriate to make fundamental improvements regarding the relationship between religion and the state on the actual path and direction as conceptualized by Pancasila, which places religion in an honourable position.⁴² In the context of Pancasila, the relationship between religion and the state is interrelated, interdependent, and mutually beneficial. The state certainly needs the support of religion so that all its state policies, especially those relating to the people's livelihood, can be carried out according to procedures and good values taught by religion. In this context, religion's contribution is very large in ensuring that the administration of the state can run well by making the good values and teachings adhered to in religion the standard in every state policy.⁴³

⁴⁰ Adam Muhshi, *Teologi Konstitusi (Hukum Hak Asasi Manusia Atas Kebebasan Beragama Di Indonesia)* (Yogyakarta: LKiS, 2014). 87.

⁴¹ 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>.

⁴² Muwaffiq Jufri et al., "Religion and State in Islamic Constitutional Law: The Role of Pesantren in Strengthening Symbiotic Islam and The State in Madura," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 21, no. 2 (2024): 221–46, <https://doi.org/10.21154/justicia.v21i2.9283>.

⁴³ Agung Ali Fahmi, "Implementasi Kebebasan Beragama Dalam UUD Republik Indonesia Tahun 1945" (Universitas Indonesia, 2010).

On the other hand, religion also requires the role of the state in terms of ensuring that the existence of the religion adhered to by its citizens is properly guaranteed through state legal instruments.⁴⁴ The existence of legal instruments guarantees the freedom of its people to adhere to and believe in the truth of religion and practice various religious rituals. Thus, religious life can be carried out properly, smoothly, and without interference from certain parties.⁴⁵

The concept of religious relations with the state in the context of Pancasila is a concept that gives an obligation to the state to provide religious facilities, especially in terms of fulfilling access to worship for followers of religions in Indonesia.⁴⁶ The fulfillment of religious facilities must be evenly distributed to all existing religions according to the values of social justice and civilization upheld by Pancasila. Pancasila not only places religion as a source of values and ethics in an effort to create an orderly and peaceful state life, but Pancasila is also committed in terms of maintaining the existence of religion so that all adherents have the same rights and opportunities in carrying out their religious guidance in the form of worship rituals.⁴⁷

Indonesia is not a country that has an integralistic pattern of relationship with the state. This integralistic pattern of religion with the state is a pattern that creates a process of unification between state affairs and divine or religious affairs.⁴⁸ Integralistic state patterns usually give birth to the consequences of having one official state religion and placing religious law as the applicable law in the state.⁴⁹ This integralistic pattern has developed in medieval times after the fall of the Roman Empire in 476. At that time, the idea of the relationship between religion and the state was discussed by Augustine in his book entitled “De Civita de Dei”. Augustine argued that the church's position led by the Pope is higher than that of the state led by the king. A good state is a state as desired by religious teachings.⁵⁰

⁴⁴ Sumanto Al Qurtuby, “Beyond Liberal Peace: Religious Violence and Tactical Peacebuilding in Indonesia,” *Journal of Asian Security and International Affairs* 10, no. 2 (August 22, 2023): 145–68, <https://doi.org/10.1177/23477970231173525>.

⁴⁵ Bani Syarif Maula, “Religious Freedom in Indonesia: Between Upholding Constitutional Provisions and Complying with Social Considerations,” *Journal of Indonesian Islam* 7, no. 2 (2013): 383–403, <https://doi.org/10.15642/JIIS.2013.7.2.383-403>.

⁴⁶ Wahyuni, “Pola Simbiotik Negara Dan Agama Dalam Perspektif Perbandingan Hukum Tata Negara Indonesia,” *Qaumiyah: Jurnal Hukum Tata Negara* 2, no. 2 (2023): 229–42, <https://doi.org/10.24239/qaumiyah.v2i2.37>.

⁴⁷ Al Makin, “Not a Religious State: A Study of Three Indonesian Religious Leaders on the Relation of State and Religion,” *Indonesia and the Malay World* 46, no. 135 (2018): 95–116, <https://doi.org/https://doi.org/10.1080/13639811.2017.1380279>.

⁴⁸ Emmanuele Pavolini, Daniel Béland, and Rana Jawad, “Mapping the Relationship between Religion and Social Policy,” *Journal of International and Comparative Social Policy* 33, no. 3 (2017): 240–60, <https://doi.org/https://doi.org/10.1080/21699763.2017.1363801>.

⁴⁹ Andi Jufri, “Islam and State Relation: Integralistic, Symbiotic, and Secularistic Paradigm,” *International Journal of Multidisciplinary Research and Growth Evaluation* 03, no. 06 (2022): 492–501, <https://doi.org/https://doi.org/10.54660/anfo>.

⁵⁰ Jonathan Fox, “Separation of Religion and State and Secularism in Theory and in Practice,” *Religion, State and Society* 39, no. 4 (2011): 384–401, <https://doi.org/https://doi.org/10.1080/09637494.2011.621675>.

If a study is made of the long history of the relationship between religion and the state in Indonesia, there is indeed some tension between the state and religion. Some believe that this tension has contributed to the occurrence of acts of violence on the basis of religion in Indonesia to date. The debate began during the BPUPK meeting, where there was a sharp debate between the Islamic and Nationalist groups about the basis of the Indonesian state.⁵¹ The Islamic group believed that the Indonesian state that would later be established must be based on Islamic shari'a. The reason for this group is as a consequence of the fact that the majority of the Indonesian people are Muslims. The Muslim community has been united in fighting to free the nation from the grip of colonialism. For this reason, the Indonesian state must be based on the principles of Islamic sharia.⁵²

The argument of the Islamic group turned out to bring sharp opposition from the nationalist group who considered that there would be a division of the archipelago if Islamic sharia was forced to become the basis of the state in Indonesia. Furthermore, nationalists consider the most appropriate basis for the Indonesian state to be a unitary state given the diversity of ethnicities, cultures, and religions in Indonesia, all of which took part in achieving independence.⁵³

The debate between the *two* groups continued in the following days in the BPUPK meeting, which eventually gave birth to the Committee of Nine formed on June 1, 1945. This small committee was tasked with finding a compromise on the deadlock between the nationalist and Islamic groups regarding the basis of the state. From this Committee of Nine, the foundation of the state was born based on: 1) Deity with the obligation to implement Islamic law for its adherents; 2) Humanity that is fair and civilized; 3) Indonesian Unity; 4) Democracy led by wisdom in the deliberation of representatives; 5) Social Justice for all Indonesian people. The five elements of the state foundation above are commonly known as the Jakarta Charter, which was passed with 'difficulty' on July 16, 1945.⁵⁴

The compromise initiated by the Committee of Nine did not last long, considering that on July 18, 1945, Hatta and other Nationalist-Secular groups requested that the formulation "*with the obligation to implement Islamic law for its adherents*" (hereinafter seven words) be deleted. Hatta argued that this would avoid divisions in the eastern regions of Indonesia, where many people practiced religions other than Islam. As a result of this reason, the Islamic group then accepted Hatta's proposal

⁵¹ Nasaruddin Nasaruddin, "Pemikiran Islam Tentang Hubungan Negara Dengan Agama," *HUNAF: Jurnal Studia Islamika* 6, no. 2 (2009): 205, <https://doi.org/10.24239/jsi.v6i2.134.205-218>.

⁵² Saefur Rochmat, "The Fiqh Paradigm for the Pancasila State: Abdurrahman Wahid's Thoughts on Islam and the Republic of Indonesia," *Al-Jami'ah* 52, no. 2 (2014): 309–29, <https://doi.org/10.14421/ajis.2014.522.309-329>.

⁵³ Mei Susanto et al., "Should the Muslim President Become a Constitutional Convention in Indonesia? Based on Constitutional Debates about Islam and State, and the Constitutional Practice," *Cogent Social Sciences* 9, no. 1 (2023), <https://doi.org/10.1080/23311886.2023.2196815>.

⁵⁴ Ahmad Salehudin, "Remembering the Seven-Word of The Jakarta Charter: The Challenging Risk of Indonesian Today," *Ijtima' Iyya Journal of Muslim Society Research* 3, no. 2 (September 28, 2018): 234–48, <https://doi.org/10.24090/ijtima'iyya.v3i2.1922>.

to delete the seven words in order to maintain the integrity and unity of the Indonesian nation.⁵⁵

The regulatory pattern meant by the aforementioned concept is a regulatory pattern that provides freedom for religion to grow and develop without any limitations from the state.⁵⁶ The regulatory pattern also mandates the state that even though some limitations need to be done, the concept of limitation should not degrade religion and/or not even refute it. Therefore, such a policy is not only misdirected but has denigrated the sacred dignity of religion, which is rich in noble teachings, ethics, and values of wisdom.⁵⁷

However, the concept of the Indonesian state's restrictions on religion, especially on local religions, could be better because until now, there have been no concrete steps taken to provide religious facilitation for adherents of local religions.⁵⁸ Even to recognize that local religions are still widely practiced by its citizens has yet to be done by the state. The state still considers the existence of local religions as not part of religion but rather noble teachings about values that come from the culture of the Indonesian people and do not have the status of religious teachings.⁵⁹

This state policy is inversely proportional to the teachings of several local religions that give full recognition and support to the existence of Indonesia as a sovereign state. Such teachings can be seen in the teachings of the Kaharingan religion which reads "*Ella buli manggetu hinting bunu panjang, isen mulang, manetes rantai kamara ambu*". This teaching is essential advice to Kaharingan adherents to always foster personality integrity to support the welfare of the life of society, nation, and state.⁶⁰ Through this teaching, Kaharingan, as a religion for the Dayak people in Kalimantan, has tried to instill noble character to always support all efforts to advance the nation's life.⁶¹

⁵⁵ Alif Lukmanul Hakim, "Integration of the Noble Essence of Pancasila with the Perspective of the Islamic Religion," *Edumaspul: Jurnal Pendidikan* 7, no. 1 (2023): 1586–91, <https://doi.org/https://doi.org/10.33487/edumaspul.v7i1.6336>.

⁵⁶ Muchamad Ali Safa'at, "The Roles of the Indonesian Constitutional Court in Determining State-Religion Relations," *Constitutional Review* 8, no. 1 (2022): 113–50, <https://doi.org/10.31078/consrev815>.

⁵⁷ 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>.

⁵⁸ Paul Marshall, "The Ambiguities of Religious Freedom in Indonesia," *Review of Faith and International Affairs* 16, no. 1 (2018): 85–96, <https://doi.org/10.1080/15570274.2018.1433588>.

⁵⁹ Muhammad Dahlan, "Perlindungan Hukum Atas Hak Konstitusional Para Penganut Agama-Agama Lokal Di Indonesia," *Arena Hukum* 10, no. 1 (2017): 20–39, <https://doi.org/http://dx.doi.org/10.21776/ub.arenahukum.2017.01001.2>.

⁶⁰ Tiwi Etika and Anne Schiller, "Kaharingan or Hindu Kaharingan: What's in a Name in Indonesian Borneo?," *Nova Religio* 25, no. 4 (2022): 64–87, <https://doi.org/https://doi.org/10.1525/nr.2022.25.4.64>.

⁶¹ Muhammad Sandi Rosyadi, "Facing World Religion Paradigm: Challenges Of Dayak Kaharingan During New Order Era Into Reforms," *Jurnal Ilmiah Ilmu Ushuluddin* 21, no. 2 (2022): 133, <https://doi.org/10.18592/jiiu.v21i2.7316>.

In addition to kaharingan, another local religion that teaches the spirit of togetherness and unity among fellow citizens is the Parhabonaron religion. This indigenous religion of the Simalungun people in Sumatra teaches its adherents to remain faithful to live with one another in a national community under any conditions (*sisada ahap sisada parmaluan*).⁶² This teaching also recommends having a spirit of brotherhood and togetherness among fellow human beings in a nation. Togetherness and mutual cooperation are absolute prerequisites in an effort to realize a just and sovereign state of society (*sapangambe manoktok hitei*).⁶³

The Idea of a Model of Limitation of State Power in The Field of Religion for The Fulfillment of The Rights of Adherents of Indigenous Religions in Indonesia

Implementing such regulatory patterns in limiting state power in religion could be conducted: First, the distinction between religion and belief in its legal products could not be applied. The state's authority in religion should focus more on efforts to produce various legal products to uphold religious life so that people can freely worship and practice religious activities. Instead of implementing multiple regulations about religion and belief distinctions, there is the potential to degrade the state's dignity in spiritual matters.⁶⁴

Religion and belief are inseparable elements. This is because the complex understanding of the meaning and essence of the religion is quite broad in scope. Therefore, according to Agung Ali Fahmi, there will be difficulties in an attempt to fully describe religion if the perspective used is the perspective of a religion outside that religion. Agung emphasized that the interpretation of a religion should not be generalized with a doctrine understood outside of religion. However, religion is a matter of the belief of someone who has found the truth in his teachings, which are ingrained and strongly influence their way of life during their interactions in society.⁶⁵

⁶² Dona Ponja, Yusra Dewi Siregar, and Anang Anas Azhar, "Dinamika Penyebaran Agama Islam Di Kerajaan Siantar, 1904-1913," *Warisan: Journal of History and Cultural Heritage* 1, no. 2 (August 27, 2020): 55–60, <https://doi.org/10.34007/warisan.v1i2.521>.

⁶³ Muwaffiq Jufri, "Kontribusi Konstitusi Madinah Dan Konstitusi Nagarakretagama Terhadap Rancangan Amandemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Terkait Hak Dan Kebebasan Beragama" (Brawijaya University, 2016).

⁶⁴ Suparman Marzuki, "Politik Hukum Hak Asasi Manusia Tentang Kebebasan Beragama Pasca Orde Baru," *Jurnal Hukum Ius Quia Iustum* 26, no. 2 (2019): 215–37, <https://doi.org/10.20885/iustum.vol26.iss2.art1>.

⁶⁵ 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' Rights The 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>.

Different treatment of religion and belief will only trigger social jealousy and horizontal conflict within society.⁶⁶ Regardless of one's opinion and evaluation of belief, its adherents still regard it as a religion that binds all the rules and religious teachings. Thus, there is no need to distinguish between religion and belief.⁶⁷

In comparison, state policies that do not discriminate between religion and belief (local religion) can be found in the classical legal system in the past when Majapahit ruled this Nusantara. According to Agus Sunyoto, the existence of local religions such as Kapitayan and other religious beliefs was more guaranteed than the current policies implemented by the Indonesian government. The local religion (Javanese religion) in Majapahit had full guarantees that its adherents had the freedom to believe and practice their religious teachings.⁶⁸ This can be proven by the Arrangement of Article 82, paragraph (1) of the Nagarakretagama Constitution, which states that the state guarantees the continuity of all religions adhered to by the people of Majapahit.⁶⁹

The form of recognition of all the religions adhered to by the people of Majapahit, including local religions, was a manifestation of the religious facilities or institutions (*dharmayaksa*) provided by the state.⁷⁰ This religious institution functioned to provide religious teachings upheld by each of its people, as well as to become an institution for solving all problems concerning spiritual matters. The provision of religious facilities was divided into four types of institutions, including;

- 1) *Dharmayaksa ring Kacewan (Kasaiwan)* which was responsible for all matters related to Shiva's religion. This institution provided religious teachings of the Hindu-Shiva religion and solved all social problems associated with the laws of the religion.
- 2) *Dharmayaksa ring Kasogatan* which handled all matters related to Buddhism. This institution provided religious teachings of Buddhism and solved all social problems related to the laws of Buddhism.⁷¹
- 3) *Dharmayaksa ring Herahaji*, which was a religious institution provided for adherents of local religions. This institution was also commonly known as "*Dharma Ipas Karsyan*".⁷² This religious institution was responsible for the

⁶⁶ 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>.

⁶⁷ Robert W. Hefner, "Islam and Institutional Religious Freedom in Indonesia," *Religions* 12, no. 6 (June 7, 2021): 415, <https://doi.org/10.3390/rel12060415>.

⁶⁸ Agus Sunyoto, *Atlas Walisongo; Buku Pertama Yang Mengungkap Wali Songo Sebagai Fakta Sejarah*, VII (Tangerang Selatan: Imania, 2017). 211.

⁶⁹ Slamet Muljana, *Menuju Puncak Kemegahan; Sejarah Kerajaan Majapahit* (Yogyakarta: LKiS Pelangi Aksara, 2012). 77.

⁷⁰ Eugenia Brandao Da Silva and Lin Asyiqoh, "The Idea of Legal Pluralism in Dispute Resolution of Village Head Election in Madura," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 61–83, <https://doi.org/ejournal.pustakaparawali.com>.

⁷¹ Slamet Muljana, *Tafsir Sejarah Nagara Kretagama* (Yogyakarta: LKiS Pelangi Aksara, 2012). 154.

⁷² Supratikno Rahardjo, *Peradaban Jawa; Dari Mataram Kuno Hingga Majapahit Akhir* (Jakarta: Komunitas Bambu, 2009). 139.

special task of providing religious instruction to followers of local religions that were adhered to by the people of Majapahit, as well as resolving all legal and social issues related to the applicable laws.

- 4) *Raja Pandhita*, which was a religious institution devoted to fostering and providing teaching to adherents of Islam began to emerge and develop in Majapahit. Apart from that, according to Agus Sunyoto, this institution also functioned as an institution to resolve all legal issues related to Islamic sharia. This institution began to be established since the presence of the Muslim community in Java. The presence of this institution was valid proof of Majapahit's commitment and responsibility for the continuity of religions that the state has guaranteed in its constitution.⁷³

The existence of these four kinds of religious institutions gives a valuable lesson that Majapahit does not only give freedom to adhere to a religion, but also provides maximum religious services and facilities to ignite spiritual passion. In addition, the facilitation of local religions through religious institutions (*Dharmayaksa ring Herahaji*) shows that Majapahit never discriminated against religions and beliefs (local religions) adhered to by its people. Even the presence of Islam as a new religion at that time was not considered a threat to Majapahit, instead, it was facilitated properly and optimally like its predecessor religions.⁷⁴

In addition, Majapahit did not implement religion standardization in their state regulation as they understand that the standardization of religion will only create the extinction of local religions.⁷⁵ State policies that carry out standardization of religion have endangered the status of local religions as they could not meet the criteria that have been applied. In addition, if we look at the history of the implementation of this religious standard, before its first official recognition as official state religion on September 5, 1958, Hindu Organizations should adjust some of the Hindu belief systems and teachings as required by the Ministry of Religion. Hindu religious leaders in this country make Brahma the supreme god and defined other gods as 'angels' or saints. As a requirement of the scriptures, the Veda is aligned with the Qur'an and the Bible, while mantras are valued to be equal to prayers in Islam.⁷⁶

An interesting lesson that can be learned from the experience of the struggle of Hindu religious leaders to fulfill the criteria set by the Ministry of Religion is that the policy of standardizing religion which only accommodates the monotheistic

⁷³ Sunyoto, *Atlas Walisongo; Buku Pertama Yang Mengungkap Wali Songo Sebagai Fakta Sejarah*.

⁷⁴ Jufri, "Regulation Model of Religious Rights and Freedoms for Local Religious Believers in the Majapahit Constitution."

⁷⁵ Louay M. Safi, "Religious Freedom and Interreligious Relations in Islam: Reflections on Da'wah and Qur'anic Ethics," *The Review of Faith & International Affairs* 9, no. 2 (June 2011): 11–16, <https://doi.org/10.1080/15570274.2011.571422>.

⁷⁶ Safa'at, *Dinamika Negara Dan Islam Dalam Perkembangan Hukum Dan Politik Di Indonesia*.

concept of religion is very difficult for earth-centered religions.⁷⁷ This policy should not be carried out considering that the systems and teachings of each religion are different, and it must be respected and upheld. Acceptance of differences is what makes this country considered a country with high tolerance and living in harmony within the diversity.⁷⁸

The concept of limiting state power over religion above is very appropriate when viewed from constitutional theory. The characteristics of a state with constitutionalism are reflected by three special characteristics, including 1) the existence of a constitutional system that is fundamental;⁷⁹ 2) there is guarantee of human rights; and 3) the existence of provisions regarding the division and limitation of fundamental state power.⁸⁰ This constitutional paradigm recognizes that the limitation of state power is one of the important elements of a constitutional state.⁸¹ This important element is intended to avoid a pattern of state administration that tends to be authoritarian and ignores the principles of the fundamental rights of its citizens.⁸²

In the context of religious life, the limitation of state power meant by the constitutional paradigm is the limitation of power in regulating the existence of religion. The state is limited in its power to regulate religious matters which are integral to religious teachings such as the concept of divinity and so on.⁸³ The state cannot interfere with the authority of religion in formulating its teachings because this has become the internal area of religion. Meanwhile, The state can only be imposed the limitation at the stage of manifestation of religious beliefs in the public space. Thus, the policy of standardizing and classifying religions is an act of the state that forces people to enter the sacred area of religion.⁸⁴

⁷⁷ Saldi Isra, Ferdi Ferdi, and Hilaire Tegnan, "Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia," *Hasanuddin Law Review* 3, no. 2 (August 12, 2017): 117, <https://doi.org/10.20956/halrev.v3i2.1081>.

⁷⁸ Melissa Crouch, "Implementing the Regulation on Places of Worship in Indonesia: New Problems, Local Politics and Court Action," *Asian Studies Review* 34, no. 4 (December 2010): 403–19, <https://doi.org/10.1080/10357823.2010.527921>.

⁷⁹ Herlambang Perdana Wiratraman and Sébastien Lafrance, "Protecting Freedom of Expression in Multicultural Societies: Comparing Constitutionalism in Indonesia and Canada," *Yuridika* 36, no. 1 (2021): 75, <https://doi.org/10.20473/ydk.v36i1.24032>.

⁸⁰ Hasanuddin Hasim, "Gagasan Muatan Materi Dalam Perubahan UUD 1945," *Jurnal Al-'Adl* 10, no. 2 (2017): 83–96, <https://ejournal.iainkendari.ac.id/index.php/al-adl/article/view/701/646>.

⁸¹ Muwaffiq Jufri et al., "Standardisation of the Legislation as a Follow-Up to the Constitutional Court's Decision on Judicial Review of Omnibus Law," *Jurnal Konstitusi* 21, no. 3 (September 1, 2024): 366–91, <https://doi.org/10.31078/jk2132>.

⁸² Muwaffiq Jufri, "Perbandingan Pengaturan Hak Kebebasan Beragama Antara Indonesia Dengan Majapahit," *Jurnal Konstitusi* 14, no. 2 (2017): 396–417.

⁸³ Dixon Sanjaya and Akhliah Aulia Rahim, "Freedom of Religion and Belief in The Indonesian State Of Law: Dualism of Conceptual Interpretation and Constitutional Court Decision," *Jurnal Konstitusi Dan Demokrasi* 4, no. 1 (June 30, 2024): 22–30, <https://doi.org/10.7454/JKD.v4i1.1402>.

⁸⁴ Göran Gunner, "Religious Freedom as a Human Right," in *Freedom of Religion and Religious Pluralism* (Leiden, The Netherlands: Brill | Nijhoff, 2023), 79–100, https://doi.org/10.1163/9789004504967_006.

The limitation on state power in religious matters is intended to uphold the principle of the rights of citizens to adhere to and practice their religion without any interference or limitations from anyone, including the state. Fulfillment of these rights is an important implementation for a country that upholds modern constitutionalism, one of the characteristics of which is the existence of constitutional content material that regulates human rights. On this basis, it can be said that efforts to define the limits of state power in religion are actions that support the creation of a good climate for the development of the legal system and constitution in Indonesia.

Conclusion

Based on all the descriptions above, it can be concluded that the role of the state in limiting the constitutional rights of local religious adherents is carried out through various policies that distinguish religion and belief (local religion). In addition, state policies that standardize religion make beliefs unable to meet the requirements to be called a religion. Whereas by its adherents, this belief is a religion that they believe in the truth from generation to generation. Therefore, a concept of limiting state power is needed to accommodate the constitutional rights of adherents of local religions. This concept can be implemented by applying regulations that uphold religious life and guaranteeing the rights and freedom of religion. The power of the state must be limited to matters that potentially reduce or even prohibit the fulfillment of freedom of religion, whether the reduction is through classification or standardization of religion.

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