

## Beyond the 'official' religions: A normative framework for religious recognition in Indonesia

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### Abstract

The regulation of religious recognition in Indonesia remains problematic to this day. Research on the regulation of religious recognition has not been conducted to date. As a country with diverse religions, Indonesia faces unique challenges in managing religious life for substantive citizenship. The terminology of "recognised" and "unrecognised" religions, as well as "official" and "unofficial" religions, is one of the factors that hinder the fulfilment of the right to religious freedom for Indonesian citizens. The regulation of religious recognition in Indonesia must address significant legal issues to achieve justice and legal certainty. Inclusive reforms, policy harmonisation, and stronger enforcement mechanisms are essential to ensure that all religious groups are treated equally under the law. These efforts must align with both constitutional principles and international human rights standards to uphold justice and legal certainty in the recognition of religion. Religious recognition must be in line with the spirit of the Indonesian nation, which upholds respect for human dignity, guarantees freedom of religion and belief, and upholds equality, non-discrimination, justice, and legal certainty. This paper is the result of normative research on the regulation of religious life in Indonesia, particularly regarding the recognition of religions in the country. The study concludes that, to date, there is no comprehensive regulation regarding the recognition of religions in Indonesia. Therefore, in the future, the formulation of such regulations is an urgent necessity. The regulation of religious recognition must prioritise the principles of equality, justice, and legal certainty. Indonesia needs fair religious recognition and legal certainty based on Pancasila

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## Introduction

Although many studies have examined the legal problems of guaranteeing religious freedom, religious intolerance, few have analysed the administrative mechanisms of religious recognition through the perspective of substantive citizenship and John Rawls's theory of justice. Pertiwi (2021), in his dissertation, found that the existence of official or recognised religions in Indonesia is the result of religious political making by the nation's founders. The existence of this accepted religion eventually affects administrative legislation, marriage regulations, and blasphemy law (Pertiwi, 2021). In fact, until now, there are no special rules regarding the religion to be recognised, the form of recognition accepted, or the procedure for recognising religion at all. Seglow (2021) proposed that official recognition for adherents of religious minorities will lead to equal status as citizens. Recognition of religion is a symbolic status that indicates the religion's presence in society (Seglow, 2021).

Hidayat (2015), who is an Indonesian Constitutional Judge, emphasised that Indonesia is a Theistic State. Indonesia, as a Theistic State, fully guarantees the fulfilment and protection of Human Rights (HAM). Protection, respect, fulfilment, and even restrictions on human rights are part of state power. Human rights are a very important part of the constitution of a modern state (Hidayat, 2015). The founders of Indonesia, from the very beginning, decided to ensure that diversity thrives and is preserved in the country, encompassing ethnic, linguistic, cultural, and religious diversity. Lubis (2011) suggested that the guarantee of such diversity is a form of respect for human dignity and is closely related to human rights. Religious freedom is strictly regulated in 29 paragraphs (1) and (2) of the Indonesian Constitution, which stipulates that Indonesia is a country based on the One God. Therefore, every citizen is guaranteed by the state the freedom to believe in their religion and to practice it in worship. Manifesting one's religious beliefs is a fully guaranteed freedom. This aligns with Indonesia's foundational philosophy, Pancasila, specifically its second principle, which upholds the values of a just and civilised humanity. Respect for human rights is an essential element of a modern state's constitution.

The founders of Indonesia had a clear understanding of the limits of the state, recognising that it could intervene only in the realm of belief. From the beginning, they interpreted the same thing that the state played a role, not as a true judge or one of the religious teachings, but as a guarantor and protector of free and equal religious life. In regulating religious recognition, the principle that the state is not a true judge of religious teachings, but rather a guarantor and protector of religious freedom, should govern. That is why any policy related to religious recognition that is reduced to rigid, exclusionary, and potentially discriminatory administrative policies must be criticised, as it deviates from the nation's philosophical foundation, namely Pancasila. This is the important point in formulating a model of religious recognition that is just and provides legal certainty in Indonesia, grounded in the philosophical foundation, namely Pancasila. This will address the lack of normative regulation of religious recognition in Indonesia within a comprehensive legal framework. So far, there has been only administrative policy in the form of very sectoral determinations that could ultimately cause uncertainty and legal injustice.

The precepts of the One Godhead are philosophically the ontological and axiological basis of religious life. This precept is not placed as a normative instrument to limit the expression of the religious life of citizens. The precepts of the One God as the first precept are the guiding principles for the values of other precepts, especially for the values of humanity, justice and unity. The precepts of the One Godhead recognise the existential freedom of the believer in expressing his beliefs in a relationship with God. This is part of respect for human dignity. That is why Pancasila can be upheld: it serves as a meeting point for all religions in Indonesia. All religions call for finding common ground with other religions (Hidayatullah, 2006). The common point is Pancasila, which is inclusive, non-dogmatic and non-sectarian.

Notonagoro, in his idea, stated that the value of Godhead is not just a theological claim but the principle of the religiosity of Pancasila. The precepts of the One God are religious principles

that animate the values of Pancasila as a whole. The precepts are not a specific religious doctrine, nor are they fundamentally an attempt to make it a state religion. Pancasila serves as the moral foundation and spiritual life of citizens, and is universal. Notonagoro's idea of Pancasila religiosity is a genuine concept in the context of religious pluralism (Hidayatullah, 2006). The humane, just, and civilised precepts of God that unite Indonesia must be the basic foundation for religious recognition in Indonesia.

The first principle of Pancasila, belief in the One and Only God, symbolises the Indonesian nation's identity as a theistic state. Regardless of each citizen's religion or belief, it is part of expressing respect for the One and Only God. The One God State is applied with the principle of divinity that is cultured, virtuous, and respectful of each citizen's freedom of religion. (COOTER, 1987) proposed that freedom can be classically defined as "the absence of prohibitions".

Nevertheless, the basic concept of "freedom" must also consider the absence of interference with the freedom exercised against others' freedom. So, there are two balanced freedoms: the freedom to do and the freedom not to be intervened in by the action (Prasetyo, 2020). A country based on the principle of one God applies the principle of a divine culture with noble ethics, liberates, upholds justice, respects the religious freedom of every citizen, and fosters a spirit of cooperation through social ethics to advance the nation and state.

Terms and regulations that recognise or do not recognise certain religions usually have a direct impact on the protection of the civil and political rights of adherents of unrecognised religions. In 2017, one of the interesting facts is that the issue of the Baha'i religion in Indonesia is considered to have become an official religion because of the statement of the Minister of Religious Affairs, who wrote to the Ministry of Home Affairs to fulfil civil rights in terms of population administration to Baha'I, Taoist and Sigh believers (Bagir et al., 2019). At that time, Baha'I was in the spotlight because it was considered new and immediately considered as an official religion or a recognised religion since the statement of the Minister of Religion at that time, namely Lukman Hakim Syaifuddin. Official recognition for adherents of minority religions will have a significant impact on the implementation of justice for all Indonesian citizens, as stated in the fifth precept of Pancasila. This is because every citizen can be in the same position as any other citizen. Religious recognition is a symbolic status that indicates a religion's presence in society (Seglow, 2021). Religion plays a significant role in an individual's identity, as a person who is deeply involved in his religion or beliefs is also strongly committed to it (Lawan, 2013).

The legal product often used as a reference to justify the terms 'recognised' and 'unrecognised' religion is Article 1 of Law Number 1/PNPS/1965 concerning the Prevention of Abuse and/or Blasphemy (Law Number 1/PNPS/1965 Concerning the Prevention of Abuse and/or Blasphemy, 1965). In the article, the phrase "religion adhered to in Indonesia" appears. In the explanatory part of this Law, it is stated that the religions practised in Indonesia are Islam, Christianity, Catholicism, Hinduism, Buddhism, and Khong Cu (Confucianism), as evidenced by their historical development in Indonesia. Almost the entire Indonesian population embraces these religions. However, this does not mean that other religions outside the six religions, such as Judaism, Zoroastrianism, Shinto, and Taoism, are banned in Indonesia. These religions are still guaranteed, protected and entitled to assistance in accordance with existing rules. If referring to religions outside the six practised by almost all Indonesian people, there are several rarely heard of religions, such as Zoroastrianism, now known as Zoroastrianism/Zoroaster. For a religion that may be "new" to some people, it is still guaranteed and protected.

In this regulation, there is absolutely no recognised term for religion, and religion is not recognised, neither official nor unofficial. However, Jufri (2020) proposed that it does not mean that other religions outside the six religions, such as Judaism, Zoroastrianism, Shinto, and Taoism, are banned in Indonesia. These religions are still guaranteed, protected and entitled to

assistance in accordance with existing rules. If referring to religions outside the six practised by almost all Indonesian people, several are rarely heard of (Jufri, 2020).

The Constitutional Court's (MK) ruling on the application for Judicial Review of the Blasphemy Law resolved the debate over recognised and unrecognised religions. The Constitutional Court, in the consideration of its decision, expressly does not justify that religious recognition is limited to six religions. The Constitutional Court emphasised that all religions embraced by the Indonesian people are recognised (Constitutional Court (MK) Decision No. 140/PUU-VII/2009 Concerning Judicial Review of Law No. 1/PNPS/Year 1965 Concerning the Prevention of Abuse and/or Blasphemy of Religion against the Constitution of the Republic of Indonesia in 1945, 2009). In essence, the Constitutional Court itself expressly states that only six religions recognised in Indonesia are untrue. As a law-abiding government, Indonesia must provide a solution to the debates and issues surrounding the existence of recognised and unrecognised religions in Indonesia. However, this will have a significant impact on religions other than the six recognised and official in this country. The restriction to six religions recognised in Indonesia, as reflected in several legal documents, needs to be examined from a justice perspective.

The characteristics and existence of legal science in the scientific order and praxis are that its implementation in community life is a necessity in the process of legal development (Sidharta, 2020). This research attempts to answer why a just and certain regulation of religious recognition in Indonesian law is necessary and how to formulate it in positive Indonesian law. At least until now, the norms related to the regulation of religious recognition still do not have a norm (vacuum of norms) and therefore do not have legal certainty. New normative formulations on religious recognition are an important part of regulations that uphold the fundamental rights of justice, equality, and freedom of religion for every Indonesian citizen. Legal issues related to religious recognition are important to study from scientific, rule-based, and practical perspectives to develop a regulatory framework that is fair and legally certain in Indonesia.

The absence of a comprehensive normative framework for religious recognition in Indonesia cannot be understood solely as an administrative lacuna; it reflects a more fundamental tension between the state's prevailing conception of religion and the lived plurality of beliefs that characterises Indonesian society. Hefner et al. (2021) argues that individual religious freedom is inevitably contingent upon complex social embeddedness, and that the concept of institutional religious freedom thus serves as a critical corrective to conventionally individualistic approaches. Moreover, this framework complicates the analysis of religious freedom by requiring scholars to recognise that distinct societal and civilisational traditions define religion itself in significantly different ways. This observation carries weight in the Indonesian context, where the state's historically rigid delimitation of recognised religions to a fixed number has generated persistent normative conflicts. Tensions between competing social definitions of religion and between divergent manifestations of institutional religious freedom have constituted a chronic feature of Indonesian religious life since the proclamation of the republic in 1945, most acutely in relation to the contested legal and ethical standing of indigenous spiritual traditions (*kepercayaan*) that have long been excluded from full state recognition (Hefner, 2021). Accordingly, any serious attempt to construct a just and legally certain framework for religious recognition must engage not only with constitutional texts but also with the broader sociological architecture within which religious identity is produced and sustained.

Comparative scholarship on the governance of religious diversity offers instructive models for reconceptualising the relationship between the state and religious plurality beyond the limitations of administrative exclusivity. Modood et al. (2021) contend that multiculturalised secularism is characterised by the state's recognition that religion possesses a public good dimension within civil society, and that this dimension may legitimately attract

state support where it is judged to contribute to the broader common good. Crucially, this framework does not advocate the subordination of the state to religious authority; rather, it proposes that the state actively accommodate a wider range of religious communities by extending recognition upwards rather than narrowing it through exclusionary classifications. The moderate form of secularism that has historically evolved across many democratic states is, in principle, capable of accommodating religious diversity in a manner broadly comparable to its accommodation of established churches. Still, it must first undergo a process of 'multiculturalisation' to do so equitably (Modood et al., 2021). Applied to Indonesia, this framework suggests that Pancasila's inclusive and non-sectarian philosophical foundation already provides the moral groundwork for such an approach; what is required is the translation of those foundational values into a normative legal instrument that affords equivalent recognition and protection to all religious and belief communities, irrespective of their numerical strength or historical prominence.

The persistence of discrimination against adherents of minority religions and indigenous belief systems, notwithstanding constitutional guarantees of religious freedom, underscores the urgency of establishing clear and enforceable legislative norms in this domain. Palaguna et al. (2021) demonstrate that, as a constitutional democratic state, Indonesia has formally incorporated numerous human rights provisions derived from international covenants into its constitutional order; however, such formal incorporation does not in itself guarantee the effective realisation of those rights in practice, rendering the judicial review mechanism of the Constitutional Court an indispensable instrument through which citizens seek to vindicate their constitutionally protected entitlements. This observation is directly pertinent to the domain of religious recognition, where the Constitutional Court has repeatedly been called upon to adjudicate disputes that the legislature has failed to resolve through primary legislation. The Indonesian Constitutional Court is required to operate within a highly pluralistic environment that must simultaneously accommodate and reflect the country's cultural, religious, and regional diversity, including by recognising the rights of adherents of indigenous belief systems against discriminatory norms and policies (Isra & Faiz, 2021). The Court's interventions, whilst significant, are inherently reactive and cannot substitute for the proactive enactment of a comprehensive legislative framework. It is therefore imperative that the Indonesian legislature address the existing vacuum of norms in this field by formulating positive law on religious recognition that is grounded in the justice principles of Pancasila, consistent with constitutional guarantees of equality and freedom of religion, and capable of providing legal certainty for all citizens regardless of their religious or belief affiliation

Research on fair, legally certain religion recognition is very important, so that religion recognition can be adequately regulated in accordance with the state's fundamental norm (Pancasila) and not contrary to the constitution. Based on the preceding description of the problem's background, the problem in this study is how to practice religion recognition from the old order period to the reform period, and how to regulate religion recognition with justice and legal certainty to fulfil human rights to religious freedom. This research seeks to explain why a just and certain religion recognition in Indonesian law is needed and how to formulate it within Indonesia's positive law.

## Method

This study employed a normative legal research methodology. Normative legal research, also known as doctrinal research, is used to undertake in-depth studies of normative vacuums, normative vagueness, and normative conflicts. In the context of this study, this strategy is employed to fill a gap in Indonesia's regulatory framework for fair and legally assured religious recognition. This is a descriptive study that describes and illustrates the norms of religious confession as just and legally secure by examining Indonesian values, principles, norms, and legal realities ((Agustini et al., 2023) . In addition, it examines international conventions, national laws, and court decisions related to religious freedom and religious recognition in

Indonesia. It concludes by explaining why religious recognition that is just and legally certain is needed in Indonesia, and how it will be regulated in the future within the Indonesian legal system (Muhaimin, 2020).

This study utilises statute, case, historical, and conceptual techniques. This study uses normative legal research (juridical normative) to examine the principles of law, legal systems, synchronisation, history, and theory. The statutory approach will carefully examine laws and regulations that address matters of recognised religion and conflict with the Constitution. The case approach is used to carefully examine the application of the law regarding recognised religions in this case, specifically studying the application of the law for adherents of religions and beliefs outside the six religions. The historical approach is used to examine the recognition of religion through the historical and legal context of the drafting of the constitution and other laws or policies related to recognised religions in Indonesia. The conceptual approach is used to examine matters of religion, recognition, freedom, justice, equality, and human rights in legal construction.

The data in this study are classified into primary, secondary, and tertiary legal materials. Primary legal materials consist of binding normative rules, including the 1945 Constitution of the Republic of Indonesia, Law No. 1/PNPS/1965 on the Prevention of Religious Blasphemy, Constitutional Court decisions, and international human rights instruments ratified by Indonesia. Secondary legal materials include non-binding sources that provide explanatory and analytical context, such as legal textbooks, peer-reviewed journal articles, expert opinions, and academic commentaries pertaining to religious freedom and legal recognition. Tertiary legal materials encompass legal dictionaries and encyclopaedias employed to clarify technical legal terminology. This tripartite classification of legal sources is consistent with the doctrinal research framework advanced by Hutchinson & Duncan (2012), who argue that the rigorous hierarchical identification and treatment of legal materials is fundamental to ensuring the internal validity of normative legal inquiry.

The analysis in this study is conducted through a qualitative interpretive approach, in which legal materials are systematically interpreted and evaluated to construct a coherent normative argument. Legal interpretation employs grammatical, systematic, teleological, and historical methods of legal reasoning to uncover the meaning and legislative intent embedded in the relevant legal provisions (van Hoecke, 2013). The findings are subsequently synthesised to identify normative vacuums, ambiguities, and conflicts within Indonesia's existing regulatory framework for religious recognition, and to propose normatively grounded recommendations for legal reform. This analytical strategy is consistent with the broader tradition of doctrinal legal scholarship which, as articulated by McCrudden (2017), seeks not merely to describe the law as it stands, but to critically evaluate and reconstruct it in light of foundational legal principles—particularly justice, equality before the law, and legal certainty—thereby ensuring that the study's conclusions are both academically rigorous and practically relevant.

## Results and Discussion

### The Concept and Meaning of Religious Recognition in the State of Law

Recognition is an important issue in the fulfilment of rights and the respect for human dignity in the context of the protection of human rights. Heiner Bielefeldt interprets recognition in at least three ways, both from its conceptualisation and its implementation in freedom of religion and belief. *First*, recognition is closely related to the status of rights holders, grounded in their dignity. *Second*, recognition is understood as the state's obligation to recognise religion so that it can carry out collective legal acts with clear legal status. To obtain the status of a legal entity, one usually goes through administrative procedures to ensure recognition. This administrative recognition is not an attempt to legitimise the view that only certain religions are, or to ensure that other religions are not discriminated against or prevented from obtaining the same status. *Third*, state recognition will confer practical benefits on certain religions that

receive it. Those benefits can be tax exemptions or deductions, religious aid, and other special assistance that other religions may not get (Bielefeldt, 2019). The three meanings of recognition are relevant to the process of fulfilling the right to freedom of religion, each with different implications.

Conceptually, the recognition of religion cannot be reduced to the state's effort to declare which religions are valid, recognised, or official. The State's efforts to determine which religions are recognised, legitimate, or official are contrary to the principles of the rule of law and human rights. Referring to various legal literature, religious recognition is an administrative legal act that aims to fulfil citizens' constitutional rights, not as part of the state's efforts to assess or ensure the truth of a religion's teachings. Religious recognition is a means of ensuring that freedom can be enjoyed within a just and non-discriminatory legal framework.

Recognition in public law is, conceptually, the act of the state granting legal status to a certain subject, so that the subject can legally access rights, protection, and public services. The right to recognition is a right that is strictly regulated as a constitutional right (Article 28D paragraph (1) of the Constitution of the Republic of Indonesia of 1945 stipulates that "everyone has the right to fair legal recognition, guarantee, protection, and certainty and equal treatment before the law" (The 1945 Constitution of Republic of Indonesia, 1945). In the context of religious confession, it does not touch the theological dimension or the truth of a religion's teachings. However, the recognition in question is state recognition of a religion's social and legal existence, including recognition of its adherents. That is, recognition is interpreted as part of the socio-cultural process of a particular religion or belief; both the community of believers and its affiliated organisations exist, and their existence is recognised by society and the state without judgment or justification of the substance of their teachings. The religious recognition is juridical-administrative, not normative-theological.

Religious confession, if linked to Thompson's view as interpreted by Ikaheimo, falls under the category of vertical recognition. Vertical recognition is related to the relationship between the state and its citizens. Another type of recognition is horizontal recognition, which concerns relationships among individual citizens. Vertical recognition is divided into two, namely vertical recognition up and vertical recognition down. Vertical recognition is the recognition of citizens who are subject to state authority. At the same time, vertical downward recognition is recognition where the state recognises its citizens. Thompson, in his idea, emphasised that religious recognition has a multidimensional character. The character includes legal, social and institutional dimensions.

The six religions are mentioned in the explanation of Article 1 of Law No.; 1/PNPS/1965, the explanation uses the term "religions embraced by the people of Indonesia" rather than the express term "official religions". However, the explanation is that the law continues to limit religions beyond the six officially recognised ones, as these religions must not conflict with the provisions of Law No. 1/PNPS/1965 or other legal regulations. This presents a challenge, as Article 1 of Law No. 1/PNPS/1965 prohibits interpretations or religious practices that deviate from the core principles of mainstream religious teachings. This means that any interpretations or religious activities considered contrary to the mainstream are deemed criminal offences.

The President's determination on the Prevention and Blasphemy is based on at least two things. First, to prevent religious abuse and blasphemy during the national revolution and ensure the country remains safe. Second, for the sake of public peace and the security of the revolution. Efforts to prevent religious abuse and persecution are considered one of the factors supporting the achievement of the national revolution (Christianto, 2013). If referring to Explanation Number 2 of the Law on the Prevention and Blasphemy, this Presidential Decree is very much needed because, at that time, various sects and organisations emerged within the community that were contrary to the principles of existing religions. This will certainly affect the community's security and peace, given the high potential for horizontal collisions/conflicts.

The ideals of national revolution and national development towards a just and prosperous society must be ensured to run and not be disturbed by horizontal conflicts.

Article 1 of the Law on the Prevention of Blasphemy reads;

"Everyone is prohibited from deliberately in public telling, advocating or seeking public support, to interpret a religion that is practised in Indonesia or to carry out religious activities that resemble the religious activities of that religion, which interpretations and activities deviate from the main teachings of that religion."

The Law on the Prevention and Blasphemy of Religion was asked for a material test in 2009. The Petitioners stated that the existence of this Article constitutes discrimination against religions and beliefs not mentioned in the law and even tends to prohibit their growth and development.

Under Article 1 of the Law on the Prevention of Blasphemy, everyone is prohibited from publishing interpretations that differ from the religion practised in Indonesia. Publicising here can be interpreted as a deliberate effort to convey, advocate, and seek general support for an interpretation of religion considered deviant from the main teachings of the religions embraced by the Indonesian people. This norm imposes restrictions on citizens' constitutional rights to association, assembly, and freedom of expression (Ali, 2022). The Constitutional Court is of the view that the existence of this rule is part of the effort to prevent the possibility of horizontal conflicts. After all, religion is something sensitive and sacred for most people. Religion cannot be interpreted solely as an individual relationship with God, but also as part of social capital that shapes the joints of society (Mahkamah Konstitusi, 2009). Religion is a very important and influential thing in the structure of social life in Indonesia.

The rights of religious freedom, as manifested in the *forum externum* (associating, running religious organisations, worship, and sharing one's beliefs with others), are nullified by this norm. In addition, the beliefs of citizens (*forum internum*) with different interpretations or religious beliefs in Indonesia are also not protected. However, in the weighing section of the Law on Prevention and Blasphemy, it was issued to support the ideals of the national revolution for the realisation of a just and prosperous society. If we want to prioritise a just society, the mechanism for dissolving organisations or religious schools deemed deviant should go through a process in an independent, open court.

Article 3 of the Law on the Prevention and Blasphemy also stipulates that any person, organisation, or school of faith that violates Article 1 will be held criminally liable. The reading of Article 3 is;

"If, after action has been taken by the Minister of Religion together with the Minister/Attorney General and the Minister of Home Affairs or by the President of the Republic of Indonesia in accordance with the provisions of article 2 against a person, organization or school of belief, they continue to violate the provisions in article 1, then the person, adherents, members and/or members of the Management of the Organization concerned from that school shall be sentenced to imprisonment for a maximum of five years"

This article is considered contrary to the principle of the rule of law, which prioritises tolerance and diversity. This article has the potential to be used by the government as a tool of power to criminalise religious freedom.

In Article 4 of the Law on the Prevention and Blasphemy of Religion, it specifically changes the reading of Article 156a of the Criminal Code to;

"Article 156a Shall be punished with imprisonment for a maximum of five years if anyone deliberately expresses feelings or commits an act, a. which is essentially hostile, abusive, or blasphemous against a religion practised in Indonesia; b. with

the intention that people do not adhere to any religion, which is in harmony with the One God."

This norm stipulates that anyone who willingly expresses feelings or actions in public that are essentially hostile, abusive and blasphemous of a religion practised in Indonesia can be sentenced to a maximum of 5 years. (Safa'at, 2022) argues that words such as "hostility", "slander", "harassment" and "defamation" of a religion are very difficult to measure. This is because every religious believer has a highly subjective view of character, religious values, and worship (Ali, 2022). In addition, in the Indonesian context, which has a Pancasila identity that is in harmony with the values of the One Godhead, efforts to bolster or campaign for non-religion are something that can be held criminally accountable.

Recognition is synonymous with respect for human dignity, collective identity, and the guarantee to be recognised as equal legal subjects in society. Meanwhile, registration is understood as an administrative procedure carried out by the state to regulate, record, and manage religious organisations and public services. This registration is not to declare a religion valid or not, official or unofficial, recognised or unrecognised. In the context of human rights, registration should be voluntary, neutral, and non-discriminatory, rather than a prerequisite for the enjoyment of citizens' right to freedom of religion (Taylorian, 2023). The distinction between recognition and registration in the context of religious diversity in Indonesia is relevant today. That is why regulation of religious recognition, which provides just and legal certainty in Indonesia, is urgently needed.

### **Religious recognition in Substantive Citizenship**

The right to freedom of religion provides guarantees and certainty that every citizen is equal. That is why religious recognition is important as an effort to exercise substantive citizenship. Religious recognition for substantive citizenship is inseparable from the state's position on religion. Dynamic relations between religion and the state must be maintained within the framework of Pancasila, which is the nation's ideology and the basis of the state. That is why the Constitutional Court, when testing laws related to religion, will use the 1945 Constitution as a touchstone. The touchstone of religion is certainly inseparable from Pancasila, which is also substantially present in the 1945 Constitution in its opening section. In addition, of course, the part of the body that regulates freedom of religion and belief. The Constitutional Court plays a significant role in ensuring that the relationship between religion and the state remains within the parameters set by the 1945 Constitution (Ali, 2022). Indonesia is neither a religious nor a secular country. Indonesia is between a secular country and a religious country. Symbiotic or interdependent relationships are used to describe the relationship between a state and religion as two distinct entities (Herlius & Sitorus, 2022). Pancasila is a balancing point between the relationship between the state and religion. This is important to understand the relationship between the state and citizens regarding the religion they adhere to.

Religious recognition is philosophically in accordance with the soul of the Indonesian nation. The *Volksgeist*, as stated by Friedrich Carl von Savigny, is where law is not born of the will of the ruler. Law must be seen as part of society's social life, not because certain people form it, but because it is born of a common spirit. In the community's general awareness, the law is accepted, enforced, and undergoes various adjustments. Thus, it can be inferred that the law, as the soul of the nation (*volksgeist*), develops through the internal forces within society itself and is not formed by the arbitrary will of lawmakers (Latipulhayat, 2015). The law that is formed is a law that is in accordance with the consciousness of the people, the soul of the people and the soul of the nation. The regulation of religious recognition in Indonesia must accommodate the Indonesian nation's plural character and inquisitiveness. Rigid, formalistic and exclusive religious recognition can reduce the personality of the Indonesian nation. Religious recognition must be in line with the spirit of the Indonesian nation, which upholds respect for human dignity, guarantees freedom of religion and belief, and upholds equality, non-discrimination, justice, and legal certainty.

The term "recognition" is important in protecting human rights. The Universal Declaration of Human Rights (UDHR) of December 10, 1948, as the main foothold in the protection of human rights, is no coincidence in its opening in the first paragraph by stating that the recognition of the noble human dignity and equal rights inherent in every human being must be respected and cannot be revoked (United Nation, 1948). The term recognition in this international convention indicates that the dignity of human existence must be accepted and recognised as part of the foundation of the protection of human rights. Indonesia, as a country of law, is obliged to respect, protect and *fulfil universal* human rights. The universality of human rights requires the state to ensure that every individual is respected in the exercise of his or her human rights in freedom of thought, belief, and religion. The universal nature of human rights will be measured by a sense of justice (Syahuri, 2011).

According to R.W.M. Dias, justice is generally based on equality (Dias, 1985). Treating citizens as equals, based on their human rights and dignity, ensures justice. This is the basis for the state's power not to issue discriminatory public policies based on status, gender, ethnicity, race, class, and religion. So what is a challenge is also in these two things, if they are associated with respect, protection, and the fulfilment of human rights. The challenge is unequal treatment and discriminatory treatment (Bielefeldt & Wiener, 2021). The inherent human dignity is the reason why respect for human dignity does not require any conditions. The state, society or other people do not have the right to recognise the dignity of other human beings; that is where the nobility of human dignity lies.

The Indonesian Constitution, through Articles 28E and 29 of the 1945 Constitution, guarantees the freedom of religion and belief as a fundamental right of every individual. Article 28E affirms that "Everyone has the right to religious freedom." Article 29 further emphasises the nation's commitment to religious freedom, with Paragraph (1) declaring, "The state is based on the One Godhead," and Paragraph (2) stating, "The state guarantees each citizen's freedom to embrace their respective religion and worship according to their religion and belief."

This indicates that religious freedom in Indonesia is enshrined in the constitution as a fundamental legal principle and is directly linked to Law No. 39 of 1999 on Human Rights. However, this freedom is not absolute; laws and regulations bound it, prudently managed under state oversight to ensure harmony and stability within Indonesia's diverse society. The enactment of Law No. 1/PNPS of 1965 on the Prevention of Abuse and/or Blasphemy of Religion was intended to preserve public order and prevent interfaith conflicts. However, the law has sparked controversy, as it is perceived as "restrictive" and inconsistent with the principles of religious freedom. Its ambiguous and subjective interpretations have made it prone to misuse (Cooter, 1987).

First, regarding the state's discriminatory policy, precisely in Law No.1/PNPS/1965 in Article 1, which mentions the term religion "embraced in Indonesia by mentioning six religions. This finally gives rise to the impression of religious terms that are "recognized" and "not recognized" by the state, because it gives rise to the assumption that in addition to the six religions or beliefs outside what is written in the law, they are not recognized and discriminated against so that they do not get protection and services from the state as they should (Ratnaningsih, 2020). In fact, in addition to these six religions, many schools of belief in the context of "religion" are also related, especially given that Indonesia is a very plural country with various cultures and customs at the regional and local levels. In the explanation of the law, it has also been explained that other religions outside the six religions that have been banned and guaranteed and allowed to exist, as long as they do not violate the provisions of the law (Muktiono, n.d.). The things that happen in the practice of the state are not part of the manifestation of substantive citizenship.

Religious recognition from the perspective of constitutional law must be understood as part of the constitutional relationship between the state and citizens. Religious recognition is not part of the relationship between the state and religion as a doctrine. The constitutional

relationship in question arises from the positioning of citizens as legal subjects to whom a constitutional right is attached, namely the right to freedom of religion. The state provides religious recognition that is not constitutive of citizens' beliefs, but serves to ensure the effective fulfilment of citizens' religious rights within a positive legal framework. This means that religious recognition is a mechanism of the state for managing citizens' religious diversity, as well as an effort to recognise citizens as subjects of these rights. Religious recognition does not focus on which religion is recognised, official, or legal, but on the state ensuring that citizens' religious rights are exercised equally and non-discriminatorily. Thus, a substantial citizenship is realised.

### **Differences in constitutional and administrative recognition of religion**

Indonesia, as a country of law, must apply the *rule of law* in exercising its power. Brian Tamanaha, in his idea, stated that if the principle of the rule of law is understood as an attempt to limit the power of the government through law, then the other main thing that limits that power is the human good (Engelmann, 2006). *Human good* is understood as everything that is considered good for humans in relation to their essence as humans. This goodness is not only for the good of the individual but also for the collective good or the common good. The common good of the state context is formulated normatively through the constitution. Article 28D, paragraph 1, of the Indonesian Constitution stipulates that every Indonesian citizen has the right to recognition, including religious recognition. An agreement to bind oneself to an organisation of power that agrees on good things that are the common goal of uniting in a country.

Religious recognition by the state must be distinguished from constitutional recognition and administrative recognition. Constitutional recognition refers to the basic norms of the state, in which the Constitution expressly guarantees freedom of religion as part of the fundamental rights inherent to citizens. This recognition is general, open and non-exclusive. So that the classification of recognised or unrecognised religions, official or unofficial religions, legitimate or illegitimate religions, is not recognised in this basic norm. In contrast to administrative recognition, the state implements policies to regulate the technical implementation of citizens' rights, including population registration, public services, marriage, and education. This recognition is instrumental. This recognition is not normative-constitutive. That is why administrative recognition will not create a religious hierarchy or serve as a basis for restricting constitutional rights. However, in state practice in Indonesia, this administrative recognition is treated as if it were constitutional recognition, so that the term 'religion' is recognised or not recognised, and whether it is an official or unofficial religion appears in state practice. Recognition intended to optimise public services has shifted into an instrument of legal exclusion.

Religious recognition by the state is often interpreted as granting a certain religion legal entity status. The granting of legal entity status is a legitimacy to take collective action related to their religious rights. Many countries carry out religious recognition by granting status through a series of procedural steps as part of efforts to register a religion. However, in practice, this series of administrative procedures has the effect of restricting or discriminating against a certain religion or group in the exercise of its right to freedom of religion (Bielefeldt, 2019). Countries that implement recognition through a series of registration procedures for obtaining religious recognition must ensure that the process applies the principles of equality, non-discrimination and justice.

Status as a human being, with all the essence attached to it, should be the primary position in various administrative procedures of the state (Bielefeldt, 2019). The implementation of various procedural steps related to the administration of a religion is partly an effort to gain recognition, in practice, that many harm the nobility of human dignity. The administrative procedural process by adherents of a religion often receives unequal treatment from the state apparatus. The understanding that registration is an obligation of the owner of religious rights

and that he can then enjoy his rights is a misunderstanding. However, if the registration process concerns the status of legality in the legal actions carried out, it should not be a problem. This legal action can be in the form of marriage, death, birth, or other civil matters.

Heiner Bielefeldt, as described earlier, distinguished the state's recognition of religion into three meanings. *First*, religious recognition is granted by the state because of the respect for human dignity inherent in it, as a matter of its nature as a human being. *Second*, the recognition of religion by the state is when a religion obtains legal status as a legal entity to conduct various public affairs related to its religious status. *Third*, recognition by the state that has implications for special and special things obtained by a religion related to its existence (Bielefeldt, 2019). The first meaning proposed by Heiner Bielefeldt can be understood as constitutional recognition. Meanwhile, the second and third meanings can be understood as administrative recognition. The state, through its power, is obliged to recognise religion in terms of the third meaning of religious recognition.

### **Arrangements for Religion Recognition in Indonesia in the Future**

Religious recognition must be in line with the spirit of the Indonesian nation, which upholds respect for human dignity, guarantees freedom of religion and belief, and upholds equality, non-discrimination, justice, and legal certainty. Religious recognition has a very central position in the practice of guaranteeing freedom of religion and belief. In the context of human rights, the recognition of religion and belief is a separate branch of freedom of religion and belief. In social and state practices, religious recognition is very important because it shapes a person's religious practice and life. That is why all religions seek recognition from the state and society. Religious recognition is considered one of the important things to protect a religion from human rights violations and discrimination.

The reality is that almost all countries provide guarantees, either directly or indirectly, to the religions within their borders, but the status of these religions varies. Changes to legal norms must always be adjusted to the needs of citizens and to the sociological principles of legal norm formation. As a constitutional state, Indonesia must therefore address debates and disputes over the existence of recognised and unrecognised religions. However, this will have a significant impact on religions other than the six recognised and official in this country. The restriction to six religions recognised in Indonesia, as reflected in several legal documents, needs to be examined from a justice perspective.

Religious recognition and belief in Indonesia are complex and growing issues. Although Article 29 Paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia guarantee freedom of religion, there is still discrimination against religious groups or minority beliefs. Religious recognition in Indonesia is also still limited to the six officially recognised religions, leaving a legal void in this regard. The gap in legal norms regarding religious recognition and belief streams in Indonesia must be resolved immediately to provide fair legal protection and legal certainty for citizens (Durham, 1999). There needs to be a common understanding of religion, the process of religion recognition, and who or what institution is authorised to recognise the religion. Efforts are needed to eliminate discrimination against minorities who practice religions outside the six recognised religions, as well as to develop national culture and identity.

Hans Kelsen, posits that norms have a hierarchical structure. The low-degree norm is an elaboration or derivative of the higher-degree norm. In the Indonesian context, the Grundnorm, or basic norm, is Pancasila. Pancasila is referred to as the basis of the state or the source of all sources of legal order in Indonesia (Aulia, 2020). The highest norm, or basic norm, serves as the basis for the validity of the norms under it.

In the context of religious recognition in Indonesia, the principles for future regulations align closely with John Rawls' theory of justice and the concept of legal certainty. Rawls' concept of "justice as fairness" emphasises two core principles: equal basic rights for all individuals and

the protection of the least advantaged (Bobbio & Zolo, n.d.). Applying this theory, future recognition of religion should ensure that every citizen, regardless of religion or belief, enjoys equal legal rights and protection. This aligns with the principle of equality in Indonesia's constitutional framework, particularly Article 29 of the 1945 Constitution.

Rawls' Difference Principle further suggests that any social or legal inequalities must benefit the least advantaged members of society (Rawls, 1971). In Indonesia, this principle requires the regulation to actively safeguard minority religions and indigenous beliefs, which have historically faced discrimination and exclusion, thus ensuring justice in the pluralistic society of Indonesia. From the perspective of legal certainty, Indonesia's future regulations must be formulated to provide clear, consistent, and enforceable laws that minimise ambiguity and overlapping rules.

Legal certainty is critical in Indonesia's context to ensure that religious recognition is uniformly applied nationwide, avoiding regional disparities and arbitrary interpretations of the law. It would also prevent conflicting practices between national and local governments, which has been a persistent issue in the Indonesian legal system. By integrating Rawls' theory with the concept of legal certainty, Indonesia can create a framework that not only addresses its constitutional obligations but also strengthens social cohesion and ensures that justice and fairness are realised in its diverse religious landscape.

The practice of religious recognition is highly dependent on how the state positions religion within its own authority. For those who think that religion and the state must be separated, the state does not need to give recognition to any religion in the country. For those who have different opinions, the state must identify itself with one religion. However, Thompson & Modood (2022) suggested that, in a country with diverse religions, they need not be recognised in the same way or at the same level. That is the importance of recognising religion with multiple dimensions. Religions can be recognised in different dimensions and to different levels (Thompson & Modood, 2022). This concept is highly relevant in Indonesia, which is highly religiously diverse. The fact that, in addition to the six religions that are always referred to as recognised religions in Indonesia, there are still other religions such as Baha'i, Judaism, Zoroastrianism, Sikhism, etc. Multidimensional religious recognition is needed in Indonesia today, while still prioritising principles of justice that provide legal certainty.

Ikheimo (2024) reclassifies the concept of vertical recognition into two: vertical recognition up and vertical recognition down. Vertical recognition of the meaning is the recognition citizens make of the state's authority. Meanwhile, downward vertical recognition is the state recognising the interests and needs of its citizens. The researcher's focus is on the recognition of religion vertically downwards. In this recognition, Ikaheimo described religion recognition as a state attribution to individuals, namely citizens with their status, to obtain rights and obligations.

If Indonesia intends to develop regulations for religion recognition, the formulation must be guided by principles that ensure justice, equality, and adherence to constitutional and international standards (Pertwi, 2021). The formulation of religion recognition regulations in Indonesia must be comprehensive, inclusive, and guided by principles that promote justice, equality, and respect for diversity. By adhering to these principles, Indonesia can create a legal framework that not only upholds constitutional and international standards but also strengthens national unity and harmony.

The principle of identification means that the state recognises religion, and that religion can have an identity. The state has a non-absolute duty if religion has been recognised and has an identity. However, citizens who are included in religious communities recognised indirectly identify themselves as the state's political community (Oliver, 2013). The important reasons why religious groups must have an identity are (1) the state will more easily achieve public order, civil peace, security, anti-radicalism, and anti-extremism; (2) the government will be

easier to function in an inclusive democracy for all citizens so that they feel protected by the state; (3) Citizens will be better prepared to carry out ethical obligations that describe that they are part of the state, namely as a political community that the state has bound.

Suppose a citizen does not obtain the principle of identification in the recognition of religion in a country. So, citizens will be unable to identify with their community. As an analogy, for example, when in a country that adheres to a patriarchal system, where the entire line of life is male, women will indirectly feel alienated from the group. The impact will occur if there is no official recognition of religion, which provides the legal umbrella required by certain legal requirements. This will also contribute to the alienation of citizens who feel different and do not identify with the country.

Opinions on the constitutional rejection of religious recognition for several religions, or even just one religion, were also expressed by De Vries in his research. According to him, if one religion obtains constitutional recognition, then other religions are also entitled to it. Moreover, the followers of this religion already numbered in the thousands, spread throughout the country. De Vries in the research revealed by Geoffrey Brahm Levey also explained that religion recognition in a country must also be based on three conditions, including: (1) the size of the community of adherents of the religion in society; (2) social contributions made by members of the community to their communities; (3) any injustice that the member may suffer under the hands of state power, therefore the state must think about recognition without discrimination (Levey, 2021).

A normative framework for religious recognition in Indonesia is urgently needed to bridge the gap between the constitutional guarantee of religious freedom and state administrative practices, given the constitutional ambiguity and administrative fragmentation that have thus far occurred. The normative framework must be based on the principle that freedom of religion is a constitutional right and an inherent part of human dignity, so that the state does not grant this right through its administrative policies. Religious recognition is not a form of theological legitimacy or the truth of a religion. The recognition was given as a form of respect for the existence of citizens' rights in the constitutional shell.

Three main principles need to be applied in religious recognition from the perspective of the Pancasila Law State. *First*, constitutional supremacy, meaning that all state policies and state actions, both in the form of administrative administration, must be subject to the guarantee of the right to freedom of religion as a constitutional right of citizens in the 1945 Constitution. *Second*, the principle of non-discrimination, which means that all citizens have an equal position and have an equal position before the law. There should be no distinction in public services and population administration. *Third*, the principle of legal certainty, meaning that the legal certainty in question is not legalistic, absolute, or formalistic. However, the constitutional legal certainty is that the regulation must be clear, explicit and coherent so as not to create different administrative interpretation spaces that ultimately suppress the right to freedom of religion.

A firm separation between the constitutional and administrative dimensions is what this normative shell wants. The state with the authority it has certainly has the authority to regulate administrative aspects to ensure more optimal public services. The limitation is clear that the state is not authorised to determine the theological legitimacy of a religion or belief. The nature of the recognition given by the state is more facilitative than evaluative in carrying out its functions. To address the absence of explicit norms regarding religious recognition, this framework normatively affirms that laws and regulations, as well as administrative records related to religion and population, must be based on constitutional guarantees rather than limited to administrative recognition. Within such a normative framework, the recognition of religion and the legal certainty it affords in the Indonesian constitutional system can be realised without ignoring the values of the Indonesian nation's identity as reflected in Pancasila, the religious character, and religious plurality, which are part of this nation's wealth.

This study is further grounded in a normative framework that draws a firm distinction between the constitutional and administrative dimensions of religious recognition. Within this framework, the state's authority is acknowledged as extending to the regulation of administrative aspects of religion, such as civil registration and public service delivery, but is expressly delimited from determining the theological legitimacy of any religion or belief, as such determination falls beyond the competence of state authority and would constitute an infringement upon the inviolable domain of individual conscience and religious freedom. The recognition afforded by the state is therefore conceptualised as facilitative rather than evaluative, consistent with the principle that state neutrality in religious affairs is a prerequisite for genuine pluralism and equal citizenship.

In operationalising this framework, the study normatively affirms that laws, regulations, and administrative records pertaining to religion and population must be anchored in constitutional guarantees rather than confined to administrative recognition alone. This position is reconciled with the distinctive identity of the Indonesian constitutional order, which acknowledges the values of Pancasila, the religious character of the state, and the plurality of beliefs as constitutive elements of the national legal identity to ensure that legal certainty in religious recognition is achieved without displacing the foundational values that define Indonesia as a nation.

## Conclusion

The Population Administration Law must be amended to allow administrative records related to religion and population identity to be based on the Constitution and the principles of the Pancasila state of law. The Constitutional Court, in its Decision after the judicial review of the Population Administration Law, recommended that the law be amended and improved. To refine or change it, refer to this proposed normative shell. In a country with diverse religions, they need not be recognised in the same way or at the same level. That is the importance of recognising religion with multiple dimensions. Religions can be recognised in different dimensions and to different levels. In Indonesia's context, future regulations on religious recognition should align with John Rawls' theory of justice and the principle of legal certainty. Rawls' emphasis on equality and protection for disadvantaged groups supports inclusive and fair treatment for all religions, particularly minorities. Legal certainty ensures clear, consistent, and enforceable rules that address regional disparities and promote uniformity. Together, these principles provide a foundation for just and equitable recognition of religion in Indonesia's pluralistic society. The principles for future religion recognition in Indonesia should prioritise equality, justice, and legal certainty. Equality ensures that all religions and beliefs are treated equally under the law, without discrimination. Justice emphasises fairness in accommodating Indonesia's diverse religious landscape, protecting both majority and minority groups. Legal certainty requires clear and consistent regulations to prevent ambiguity and overlapping rules.

Additionally, the principles should uphold religious freedom, pluralism, and harmony, ensuring every citizen's right to practice their faith while fostering interfaith understanding. Transparency and public participation in the regulatory process are essential for legitimacy, alongside alignment with international human rights standards to reflect Indonesia's global commitments. Religious recognition must be in line with the spirit of the Indonesian nation, which upholds respect for human dignity, guarantees freedom of religion and belief, equality, non-discrimination, justice, and legal certainty, all based on Pancasila.

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This study did not require ethical approval, as it did not involve human participants, animal subjects, or their biological materials.

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