

Ratio Legis of Religious Law Practice in State of Law, Indonesia

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Abstract

Indonesia is a state of law that is perceived as neither a religious nor a secular state. The relationship between religion and state is critical in the Indonesian constitutional framework. The majority of Muslims in the population do not significantly transform the country into an Islamic state. In the formulation of the state ideology, there was a debate on an Islamic and a secular state. These ideological differences were addressed by the emergence of the state philosophy named Pancasila. This philosophy is widely known for its first principle, specifically A Belief in the One and Only God, where Indonesia is founded. As a state of law, all religions/beliefs should be free from state interference. Furthermore, as a state based on A Belief in the One and Only God, it regulates religion and their roles in people's lives. This paper is a normative research. The method that used in this research documents study using secondary data that analyze using statute and conceptual approach. This paper examines the relationship between religion and the state of law and its model in Indonesia. The ratio legis of the application of religious law is discussed through the analysis of laws governing religion. The result showed that religious regulation practice in nation law leads to discrimination over minority groups. For this reason, the state needs to discharge its constitutional obligations to respect, protect, and fulfill human rights, especially the right over religious freedom.

Keywords: *Ratio Legis, Religious Law Practice, State of Law, Indonesia.*

1. Introduction

In independence preparations, especially the state ideology formulation, there was a debate between two groups supporting either Islamic or the secular state. According to the *santri* group, there is an interdependence between Islam and politics. In general, religion and the state are considered as one. The *abangan* groups involving Islam adherents are neutral towards the state. According to this group, religion must be separated from the state since it is an individual matter. Sukarno finally bridged the tension between these two groups for their different political ideology (Islamic state vs. secular state) through a speech on June 1, 1945. (Maarif 2018: 17-18)

Sukarno stated that Pancasila was intended to be a *philosophische grondslag* and not for Indonesian independence. *Philosophische grondslag* is the fundamental philosophy, representing the most profound thought to establish an eternal, independent Indonesian State. Prof. Mr. Drs. Notonagoro, in the Airlangga University (Surabaya) Anniversary Speech on November 10, 1955, emphasized

that the Pancasila arrangement was a hierarchical and pyramidal roundness. It resulted in an organic relationship between the five state principles, including a belief in the One and Only God based on humanity (Humanity), the unity of Indonesia (Nationality), Democratic Law, and Social Justice. A belief in the One and Only God relates to humanity, nationality, and social justice. For this reason, each principle contains other precepts in it. Pancasila involves the Republic of Indonesia's continuation, which proclaimed its independence on August 17, 1945, a position that cannot be changed (Kansil 1983: 53-54).

The relationship between the State and Religion in Indonesia is quite unique based on Pancasila. Indonesia is said to be neither a Religious State nor a Secular State. In the Five-Year Development Plan in the New Order era specifically regarding the role of religion it is said that religions provide a moral, ethical and spiritual foundation for national development as a practice of *Pancasila*. In this position religion has an important role, but not in the sense of religious law used as positive law. What we want to emphasize is that religious values (whatever religion they may be) that can be universal (eg values of justice, brotherhood, longing for shared prosperity and so on) can be used as a basis for the implementation of development so that development is not distorted towards inhumane (dehumanization) (Yewangoe 2006:55).

Freedom of religion is part of the right that cannot be revoked in the Indonesian Constitution. The concept of religious freedom has always been a discourse under the Indonesian legal system. Chapter XI, Article 29 of the 1945 Constitution, concerning Religion, is the only chapter that has not been changed by the 1999-2002 constitutional reform. The rejection of the proposal to include the 'seven words' of the Jakarta Charter in Article 29 (1) is more evidence that the debate on nationalism and the Islamic state is a sensitive and important issue in the history of the Indonesian constitution. The 1999-2002 constitutional debate about the insertion of the Jakarta Charter, in fact, repeated the same debate that had taken place in 1945 and 1956-1959. From these debates, the results always maintain the preamble (Pancasila) and the refusal to include sharia in the Constitution. This same result is strong evidence that the demand to defend the ideology of the Pancasila nationalist state and Article 29 as they have today is the preferred choice by most social groups in Indonesia (Indrayana 2008: 288-289).

All sources of national law emanate from Pancasila. According to the constitution, Indonesia is a state based on the law (*reshtsstaat*) and not power (*machstsstaat*). In the third amendment, Article 1 paragraph (2) of the 1945 Constitution concretely states, "that sovereignty is in the hands of the people and is implemented based on this constitution." Article 1 paragraph (3) states that Indonesia shall be a state based on the rule of law (Muchsin 2003: 29). Also, Article 29 (paragraph 1) of the 1945 Constitution states that the country shall be based on a belief in the One and Only God. As a state of law, all beliefs should be free from state interference. However, the state could regulate religion in people's lives. This study examines the relationship between religion and the state of the law in Indonesia by analyzing the provisions of law governing religion in Indonesia and the to find out the ratio legis of religious laws in the State of Law in Indonesia.

2. Research Method

To answer the above questions this research is conducted. The research is a normative and a qualitative research. A normative research is a scientific activity, which is based on certain methods, systematic and thinking, which aims to study one or several specific legal phenomena by analyzing

them. Apart from that, an in-depth examination of the legal facts is also held, to then work on a solution to the problems that arise in the symptoms concerned (Soekanto 2015:43). The method that used in this research documents study using secondary data collecting from legislation, books and journal articles. To complete the data from the internet also uses as an additional source.

The approach used in this research is the statute approach. The approach examines the laws and regulations relating to the formulation of the problem. Looking at the norms of the existing law, the background of the norms in the law and the compatibility between one law and the other laws uses the statute approach. The conceptual approach is used to develop a new concept by looking at the previous doctrine, statute and court decision (Ibrahim 2007:302-306).

The source of law as a whole collection of legal materials arranged categorically in order to facilitate the work of searching and re-finding. There are 2 (two) types of legal sources that are known. The first is known as the source of formal law and the second is called the source of the material law. The 'formal' and 'material' qualifications refer to the source of the law and the law. The legal materials can be distinguished between primary and secondary. Legal materials collected in formal legal sources are called 'primary legal materials, while legal materials collected in material legal sources are called secondary legal materials (Wignjosuebrototo 2013: 80-81). What is defined as primary legal material from this study is the constitution or the Constitution of the Unitary Republic of Indonesia, the laws and regulations related to the object of research, namely the law relating to the regulation of religion. Whereas secondary legal materials are materials that provide an explanation of primary legal materials such as research results, the work of legal experts, theorists. These legal materials are divided into categories to deal with the problems of research. Then the data are analysed using the statutory approach and conceptual approach.

The purpose of this study is to examine how Indonesia as a state of law not religion state can be implemented religion law. The next section will examine the relation between religion and state of law. In the following section the ration legis of religion laws will be discussed, analysed and examined. The research will be resulted with conclusions and suggestions.

3. Result and Discussion

3.1. Relationship between Religion and State of Law

The relationship between religion and state is critical in the Indonesian constitutional framework. Indonesia is a state of law, not a religious nor a secular state. The country is governed based on a belief in the One and Only God, rather than an Islamic state, though most citizens are Muslims. In Indonesia, the law stands in all religions, though Islamic applies regulations on Muslims. Its history, both in the period leading up to independence and in the decades after, shows that the relationship between Islam, the state, and society has always been the main concern of policymakers and politicians. This aspect also concerns intellectuals and reformers across the spectrum of political and ideological orientation. The debate that broadly involves all segments of Indonesian society is quite complicated. In general, intellectual elites with conflicting perspectives and goals often claim to speak on behalf of the nation. Some intellectual movements, such as the late Nurkholis Madjid or those by Islamic organizations, including Nahdlatul Ulama, have relatively broader civil society participation levels. In reviewing them and other social movements and intellectuals, Abdullahi Ahmed An-Na'im did not suggest that they represented a broad consensus prevailing throughout the society in all its diversity. They aimed to present examples of views and positions regarding the

nature of the state and its relationship with Islam and society, expressed at a broader level. (An-Na'im 2008: 248).

The relationship between Islam and the state in Indonesia takes place in most Muslims' presence. According to Muhammad Natsir's speech at the Constituent Assembly in 1957 entitled Islam as the state's foundation, Indonesia had only two choices, secularism (*la-diniyah*) or religious understanding (*diniyah*). Pancasila is *la-diniyah* (secular) because it does not recognize revelation as its source, referring to it as a result of community excavation. As a dominant religion, Islam is deeply rooted in society, and therefore, its role as a state ideology is justified. The relationship between democracy and Muslims shows that Islam can only succeed in a democratic system. The debate between Islam and Pancasila ended with the defeat of Islamic ideology in the Indonesian political arena. Pancasila was examined by Sukarno based on the souls and personalities of the Indonesians long before Islam. This is because it is perceived to be a historical socio heritage. Pancasila was then formulated in five principles, including Belief in the One and Only God (Maarif 2006: 129-146).

The principle of Belief in the One and Only God is reflected in Article 29 paragraph (1) of the 1945 Constitution, which stipulates that "The State shall be based on a belief in the One and Only God." This clause implies that religion and beliefs without "Obedience to the One and Only God" are not guaranteed by the state. The logical consequence of using this term as the basis of the state is the inseparability of religious life, while religion gains philosophical, juridical, and political legitimacy, as stated in the first principle of Pancasila. They regulate the public space of citizens in human relations. The country uses a symbiotic paradigm, where religion and the state have reciprocal and interdependent relationships. Religion needs the country to be better developed. Similarly, the state also needs religion to be developed spiritually and morally. At a practical level, this interaction is precisely governed by state politics. In most cases, Islam is comprehensively examined by the political elites, especially the concept of "Islam religion and state" (Rohidin 2015: 145). This article formed the basis of the state philosophy regarding its relations with religion. Indonesian laws and regulations do not govern the religious freedom scope. Although, the religious rights has been guaranteed in the Constitution as non-derogable rights in Article 28I. However in the implementation, the policy maker uses Article 28J which state that "in the exercising their rights and freedoms, each person must submit to the restrictions stipulated by law with the sole purpose of guaranteeing recognition and respect for rights and freedoms other people and to fulfill fair demands in accordance with moral considerations, religious values, security and order in a democratic society".

In the development of Islamic law studies in Indonesia, Ismail Sunny stated the following theories of applying Islamic law in Indonesia (Sunny 1994: 101-132)

1. Islamic teachings on legal arrangements. The Qur'an stipulates that Muslims are commanded to obey Allah and His Messenger (Q: 4: 59; Q: 24: 51). Muslims are under obligation to obey and apply this principle (Q: 4: 59; Q: 24: 51, 52).
2. Theory of acceptance of legal authority. This theory was put forward by H.A.R Gobb in the book *The Modern Trends of Islam*. In case a Muslim accepts Islam as a religion, the authority of Islamic law should be accepted. Sociologically, people who are already Muslims accept this authority as well as obeying the law.
3. Theory of receptie in complexu. This theory was introduced by Prof. Mr. Lodewijk Willem Christiaan Van den Berg (1845-1927). It stated that Islamic law applies fully to Muslims because

of embracing Islam despite irregularities in its implementation. L.W.C. van den Berg is an expert in Islamic law with credit for the discovery and demonstrated the effectiveness of Islamic law in Indonesia. He also sought that Islamic inheritance and marital law be carried out by Dutch judges with Muslim officials' help. This theory emerged as a formulation of the existing legal situation and was sourced from Islamic legal principles that apply to Muslims.

4. Receptie theory. This theory was proposed by Prof. Christian Snouck Hurgronje and later developed by C. Van Vallonhoven and Ter Haar Brn. It stated that conventional law applies to indigenous people, while Islamic law applies in case the community has accepted the norm as customary law. Snouck Hurgronje advised the Dutch East Indies government to adopt Islamic Policy in the following ways.
 - a. In a genuine sense of religious activities, the Dutch East Indies government should honestly and thoroughly provide Muslims' unconditional freedom to carry out their religious teachings.
 - b. In the social field, the government should respect the people's customs and practices in force by opening a way that pacifies progress.
 - c. In state administration, they prevent the goals that can bring or link the Pan Islamism movement, aiming to find other forces to face the Dutch East Indies government successfully.

The above provisions show that Islamic law's acceptance can be fully enforced since many people have embraced Islam (receptie in complexu). In general, Islamic law can be applied in case the community accepts its legal norms as customary law (receptie theory). After Article 29 paragraph (1) of the 1945 Constitution was drafted, Islamic law could be acknowledged for its constitution position.

The application of religious law in the rule of law also applies in several countries in Africa and Asia. The following are eight models of state and religious relations (Hirschl 2011: 422-437):

1. The Atheist State. Declaratively, the communist regime declared itself the most anti-religious. According to Marx, they view religion as an opium for the masses. Atheists consider religion in public and private spheres as backwardness, colonialism, and false consciousness. For instance, the Republic of China abolished religion from Chinese life and culture.
2. Assertive Secularism. This model forms secularism that goes beyond neutrality towards religion. It separates religion's manifestations in public life and perceives secularism as a core element of the modern nation and the collective identity. For instance, the French restrict scholars and religion from influencing religion. It builds citizenship and nationality uniformly free of religion.
3. Separation as State Neutrality. The most common model among separatist countries is the separation of states from religious beliefs to emphasize neutral attitudes, such as in the United States.
4. Weak Religious Establishment. Formal appointments are made mainly at certain religious ceremonies representing the state religion. However, this move has no implications for public life. Several European countries, including Norway, Denmark, and Finland, describe this model by designating the Gospel Lutheran Church as a 'state church.'
5. Formal Separation with De Facto Preeminence of One Denomination. This model is displayed in countries with a formal separation between church and state. Religious freedom is generally guaranteed constitutionally, though old patterns regarding church hegemony still exist, which are politically and morally centered on the church. This is common in Latin American countries that are part of the Roman Catholic population.

6. Separation alongside Multicultural Accommodation. This model combines formal separation between religions with accommodation approaches to religious diversity. The model is prevalent in immigrant communities, especially in Canada.
7. Religious Jurisdictional Enclaves. This model is based on selective accommodation of religion in certain areas of law. The general law is secular, but the jurisdiction of autonomy is given to the people's religion. It is applied in African and Asian countries.
8. Strong Establishment - Religion is constitutionally responsible for Legislation. The entire legal and constitutional system is based on a dual commitment inherent in the foundations of religion and constitutional principles or referred to as constitutional theocracy. An example is found in the Preamble of the 1979 Islamic Republic of Iran Constitution to perpetuate Sharia as the constitution's highest law.

Constitutionally, the institutionalization of religious law in national governance is based on Pancasila and the 1945 Constitution. The relationship between religion and the state is contained in the constitution. This is because a state of law based on a belief in the One and only God. Consequently, religious beings cannot be separated at all from the state life. Moreover, this first principle has also become the state ideology. Legislation in Indonesia regulates the relationship between citizens in respecting the rights and freedoms within the Pancasila framework. The state and religion relations model in Indonesia adheres to Religious Jurisdiction in certain regions (Religious Jurisdictional Enclaves). This is especially the case where the general law is secular and religious law can be applied in certain jurisdictions fields.

3.2. Ratio Legis in Religious Law Practice in Indonesia

The Ratio Legis is defined in the Black's Law Dictionary as the reason or occasion of law and making a law (Black 1990: 1262). The definition varies due to the background of its formation. In practical discourse, the use of ratio legis can be found and characterized in the following ways (Klappstein-Dybowski 2018: 9).

- a. The presence of a real legal giver or judge (reason given or implied).
- b. The consideration that makes a lawgiver impose specific legislative or judicial actions to impose some stipulations.
- c. Subjective objectives of the law (or sentence).
- d. Intentions made or constructed by the lawgiver or judge (reasons that must be given by the lawgiver or judge).
- e. The type of legal argument constructed with the intention or reason to the legal giver (or judge).
- f. The objective purpose of the law (or sentence).
- g. Specific purposes of the law or punishment (relevant under certain conditions).
- h. All purposes of statutes or sentences;
- J. Justification (external justification reasons) for certain legislative or judicial actions.

Pancasila is an open ideology, meaning that its basic value is determined, but the interpretation can be developed creatively and dynamically based on the people's demands. The constitutional responsibility of the launching of this open ideology is implied in the 1945 Constitution. This is because the constitution, as a written form, only regulates the basic rules. As an embodiment of all the Indonesians, the People's Consultative Assembly should observe the dynamics of society and outline the course followed for the next five years. Additionally, Pancasila is neither dogma nor religion, and cannot be religious (Moerdiono 1991: 188).

Pancasila is an open ideology that can be interpreted differently by all groups of people. No state monopoly takes place on how one interprets Pancasila because it might unleash dictatorship. However, the lack of a valid interpretation produces uncertainty at the boundaries between the domain of religion and the state. Each group takes these limits from its perspective and decides where and how the state can regulate religion, though the State Law is often given an advantage. However, since religion can influence state law, the interpretation can be overwritten by the majority standpoints. For example, interpretation is mainly in the Law of Defamation, which determines whether an action has deviated from a particular religion's basic teachings. The interpretation of the majority religious group is more important than that of the minority. A further example is the Marriage Law, which states that marriage is only legal in case it is carried out following the religion of the people involved. These conditions are determined by the dominant religious views. In the Law on Blasphemy, the impact of religion on the state through formal legal instruments is followed up based on the six officially recognized religions in Indonesia, including Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. Local religions and beliefs not being officially recognized are subject to discrimination until the Constitutional Court decision No. 97 / PUU-XIV / 2016 is issued. This decree recognizes belief and religion as separate but equal entities. Recently, the term 'religion' in the Civil Administration Act refers to officially recognized religions and beliefs (Safa'at 2019: 20).

The Pancasila legal system began to be implemented and showed great respect for religious law (Ichtijanto 1994: 157-158):

- a. Law No. 14 of 1970 showed that the religious justice board is an integral part of Indonesia's national justice system, which is a subsystem of the Pancasila legal system. U.U. no. 15 of 1985 (Law on the Supreme Court) completes the religious justice sector's existence in the Supreme Court.
- b. Law No. 5 of 1960 (Basic Agrarian Law) places religious law in Article 5, Article 14 (1), Article 49 paragraph (2) (provision of government land for places of worship), and Article 49 paragraph (3) on the regulation of waqf land property.
- c. Law No. 1 / PNPS / 1965 recognizes the reality of religions embraced in Indonesia, protected from abuse and blasphemy. This is the attitude of the Pancasila legal system in the criminal field. The criminal legal system pays attention to the Pancasila state philosophy even though it protects and incorporates norms sourced from religious law.
- d. Law No. 1 of 1974 concerning Married jo. Government Regulation (*Peraturan Pemerintah*) No. 9 of 1975 defines religious and human rights regulations and determining the value of marital validity (Article 2 paragraph (1) of the Marriage Law). It shows that the Marriage Law is part of the Pancasila legal system by respecting and involving religious law.

The model of state and religion relations in Indonesia adheres to Religious Jurisdiction in certain regions (Religious Jurisdictional Enclaves). This applies where the general law is secular and religious law can apply in certain fields of law or certain areas. The application of religious law in certain fields is described in Table 1 below.

Table 1
Ratio Legis of Law Governing Religion in Indonesia

No	Constitutions	Anatomy of the Law		
		Considering	Articles Governing	Explanation

		and Observing	Religion	
1.	Law No. 1/PNPS/1965 Concerning the Prevention of Religious Abuse and Defamation	<p>a. In securing the state and society, the ideals of the National Revolution and Development for a fair and prosperous society, it is necessary to make arrangements to prevent abuse or blasphemy on religion.</p> <p>b. To safeguard the revolution and the provisions of society.</p>	<p>Article 1: Every subject is forbidden to deliberately tell, encourage, endeavor or seek public support in interpreting a religion held in Indonesia or carry out religious activities that resemble certain religions and interpretations and activities deviating from the main points of religious teachings.</p> <p>Article 2: Anyone who violates the provisions in article 1 is given an order and a warning to stop the action in a joint decision of the Minister of Religion, Minister or Attorney General, and the Minister of Home Affairs.</p> <p>Article 156 a: A prison sentenced of up to five years for anyone who deliberately and publicly issues feelings of hostility, abuse or conducts an act:</p> <p>a. which indicates hostility, abuse, or desecration of an adhered religion in Indonesia.</p> <p>b. With the intention that people do not adhere to any religion based on a belief on the One and Only God.</p>	<p>I. General</p> <ol style="list-style-type: none"> 1. Recently, no beliefs or religious organizations/communities arise and conflict with Indonesia's teachings and religious law. Many violations were committed, breaking national unity and blasphemy against religion in the past. 2. To prevent this from becoming protracted and endangering the unity of the nation and state, it was necessary to issue a Presidential Decree on July 5, 1959, in national vigilance and Guided Democracy. 3. This Presidential Decree is issued to prevent the misuse of religious teachings adopted by the main parties concerned. For the second time, this rule protects religious peace from blasphemy and teachings that encourage non-adherence to a religion based on a belief in the One and Only God. <p>II. By Paragraph</p> <p>Article 1: The word "in public" means what is commonly interpreted in the Criminal Code. The religions embraced by the population in Indonesia include Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism, proven by the history of the development of Religions in Indonesia. These 6 religions are guaranteed as provided by article 29 paragraph (2) of the Constitution. Additionally, they also receive</p>

				<p>assistance and protection, as provided in this article. However, that does not mean that other religions, such as Judaism, Zarasutrian, Shintoism, and Taoism, are forbidden. They also get a full guarantee as provided by this article and allowed to exist, as long as they do not violate the provisions contained in this regulation or other legislation.</p>
2.	Law No. 1 of 1974 regarding Marriage	<p>Considering: Following the Pancasila philosophy and the aspirations of promoting national law, there must be a marriage law applicable to all citizens.</p>	<p>Article 1: Marriage is a physical and spiritual bond between a man and a woman as husband and wife, to establish a happy and lasting family founded on the Belief in God Almighty.</p> <p>Article 2:</p> <p>(1) A marriage is lawful when funded on the laws of the respective religions and beliefs of the parties.</p> <p>(2) Each marriage shall be entered in a register conforming to the statutory regulations.</p>	<p>General explanation:</p> <p>1. In this law, the principles of marriage and all related matters are determined and adapted to the development and demands time. The principles listed in this Act include</p> <p>C. Marriage is legal if it is done according to the law of each religion and belief. Each marriage must be recorded based on the applicable laws and regulations. This recording is the same as the recording is critical and should be stated in a certificate or official deed.</p> <p>Explanation by Article:</p> <p>Article 1: This law states that a marriage is legal when based on certain religious laws and beliefs. Moreover, each marriage should be registered according to the relevant laws and regulations. This registration is the same as for important events in a person's life, such as birth and death, stated in a certificate or official deed.</p> <p>Article 2: with the formulation in Article 2 paragraph (1), there is no marriage outside the law of religions under the 1945 Constitution. It includes the statutory provisions applicable</p>

				to religion/belief groups as long as it does not contradict or is not otherwise specified in this Law.
3.	Law Number 3 of 2006 on Amendments of Law Number 7 of 1989 concerning Religious Courts.	Considering: a. Unitary State of the Republic of Indonesia is a constitutional state based on the Pancasila and the 1945 Constitution, which aims to realize an orderly, clean, prosperous, and fair life system. b. That the Religious Court is a judicial environment under the Supreme Court, an independent judicial authority to administer justice.	Article 49 paragraph (1) states that the Religious Courts have duties and authorities in examining, deciding, and settling cases at the first level among Muslims in the following fields: a. marriage; b. inheritance, wills, grants carried out based on Islamic law; c. <i>waqf</i> and <i>sadaqah</i>	Explanation I. General. The Religious Courts implement judicial Power in the Religious Courts (P.A.) in this Act centered on the Supreme Court, under the principles determined by Law No. 14 of 1970. The Religious Court is the first institution to examine, decide, and settle cases between Muslims in marriage, inheritance, wills, grants, <i>waqf</i> , and <i>sadaqah</i> based on Islamic law.
4	Law No. 23 of 2011 regarding Management of Zakat (Alms)	Considering: a. the state guarantees each population's independence to adhere to their religion	Articles 5, 6, 7 states the formation of National Alms Agency in the government's management of zakat nationally. Article 38: Every person is	Explanation. I. General The state guarantees the independence of each people to adhere to their respective religions and to worship according to them and their beliefs. The payment of zakat is an obligation for capable

		<p>and to worship according to their beliefs;</p> <p>b. Almsgiving is an obligation for capable Muslims based on Islamic law</p> <p>a. Zakat (Alms) is a religious regulation that aims to improve the community's justice and welfare.</p> <p>b. To increase power and effectiveness, it must be managed in an institutionalized manner following Islamic law.</p>	<p>prohibited from deliberately acting as <i>amil zakat</i> to collect, distribute, or utilize zakat without the authorized official's permission.</p> <p>Article 39, 40, 41, 42 regulates the criminal provisions of every person distributing zakat not under this law.</p>	<p>Muslims, as stated in Islamic law. Zakat is a religious regulation that aims to improve justice, public welfare, and poverty alleviation.</p> <p>To increase power and effectiveness, zakat must be managed in an institutionalized manner under Islamic law, trustworthiness, expediency, justice, legal certainty, integrated and accountability, and increased services efficiency.</p> <p>To assist Baznas in collecting, distributing, and utilizing zakat, the community forms the Amil Zakat Institution (L.A.Z.). However, it must obtain permission from the Minister or appointed official. L.A.Z. is obliged to report periodically on the implementation of collection, distribution, and utilization of the shari'a-audited and financial auditorium to Baznas</p>
5	<p>Law Number 24 of 2013 on Amendment to Law Number 23 of 2006 on Population Administration.</p>	<p>Considering:</p> <p>a. in the context of realizing a proper administration on national population, the Republic of Indonesia based on Pancasila and the Constitution is essentially obliged to provide protection and</p>	<p>Article 61 paragraph (1):</p> <p>Family Card (K.K.) contains information regarding the number, full name of the head of family and members, Population Identification Number (N.I.K.), gender, address, place of birth, date of birth, religion, education, occupation, marital status, family status, citizenship, immigration documents, other people's names.</p> <p>Paragraph (2):</p> <p>As referred to in paragraph (1), information about</p>	<p>Explanation</p> <p>I. General</p> <p>Indonesia's unitary state is obliged to provide protection and recognition of the legal status of the population and essential events experienced by the citizens. This law aims to realize an orderly population administration with the building of a national population database and the validity and truth of the population documents issued.</p> <p>Population administration is expected to provide the fulfillment of the population's administrative rights in public services and provide protection relating to the issuance of population documents without any discriminatory treatment.</p>

		<p>recognition of the determination of personal and legal status for any population and essential events experienced by residents / and or Indonesians outside the country's territory.</p> <p>b. According to the demands of professional administrative services, to improve population administration services, meet professional standards and information technology, dynamic, and non-discriminatory in achieving minimum</p>	<p>religion for residents whose religion has not been recognized based on statutory provisions, or for certain belief followers, is not filled out but is still served and recorded in the population database.</p> <p>Article 64 paragraph (1): The Electric Identity Card (KTP-el) includes a picture of the Garuda Pancasila symbol and a map of the Unitary Republic of Indonesia. It contains elements of population data, identity number, name, place, and date of birth, gender, religion, marital status, blood type, address, occupation, citizenship, passport photo, validity period, place and date of issue, and owner's signature.</p> <p>Paragraph (5): the element of population data on religion, as referred to in paragraph (1) for residents whose religion has not been recognized based on statutory provisions, or for adherents of a certain belief, is not filled out but is still served and recorded in the population database.</p>	
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		service standards towards comprehensive prime service to overcome population problems.	
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Since Indonesia's independence, several groups of citizens have categorized themselves as adherents of ancestral religions or are not adherents of one of the six officially recognized state religions. They are a collection of citizens who demand recognition and service from the state for civil rights based on their diversity which has been ignored and violated in Indonesian history. They have been sued throughout history or forced to for example identify themselves, get married, give cursing and so based on the official religion of the country which they do not believe in. They are victims of state discrimination in the name of legitimate religion or precisely in the name of "religious politics" to this day (Maarif 2017:1). Discrimination against local or minority religious groups is carried out by enacting various laws that limit their religious freedom as contained in table 1.

According to the table, the ratio legis is analyzed from the birth of laws governing religion, where its implementation leads to discriminatory treatment for adherents outside recognized religions. First, the anatomy of Law No. 1 / PNPS / 1965 consists of 5 articles, including 1). Prohibition to interpret religious beliefs adopted in Indonesia, 2) In case the provisions of Article 1 are violated, stern warnings are issued. In case the violation was carried out by organizations or beliefs, the President may dissolve the organization and declare it outlawed, 3). In case the organization continues to do violations, its management can be sentenced to prison for up to 5 years. 4) Article 156a is added to the Criminal Code, which criminalizes people pronouncing feelings or acts that are hostile, misuse, and blasphemy against religion in Indonesia. This also applies to behavior that prevents a person from adhering to any religion 5). Promulgation Order. Provisions regarding recognized religion are not contained are contained in the explanation of Article 1. Specifically, the religions embraced by the population of Indonesia are Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism, proven in the historical development of religions in Indonesia.

Law No. 1 / PNPS / 1965 viewed from the concordance between the preamble, article, and explanation. First, this Law was made to secure the state, society, and the ideals of revolution and national development, where the abuse or defamation of religion is a threat revolution. Second, various Islamic religious organizations' emergence contradictory to religious teachings and laws is perceived to be violating the law, breaking unity, and defaming religion. Therefore, national vigilance is required in passing this law. Third, this rule is intended to prevent the abuses of the central teachings by the scholars of the religion in question. It protects religious harmony from defamation/insults and teachings, not embracing any religion. The PNPS Law does not explicitly state the definition of religion recognized by the state. However, it mentions six (6) religions, including Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism, which Indonesians adhered to.

Although not explained in the PNPS Act, it does not mean that other religions, such as Judaism,

Zarassutrian, Shintoism, and Taoism, are prohibited. They get a full guarantee as provided by Article 29 paragraph (2) and allowed to exist, as long as they do not violate the provisions contained in this regulation or other legislation. However, in practice, state policy politics only determine 5 (five) official religions. This is increasingly apparent from the emergence of the Circular of the Minister of the Interior Number 477/74054 dated November 18, 1978, which states that: "Religions officially recognized by the government include Islam, Catholicism, Protestantism, Hinduism, and Buddhism." The statement was reaffirmed by various formal decisions issued by the Ministry of Religion and activities organized by the government that only involved 5 (five) recognized religions. For example, Minister of Religion Decree No. 35 of 1980 concerning Interfaith Forum only mentions 5 (five) religious assemblies in Indonesia, specifically MUI, D.G.I., MAWI, Parisadha and Walubi (Dja'far 2010: x).

The legal order was issued related to the Implementation of Law Number 1 / PNPS / 1965 on Prevention of Abuse and Blasphemy of Religion, which explains the religions embraced by Indonesia's population as Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucius. These six religions are the most widely adhered to by Indonesians. They receive guarantees, assistance, and protection provided by Article 29 paragraph (2). However, this does not mean other religions such as Judaism, Zarassutrianism, Shintoism, Taoism are prohibited. They have the full guarantee given in Article 29 paragraph (2) and are allowed to exist. The religions recognized by the state enjoy more privileges compared to others.

In practice, the provisions in article 1 of Law no. 1 / PNPS / 1965 which states "every person is forbidden to deliberately and publicly tell, encourage or seek public support to interpret a religion held in Indonesia or carry out religious activities that resemble the activities of that religion; interpretations and activities deviating from the main points of religious teachings " should be careful not to throw accusations that desecrate the religious community. During the Soeharto era, this provision was precisely aimed to secure official recognized state religions and gain state power stability. Likewise, the politics of state policy on the groups of belief did not place them as religion. M.P.R. Decree No. IV / MPR / 1978 on the GBHN expressly states that belief in God is not a religion. This Decree was then followed up by Minister of Religion Instruction No. 4 of 1978 concerning Policy on Beliefs. Furthermore, the state policy on Confucianism changed after the 1998 reform. In the era of Abdurahman Wahid's administration, Presidential Instruction No. 14 of 1967 was revoked by Presidential Decree No. 6 of 2000 which recognized Confucianism as a religion (Mulia 2007: xi)

At the issuance of the 1965 PNPS Law, the country was in a political crisis after a failed coup (G. 30 S / PKI) that made Sukarno issue Supersemar (March Eleven Warrant) in 1966 and contained the power delegation to Suharto. When the New Order government emerged in national politics, Indonesia faced an extraordinary crisis in the political and economic aspects. Politically, the crisis was marked by various demonstrations of students and mass organizations under political parties that lived under pressure during the era of guided democracy. Economically, it is characterized by difficulty in obtaining daily necessities and rising prices. The inflation rate at that time reached 600%, while the economy was almost stagnant. The New Order government was determined to fix the imbalances by restoring political order based on Pancasila, while at the same time putting up rehabilitation and economic consolidation program. Economic development is the main target, while political stability should be built as a prerequisite for its implementation. According to Moh. Mahmud M.D., political configurations in 1959-1966 was authoritarian based on guided democracy. The 1996-1998 new order period featured a non-democratic political configuration. (Mahfud MD

2011: 302-303).

The political configuration during the PNPS Law issuance was motivated by the need to secure the state and society, the ideals of the revolution, and the development of the universe towards a just and prosperous society. The enactment of the PNPS Law occurred in the context of a revolution, where the state's position was dominant due to the 1959 Presidential Decree and the application of guided democracy. Mahfud M.D. established that the character of legal products always develops in line with the political configurations. Although their capacities vary, democratic political configurations are always followed by the emergence of responsive/autonomous legal products. In contrast, authoritarian political configurations are always accompanied by the emergence of conservative/orthodox character laws. (Mahfud MD 2011: 72-73)

Second, the enactment of Islamic Law for its adherents is contained in the Marriage Law consisting of 67 articles, precisely the basis of marriage, conditions, cancellation, agreement, and property for marriage, child domicile, other provisions, transitional provisions, and closing. According to Article 1, as a state based on Pancasila, where the first precepts are the Godhead, the marriage has a very close relationship with religion/honor marriage have physical (*jasmani*) and psychological (*rohani*) elements. Creating a happy family to have descendants is the goal of marriage, where their care and education are the rights and obligations of parents. The influence of religion in marriage is also stated in this Law by emphasizing that there is no marriage outside the law of religions and beliefs. This includes the statutory provisions that apply to religious groups and their beliefs, as long as they do not contradict or are not otherwise stipulated in this Law. Restrictions on freedom of religion and belief choice occur in an interfaith marriage, or those with have religions outside the 6 recognized. They are forced to submit to one of their partner's religions or get married abroad to be registered in Indonesia.

Third, the special courts for Muslims are regulated in the Religious Courts Act, which examines and settles cases between Muslims in marriage, inheritance, wills, grants, endowments (*waqf*), and *sadaqah* based on Islamic law. This law's anatomy consists of 108 articles, including general provisions, court powers, procedural law, and other provisions. Cases judged in Religious Court are civil issues outside Islamic criminal jurisdiction. Non-Muslims are subject to the jurisdiction of the District Court.

Fourth, Law No: 23 of 2011 concerning Management of Zakat consists of 47 articles and specifically regulates Muslims. It contains general provisions, the National Amil Zakat Agency, financing, guidance and supervision, community participation, administrative sanctions, prohibitions, criminal provisions, transitional provisions, and closing provisions. The payment of zakat is an obligation for Muslims allowed to carry out their religion and beliefs. Communities are given the freedom to hand over their zakat to individuals or religious organizations. Therefore, whether the state needs to regulate and form a special institution that applies penalties for zakat managers without government permission is critical.

Fifth, the Population Administration Act, although not a law regulated explicitly for adherents of certain religions, impacts followers of the religion. It leaves a blank column for residents whose religion is not recognized by the state. The content material in the Population Administration Act consists of 107 articles, including general provisions, rights and obligations of the population, authority and implementing agencies, and population, civil, data, and documents, and civil

registrations. It applies when the state is plagued with an emergency and outside usual, population administration information systems, protection of residents' data, investigations, administrative sanctions, and transitional and closing provisions.

The five laws above regulate religion as an embodiment of the state based on the belief on the One and Only God, as stated in Article 29 paragraph (1) of the 1945 Constitution. Although Article 29 paragraph (2) of the 1945 Constitution emphasizes that the state guarantees the independence of each resident to embrace their respective religions and to worship according to their beliefs, religious freedom is limited to only six officially recognized religions, including Islam, Catholicism, Protestantism, Hinduism, Buddhism, and Confucianism. Law No. 1 / PNPS of 1965 on the Prevention of Abuse and/or Blasphemy of Religion only recognizes the religions embraced by Indonesian people as Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism (Confucius). The article's interpretation explains in the PNPS Act is the legitimacy in implementing Law No. 1 of 1974 on Marriage and Law Number 24 of 2013 on Amendments to Law No. 23 of 2006 on Population Administration, where only 6 (six) religions are recognized. The impact of the facilitation of 6 religions recognized by the state causes discrimination against adherents of local beliefs or religions not recognized. This includes interfaith and unrecorded marriages conducted by unrecognized religions, or regarding religious inclusion in the Identity Card.

The regulation of religious law in the national legal system limited to only recognized 6 (six) religions leads to discrimination in religious groups. The majority of this discriminatory treatment leads to conflicts in society, disrupting religious tolerance. For this reason, the state should discharge its constitutional obligations to respect, protect, and fulfill citizen rights over religious freedom.

4. Conclusion

Indonesia is a nation based on law and the principle of a belief on the One and Only God, which forms the basis of recognizing religion in law. The first principle of Pancasila as the fundamental philosophy of the state is "a belief in the One and Only God". The relationship model between state and religion adheres to religious jurisdiction in certain areas (religious Jurisdictional Enclaves). This is where the general law is applied nationally to everyone (secular), while religious law is limited to specific fields or jurisdiction. Furthermore, the Pancasila legal system is implemented in various religious laws that regulate namely 6 (six) religions which officially recognized by the state, married should be based on religion, the services from the state also be based on religion. In practice, these laws make local religion or minority religion as the victims of state discrimination in the name of religion.

Indonesia consists of diverse ethnic groups, cultures, regional languages, races, and religions or beliefs with a famous slogan, "Bhineka Tunggal Ika." Religious differences might trigger conflicts in society, hence tolerance among religious people needs should be developed. The state should protect all religious communities without discrimination. Therefore, the House of Representatives and the Government need to make amendments to the articles in Law No. 1 / PNPS of 1965 on Prevention of Abuse and Blasphemy of Religion, Law No. 1 of 1974 on Marriage, as well as Law Number 24 of 2013 on Amendments to Law No. 23 of 2006 concerning Population Administration, provides for discrimination against minority religious groups.

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