Keeping the Faith:
A Study of Freedom of Thought, Conscience, and Religion in ASEAN
Indonesia
Indonesia

Formal Name: Republic of Indonesia
Capital City: Jakarta

Declared Relationship between State and Religion in Constitutional/Foundational Documents: (e.g., whether or not a state religion is declared in the constitution)
The Constitution does not declare Indonesia as a secular state nor a state based on a particular religion, but that “State shall be based upon the belief in the One and Only God” (Art. 29 (1))

Form of Government (e.g. Federal or Unitary system)
Unitary state; a republic with a presidential system

Whether the regulation of religion (if any) is part of the State’s functions, and if so which government (federal or state) and which institution of government:
Religion is regulated by the central government; the main institution is the Ministry of Religious Affairs. By law local governments (at the provincial and district levels) do not have the authority to regulate religion.

Total Population: 237,641,326 (2010 Census)

Religious Demography in 2014:
Muslims (87.18%), Christians (9.87)\(^1\), Hindus (1.69%), Buddhists (0.72%), Confucians (0.05%), Others (0.13%)

Changing Religious Demography (in 10 year intervals):
(See below)

Changing Religious Demography:\(^2\)

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2000</th>
<th>1990</th>
<th>1971</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total population (in million)</td>
<td>237.64</td>
<td>201.24</td>
<td>179.25</td>
<td>118.37</td>
</tr>
<tr>
<td>Muslims (%)</td>
<td>87.18</td>
<td>88.22</td>
<td>87.20</td>
<td>87.51</td>
</tr>
<tr>
<td>Protestants (%)</td>
<td>6.96</td>
<td>5.87</td>
<td>6.04</td>
<td>5.11</td>
</tr>
<tr>
<td>Catholics (%)</td>
<td>2.91</td>
<td>3.05</td>
<td>3.57/8</td>
<td>2.27</td>
</tr>
<tr>
<td>Hindus (%)</td>
<td>1.69</td>
<td>1.81</td>
<td>1.84</td>
<td>1.94</td>
</tr>
<tr>
<td>Buddhists (%)</td>
<td>0.72</td>
<td>0.84</td>
<td>1.03</td>
<td>0.92</td>
</tr>
<tr>
<td>Confucians (%)</td>
<td>0.05</td>
<td>-</td>
<td>-</td>
<td>0.82</td>
</tr>
<tr>
<td>Others</td>
<td>0.13</td>
<td>0.20</td>
<td>0.31</td>
<td>1.42</td>
</tr>
</tbody>
</table>

\(^1\) The Census presents different categories for Catholics (2.91%) and Protestants (6.96%); further discussion on the categories of religion is discussed below.

\(^2\) A more detailed explanation about the Census and the changing categories of religion is provided in the Introduction below.
INTRODUCTION

Indonesia is an archipelago consisting of more than 13,000 islands, with more than 300 ethnic groups, the largest being the Javanese, who are concentrated in the most populous island of Java. It was the home of powerful Hindu and Buddhist kingdoms from the 7th century until around 1500, followed by Muslim kingdoms in many parts of Indonesia from the 13th century. European presence in the region began in the early 16th century; in 1602 the Netherlands established the United East India Company (Verenigde Oostindische Compagnie) that lasted until 1800 when it went bankrupt. The establishment of the Dutch East Indies as a colony followed this. Dutch control over what today is known as Indonesia was gradual, and only in the early 20th century was it nearly complete. Indonesia itself was then not a united entity; an awareness of a shared Indonesian identity emerged only in the 20th century. The last foreign power to rule the country was Japan, from 1942-1945.

Indonesia gained its independence on 17 August 1945. Between then and 1998 there were only two presidents, Soekarno (1945-1967), representing the regime that was later called the Old Order, and Soeharto (1967-1998) of the New Order. An important recent turning point in Indonesian history is the Reformasi protest movement in 1998 that heralded the start of the democratization process following the fall of Soeharto. Direct presidential elections have been held every five years since 2004. Joko Widodo began his time in office in October of 2014 as the seventh Indonesian president, after winning the nation’s third presidential election. Previously highly centralized, the decentralization process that followed democratization has provided local governments with significantly more political and economic power, and divided the country into more provinces and districts/cities. As at December 2013, there were 539 autonomous regions (consisting of 34 provinces, 412 districts and 93 cities).

Decentralisation becomes particularly important when considering the religious minority-majority composition of different regions in Indonesia. While the majority of Indonesians are Muslim (87%), parts of Indonesia have quite different majority-minority compositions. Aceh, for example, is overwhelmingly Muslim (98%); Bali is a majority Hindu region (80%, compared with only 1.69% in the national average); Catholics in the small province of Nusa Tenggara Timur constitute 36% of the population (compared with 2.91% in the national average); and in North Sumatra, Protestants make up 27% of the population.

The 1945 Constitution does not explicitly identify Indonesia as either a secular or a confessional state. However, the Preamble and Article 29(1) of the Constitution says that the Indonesian state is based on the belief in one and only God. In the introduction, religion is mentioned as the first of the five pillars of the state known as Pancasila. In principle, Article 29(2) says that the state shall guarantee the freedom to embrace religions and to worship according to the religions. However the State privileges certain religions by formally acknowledging them. The extent to which the State acknowledges and privileges a certain religion crucially depends on whether the religion in question is monotheistic, following the principle of the first pillar. This is an important issue that will be further discussed in this report. The Ministry of Religious Affairs (“MORA”) institutionally recognizes the following major world religions, being Islam, Catholicism, Protestantism, Hinduism, Buddhism and Confucianism. From the


6 The other four are: just and civilized humanity; the unity of Indonesia; democracy guided by wisdom and deliberation; and social justice for all people.
constitutional, legal, and institutional standpoints, therefore, the State’s view of how it should regulate religion is heavily informed by a monotheistic view of religion, as well as its acknowledgment of specific faiths as being religions (and others not). The practical and legal consequences of this in a number of areas of life will be discussed further below.

Some important features of the relationship between religion and the state date back to the colonial period. The Dutch colonial regime administered religion under several departments. Religious courts were under the Department of Justice, while the Department of Home Affairs handled Islamic education and hajj. Of special significance was the establishment of courts for Islamic affairs starting in the late 19th century for Java and Madura. These were the seeds for nation-wide Islamic religious courts after Independence. Under Japanese rule from 1942-1945, the Office for Religious Affairs was designed to replace the Dutch Office for Native Affairs, and further expanded to manage other Muslim affairs previously administered in different departments. This served as the precedent for the post-Independence Ministry of Religious Affairs. The Ministry was established in the newly independent Indonesia in January 1946. The proposal to establish such a Ministry emerged around the time of Independence in August 1945. It was established amidst a fierce debate about what kind of state-religion relation the new Indonesian state should institutionalize. At the time, some pro-Islamic political camps aspired to make Islamic law (shari’a) the foundation of the Indonesian state on the grounds that Muslims were in the majority. In this regard, they were advocating not for a fully Islamic state, but one that would acknowledge a Muslim’s obligation to abide by shari’a law. In fact, the original draft of the Constitution contained a clause pertaining to this obligation but it was dropped by the time it was adopted on August 18, 1945.

The establishment of the Ministry a few months later was thus perceived as a concession to the nation’s Muslims. The Ministry, however, was to administer other religions as well, with divisions being established for the Protestant and Catholic religions early in the same year. In 1960, Hinduism also found its home in the Ministry, followed by Buddhism in 1966 (first under the Hindu division and in 1980 under a separate division). Each of the five religions now has a General Directorate in the Ministry, with the exception of Islam, which has two additional Directorates, one specifically for the management of pilgrimage to Mecca known as hajj and umrah, and the other for Islamic education. The Directorates are supposed to represent particular religious communities.

The sixth institutionally recognized religion Confucianism (or Khonghucu as it is known in Indonesia) has a more complicated history. Until the 1960s, the government acknowledged Confucianism, but following the purge of the Indonesian Communist Party it was practically banned for more than thirty years, along with any expressions of Chinese tradition and beliefs. President Abdurrahman Wahid revoked the 1967 presidential instruction that was the basis for the ban in 2000. In 2014, the President promised that Confucianism would have its own General Directorate. At this time, it is represented within the Center for Inter-religious Harmony, under MORA’s General Secretary.

While the concept of “recognized/acknowledged religion” does not have any legal basis, in practice religions other than the six listed above are referred to as faiths that have “not yet been recognized” as official religions, as in the 2003 Law on Civil Administration. This differentiation has several implications in the state’s funding of religious institutions, the way religion is recorded, and the

---

7 B.J. Boland, The Struggle of Islam in Modern Indonesia (The Hague : Nijhoff, 1982), 9-11, 105-111.

fulfilment of citizens’ civil and political rights. Religion is registered on the national ID card.

MORA is one of five state Ministries that receive the largest share of the national budget. In 2013, the Ministry received USD 4.2 billion, or 2.7% of the total state budget. State funding for religious communities is distributed through the General Directorates, and is typically given for “religious affairs” (such as salaries for preachers, religious outreach, and maintenance of places of worship) and formal religious education (schools, colleges and universities, including funding for religious teachers’ salaries).\(^9\) It appears that the Ministry has a convention of providing funding to each General Directorate, which is directly proportional to the percentage of the population that identifies as belonging to that religious community, although it is difficult to assess whether this is merely a coincidence.\(^10\)

How religious affiliations are recorded by the State partially reflects their administration. As seen in the case of Confucianism (and also Christianity), because of the changing situations related to acknowledgment of religions throughout Indonesia’s history, the census has inconsistently recorded citizens’ affiliations to these religions. As such, the religious demography presented above requires some further explanation. Since Indonesia’s independence in 1945, there have been six population censuses: in 1961, 1971, 1980, 1990, 2000 and 2010. Religion was recorded in all of these censuses; however, the data regarding religion from the 1961 and 1980 censuses has not been released to the public. There have also been changes in the way religions are registered, which makes a straightforward comparison between decades problematic. Specific changes in how religions have been categorized are outlined as follows:

(i) **Categories of Christianity**: In 1971, there were three categories of Christianity with the following numbers: Catholicism (2.27%), Protestantism (4.35%) and “other Christianity” (0.76%). It is not entirely clear what “other Christianity” means in this case. The 1985 inter-census survey (which is not included in the above table), and 1990 census both grouped “Protestantism and other Christianity” together in the same category. For this reason, Protestantism and other Christianity are grouped under Protestantism in the table above (making up a total of 5.11%). Only two categories were used in both the 2000 and 2010 censuses, although employing different terminology; the 2000 census called the two categories Protestantism and Catholicism, and the 2010 census used the categories Christianity and Catholicism.

(ii) **Confucianism (Khonghucu)**: In 1990 and 2000 Confucianism was not registered, because it disappeared from official discourse regarding recognized religions and was only recognized again in 2000.\(^11\) Presumably the Confucians in those two censuses were grouped under the “Other” category, though some might well have chosen to identify themselves under Buddhism, Christianity, or other religions.

---

\(^9\) The data is compiled from several sources issued by the Ministry of Finance. Main source of annual state budget from 2007 to 2013 is available at http://www.anggaran.depkeu.go.id/dja/acontent/Data%20Pokok%20APBN%202013.pdf ; General information on annual state budget is available at http://www.kemenkeu.go.id/uuapbn. On MORA as one of the five state ministries receiving the largest share, see http://bisnis.news.viva.co.id/news/read/345812-5-anggaran-kementerian-paling-tebal-di-2013.

\(^10\) For example, in 2013, out of the total budget of USD 4.2 billion, the Catholic Directorate received approximately USD 50 million; the Protestant Directorate USD 85 million; the Hindu Directorate 53 million (normally it is around 38 million, but in 2012 there was a budgetary shortfall); the Buddhist Directorate almost 20 million. ([http://www.dpr.go.id/complorgans/commission/commission8/risalah/K8_risalah_RDP_Komisi_VIII_DPR_RI_dengan_Dirjen_Bimas_Kristen_Dirjen_Bimas_Katolik_Dirjen_Bimas_Hindu_dan_Dirjen_Bimas_Buddha_Kementerian_Agama_R.I._pdf](http://www.dpr.go.id/complorgans/commission/commission8/risalah/K8_risalah_RDP_Komisi_VIII_DPR_RI_dengan_Dirjen_Bimas_Kristen_Dirjen_Bimas_Katolik_Dirjen_Bimas_Hindu_dan_Dirjen_Bimas_Buddha_Kementerian_Agama_R.I._pdf))

\(^11\) The President Abdurrahman Wahid issued Presidential Decision No. 6/2000 on the revocation of Presidential Instruction No. 14/1967 on Chinese Religion, Belief and Custom. But the Census in that year still did not include Confucianism as one of the options in the category of religion.
(iii) “Others”: The 2010 census is the most detailed, registering all six recognized religions, “others”, plus two new categories: “unstated” (0.06%), and “not asked” (0.32%), which are quite statistically significant as these numbers are higher than those for Confucians and “others”. As discussed below, the 2006 Law on Civil Administration acknowledges six recognized religions, and reserves the category of “others” (in the national ID card as well as the census) for those whose religions are not one of the six. This may include different religious groups, like indigenous religions, *aliran kepercayaan* (“streams of belief” referring to syncretic beliefs or local religions), other forms of religion, or those who do not have any religious affiliation.12

The most recent historical benchmark in Indonesia in terms of protection of freedom of thought, conscience and religion is the events that were triggered by the popular mass protests during the Reformasi in 1998. After 1998, the legal foundation of human rights was strengthened through Constitutional amendments and the enactment of a number of laws on human rights. Article 29 of the Constitution (which protects all religions) remained unchanged, but was supplemented by additional, wide-ranging new articles that were part of a new chapter specifically focusing on human rights. While the amendments are widely considered to change the character of the Indonesian state,13 in general there was no significant change in regard to the state-religion relation. There was a proposal to provide more explicit acknowledgment of Islamic law (sharia) repeating the constitutional debate in 1945, but it was not passed. Defining laws, such as the Law for the Prevention of the Defamation of Religion in which the state is responsible for protecting religion, were not changed.14

In the report to the Human Rights Council during the second Universal Periodic Review (2012), Indonesia acknowledged that frictions between religious communities still constitute a challenge.15 The challenge, from the standpoint of the Indonesian government is to protect the rights of these communities while maintaining public order (in a context where there is both a powerful and dominant religious majority and no constitutional separation of church and state) Two issues that were specifically acknowledged concern non-mainstream religious groups that have in recent years become the target of accusations related to “defamation of religion” (such as the Ahmadiyah) and the building of places of worship (the case of the Taman Yasmin Church was mentioned).

Related to the first issue, Indonesia defended the problematic defamation of religion law, deeming it essential for protecting the right to practice religion and necessary to maintain public order. More generally, the law was alleged not to interfere with the rights of religious practitioners. The suggestion from a number of countries to repeal the religious defamation law was one of the 30 (out of 180) recommendations that were not accepted by Indonesia. Two avenues that the government promised to pursue in rectifying the situation were (1) enhancing interfaith dialogues to peacefully resolve inter-religious issues and empower moderates; (2) at the policy level, formulating a draft law on religious harmony, which has been shelved since 2012 after several hearings in the parliament.

---


13 See the discussion in Part Two.

14 For further discussion of this law, see *infra* ss I.B.1. and I.B.2., respectively.

Despite the problematic intertwining of religion and the state described above and the incidents related to religious freedom that will be discussed in Part Two, Indonesia has in general been regarded as a free country. One indicator of this is Freedom House's rating that ranked Indonesia as “free” from 2006 until 2013; in 2014 this designation was demoted to “partly free” due to the adoption of the law on societal organisation in 2013.16

PART ONE: LEGISLATIVE AND POLICY FRAMEWORK

A. International Obligations17

<table>
<thead>
<tr>
<th>International Document</th>
<th>Year of Signature</th>
<th>Year of Ratification / Accession</th>
<th>Reservations / Declarations (based on religion)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEDAW</td>
<td>1980</td>
<td>1984 (Law No. 7/1984)</td>
<td>None</td>
</tr>
<tr>
<td>CRC</td>
<td>1990</td>
<td>1990 (Presidential Regulation No. 39/1990)</td>
<td>None</td>
</tr>
<tr>
<td>CERD</td>
<td>1999</td>
<td>(Law No. 29/1999)</td>
<td>None</td>
</tr>
<tr>
<td>ICESCR</td>
<td>2005</td>
<td>(Law No. 11/2005)</td>
<td>None</td>
</tr>
<tr>
<td>CCPR</td>
<td>2005</td>
<td>(Law No. 12/2005)</td>
<td>None</td>
</tr>
<tr>
<td>CED</td>
<td>2010</td>
<td>(The law on the ratification of this convention has been discussed by the Parliament)</td>
<td>None</td>
</tr>
<tr>
<td>CRPD</td>
<td>2007</td>
<td>2011 (Law No. 19/2011)</td>
<td>None</td>
</tr>
<tr>
<td>CMW</td>
<td>2004</td>
<td>2012 (Law No. 6/2012)</td>
<td>None</td>
</tr>
</tbody>
</table>

In all of the treaties listed above, Indonesia has made no reservations based on religion. However, as discussed below, qualifications or restrictions based on religion are present in the Constitution and several of Indonesia's laws that may be regarded as incompatible with Indonesia’s obligations under the ICCPR.

16 http://www.freedomhouse.org/report/freedom-world/2014/indonesia-0. The reason for the demotion in rank is ‘due to the adoption of a law that restricts the activities of nongovernmental organisations, increases bureaucratic oversight of such groups, and requires them to support the national ideology of Pancasila—including its explicitly monotheist component.’ It should be noted, however, that the last requirement (support of Pancasila) is not a new feature of the regulation, but actually a weakening of the stronger wording in the earlier 1985 law, which says that Pancasila should be the only basis of such organisations, while the new law (2013) says that it may have basis other than Pancasila but should not contradict it.

It is not entirely clear whether Indonesia adopts a monist or a dualist system: it appears that the issue is as yet unsettled in the jurisprudence and academic commentary on the same.\(^{18}\) That being said, according to Articles 9 and 10 of Law No. 24/2000 on International Treatises, a human rights treaty must be adopted by the Parliament in order to form part of Indonesian law. All the conventions listed above have been enacted into national laws, except the CRC (by Presidential Regulation, since it was passed before the 2000 Law) and the CED, which has been discussed by Parliament and is expected to pass before the end of the 2014 term.\(^{19}\)

### B. Domestic Laws and Policies

Before discussing specific laws and policies pertaining to freedom of thought, conscience and religion (“FOTCR”), an introductory explanation about Indonesia’s legal system seems appropriate. **First**, FOTCR is subject to a hierarchy of laws that comprises the Constitution at its apex, followed by the 1998 Decree of the People’s Consultative Assembly on Human Rights (No. XVII/MPR/1998 signed in November 1998) (“MPR Law”), national laws, governmental regulations, Presidential decrees, and local bylaws (at the provincial and district/city levels).\(^{20}\) However, freedom of thought, conscience and religion is both regulated and guaranteed by this hierarchy of laws in a manner that is not entirely consistent, as will be discussed in detail below.

**Second**, the Indonesian legal system, derived mostly from the colonial Dutch legal system, relies on codes and statutes, while court decisions are regarded as references and not as a source of law.\(^{21}\) **Third**, in terms of their content, we may group the kinds of laws and policies on FOTCR-related issues into three categories. Some laws and policies are explicitly about FOTCR; another group of laws and policies relate to the implications this first group has on the administration of citizens’ lives (such as laws pertaining to civil administration, the police, and the office of prosecutor); and the third group consists of laws and policies on other issues (such as laws on information technology, film, or child protection) which have clauses that may affect FOTCR directly, although the law itself has not been enacted with a view to regulating FOTCR.

1. **Freedom to adopt, change or renounce a religion or belief; and freedom from coercion**

Ch. XI, Article 29 of Indonesia’s 1945 Constitution contains these two short verses:

---

18 Sari Aziz and Ranyta Yusran, *Indonesia’s Country Report*, Centre for International Law (CIL Research Project on International Maritime Crimes), National University of Singapore, 2011, 9-13 <http://cil.nus.edu.sg/wp/wp-content/uploads/2010/10/Country-Report-Indonesia.pdf> This report discusses the academic debate about whether Indonesia adopts a monist or dualist system (pp. 9-13). The practice is actually not consistent. There was an instance where a court refused to use the CAT, which was already ratified at that time, on the grounds that the Penal Code does not have articles on torture. However, there was also an example where the Constitutional Court took a monist position, using the ICCPR in 2003 grounds to dispute a law that takes away the political rights of ex-Communist party members (in the Decision No. 011-017/PUU-I/2003), even though the ICCPR was only ratified in 2005. Thanks to Asfinawati for providing these examples.

19 Until end of 2013, the parliament invited parties for hearings on the law of ratification of the convention. But as of June 2014, the law has not been passed, though it is deemed to hold a special significance due to, among other things, the unresolved kidnapping case of pro-democracy activists in 1998. See for example two hearings with NGO (Elsam) and the government (Ministry of Foreign Affairs at: [http://www.elsam.or.id/downloads/518735_Masukan_Elsam_RDPU_Penghilangan_Paksa.pdf](http://www.elsam.or.id/downloads/518735_Masukan_Elsam_RDPU_Penghilangan_Paksa.pdf) and [http://kemlu.go.id/Pages/SpeechTranscriptionDisplay.aspx?IDP=812&l=id](http://kemlu.go.id/Pages/SpeechTranscriptionDisplay.aspx?IDP=812&l=id).

20 Law No, 12/2011. The MPR decree was taken out from the hierarchy in 2004, but was put back in 2011. There was a debate about the Ministerial Decree which is not mentioned in the current hierarchy. As shown in the discussion below, despite the fact that the Ministerial Decrees are not part of the hierarchy, a few of them are central on issues related to FOTCR.

(1) The state shall be based on the belief in the One and only God.\textsuperscript{22}

(2) The state guarantees all persons the freedom to embrace a religion and worship according to their religion and belief.

As a result of the 1998 democratization movement, the guarantee of FOTCR has become much stronger. The Constitution was amended and new laws enacted to ensure greater safeguards in order to protect this freedom.\textsuperscript{23} In particular, Article 28E(1) guarantees freedom of worship and Article 28E(2) explicitly guarantees freedom of thought, conscience and belief.\textsuperscript{24} Article 28I(1) appears to make this right absolute, hence suggesting that there are no exceptions to FOTCR based on the government’s use of emergency powers or limitations based on public order, morality or security, or any grounds whatsoever.\textsuperscript{25}

Besides the Constitution, the most important law is the one specifically on human rights (Law No 39/1999). Article 4 states that freedom of thought, conscience and religion is amongst several non-derogable human rights guaranteed under that law. Article 22 further states that every person has freedom of religion and the right to worship according to his/her religion, and that the state guarantees this right. In most cases, the state’s responsibility is to guarantee everyone’s rights, not only its citizens, with special mention of women and children.\textsuperscript{26}

Yet despite this seemingly strong foundation for FOTCR, qualifications tend to emerge in the interpretation of this guarantee. For example, despite the non-derogable status of the rights associated with freedom of religion and belief, some clauses

\textsuperscript{22} “Negara berdasar atas Ketuhanan Yang Maha Esa.” “There are many English translations of the phrase; the one used here seems best to convey the monotheistic connotation intended here.

\textsuperscript{23} The Constitution was amended four times between 1999 and 2002. While Chapter 29 was retained without any change, the second amendment (2000) inserted an extensive bill of rights (Arts. 28A-J, under the general title “Chapter XA Human Rights”).

\textsuperscript{24} Article 28E states that:

“(1) Every person is free to embrace a religion and to worship according to his/her choice, to choose one’s education, to choose one’s employment, to choose one’s citizenship, and to choose one’s place of residence within the state territory, to leave it and to subsequently return to it.

(2) Every person has the right to freedom of belief, and to express his/her views and thoughts, in accordance with his/her conscience.

(3) Every person has the right to the freedom to associate, to assemble and to express opinions.”

\textsuperscript{25} Article 28I states that:

(1) The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.

(2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.

(3) The cultural identity and rights of traditional society shall be respected in harmony with the development of the age and civilization.

(4) The protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government.

(5) For the purpose of upholding and protection of human rights in accordance with the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated and set forth in laws and regulations.

\textsuperscript{26} In addition, this law provides a renewed legal foundation for the National Committee on Human Rights. The Committee was established in 1993, and the law also ordered the establishment of a human rights court. In 2000, Law No 26 of 2000 on the Human Rights Court was passed by the Parliament. As a follow up to the law, a governmental regulation (No. 3) was issued in 2002 on the compensation, restitution, and rehabilitation of victims of serious human rights violations.
in the Constitution have been interpreted to carry significant restrictions on FOTCR. In particular, the way religion is defined in the Constitution is interpreted to further limit the scope of protection of FOTCR. As will be discussed in further detail below, there are also particular laws that directly affect FOTCR.

a. Conversion

Conversion from one religion to another is not illegal. A more extensive attempt to prevent religious conversion exists with regard to children, mentioned in the 2002 Law on Child Protection, discussed in further detail in the sections on teaching and dissemination, and children, below.

b. Limitation of FOTCR: “religious values”

Article 28J mentions the limits of human rights in general, which includes “religious values”:

1. Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation and state.

2. In exercising his/her rights and freedoms, every person shall observe the limitations as are prescribed by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

While Article 28J(2) mentions “religious values”, the first and highest official support for human rights was the MPR Law. Article 36 of the MPR Law mentions ‘moral consideration, security and public order in a democratic society’ as factors that may limit individual rights and freedom. The limitation clause of Article 18(3) in the ICCPR, which was ratified with no reservation, mentions that permissible limitations are those necessary to protect “public safety, order, health, or morals or the fundamental rights and freedoms of others”. In the 1999 Law on Human Rights, the chapter on limitations and prohibitions mentions morals (or moral decency, Ind. kesusilaan), public order and national interest (Art. 73), but Article 23 adds “religious values” as another kind of limit.

The limitation on the basis of “religious values” is significant as it has been used to limit FOTCR. This was evident in the role the limitation played in the 2010 Decision of the Constitutional Court to keep the Law on Prevention of Defamation of Religion (henceforth referred to as the “Defamation Law”)\(^{27}\). The Court concedes that the law constitutes a limitation of FOTCR but holds that this restriction of freedom of religion and belief allowed by the Constitution. One of the grounds used by the Court to support this restriction is the phrase “religious values” in Article 28J(2) of the Constitution.\(^{28}\) In this regard, the Court categorically accepts that the limitation clause in the Indonesian Constitution is different from Article 18 of CCPR.\(^{29}\) “Religious values” is here understood not only as moral, but apparently also as (correct) theology (orthodoxy). Thus, religious beliefs deemed “deviant” or incorrect may be prohibited and prosecuted without violating the constitutional guarantees of freedom of religion and belief.

c. Limitation by the way that religion is defined

Another cause of the limitation on FOTCR derives from the way that religion is defined. The scope of what is regarded as religion determines the range

\(^{27}\) An alternative translation of the title of the law is “blasphemy”. However, the intended meaning is broader than blasphemy. As the text of the law says (quoted below), the main criteria is deviancy from “mainstream” teachings and practices. See Bagir (2013, 4-8) for a discussion of the term and the characteristics of “defamation”.

\(^{28}\) This does not mean that the phrase is the Court’s only or most important ground. The review will be discussed in a separate section of this paper. Constitutional Court Decision No.140/PUU-VII/2009, 274-275.

\(^{29}\) Constitutional Court Decision No.140/PUU-VII/2009, 276.
of religious groups protected under the FOTCR clauses in the Constitution and laws. Consequently, groups with beliefs that are held not to fall within the category of “religion” are not protected and may be the object of discrimination. In Indonesia, it is actually not entirely clear how religion is defined, as there is no specific law that unambiguously defines it. The operational definition is drawn from at least three sources. The first source is the Constitutional stipulation that the state is based on the belief in one and only God. This is generally understood as immediately excluding non-monotheistic religions and atheism. Second, there remain some lower level regulations and ministerial circulars from the 1950s up until the 1970s that attempted to put forward an explicit definition. The third source is the Elucidation of the Defamation of Religion Law (No. 1/PNPS/1965 on Prevention of Misuse and/or Defamation of Religion) – (“Elucidation”) which names particular religions.

This last source is rich in the sense that the Elucidation names several religions and implicitly portrays a hierarchy of religions when explaining what is meant by a religion that is protected from defamation. Six world religions (Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism) are named first as religions that have historically been embraced by Indonesians, and as such have to be protected and receive assistance. Next there are other (world) religions (the examples are Judaism, Zoroastrianism, Shintoism and Taoism) that are not outlawed and could exist as they are, as long as they do not go against the decree or other laws. Then there is another group, which consists of streams of spiritual beliefs (aliran kebatinan) and are implicitly not regarded as “religion”—the government’s task here is to guide them to become “healthy beliefs in one and only God”. What is also telling is that the Elucidation does not mention indigenous religions, and as such they are not recognized as religion. The notion of religious orthodoxy is implicit in these classifications.

Finally, atheism is not even mentioned, since it is assumed that it does not (or could not) exist in Indonesia. As a matter of fact, any act to persuade people to embrace atheism is punishable by law both as an act of defamation and of hostility toward religions. The Constitutional Court’s 2010 decision to uphold the anti-defamation law touches on this issue and asserts that basically there is no place for atheism in Indonesia. Belief in God is an obligation, not a right: “Every citizen, as an individual or collectively as part of the nation has to accept the belief in one and only God”.

The decision goes on to state that, “Indonesia is a nation that believes in God, not an atheistic nation.” Atheism is put on par with insult or defamation of religion: the Constitution “does not open the possibility for campaigning for the freedom not to embrace any religion, freedom to promote anti-religion, or insulting religious values and scriptures as the source of religious beliefs, or degrading the name of God.” The Constitutional Court’s decision would therefore seem to interpret the Constitution in a manner that provides the state with a wide ambit of discretionary powers when regulating or limiting the practice of heterodox religions and beliefs: taken to its most extreme, the interpretation adopted by the Constitutional Court would seem to permit state repression of any religion or beliefs.

30 Two notes are due here: first, as discussed in the literature on the history and politics of religion in Indonesia, while Islam and Christianity would be the model of monotheistic religions, Hinduism, Buddhism, and Confucianism in Indonesia might be—and were—construed as monotheistic. Second, even with regard to atheism, there is an alternative interpretation that would make atheists the subject of protection under the FoRB clause in the Constitution. A famous example comes from H. Agus Salim, one of the founding fathers of Indonesia, who wrote in 1950s that non-monotheistic and atheistic beliefs should not be excluded from state recognition. (From Agenda Kementrian Agama, 1951/1952; the archive can be available for download at https://app.box.com/s/fov0bpt08y1h0jgbx; also http://pancasilaislam.blogspot.co.nz/2013/05/h-agus-salim-tentang-kemerdekaan-agama.html).


other than monotheistic religions, on the grounds that belief in the one and only God is an obligation of any person who is a part of Indonesian society.

The prohibition of atheism is more recently expressed in the 2013 Law on Societal Organisations (No. 17/2013). It prohibits an organisation to hold, develop, and disseminate atheism or communism/ Marxism-Leninism because they are regarded as against Pancasila (Art. 59 (4) and its explanation).

In conclusion, the Elucidation thus asserts the recognition of world religions and divides them into two categories: the six religions embraced by most Indonesians and those outside of the six that are labelled as “other”. Indonesian law does not recognize “non-standard” religions (the aliran kepercayaan and indigenous or local religions) and atheism. This differentiation between expressions of religion and beliefs may be compared with the General Comment No 22 on Article 18 of the CCPR, which prohibits such differentiation.34

Ultimately, this view on the recognition of, and, at the same time, differentiation between, religions is partly reflected in how religious communities are administered by the state. As discussed in the Introduction, the Ministry of Religious Affairs administers and distributes state funding to the six recognized religions (though Confucianism has a more complicated history). The streams of belief (aliran kepercayaan), which were an important target of the defamation of religion law when it was enacted, are now recognized but less privileged. The Aliran is administered by the Ministry of Education and Culture, since it is regarded as a class of culture rather than religion (previously this category was administered for several years under the Ministry of Tourism and Culture). However, this classification is actually not entirely consistent if we examine it in relation to the 2006 Civil Administration Law. (To be discussed in a separate section).

2. Right to manifest one’s religion or belief

In general, the right to manifest one’s religion or belief is guaranteed by Article 28E(2) of the Constitution: “Every person shall have the right to the freedom to believe his/her faith, and to manifest his/her views and thoughts, in accordance with his/her conscience.”

The Defamation Law, and relevant articles in the Penal Code, prescribe an important limitation on the right to manifest one’s religion or belief.35 The Code contains in Section V (“Crimes against Public Order”), five articles of which specifically relate to religion, i.e. Articles 156, 156a, 157, 175, 176 and 177. All of these articles prohibit insult or expression of hostility toward religious persons or groups in different situations. The most controversial and significant of these articles is Article 156a. As will be discussed in Part II, this law has recently been revitalized and has provoked much concern and controversy amongst FOTCR scholars and activists in Indonesia.

The main target initially of the Defamation Law was the then sprawling syncretic spiritual movements (kebatinan) that did not fall under the category of any established official religion. The core of the 1965 Decree lies in a single sentence of the first article:

Every individual is prohibited from intentionally, in public, conveying, endorsing [advising], or soliciting public support for an interpretation of a certain religion embraced by Indonesian people or undertaking religious activities that resemble the religious activities

34 General Comment on ICCPR No. 22 (2): “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”

35 Law No 1/PNPS/1965 on Prevention of Misuse and/or Defamation of Religion (initially a Presidential Decree issued in 1965).
of the religion, where such interpretation and activities deviate from the basic tenets of the religion.

Article 156(a) of the Penal Code says that “any individual who, intentionally and in public, expresses the feeling or engages in actions (a) that are hostile in nature and considered an abuse or defamation of a religion embraced in Indonesia, (b) with the intent that the people will not embrace any religion which is founded on the ’belief of the One God’” could face up to five years of imprisonment.

The Elucidation says that “the basic tenets of a religion” are known by the MORA and that the Ministry has instruments or means for determining deviation. In practice, it seems to be assumed that the state would consult the acknowledged representatives of the relevant religion (such as the Indonesian Council of Ulama for Muslims, the Council of Churches for the Protestants, and the Bishop’s Conference of Indonesia for the Catholics, etc.). Hence, similar to the Constitutional Council’s decisions pertaining to atheism, this provision and the government’s interpretation of it would tend to enable conservative, rather than pluralistic, understandings of religions to prevail. It does so by providing for a mechanism through which officially recognized religious bodies are able to define the contents of religious orthodoxy insofar as they are publicly expressed, hence giving them extensive leeway to determine deviant practices of religion or forms of worship.

Another important point in the Elucidation is the qualification of what constitutes a criminal act of defamation. i.e. those that are in principle aimed to insult or take a hostile action against religion. Spoken or written statements which are regarded as objective and scientific about a religion, and “with efforts to avoid hostility or insult to a religion”, do not qualify as hostile or as an insult.

When the Defamation Law was brought to the Constitutional Court for a review in 2010, the main argument put forward by those against it was that it contradicted the amended Constitution, which contains explicit references to FOTCR, the Law on Human Rights, as well as the international human rights conventions Indonesia has ratified. The Court admitted that the Defamation Law restricts FOTCR, but asserted that such restrictions were within the allowed limits of both international human rights law and Indonesia’s Constitution. However, as noted above, the Court also held that the limitation clause in the Indonesian Constitution, which mentions “religious values”, is different from Article 18 of the ICCPR.36 In any case, the HRC General Comment No. 34 on Article 19 of the ICCPR, which was released in July 2011,37 addressed this kind of interpretation more explicitly.

For religious communities that are affected or targeted by the Defamation Law (such as Ahmadiyah, Shi’a, or Baha’i), this law has restricted their freedom to manifest their beliefs, to worship, to teach, and to disseminate religious materials. Ahmadiyah and Shi’a will be specifically discussed under Part D (Persecution) below.

An example of how the law restricts the right to manifest one’s belief is the 2012 case of Tajul Muluk, a Shi’a leader of a village in Sampang, Madura, East Java. He was found guilty of defamation of religion in accordance with Article 156A of the Penal Code.


37 General Comment No. 34 on Article 19: Freedoms of opinion and expression (Human Rights Committee 102nd session, Geneva, 11-29 July 2011), released a year after the Constitutional Court’s decision, addresses some of the issues brought up in the Review. Among other things, it explicitly says that “Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Thus for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”
The judges found that he had taught his students unorthodox interpretations of Islamic teachings. Ultimately, however, he was charged and convicted for degrading Islam due to allegations that he was teaching students that the present day Qur’an is inauthentic.38 On appeal, the higher court increased the sentence to four years.

The attacks against his relatives and followers which took place after his sentence was handed down at trial and while he was already in prison were considered proof that his act was disruptive of public order, and was the consideration for increasing the sentence. He appealed to the Supreme Court, which was in agreement with the lower courts. One sees here how the reference to “public order” provides the justification for repressing beliefs deemed to be non-orthodox and appears to condone acts of vigilante violence. It is the “disruption” of “unorthodox” belief that is responsible for attacks on such religious minorities not the intolerance and vigilantism of the attackers.

a. Freedom to worship

As has already been discussed in detail, the Constitution and the Law on Human Rights guarantee freedom to worship. Article 29(2) of the Constitution read together with Art. 28E(1) and Art. 22 of the Law on Human Rights clearly state that the state guarantees all persons the freedom to embrace a religion and worship according to their religion and belief. However, the extent to which this freedom can be exercised in practice appears to be subject to significant state discretion, as is further discussed in relation to section (b), which follows.

b. Places of worship

While the state’s guarantee of freedom to worship appears to be unequivocal and absolute, a major issue in religious life in Indonesia today in fact relates to the building of places of worship. A 2006 Joint Ministerial Decree (signed by the Ministers of Religious Affairs and Domestic Affairs) (“2006 Decree”) that revised and replaced the 1969 regulation pertaining to places of worship (the “1969 Regulation”) would appear to be of particular concern.39 As discussed earlier, ministerial decrees actually do not constitute a binding source of legal authority. As such, there is a debate as to whether the 2006 Decree is valid at all; nevertheless, it has been given effect and has been used in a number of court cases to limit the right to practice religion.

The 1969 Regulation delegates the authority to decide on a proposal to build a house of worship to district government officials. The 2006 Decree, which was discussed with the main representatives of religious organisations, continues this mandate, but provides for much more onerous requirements in order for parties to obtain approval, including reliance on recommendations from locally constituted interreligious organizations as to whether/not to grant such approval. Specifically, the 2006 Decree states that the head of a district/city has the authority to issue a licence, based upon the recommendation of the Forum for Interreligious Harmony (Forum Kerukunan Umat Beragama or “FKUB”) at the district/city level.40 At present, all provinces and districts/cities have FKUBs, which now number more than 500 across Indonesia. The Decree specifies how to select members of the FKUB as representatives of religions. The establishment of the FKUB is to be facilitated and partially funded by the government, to help the government maintain religious harmony. It acts as a consultative body, bridging society and government.41

The 2006 Decree also specifies the requirements for a house of worship. It should be built based on the real need of the users and the composition of the religious community in the area, which in turn

38 Decision of Sampang Court No. 69/Pid.B/2012/PN.Spg.
39 No. 01/Ber/MDN-MAG/1969 on “The duties of state apparatus in guaranteeing order in the performance of religious worships”.
40 An FKUB is to be established at both the provincial and district/city levels across Indonesia, as ordered by the Decree.
41 See Articles 8 and 9, 2006 Decree.
is determined by showing that there are at least 90 people who would use it, and that it is supported by at least 60 other people in the neighbourhood. In addition to the FKUB, a recommendation from the local office of MORA is also necessary. If a house of worship fulfils the 90-user requirement but does not get support from at least 60 neighbours, then the application may be rejected and it falls to the local government to make sure that the community can find a place for its house of worship\(^\text{42}\). Part of the considerations for the regulation concerns the need to maintain public order and the government’s obligation to make sure that religious communities have places to worship in one location or another. In practice, this arrangement has yielded mixed results. There are examples of functional FKUBs and cases where a religious group’s difficulty to build a house of worship have been solved, but there are also many cases where all the requirements were fulfilled yet the building of houses of worship was not approved.

The majority of cases pertaining to the implementation of the 2006 Decree relate to difficulties in building houses of worship for Christian communities, two of which are discussed below. However, it is also worth noting that there are cases with regard to the building of mosques in areas where Muslims are the minority.

Two prominent examples with regard to churches are the Taman Yasmin Church in Bogor and the Filadelfia Church in Bekasi, West Java. The case of the Taman Yasmin Church has been brought to all levels of policy making and advocacy, including being discussed in international forums such as the UN Human Rights Council, yet until today the case remains unresolved. The court case started a letter from the Head of the city’s Planning Department revoked a permit to build the church which had been issued by the mayor of Bogor in 2006. The letter appeared to have been issued in response to sustained protests over a two-year period from a group of people objecting to the church being built. The church then brought the case in the administrative court, which decided to invalidate the letter; this decision was backed up by the higher administrative court and finally by the Supreme Court in December 2010. The Bogor mayor revoked the letter by the head of the city planning department, but then followed it by issuing a new letter which revoked again the permit.

The case of the Filadelfia Church is similar. However, the church has never received a permit, despite fulfilling the administrative requirements according to the 2006 Decree. What was brought to the court (the same administrative court in Bandung, West Java, which dealt with the case of the Taman Yasmin Church) was a letter that instructs the church not to do any construction work nor use the land as a temporary place of worship. The court accepted the church’s lawsuit, instructing the head of the district to revoke the letter and process the church’s requests to get a building permit. This decision was brought to the higher administrative court and then to the Supreme Court, and all reviews produced the same decision. Yet, similar to the case with the Taman Yasmin Church, until now the court’s decision has not been executed by the head of the district, and the problem remains.

With regard to mosques, there are two examples of cases, neither of which was brought to court.\(^\text{43}\) The first is the Nur Musafir Mosque in Batuplat, Kupang, the capital of West Nusa Tenggara Province. The conflict started in 2003 when there were attempts to build a mosque in the Christian majority area. In 2008, the location was moved and the mosque obtained a licence, but the conflict heightened in 2011-2012. Another case concerns the Abdurrahman Mosque in the village of Wololi, Ende, in 2011. In the beginning there was no problem when the minority Muslim community started to build a mosque without attempting to get a licence; their Christian neighbours even helped. The problem emerged when the head of the village asked the local Muslim leader to fulfil the official

\(^{42}\) See Article 14(3), 2006 Decree.

\(^{43}\) Both examples are taken from Ihsan Ali-Fauzi et al., *Pemolisian Konflik Beragama* (Jakarta: Pusad Paramadina, 2013).
行政要求作为2006年规定的行政要求；穆斯林领导人显然认为与人民的文化关系比官方批准更为重要。在任何情况下，这都引发了社区内的紧张局势。2013年，在一些妥协后，清真寺开始运营，但紧张局势仍然存在。

c. Religious symbols

基于研究进行的报告，宗教社区在印度尼西亚能够展示和利用宗教符号的程度一般上不成为争论的主体，也没有广泛的案例法处理这个问题。在国家层面上，没有特定的宗教符号使用法规，但符号在公共空间中很常见。然而，特别是在阿锡和帕丁等主要的穆斯林地区，有关使用头巾的当地规定已经对女穆斯林学生进行了规定。相反，还有几个穆斯林学生未经允许在公立学校佩戴头巾，如2014年在巴厘岛发生的情况。44

另一种近期出现的问题与在警察部队中戴头巾的穆斯林女性有关。虽然没有明确规定禁止警察戴头巾，但警察制服的通用规定也没有明确说明如何让穆斯林女性戴头巾。这个规定受到国家警察总长和国家警察委员会的监管。45


d. Observance of holidays and days of rest

通常情况下，假日的数量每年基本一致，但具体日期的决定由宗教事务部长、劳动部长和国家机关事务部长共同完成。2014年印度尼西亚将庆祝15个全国性节日，包括6个伊斯兰节日；3个基督教节日（耶稣受难日、升天节、圣诞节）；印度教和佛教各1天（水祭和卫塞节）；以及中国新年。此外，印度尼西亚还庆祝两个世俗节日（新年，1月1日和劳动节，5月1日）。省级政府可能根据本省的特定信仰选择庆祝额外的节日，例如巴厘新年的庆祝活动。

e. Appointing clergy

基于研究进行的报告，没有特定的关于在印度尼西亚任命牧师的法规。每个宗教社区能够根据自己的准则和方式来评估一个成为宗教牧师的人。

f. Teaching and disseminating materials (including missionary activity)

显然为了阻止宗教组织或个人的传教活动，印度尼西亚对宗教组织或个人的传教活动和外国援助进行了限制。这种限制体现在一系列法规中。主要的法规是1979年宗教事务部长和国内事务部长联合声明（No. 1/1/1979）（“1979年声明”）。1979年声明禁止向已经接受宗教的人进行传教，具体方法是通过给钱、衣服、食物和药物引诱他们。

Keeping the Faith: 153
A Study of Freedom of Thought, Conscience, and Religion in ASEAN
convert to the religion of the proselytizers. It also prohibits distribution of publications or visiting houses for the purpose of proselytization. This leaves the people “who have not embraced a religion” as the only group open for proselytization, i.e. people whose religions are not yet recognized (see the above discussion on how religion is defined). The Defamation Law discussed in detail above may also, by implication, have the effect of restricting unorthodox groups within a religion from teaching and disseminating their religious materials.

In addition, the 2007 Disaster Management Law (No. 24/2007) prohibits proselytization in distributing aid for victims of disaster.

g. The right of parents to ensure the religious and moral education of their children

Article 55 of the Law on Human Rights guarantees that every child shall be granted freedom of thought, conscience and religion in accordance with his/her intellectual capacity and age and under the guidance of his/her parent/guardian. Article 6 of the Law on Child Protection (No. 23/2002) repeats this clause. More specifically, Article 12 of the Law on National Education (No. 20.2003) ("NE Law") says that every child is entitled to a religious education provided by teachers that share his/her religion. This clause was the subject of controversy during parliamentary debates because it was seen as obliging schools run by particular religious organisations to have to provide religious instruction for students of other religions by teachers who shared those students’ religious background. This especially impacts upon Christian schools that have many Muslim students, but also Islamic schools, especially in non-Muslim majority areas, which have non-Muslim students. In general, Article 7 of the NE Law states that parents have the right to choose an education for their children.

h. Registration

The 2013 Law on Societal Organisations (No. 17/2013) ("2013 Law") requires all such organisations, including religious organisations, to be registered with the government. The Law prohibits an organisation from holding, developing and disseminating atheism. This part of the 2013 Law was considered especially controversial as registration was seen as providing the state with a basis for restricting religious freedom.

The 2006 Law on Civil Administration, as discussed above, provides administrative/bureaucratic acknowledgment of people other than the followers of the six “official religions”, but only to those organisations that are registered. For example, marriage done in accordance with a particular kepercayaan is recognized but, as mentioned in the explanation of Art. 81 of the implementation regulation (PP No. 37/2007), only if the community of kepercayaan followers is formally registered with the government. Articles 81-83 on the procedure to register the marriage of believers in kepercayaan in the implementation regulation of the law (PP No. 37/2007), recognize marriage done in accordance with a particular kepercayaan way, in front of its leaders. However, as mentioned in the explanation of Article 81, it is on the condition that those communities of kepercayaan are (formally) organized and registered to the relevant governmental office. The registration requirement may be a problem for some groups that deliberately refuse formal association with a particular organisation.

46 See also Section (j) below.
47 Art. 3 (2)I, Disaster Management Law.
48 See Article 59(4) of the 2013 Law and its Elucidation.
49 In the years after the Law was passed, some local or ‘indigenous’ groups have managed to register their marriages in their own ways, without following the rituals of the six official religions. See CRCS, 2011: 58-59; CRCS, 2010: 18).
i. Communicate with individuals and communities on religious matters at the national and international level

Based on the review of the materials conducted for this report, there is no particular provision pertaining to this issue under Indonesian law.

j. Establish and maintain charitable and humanitarian institutions/solicit and receive funding

As is noted in Section (f) above, the 1979 Decree requires that foreign aid for religious purposes is channelled through, as well as be approved by, a government body that monitors foreign aid, based on a recommendation by the MORA. It also demands that religious organisations train Indonesians to replace foreign missionaries. Though this regulation is old, it is still valid and effective. For example, in the 2008 regulation on foreign aid issued by the Minister of Domestic Affairs (No. 38/2008), while religious aid is not singled out, one of the considerations is the 1979 Joint Decree.

k. Conscientious objection

Based on the literature review and searches conducted for this report, cases pertaining to conscientious objection do not appear significant. Additionally, the Indonesian government does not appear to regulate this issue under national law.

3. Freedom from intolerance and discrimination

Art. 28 I (2) of the Constitution asserts explicitly that “Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.” The Non-discrimination clause occurs in other laws as well, such as the Law on Education (No. 20/2003). Another law that seems remotely relevant to FOTCR on Management of Disaster (No. 24/2007) mentions non-discrimination based on sex, ethnicity, race, and religion as one of the principles of disaster management (Art. 3). The Law on Management of Social Conflict (No. 7/2012) creates a link between FOTCR and the principle of non-discrimination with prevention and resolution of conflict.

Despite non-discrimination being referred to in many laws, as has already been discussed at length in Section 1 above, the way religion is defined may in itself provide a source of discrimination. Significant in this regard is the definition of religion and the grounds for citizen registration contained in the 2006 Civil Administration Law (the “2006 CA Law”). While the term “official religion” or “recognized religion” as utilized in the 2006 CA Law never refers explicitly to Indonesia’s six official religions, the Law defines religions other than those six as “religions that are not recognized yet”.

This differentiation buttresses the assumption that certain religions continue to hold a privileged status within the state, as discussed above.

Additionally the 2006 CA Law speaks about the way citizens are registered (in the identity card or the census), and it is here that we see the most important consequence of the definition of religion. This law marks a measure of progress from the previous law, since it stipulates that for those whose religion “has not been recognized yet”, or for those who embrace aliran kepercayaan, the religion column on their identity card or in the census is to be left empty. As will be discussed in the section of this report, which considers persecution, in practice there are two issues. First, despite having been enacted almost a decade ago, cases persist of people being asked to declare one of the six religions as their religion on their ID card. Second, leaving the religion column blank still arouses suspicion for employers or government officers; as such, the differential treatment of people not belonging to the six religions may result in discrimination in practice. The law has another limitation because, as discussed in the section on registration above,
recognition of one’s religion (and the ensuing guarantees pertaining to FOTCR being granted to that religion) to some extent hinges on the religion being able to be registered.

4. Right of vulnerable groups to freedom of religion and belief

a. Women

In general, women’s rights are well protected in law, and women’s empowerment and gender equality is well grounded in governmental policies that predated Reformasi. Among the human rights conventions ratified by Indonesia, CEDAW was the first (1984). Since 1983, there has been a special ministry on empowerment of women (the name has changed several times; in 1983 it was the Ministry of Women’s Role; in 1999 it became the Ministry of Empowerment of Women, and since 2009 the name is the Ministry of Empowerment of Women and Protection of Children). An illustration of policy on women’s empowerment concerns the regulation that stipulates that at least 30% of political parties’ candidates for members of parliament must be women.

In the Law on Human Rights, there are seven articles pertaining specifically to women’s rights, ensuring women’s equality in education, employment and representation in politics and all sectors of government. However, one article (Art. 50) states that an adult woman has the right to legal actions, ‘except determined otherwise by the law of her religion.’ As explained in the Elucidation, this means that Muslim women need a guardian (wali) in marriage. This is in line with the 1974 Law on Marriage (No. 1/1974), which provides for such guardianship.52

Women may be impacted differently by some FOTCR-related policies, as shown by Komnas Perempuan in its evaluation of the impact on women of the Defamation Law. Their 2010 submission to the Constitutional Court argued that the implementation of the law has resulted in violations of FOTCR for Indonesian citizens, especially women.53 Further, in the case of violence against the Ahmadiyah, a Muslim group that has been deemed deviant under the Defamation Law, Ahmadi women have suffered further loss of rights, such as the right to be free from gender-based violence, and rights to livelihood and reproductive health.

52 The Law on Marriage, while applies equally to men and women, impact Muslims differently. Marriage is defined in the law as ‘physical and spiritual bond between a man and a woman as husband and wife with the objective of forming a happy and lasting family based on the belief in one and only God.’ (Art. 1). Religion is very central here as Art. 2 stipulates that a marriage is valid if it is conducted following the persons’ religions and beliefs. The court has the function to deal with all issues around marriage; for Muslim men and women this means specifically the Religious (Islamic) Court, in which the judges make decision based on Islamic law, which is validated by the general court. In the case of Muslim citizens, evaluation about the implications of the law on marriage on FOTCR, therefore, hinges on the religious court. One vexed issue in this regard is interfaith marriage. Because the way the validity of a marriage is defined here, by referring to different kinds of courts for Muslims and non-Muslims, marriage between a Muslim and non-Muslim is impossible. Nevertheless, such interfaith marriage, through one way or another, has become a reality, and one that does not seem to be very rare. See Suhadi Cholil, ‘The Politico-religious Contestation: Hardening of the Islamic Law on Muslim-Non-Muslim Marriage in Indonesia’, in Gavin W Jones, Chee Heng Leng, Maznah Mohamad (eds), Muslim-Non-Muslim Marriage: Political and Cultural Contestations in Southeast Asia (Singapore, ISEAS 2009), 139-159.

Women may also suffer discrimination based on religion due to local laws. Below are some illustrations of how women are noticeably often the objects of regulation in local laws. In combating perceived social ills such as prostitution, for example, or more generally in attempts to develop a society that is grounded in Islamic norms, such as in the case of local law in Tasikmalaya (to be discussed later), women’s appearance and mobility is controlled.

A prominent example is a local law pertaining to prostitution that was issued in Tangerang, a city in the Province of Banten bordering Jakarta. Law No. 8/2005, prohibits anyone suspected or appearing to be a prostitute from being on a road, in a hotel, or in other places in the city. This law received attention from the international mass media when in February 2006, a woman who was on her way home from work in the evening was detained because she was suspected of being a prostitute and subsequently spent three nights in prison. As documented by Komnas Perempuan, more than a quarter of the discriminative local policies they identified target women.\(^\text{54}\)

This trend of controlling and restricting of women’s rights is also apparent in many laws in Aceh, the only province that can implement broader and more comprehensive shari’a laws.\(^\text{55}\) The main argument given in support of enacting such laws concerns the obligation of the state to ensure that shari’a obligations are obeyed by individuals. The argument is considered a permissible derogation from the state’s human rights obligations (as manifested through local governance) because they maintain public morality. Another important justification that has been evinced is that such laws are needed to prevent vigilante or village-level violence against women. A 2010 report by Human Rights Watch shows the centrality of this argument. In its assessment, instead of preventing private citizens taking law into their own hands, the laws may have exacerbated the trend.\(^\text{56}\) An anomalous development within this trend is the enactment of the Law on Empowerment and Protection of Women in Aceh (Qanun No. 6/2009).\(^\text{57}\) One of its objectives is to create gender justice and equality, and to protect women from violence. It lists women’s rights (comprised of economic, educational, health, and political rights) as well as the government’s duty to fulfil those rights and to protect women from violence. There may be tensions between this particular qanun and other criminal qanun (jinayah) regulating women, which seem to be given priority and possess its own instruments for enforcement.

While it is noted above that many of the local laws in Aceh attempt to restrict women’s rights through, for example, requiring women to dress in a certain way, there are also cases concerning what women cannot wear. For example, there are questions as to whether a Muslim policewoman, based on her religious belief, can wear a headscarf and be excused from fully complying with the 2005 police regulation on uniforms. There is also a draft law prohibiting women from wearing clothes that are too tight. The policewoman hijab case is still undecided, pending


\(^{55}\) Many such laws regulate women, such as how they dress, or people’s morality, such as the one on seclusion (khilwat). For further discussion of the situation in Aceh, see in particular Section II.A.1 at ‘Regional Autonomy and the Emergence of Local Laws’, below.


\(^{57}\) This law was enacted after women’s activists strongly advocated for it.
decision from the head of police. As mentioned earlier, there are also similar cases in a few schools regarding Muslim girls who wear the headscarf.

b. Children

The Law on Human Rights has 15 articles that specifically pertain to children's rights, one of which (Art. 55) is related to FOTCR. It says that every child has the right to worship according to his/her religion, to thoughts and expressions in accordance with the child's intellectual capacity and age under the guidance of his/her parent or guardian.

An interesting issue concerning children is related to conversion. As noted above, while conversion is not illegal, it is discouraged, and the most extensive prevention of religious conversion exists with regard to children. Art. 6 of the 2002 law on child protection (No.23/2002) repeats the clause in the 1999 human rights law on the right to worship according to the child's religion, but goes further. It does not mention only the rights, but also children's obligations, one of which is to worship according to his/her religion (Art. 19(d)). The law also has several clauses that are clearly aimed at making sure children are not converted from the religion of their parents. For example, in the case of children whose parents are not legally competent or their whereabouts unknown, a child can be assigned a guardian by a court's decree. One of the requirements to be a guardian is that the individual's religion is the same as the child's (Arts. 1(11), 31 (4) and 33(3)). In the case of a religious institution caring for the child, the religious affiliation of the institution should be the same as the child's (Art. 37(3)); otherwise, the institution has to take into account the child's religion. This requirement applies also to adoption—adoptive parents have to have the same religion as the child (Art. 39(3)). Furthermore, Art. 39 (5) says, 'In the case the child's background is unknown, the child's religion is to be adjusted with the religion of the majority in the area.'

Other than those articles, the law has a special section (Arts. 42 and 43) on religion under the part on child protection. Children shall be protected to worship according to their religion; before they can make their own choice, their religion follows their parents'; the state, family, parents, guardians, and society have to guarantee protection of a child with regard to his/her own religion. Art. 65 states that 'special protection' for children of minority groups covers their culture, religion and language. To fulfil the protection, an independent Commission on Protection of Children is established, which should include religious figures among its members. Lastly, there is a penal article (Art. 86) in the law which says that 'everyone who deliberately deceives, lies to or coaxes a child to choose a different religion not on the child's own wish' is penalized with imprisonment of up to five years and/or fined a maximum of IDR 100 million (approximately US$ 10,000). The above articles make this law the most explicit and the highest in the hierarchy of laws dealing with conversion.

In 2005 this particular article was petitioned to the Constitutional Court, after a court case in which three Sunday school teachers were sentenced to three years in prison on charges related to the article. The petitioner argued that it is contrary to Article 28E of the Constitution. The Court rejected the application, arguing that if an act does not fulfil the criminal elements mentioned in Article 86 ("deliberately deceives, lies to or coaxes a child to choose a different religion not on the child's own wish"), there should be no fear in doing missionary works as part of one's freedom of religion.59


c. Migrant workers

The Law on Labour (No. 13/2003) guarantees that all workers are protected, treated with dignity, and should not be discriminated against based on religion. Article 93(2e) says that workers who cannot fulfil their job duties because they have to perform worship activities as mandated by their religion are still entitled to their wages. Article 153 says that an employer shall not terminate a work contract based on religious differences or because the workers perform worship activities sanctioned by their religion.

With regard to migrant workers, more attention is given to Indonesians who work abroad. The Law on Indonesian Migrant Workers Abroad (No. 39/2004) mentions the rights of workers to religion and belief (Art. 8d). In the event of a worker's death, the company that handles the worker's overseas employment is obligated to repatriate and bury the worker in accordance with his/her religion (Art. 73(2) c).

d. Persons deprived of their liberty

The Law on Correctional Centres (No. 12/1995) states that inmates have the right to worship in accordance with their religions or beliefs. However, Article 3 of the Minister of Law and Human Rights Regulation No. 6/2013 states that inmates are obliged to worship in accordance with their religions or beliefs and to maintain inter-religious harmony. Presumably because of that, a monitoring research by the Center for Detention Studies on detention centres in Jakarta reports that fulfilment of the right to worship/religion is very high, with all respondents (100%) answered positively to the question on worship.60

The new Law on Mental Health (July 2014)61 mentions that efforts to achieve mental health are based on several principles, one of which is non-discrimination (Art. 2(h)), which is explained as discrimination against people with mental health issues based on sex, ethnicity, religion, race, social status and political preference.

e. Refugees

There is no specific regulation on refugees. The situation regarding refugees and inter-religious relations is discussed in the section on cross-border impacts in Part II.

f. Minorities

Officially the category of “minority” is not used in Indonesian laws. The situation with minority groups is discussed in Part II.

C. Redress Mechanisms and Interpretation of Religious Freedom

1. Judiciary:

a. Constitutional Court

The 2003 establishment of the Constitutional Court (“the Court” or “CC”) was mandated by the amended Constitution. The Court has the authority to review the highest national laws (undang-undang). Article 50 of Law No. 24/2003 on the Constitutional Court originally stated that only laws passed after 1999 can be reviewed, but the CC determined to strike out


61 The law was only very recently passed by the parliament (8 July 2014), and had not been signed by the President at the time of this writing, so it has not had a specified number. The discussion here is based on the final draft of the law, available at http://www.hukumonline.com/pusatdata/detail/lt53c4dc6fda23c/nprt/481/rancangan-uu-tahun-2014-kesehatan-jiwa.
Article 50, hence enabling it to review all laws. The CC works on the basis of petitions by submitted to it by applicants who allege that their constitutional rights have been violated by a law.

In so far as FOTCR is concerned, there have been six cases reviewed by the Court. First, Article 86 of the 2002 Law on Child Protection, which penalizes a person who deceives and coaxes a child to change his/her religion, was petitioned for its contradiction with Article 28E of the 1945 Constitution on the right to freedom of religion or belief, and freedom to organise, to assemble, and to express opinions. The petition was prompted by the case of three Sunday school teachers who were imprisoned for violating this law (discussed in Part I. C.1a). The Court rejected the application, arguing that what is prohibited is the criminal elements mentioned in the law, not the attempt to change the child’s religion.

Second, in 2007 a Muslim petitioner requested a review of the clauses that restrict polygamy in the 1974 Law on Marriage. The petitioner claimed that the clauses restricted his religious rights. The Court rejected the application mainly for the argument that polygamy is not a form of worship, and no freedom of worship is restricted here. The requirements mentioned in the law as they relate to polygamy are to protect the rights of others, in this case the rights of a wife.

Third, in 2008 a petitioner claimed that the 1989 Law on the (Islamic) Religious Court denied Muslims’ religious freedom since by this law the state imposes a limitation on the jurisdiction of Islamic religious courts. That is, it is limited to civil matters. Therefore, Muslims’ constitutional right to freedom to manifest their religion—that is as fully practising Muslims who, she claimed, are required to abide by Islamic law, including in criminal matters—is limited. The Court unanimously rejected the petitioner’s arguments, arguing that it could not add anything to an existing law. Another argument, though not very central, is important in asserting the character of state-religion relation in Indonesia. The Court maintains that Islamic law is one but not the only source of law in a multi-religious Indonesia, where the 1945 Constitution, not any religious law, is regarded as the highest law.

Fourth, in 2013 a coalition of Islamic organisations concerned with the collection and distribution of zakat (obligatory alms giving) asked the Court to review Law No. 23/2011 on the Management of Zakat. The key issue determined in the case did not relate to religious freedom, but to the limitations imposed by the law on which organisations may collect and distribute charitable donations. The law tends to centralize these activities in a national organisation endorsed by the government, and as such, was regarded by the petitioners to deny the right of traditional Muslim organisations to undertake this role, even though they had administered such activities long before the law was enacted. Furthermore, the law could be interpreted so as to criminalize those organisations. The petitioners saw the existence of a variety of organisations which can collect and distribute zakat as one of the realizations of religious freedom as guaranteed in the Constitution; arguing that individual Muslims should have the freedom to choose an organisation through which they want their zakat to be distributed. The Court partially accepted the petition. In its decision, it asserts that the state may regulate zakat as a religious issue since it is part of the forum externum, not forum internum, which belongs personally only to individual believers. While the Court defended the constitutionality

62 The decision to disregard Article 50 in actual fact pre-dated the CC’s decision to amend the law. However, Law No. 8/2011 on revisions of Law No. 24/2003 formally mentions that Art. 50 is struck out.

63 Due to the limitations of its mandate (to review only national laws) the Constitutional Court has not reviewed the constitutionality of local laws and decrees. For further discussion of this point, see sections (b) and (c) below.

64 Constitutional Court Decision No. 018/PUU-III/2005.

65 See in particular Arts. 3(1) and (2), 4(1) and (2), 5(1), 9, 15 and 24 of the Law on Marriage.


67 Constitutional Court Decision No. 19/PUU-VI/2008.

68 Constitutional Court Decision No. 86/PUU-X/2012, 90.
of the law, it provided an interpretation of that law which does not deny the role of other Muslim organizations to collect and distribute zakat.

Fifth, in the 2009-2010 first review of the Defamation Law, which was partly discussed above, the legal basis of the petition is that the 1965 law contradicts the (amended) Constitution, as well as new laws on human rights. The government (represented by the Ministries of Religion and Domestic Affairs (together, the “Ministries”) defended the law on the basis that it protects each religious community from defamation of religion. The Ministries argued that religious freedom in the amended Constitution, the law on human rights and the ICCPR can be legitimately restricted, and that the law maintains public order (harmony). After several months of intensive review, which drew many expert testimonies and attracted wide coverage in the media, the Constitutional Court decided to uphold the law, with one out of the nine judges issuing a dissenting opinion. In the decision, the Court put forward a number of arguments that attempt to display the contemporary relevance of the 1965 law for contemporary religious life in Indonesia. The ruling also considered the law in light of the post-1998 legal developments in Indonesia and the ensuing strengthened guarantee of FOTCR. The Court did mention the need for revision, to make sure that the law does not go against Indonesian pluralism and become discriminatory, but to date neither the parliament nor the Ministries have endeavoured to review the law.

Sixth, the CC reviewed Article 156A of the Penal Code (derived from Art. 4 of the Defamation Law), upon receipt of a petition from two individuals who were prosecuted under the law and a few others. The Court was willing to do the review again because it viewed the second petition as pertaining to a different issue from the first. While the first petition concerned the law in general, the second was only focused on a particular procedural issue, namely how a decision on deviancy or defamation is made under Article 4 of the law. The petitioners argued that the law required a Joint Ministerial Decree (Ministers of Religious Affairs, Home Affairs and Supreme Court) for that kind of decision, while in practice judges had been seen to make such decisions, based on several types of evidence, including testimony or letters from sources such as local branches of the Majelis Ulama Indonesia. The Court also rejected this much more limited petition, repeating many of the arguments it made during the first review.

On September 2014, the Constitutional Court started to review another case on the Law on Marriage, this time related to inter-religious marriage. In general, through these reviews, the Court has provided important, though not always progressive, interpretations of state-religion relations and FOTCR in Indonesia.

b. Supreme Court

The Supreme Court functions as the highest court of appeal in Indonesia. With regard to FOTCR, the Court has reviewed cases relating to the licence to build houses of worship and defamation of religion. Among the prominent examples related to houses of worship that were brought to the Supreme Court are the cases of the two churches discussed previously, the Taman Yasmin Church in Bogor and the Filadelfia Church in Bekasi, both in West Java. Both

---

69 See infra, ss I.B.1 and I.B.2.
70 Constitutional Court Decision No.140/PUU-VII/2009.
71 The semi-governmental Council of Ulama (Majelis Ulama Indonesia or “MUI”) was established by the New Order government in 1975. MUI was designed to function as the moderate, pro-government representation of Islam. However, since 1998, it has repositioned itself to be more independent from the state, aligning its stance closer to factions of Muslims who want to assert a more visible Islamic identity, yet at the same time pressures the state to enforce its fatwa, which in many cases represent conservative Islam. See infra Part III below.
72 Constitutional Court Decision No. 84/PUU-X/2012.
73 This is Rumadi’s view, specifically with regard to the review of the defamation of religion law. See http://nasional.kompas.com/read/2010/10/28/21170733/Putusan.MK.Cenderung.Pertahankan.UU.Penodaan.Agama. Further discussion is available in Margiyono, et.al., Bukan Jalan Tengah, Indonesian Legal Resource Center, 2010.
churches won their cases in disputes over the licence to build against the local governments at all levels: the administrative court, the higher administrative court of West Java and finally the Supreme Court. However, in both cases the local governments defied failed to implement the decisions. In the case of Taman Yasmin, the church used two kinds of arguments to bolster its case: an administrative argument (that the head of city planning’s letter was not valid) and one based on human rights. However, the courts mainly regarded this as an administrative issue, so there is no interpretation of FOTCR here.\(^74\)

Another recent case concerns Tajul Muluk, a Shi’i leader of a village in Sampang, Madura, East Java, who was found guilty of a charge under Article 156A of the Penal Code and sentenced to two years. The court of appeals raised his sentence to four years, and the Supreme Court kept the higher court’s decision. In this case, the first court made an interpretation based on what is regarded as insulting or defaming religion, while the higher courts simply supported the decision of the lower courts.

The other function of the Supreme Court relates to its review of local laws. As is discussed in Part II.A below, many local laws are regarded as discriminative on account of religion. Local laws can be reviewed in two ways: through administrative review by the Minister of Home Affairs, and judicial review, conducted by the Supreme Court. The administrative review by the central government is triggered using two criteria, which are (i) public interest; and (ii) consistency with higher laws. If a local law is deemed to violate these criteria could it may be declared invalid by Presidential Regulation. In that case, the local lawmaker can challenge the central government’s decision through an appeal to the Supreme Court. Besides handling such local lawmaker’s appeals, another important task of the Supreme Court is to undertake judicial reviews of local laws based on citizen’s complaints.

In practice, considering the sheer number of local laws produced, and time limits on the review process, these two mechanisms are in general not effective. Moreover, the Supreme Court rarely considers the substance of the law, especially when dealing with religion-based regulations.\(^75\) According to Butt, most local regulations escape the review except if they impose fees or seek to raise revenue for local governments. “By late 2006, the central government had received over 12,000 regional laws for review, and from 1999–2007, 1,406 local laws were annulled. By 2008, the Finance Ministry alone had received 7,200 Perda and recommended the revocation of around 2000, most of which sought to impose an illegal tax or user charge.”\(^76\)

In conclusion, in these two functions—as the highest court of appeal and part of the mechanism to review local laws—the Supreme Court tends to steer clear of making pronouncements pertaining to religious freedom or to consider Indonesia’s obligations (both domestic and international) as they pertain to freedom of thought, conscience.

\(^74\) The court process was final with the SC decision in December 2010. However, the problem was far from being solved. The mayor seemed to comply with the decision of the SC by revoking the head of city planning’s letter on 8 March 2011, but three days later, on 11 March 2011, the mayor issued another decision which revoked the permit issued by the mayor in 2006. The next process involved an Ombudsman. There was another process involving the Supreme Court when the church asked for the Court’s opinion on the latest development. The Court answered that with regard to the 2008 letter by the head of city planning, the Court’s decision is final and has to be executed; with regard to the mayor’s new decision (11 March 2011), the church may bring the case to the relevant court (it was not explicitly mentioned, but seems to refer to the administrative court), which the church did not do, since it sees that the legal avenues had been exhausted, which culminated in the final decision by the Supreme Court in 2010.

\(^75\) Simon Butt, ‘Regional Autonomy and Legal Disorder: The Proliferation of Local Laws in Indonesia’, (2010) 32 Sydney Law Review, 185. Butt provides the example of the Tangerang law discussed in the next section. In this case, while several female victims of the law who lodged the appeal to the Supreme Court used the arguments about discrimination of women and the exclusion of religion from Perda, the Court did not consider any of these arguments and rejected the appeal because it sees that Tangerang city has the authority to produce such a law and that the subject matter of the law fell outside the court’s jurisdiction (188-189).

Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN

Indonesia

and religion. This is at least in part due to the fact that there are ongoing debates as to whether regulations of religion present in local laws violate the Second Regional Governance Law (No. 32/2004), which excludes matters of religion from regional lawmakers’ jurisdiction; the Court tends to regard that such regulations do not regulate religion per se and as such are still within the regional lawmakers’ jurisdiction. This, combined with the Court’s general reluctance to undertake judicial review of Indonesia’s laws (bearing in mind the Constitutional Court’s distinct, yet complimentary role in the same) mean that the Supreme Court is not, at present, an effective redress mechanism on matters related to freedom of thought, conscience, and religion (FOTCR). The combined result of the inaction of the Supreme Court and limitations of the jurisdiction of the Constitutional Court is that hundreds of local laws and regulations of dubious constitutionality and of discriminatory effect remain in force.

2. Administrative Bodies: Ombudsman Indonesia

Ombudsman Indonesia was established initially in 1999 based on a Presidential Decree, but in 2007 it received a significantly new shape and structure with the enactment of Law No. 37/2008 on Ombudsman of the Republic of Indonesia. Its existence was further strengthened by Law No. 25/2009 on Public Service, in which it plays a significant role to oversee public service by offices of the central and local governments. The President proposes the names of the members of office of the Ombudsman through open recruitment, but the selection is done by the Parliament. The Ombudsman receives complaints on maladministration in public service and investigates them, and attempts to prevent maladministration. Upon finishing the investigation, the Ombudsman concludes with recommendations that must be carried out by the offices or individuals concerned within 60 days. If the recommendation is ignored wholly or partly without acceptable reasons, the Ombudsman can publicize the supervisor and report to the Parliament and the President. The parties who are regarded to have performed maladministration and their supervisors may receive administrative sanctions.

Annual Reports by the Ombudsman do not have a special category related to FOTCR, but one on “discrimination”, under which cases related to FOTCR may fall. According to a recent report by the Ombudsman, from 2008 to 2013 it has received 47 complaints related to discrimination. A few of them are related to religious issues, all of which concern permits for houses of worship.

One prominent case on houses of worship handled by the Ombudsman concerns complaints against the mayor of Bogor, in the case of the Taman Yasmin Church discussed above. In this case, the mayor was instructed by the Supreme Court to revoke a letter by the head of city planning which negated the licence to build the church. The mayor seemed to comply with the decision by revoking the letter, but three days later issued a new decree revoking the licence. The Ombudsman received a complaint from the church, invited the mayor of Bogor, the Governor of West Java and a representative of MOHA to meet and concluded that the revocation of the licence is a legal disobedience. It recommended that the Governor of West Java and MOHA supervise the mayor to revoke the March 11, 2011 revocation letter. Until today there has been no follow up on the recommendation, and no sanctions applied to the mayor. Today the church is still denied a building licence, despite statements

77 See discussions further below, in Part Two. A.4. See also Lindsey (2012, 373-375) on the debate.

78 Another limitation of the Court, especially related to this second function, is that it can review regulations that are below national laws against the laws, but not review against the Constitution. The task of reviewing laws against the Constitution, as discussed above, belongs to the Constitutional Court, which reviews only national laws, not the lower-level regulations. In other words, there is no mechanism to review local laws against the Constitution. See also Lindsey, at 379.


80 The mayor recently (April 2014) finished his second term and was replaced by a new mayor.
of concern from many human rights organisations, including international ones, up to the UN Human Rights Council (during the UPR process).

Other than licensing for houses of worship, the office of the Ombudsman seems to be the appropriate place to bring forward complaints related to administration (including registration of marriage) for citizens who are not affiliated with one of the six official religions. There are reports that the enforcement of the law is not uniform across Indonesia, and it seems that even at the level of the Ministry of Religious Affairs not everything is clear in this regard. In 2014 the Ombudsman planned to hold a limited discussion forum with representatives of the government on this issue.81

3. Independent Bodies:

a. National Human Rights Commission (NHRC/ Komnas HAM)

The National Human Rights Commission was initially established in 1993 and was regarded as a respectable institution. The personnel were regarded as independent, and on many human rights issues it frequently took positions opposed to the government. One of the eleven chapters of the 1999 law on human rights is specifically on the Commission (Ch. VII, Art. 75 -99). The law strengthened the existence of the Commission and expanded its authority.

According to the law, the NHRC has four main functions (research, education, mediation, and monitoring and investigation) that are reflected in the sub-commissions. Law No. 26/2000 on the Human Rights Court (Art. 18-20 and 25) mentions the authority of the Commission to investigate severe violations of human rights through an ad-hoc team. Law No. 40/2008 on the Elimination of Racial and Ethnic Discrimination mentions a more specific task of the NHRC, which is to monitor and investigate racial and ethnic discrimination and potential discrimination and to make recommendations to the government. It also monitors the works of central and local governments. If the governments do not follow the recommendations, it may bring the case to the parliament. In its investigations, NHRC may summon the victims and perpetrators of human rights violations, as well as witnesses. If they do not fulfil the NHCR request, it may ask the court to bring them by force.

In practice the NHRC has indeed been very active, responding to incidents of violation of FOTCR. It works not only based on complaints, but its own initiatives to respond to emerging events, issuing press statements or releases, especially for situations that garner public attention. On larger issues, they formed ad-hoc teams. In 2005, for example, the NHRC investigated attacks on the Ahmadiyah community. It did not investigate a specific event but looked at the patterns of repeated attacks in different places and issued its report in 2007.82 In some cases, such as the recent case of the Shi'a community in Sampang, East Java, it worked together with the National Commission against Violence on Women (as well as the Commission on


82 The main conclusions are summarized in Comments’ of the Indonesian National Human Rights Commision on Indonesian Compliance with the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment of Punishment, April 2008, p. 16., available online: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/IDN/INT_CAT_NGO_ IDN_40_9013_E.pdf. Among the conclusions is that the attacks against the Ahmadiyah community took place without attempts at prevention; especially in the Lombok case, the perpetrators were not prosecuted. It sees the state as unwilling and unable to guarantee the rights of its citizen to freedom of religion and worship. The Commission recommended that the Government should actively provide protection guarantees to the victims; firm actions to anarchic behaviours; and a guarantee of protection for all Indonesian citizens without any exception.
Protection of Children) to issue a common report.83

With all its authority, which is more extensive than the National Commission on Violence against Women and National Police Commission, the NHCR actually has a very strong position from which to deal with violations of human rights and to support law enforcement effectively. Nevertheless, ultimately it has to depend on the compliance and support of formal offices such as the courts, the government and the parliament to make it effective. Without them, the recommendations, through their publications in the mass media, only act as a kind of pressure on the authorities. In reality, NHCR found that their support is very weak.84 In some cases, the NHCR even found it challenging to summon suspected perpetrators or government officials, despite the fact that the law says that they can be summoned by force if necessary. When it comes to recommendations, for example on the issues of Ahmadiyah in Lombok and Shi’a in Sampang mentioned above, the government and law enforcement agencies did not follow them up wholly; both communities still suffer from on-going persecution while past violence towards them was not dealt with at all.

83 In this particular case, they issued team issues five recommendations: 1) the President should take over the handling of the case and order the relevant ministries and local governments to immediately take steps to respond to the problem; 2) the Head of Police should ensure that police take a neutral position and firmly enforce law; 3) National and local governments should work together to approach the issue by cultural means and attempt to create tolerance; 4) the national and local parliaments should supervise the performance of the president; 5) the Parliament should revoke laws that could be used to criminalize non-conformist religious believers. The team’s report is available at: http://www.komnasperempuan.or.id/wp-content/uploads/2013/09/LAPORAN-PUBLIK-TIM-TEMUAN-DAN-REKOMENDASI-TTR-SYIAH-SAMPANG.pdf.


b. National Commission on Violence Against Women (NCVAW)

The National Commission on Violence Against Women (Ind. Komnas Perempuan) was established in October 1998 based on a Presidential Decree (No. 181/1998). The initial trigger for this establishment was sexual violence, especially against women of Chinese ethnicity during the 1998 riots around the fall of the President Soeharto’s regime. Its standing was strengthened by Presidential Regulation No. 65/2005.

The tasks of the Commission are fivefold. First, it is to disseminate awareness about all forms of violence against women and ways to prevent them; second, to perform studies on relevant national regulations and international instruments; third, to monitor and do fact-finding on all forms of violence against women, and publicize the findings; fourth, to recommend ways to handle the violence and develop the necessary legal framework for the government, legislative and judicative institutions as well as societal organisations; and fifth, to develop regional and international cooperation to better prevent violence against women and protect women’s rights. In terms of topics, one of the 11 crucial issues central to the NCVAW in its 2010-2014 agenda is violence against women that is based on morality and religion. One area where the NCVAW is especially active is indeed in monitoring local laws that discriminate against women, including those on account of religion and belief.

Just by looking at the circumstances of its establishment, the NCVAW is a progressive independent body, responsive to issues of women’s rights and human rights in general. As a young organisation, it has published quite a few important reports as well as books and articles on a variety of issues. As mentioned above, it frequently cooperates with the NHRC, the National Commission for Child Protection and other organisations to monitor and investigate incidents of violence or violation of rights, especially those of large magnitude (such as in the Sampang Shi’a case). In such cooperative
efforts, the Commission often contributes a particular perspective on the impact of incidents involving women.

In its 2012 report to the UN Human Rights Council on the implementation of ICCPR in 2005-2012, the NCVAW included its observations on the impact of violations of FOTCR and several governmental policies (such as the one on the national identity card) on women of religious minority groups. In addition to the joint report on the Shi’a community discussed above, in 2008 the NCVAW issued a specific report on Ahmadi women and children, referred to as victims of multiple discrimination, focusing on the series of attacks against the community in West Java and West Nusa Tenggara. During the Constitutional review of defamation of religion, it argued against the law by looking more specifically at its impacts on female victims. As noted above, however, the NCVAW lacks the scope of quasi-judicial investigative authority enjoyed by the NHRC.

c. National Police Commission (NPC)

MPR Decree No. VII /2000, which established the separation of the military and the police, mentions the establishment of an institution which was later called the National Police Commission. In Law No. 2/2002 on Indonesian police, there is one chapter on the NPC, which was strengthened by Presidential Regulation (17/2005), and later revised by another Presidential Regulation (17/2011) to make it more professional, accountable and independent. Unlike the other two commissions discussed above, which are clearly mentioned as independent, the head of the NPC is the Coordinating Minister of Politics, Law and Security, with members who include the Minister of Home Affairs and Minister of Justice and Human Rights, academics, lawyers, and former police officers. Its main objective is to assess the performance of the police force and to help develop its professionalism.

The authority of the NPC includes receiving complaints about the performance of the police and collecting and analysing relevant data to be the basis of advice for the President. At this stage, there does not seem to be much that the NPC does related to FOTCR, however, it has the potential to be a mechanism to ensure the police force's attention to FOTCR incidents and compliance with FOTCR-related regulations. The Commission, for example, recommends that the head of police fulfils the request of Muslim policewoman for a police uniform, which accommodates their needs. A larger issue that the NPC has started to work on, in cooperation with civil society organisations, is the police force's response to the hate speech and intolerance that has preceded many incidents of violation of FOTCR. In this regard, it is considering the need to create a law on hate speech.

PART TWO: TRENDS IN RELIGIOUS FREEDOM

As has already been discussed in some detail in Part One of this report, the most significant and progressive changes in the laws pertaining to FOTCR undoubtedly occurred as a result of the democratization process that began in Indonesia in 1998. However, this period also saw both the emergence of new, and the affirmation of pre-existing laws that have tended to reaffirm the state’s capacity to regulate religion in accordance with orthodox understandings of the same. In so doing, lawmakers appear to have further enabled any gains made through the national commitment to human rights to be rolled back at the provincial and district level. Two main trends in this regard concern the use of the Defamation Law, and the enactment of local laws related (directly or indirectly) to religious issues. Another major trend concerns the building of places of worship affected by a revision of a 1969 regulation and the emergence of incidents of
conflict, some of which have been brought to court.\(^8\) In the past few years, while communal conflicts and terrorist cases appear to have receded in Indonesia, issues pertaining to defamation of religion and to the construction of places of worship have become the main source of smaller, more localized conflicts. This has in turn provided avenues for expression of intolerant religious claims by certain non-state actors. Incidents of persecution are also mainly related to these two issues.

A. Significant Changes in the Law

1. Progressive changes in post-1998 laws

As has already been discussed in some detail in the introduction to this report, Indonesia’s parliament enacted several important reform-oriented laws in the immediate post-1998 Reformasi period. Only a few months after the regime change in 1998, a new law was enacted on freedom of expression in public (Law No. 9, signed on October 1998). However, the more significant move, which initializes a series of further legal developments, including on FOTCR, was the enactment of the MPR Decree. The MPR Decree, whose position is right below the Constitution in the hierarchy of laws, committed President and the parliament to ratifying UN human rights instruments, “insofar as they are not contrary to the Pancasila and the 1945 Constitution.” The decree includes a text on what is called the Indonesian nation’s views on human rights and a “Human Rights Charter”, which was derived from the UDHR. Only two years after this, the decree was followed up by fundamental changes that include the enactment of specific laws on human rights (No 39/1999); the Human Rights Court (No. 26 of 2000); and, quite significantly, the second Constitutional amendments (2000) which among other fundamental changes insert a whole new chapter specifically titled “Human Rights”.

This series of sweeping changes was momentous in terms of Indonesia’s own history, as well as in comparison with other countries. As discussed by Tim Lindsey, the original 1945 Constitution conceptualises Indonesia as an “integralist state” in which citizens are imagined as inseparable from the state, having very few guarantees of civil and political rights but more duties to the state. There was an attempt to change this in 1950s, but it failed. The series of post-1998 amendments that includes the introduction of wide-ranging protection of citizens’ rights, especially the addition of the bills of rights (Articles 28A-28J) constitutes “the most radical change to the original philosophy of the Constitution. Chapter XA is a lengthy and impressive passage, granting a full range or protections extending well beyond those guaranteed in most developed states”.\(^8\) In general, this achievement in the span of only a few years, combined with the enactment of the specific laws related to human rights and the ratification of many human rights conventions, provides a strong and unprecedented foundation for FOTCR.

2. Legal mainstreaming of FOTCR

The next move was to mainstream human rights, including FOTCR, in other laws or lower level regulations on a variety of issues. This mainstreaming was achieved in part by incorporating relevant clauses in a number of laws, as well as by inserting within a heterogeneous set of regulations provisions, which related to guaranteeing freedom of religion. For example, the Law on the Management of Social Conflict (No.7/2012) discussed briefly in Section II.A above, encourages tolerance and respect for freedom of religion and belief in order to maintain peace. Furthermore it mentions the principle of non-discrimination in conflict resolution, and acknowledges of equality without

---

\(^8\) See also Part I.3 above.

---

discrimination based on religion and belief. The Law on Disaster Management (No. 24/2007, Art. 3 and its explanation) prohibits discrimination based on religion in the distribution of aid for disaster victims. The Law on Indonesian Migrant Workers abroad (No. 39/2004) mentions the rights of the workers to religion and belief (Art. 8d). A regulation issued by the Head of Police (No. 8/2009) deals with the implementation of the principles and standards of human rights in fulfilling the tasks of Indonesian police; it is based on the bill of rights in the Constitution and the 1999 law on human rights.

3. Restrictions to FOTCR

Paradoxically, however, despite all of this progress, the complete and more ambivalent picture has only become apparent in more recent years. Some restrictive clauses in the Constitution and in certain laws have been interpreted to have significant implications. As a result, existing (pre-1998) policies on religion have not shown, in certain instances, to change. As the result there remain tensions, if not blatant contradictions, in the manner in which laws have been enacted and interpreted since that time.

The restrictions appear to centre on a few issues. First, the significance of “religious values” in Article 28J of the Constitution does not seem to have been clear when it was inserted during the amendment process. However, as discussed in detail in Part I, during the 2010 constitutional review of the Law on Defamation, it became part of the key argument to restrict freedom and discipline non-conformist religious beliefs.

Utilizing arguments that espouse “religious values” to restrict the freedom of expression, as well as the freedom of thought, conscience and religion of certain groups appear to be widely accepted among certain officials as well as judges as legitimate grounds for maintaining such restrictions. These arguments tend to be couched in the language of Indonesian particularism. It is noteworthy that the limiting phrase “religious values” appeared again during the fourth amendment of the Constitution two years later (2002), i.e. in Article 31 (5) on education (“The Government shall advance science and technology by respecting religious values and national unity…”). The addition of this phrase may be related to another development that took place during the fourth amendment. During the process, there was a failed attempt at inserting a clause about the obligation to follow Islamic sharia for Muslims (which was dropped from the Constitution in August 1945) in Article 29(1)), before the next clause that speaks about the State’s guarantee of religious freedom.

This series of developments shows how far-reaching the post-1998 progressive trend is being held back by qualifications or restrictions, some of which originated in pre-1998 policies on religion. Perhaps a final important indication of this trend is evident in the enactment of the 2006 Civil Administration Law. While as noted above this law marks progress in promising a larger space of freedom for citizens who do not profess one of the six official religions, it is then qualified by further requirements that narrow that space. First of all, the law still makes a distinction between citizens whose religion is one of the six and ones that “have not been recognized yet”, with implications for their civil rights, such as in registration of marriage and religious education for children. This is despite the fact that one of the objectives of the law, as stated in its Elucidation, is to overcome the discriminative grouping of people inherited from Dutch colonial rule. Indeed, among other laws considered to be grounds for the enactment of the law are the articles on human rights in the Constitution (Art. 28B, D, E and 29) and the 1999 Law on Human Rights and the ratification of the CERD.

88 See Articles 2(n) and 7, respectively, of the Law on the Management of Social Conflict (No.7/2012). Hereafter, “Law on the Management of Social Conflict”.

89 The issue is not only with existing laws, but also new laws that create different kinds of restrictions on FOTCR. In many respects these laws tend to reflect a pre-Reformasi understanding of religion and display new forms of restrictions based on “old school” politics.

4. Regional autonomy and the emergence of local laws that affect FOTCR

As discussed in Part I, an important part of Indonesia’s legal landscape today concerns local laws, which are a direct consequence of decentralization. The policy on decentralization or regional autonomy that was initiated in 1999 changed Indonesia’s legal landscape fundamentally and affects FOTCR significantly. Regional autonomy “set in motion a process that, in little over one year, took Indonesia from being one of the world’s most authoritarian and centralised states to one of its most decentralised and democratic.”91 At the same time, it has made the legal situation even more complex and at times confusing. Whether on issues related to localization of the Defamation Law or in the enactment of religious-based laws, local regulations tend to restrict the freedom granted at the national level. Further complicating matters is the fact that many local laws are poorly drafted, making them difficult to understand and interpret.

The first Law on Regional Governance was issued in 1999 (No 22/1999) (“First Regional Governance Law”), providing districts and cities with a law-making authority. This was followed in 2000 by Articles 18 and 18A of the amended Constitution (second amendment). A second law on regional governance - Law No. 32/2004 – then replaced the 1999 law (“Second Regional Governance Law”). Under the Second Regional Governance Law, law-making authority now extends to the provinces, districts and cities. There are several types of regional regulations, i.e. laws passed by local legislatures at the levels of the province or the district/city, and laws passed by the heads of local governments (e.g. governor of a province, regent of a district or mayor of a city). As of July 2013, there were 539 autonomous regions (consisting of 34 provinces, 412 districts and 93 cities).92 With so many lawmakers, local laws in Indonesia now likely number in the tens of thousands.93

In so far as FOTCR is concerned, an important limitation posed by the Second Regional Governance Law is the exclusion of matters of religion from regional lawmakers’ jurisdiction (the others are foreign affairs, national defence, national security, judicial affairs, and national monetary and fiscal matters). Art 10(3) of the elucidation of the Second Regional Governance Law describes matters of religion as including religious public holidays, and recognition of a religion and policy on religious life, although the central government may delegate part of its authority to the local government for the purpose of nurturing religious life. However, this exclusion seems to have been breached in many cases. Quite a number of regulations in fact do regulate religious life or even mention ‘religious values’ as the basis of the law.

The sheer number of existing local bylaws and regulations makes it impossible to discuss even a fraction of them. Only a general pattern and few examples are discussed below. In its reports from 2010 and 2013, the National Commission on Violence against Woman has documented a pattern of increasing discriminative local bylaws and regulations, a number of which relate to FOTCR. In 2009, it listed 154 discriminative local bylaws and regulations: 63 targeting women, and 91 regulating religion with negative impacts on FOTCR, out of which nine specifically restrict the Ahmadiyah group. In 2013, the numbers had more than doubled, with 334 local bylaws and regulations, the majority of which are based, explicitly or implicitly, on certain religious views. Thirty-one of the local bylaws and regulations target religious minorities and indirectly discriminate against female members of the minority groups. Seventy of the 334 local bylaws and regulations regulate women’s dress


93 It is always difficult to know exactly how many local regulations have passed. Lawmakers are required to send laws passed at the local level to the central government, but this does not seem to be obeyed; in addition, there is also no centralized system to document the laws. Several recent additions to the literature (Butt 2010, Lindsey 2012) mention 12,000 regulations from a 2006 source. By now that number may have doubled.
The regulations based on aspects of Islamic law concern a wide variety of issues ranging from whether the headscarf is to be worn by women, restrictions on the sale and distribution of liquor, the criminalization of gambling, prostitution and certain other behaviours regarded as ‘un-Islamic’, as well as regulations obligating activities such as paying religious alms (zakat) or reading the Qur’an. While there have been different attempts to group the laws in terms of their contents, what is consequential is to determine which laws do, by definition, “regulate religion”. Many of the laws are presented as addressing public order or combating social ills, not pertaining to religion.

A prominent example, and one which is the most comprehensive, is local law No. 12/2009 of the city of Tasikmalaya, West Java, titled “Development of Social Values based on Islamic and Social Norms of the City of Tasikmalaya”. It regulates a range of behaviours, from corruption, adultery (heterosexual or homosexual), gambling, abortion, the use of any kind of entertainment that is “pornographic”, to witchcraft (perdukunan), which tends to oppose religious faith, and deviant teachings. In 2012 there was an attempt to establish a “shari'a police” to enforce this law, but it was controversial, and stalled when it didn’t receive support from the Minister of Home Affairs. To date, the mayor has yet to issue a more operational regulation about how to enforce the law. In practice, this law is very difficult to enforce because of the many ambiguities it contains.

While almost all religiously based local laws pertain to Islam, there have been a few unsuccessful attempts to enact local laws, which entrench Christian beliefs. A prominent example is the draft law proposed in 2007 to make Manokwari, a city in Papua, a “Bible City”, with clearly discriminative clauses that would make building a non-Christian house of worship or wearing religious clothes (such as the headscarf worn by Muslim women) illegal. This was also very controversial, and rejected not only by Muslims but also by mainstream national Christian organisations. There have been attempts to revise it to make it less discriminative. Still, the proposal could not reach the stage of local parliamentary debate.

5. Aceh Province

Other than local laws enacted at the district/city level, there is a special case concerning the province of Aceh, which has been affected by insurgencies and military interventions for many years. Aceh has the status of a special province, making it different from other regions in that it may enact laws that deal with religion. Aceh has enacted shari'a-based regulations since 1999 based on Law No. 44/1999. In 2001, the region was granted a Special Autonomy Law, which was followed by the enactment of a few shari'a regulations with criminal penalties for offenses such as gambling, the sale and consumption of alcohol, and violations of Islamic dress codes for women. After the signing of the peace agreement in 2005, Aceh was granted the status of having ‘special autonomy’ (through Law No 11 of 2006).

Special autonomy means that, among other things, Aceh implements shari'a or Islamic law for Muslims. Article 126 states that every Muslim in Aceh is obligated to obey shari'a, and every resident is obligated to respect shari'a. Other than Islamic law, the special autonomy designation extends to the election of local officials and the exploitation of natural resources. Just as in the case of the local (district/city) laws, quite a number of these regulations are considered discriminatory. The
Islamic local laws in Aceh are different than in other places in several aspects, one of which concerns criminal laws. Some criminal laws (*qanun jinayah*) on particular issues such as drinking alcohol, gambling, and *khalwat* (seclusion or close proximity) are already in place; to date, the Aceh Parliament is still trying to pass a larger, more comprehensive *Qanun Jinayah* which would be comprised of more issues. There have been discussions about the contradictions between aspects of the *Qanun* and national laws or the Constitution, especially articles related to human rights. For this, there is a review mechanism that has been ineffective thus far, as discussed above.

### 6. Revitalization of defamation of religion law

An important trend in the past few years concerns the revitalization of the Defamation of Religion Law. Besides its more frequent use in court cases, which will be discussed in the next section (II. B), the revitalization is indicated by three other recent developments: the decision by the Constitutional Court to retain the Law in 2010, the reference to the Law in several new national laws on a variety of issues, and its increasingly frequent use as the foundation of new local laws. Furthermore, in its implementation, the Law has been utilized to target a wider spectrum of groups considered “deviant”.

The *first* development, the review of the law by the Constitutional Court, has already been discussed in Part I of this report. As has already been noted, the Court held that the law is constitutional, even after considering the significant changes post-1998. Having been determined to accord with Indonesia’s Constitution, the law’s standing was strengthened. In the 13th session of the Universal Periodic Review at the UN Human Rights Council, there were recommendations to revoke the law, but these recommendations were not accepted by the government for the reason that it was reviewed through the new democratic mechanism of the Constitutional Court, and therefore was not regarded as violating human rights and considered to fall within the limits of allowable restrictions.

There may be an opportunity for revising the law when (and if) the government or the parliament takes up the planned draft law on religious harmony, which is part of the 2011-2014 legislative agenda, although it is no longer prioritized.\[^97\]

The *second* indicator of the revitalization can be seen in the fact that it has become the basis or reference for many other laws. Besides the establishment of a particular article in the Penal Code, a number of the post-1998 laws incorporate the notion of deviancy, defamation, or beliefs deemed dangerous. The laws pertaining to two institutions that function to enforce the Defamation of Religion Law, namely, the office of the state prosecutor and police, have clauses that relate directly to defamation. The 2004 Law on State Prosecutors describes the authority of the office in criminal and civil matters and public order (Article 30). Included in the last area are monitoring of beliefs (*kepercayaan*) that may pose a danger to society and state (d), and the prevention of abuse and/or defamation of religion (e), in which case, as explained in the elucidation of the law, the attorney’s task is preventive and educational.

The 2002 Law on Indonesian Police includes, in Article 15 (1.d), monitoring of *aliran* that could threaten the unity of the state, and that, as explained in its elucidation, includes *aliran kepercayaan* that is in opposition with the founding philosophy of the state. As noted above, however, concern for human rights is also present in the regulation issued by the Head of Police (No. 8/2009) on the implementation of the principles and standards of human rights in fulfilling the tasks of Indonesian police. In that regulation, FOTCR as mentioned in the Constitution and the law is asserted. This clearly shows two forces simultaneously at work: the commitment to uphold human rights and the need to restrict those rights in order to “protect” religion from attempts at defaming it, particularly through beliefs or practices designated as unorthodox or deviant.

\[^97\] The annual list of priority in the national legislative program is available at [http://www.dpr.go.id/id/Badan-Legislasiprolegnas](http://www.dpr.go.id/id/Badan-Legislasiprolegnas).
The Law on Societal Organisations (No. 17/2013) states that such organisations shall preserve the values of religions and beliefs (Art. 5(c); Art. 21 (c)). More significantly, Article 59(2) prohibits such organisations from engaging in hostility towards ethnic, racial, religious or other social groups, and from committing misuse, insult or defamation of a religion in Indonesia. Another prohibition mentioned in Art. 59(4) is the prohibition against holding, developing and disseminating a teaching that is against Pancasila. The explanation of the law refers specifically to the teachings of atheism and communism/Marxism-Leninism.

The 2008 Law on Electronic Information and Transactions (No. 11/2008) has as one of its considerations the prevention of the misuse of information technology by “considering the religious, social and cultural values of Indonesian society”. Article 28(2) forbids the distribution of information intended to incite hate or hostility toward individuals or groups based on ethnicity, religion or race. Article 45(2) says that the violator is penalised with imprisonment up to 6 years and/or one billion rupiah (approximately US$ 100,000).

The 2009 Law on Film (No. 33/2009) regards that while there is freedom of creative expression, the nation’s religious values, ethics, morality and culture should be upheld (Article 5). The next article prohibits incitement to hostility between groups, ethnicities, races, and defamation of religion. The governmental regulation (PP No. 18/2004) on the film censorship body requires that there should be a representation of religion in the body to operationalize the objective of upholding religious values and preventing religious defamation. Article 30(6) of the regulation says that a film can be censored if it has the potential to disturb harmonious religious life, or vilify religious symbols.

It should also be noted that the Defamation of Religion law has become the basis of a lower level regulation, which is the 2008 Joint Decree issued by the Minister of Religious Affairs, the Attorney General and the Minister of Domestic Affairs to restrict the activities of the Jemaat Ahmadiyah Indonesia. In this regard, Ahmadiyah is rather special in the sense that its followers have not been brought to the court qua their teachings that are regarded as deviating from the basic tenets of Islam. Instead, their activities are severely restricted.

Furthermore, the 2008 Decree has triggered a new trend of the enactment of stricter local by-laws or regulations targeting the Ahmadiyyah, to the point of banning the organisation—this is another indicator of the revitalization of the defamation of religion law. This is the third indicator of the revitalization. Ahmadiyah is not the only non-mainstream group targeted by the local laws that are ultimately grounded on the defamation of religion law. Whether in Tasikmalaya or Aceh, “deviancy” is more strictly prohibited and constitutes a criminal offence. In general, there is a trend to target larger non-mainstream groups. Until recently, Ahmadiyah was the largest community targeted, and the number of local regulations that restrict its activities or even bans it is growing. In 2012, a larger group, the Shi’a, was targeted, following an attack on a small Shi’a community in a village in Sampang, Madura, East Java. In 2012, the Governor of East Java issued a decree on “deviant sects” targeting the Shi’a in response to the case in Sampang as well as to a few others. However, other than in East Java, the Shi’a have not been a subject of local regulations. In Aceh, the government is quite active in this area, and the list of deviant groups is growing to include sufistic (mystical) groups within Islam. The mayor of Banda Aceh, for example, formed a commission to prevent deviancy, in the name of strengthening Muslims’ faith (CRCS 2013, 15-17).

These recent trends that in one way or another relate to the Defamation of Religion Law indicate that the Law has found new life in the democratic era. Moreover, as will be discussed in the next section, a dominant part of the recent pattern of religious conflicts in Indonesia is also related to this law and the discourse on defamation of religion.
B. Significant Changes in State Enforcement

The most marked change recently in state enforcement concerns the Defamation of Religion Law. In the past decade it has been implemented much more extensively, in terms of the frequency, the targets, and the regions of the cases. While in the 35 years since 1965 the law was used in courts in only 10 cases, since 2000 the number of prosecutions has grown to more than 40 cases. In terms of the target, while initially it was clearly addressed to the syncretic spiritual movements (aliran kebatinan/kepercayaan), it has now increasingly criminalized larger unorthodox (non-mainstream) groups within some of the acknowledged religions, especially, but not exclusively, in Islam. Another trend is a change in which regions the majority of cases were concentrated. For many years, cases seemed to be concentrated in only a few regions, mostly West Java, Jakarta, and Central Java.

Interestingly, in most cases the decision to charge a person with defamation appears to be triggered by protests or demonstrations from local communities, after an extensive period of attempted mediation by the police and community members. The case of Tajul Muluk, the leader of the Shi’a community in Sampang, is an example of this. For years before the December 2011 attack on his small community, the police together with community leaders in the area and representatives of the local government tried to mediate the case and broker agreements to ease tensions. However, in 2012 Tajul Muluk was charged with Article 156A of the Penal Code due to pressure applied by community leaders and the regent (who, later in the year, would compete in the local elections for his second term).

A prominent case that attracted the attention of both the national and international media was that of Alexander Aan. Aan was a civil servant who was imprisoned for two years and three months and fined 100 million rupiahs (approximately US$10,000). Aan was a member of a Facebook group called Ateis Minang that posted hyperlinks to articles, some of which were regarded as defaming the Prophet Muhammad and the Qur’an. His atheism, expressed in his Facebook account, was also considered to have the potential to persuade others not to believe in God. Aan himself said that he is an atheist, which is regarded as violating the first principle of Pancasila (Belief in One and Only God). The latter could be penalised using Article 156a of the Penal Code (pertaining to defamation of religion). The judges, however, chose to try him using the defamation clause in the Information Technology Law and found him guilty. Responding to the amicus curiae brief from the Asian Human Rights Commission, the judges maintained that the decision did not go against international laws such as Article 29(2) of the UDHR nor Article 19(3) of the CCPR.99

The defamation clause in the Law on Film (No. 33/2009) was referred to in the banning of the Hollywood film “Noah” because its story is regarded to not be in accordance with the belief of the religion of Islam in Indonesia.100 This is an example of enforcement outside of the courts. A number of recent Indonesian films with religious themes have become controversial and there were demands that the film censorship body (Lembaga Sensor Film), whose establishment is based on the law, ban them.

With regard to places of worship, another important trend related to enforcement is how local governmental leaders/institutions defied the state, thus rendering law enforcement ineffective. Two prominent cases in this regard concern the Taman Yasmin Church and the Filadelfia Church, both in West Java. As discussed above, both churches won their court cases up to the Supreme Court, but...

---

98 The numbers provided here are approximations, since there is no accessible central repository of court cases. Only recently, since 2007, has the Supreme Court created a web page “Direktori Putusan” (http://putusan.mahkamahagung.go.id/). The number mentioned in the text refers to Crouch (2012) and CRCS Annual Reports which have document cases since 2008.

99 Decision of Muaro Court No. 45/PID.B/2012/PN.MR, 9.

the decisions were not executed by local leaders (mayor/head of district). Even after the case was brought to the Ombudsman and the president was asked to intervene, both churches still were unable to obtain permits. This phenomenon of local leaders/institutions defying higher court decisions at the national level emerges not only in the case of houses of worship, but also in other cases such as local elections.101

C. Significant Changes in Religious Claims (by Non-State Actors)

The three main trends identified in the beginning of this Part are also further reflected in the religious claims of non-state actors. Significant changes in religious claims made by non-state actors are best reflected by the phenomenon discussed earlier, namely the revitalization of defamation of religion. The Defamation Law has, among other things, drawn a line between mainstream religion (orthodoxy) and deviant or non-conformist groups. That a significant increase in the number of cases prosecuted using Article 156A of the Penal Code (on defamation of religion) was seen in the post-1998 period indicates the pressure exerted by certain religious (mostly Muslim) groups to restrict the rights of other, non-orthodox religious groups. Usually these orthodox groups start with demonstrating against groups regarded as non-orthodox, and in some cases even violently attack them; this is then considered evidence of disruption caused by the existence of deviant groups. As discussed above, non-orthodox groups can then be targeted in the interest of maintaining public order. Ahmadiyah and Shi’a groups are the most recent and the largest targets of wide-ranging anti-defamation campaigns. In general, the law targets non-conformist believers within a religion, rather than across religious lines, though there are a few inter-religious defamation cases.102

Another trend in this direction is the increase in cases of local government’s refusal to give permits to build houses of worship, in most cases based on the objections of certain religious groups. While most cases concern rejection of churches in Muslim neighbourhoods, recently there are also cases of rejection of mosques in Christian neighbourhoods as well as houses of worship belonging to other religions.

The increasing number of religiously inspired (Islamic) local laws, in many cases based on a more conservative Islamic outlook mostly affect Muslims’ rights, but in some cases also affect non-Muslims. Explicit local laws based on certain interpretations of Islamic law, on the other hand, are usually enforced against Muslims.

D. Significant Events of Persecution of Religious Groups

Religious persecution is understood, following the UNHCR definition, as serious restrictions of the enjoyment of fundamental human rights. This chapter does not separate the discussion of persecution and conflicts by state and non-state actors. In most cases, as will be noted below, the state is complicit by not doing what it should be doing, not only during and after but also before particular events, as most conflicts are not spontaneous and usually are preceded by threats and mobilization where the state could intervene.

For the purpose of this section, only a few out of the hundreds of cases that have occurred since the year 2000 are selected. The selection considers representative cases of targets of persecution, and is not based on geographical areas. Four main targets of persecution will be discussed here: the

101 Cf. International Crisis Group, Defying the State (Jakarta/Brussel: 2012): “Local institutions in Indonesia, empowered by decentralisation, are defying the country’s highest courts with impunity, undermining judicial authority and allowing local conflicts to fester.”

102 Melissa Crouch, Law and Religion in Indonesia Conflict and the Courts in West Java (London: Routledge, 2014) discusses a case in West Java in which a Christian convert (from Islam) was prosecuted using this law.

174 Keeping the Faith: A Study of Freedom of Thought, Conscience, and Religion in ASEAN
Ahmadiyah Muslims, the Shi’a Muslims, followers of “non recognized religions” (esp. the aliran kepercayaan), and Christians. It is important to note that the fate of particular religious groups can be significantly different from one province to another due to Indonesia’s geographical magnitude, different inter-religious relations (as well as majority-minority composition) in different areas or provinces, and differences in the characteristics of local governance. The Ahmadiyah, for example, were violently persecuted in Lombok and West Java, but enjoy better protection in Yogyakarta and a few other places. Even within one province, East Java in this case, Shi’a communities in different districts do not all experience persecution, and not of the same magnitude.103

1. Jemaat Ahmadiyah Indonesia

Ahmadiyah104 is a group that originated among Indian Muslims in the 1880s. The group has always been controversial because the founder, Mirza Ghulam Ahmad, claimed that the revelation continued after the death of the Prophet Muhammad, and that he himself received the revelation. While there has been pluralism within Islam, claims that may imply that Muhammad was not the last Prophet are highly unorthodox, since Muhammad’s position as the last prophet is quite central in Islamic theology, second to the oneness of God. Mainstream Islamic organisations in many countries declared that Ahmadiyah is not part of Islam. After the founder’s death in 1908, the movement split into two groups, Ahmadiyah Lahore and Qadiani. The first is more moderate, not claiming its leader as a prophet but as a reformer.

Both factions have had a presence in Indonesia since early 20th century. The Lahore Ahmadiyah faction organized itself into Gerakan Ahmadiyah Indonesia (Indonesian Ahmadiyah Movement), and the Qadiani into Jemaat Ahmadiyah Indonesia—they have been legally registered as religious organisations since the 1950s. The Ahmadiyah have always been controversial in Indonesia. They have been involved in disputes with leaders of other major Islamic organisations, yet these were mostly debates and for some time in fact they cooperated with other organisations, especially to resist Christian proselytization.

Despite the fact that major Muslim organisations see Ahmadiyah as deviant, they have been able to carry on their social services for decades, including building schools in some cities, publishing books and missionary work. Estimates about the number of Ahmadis in Indonesia range from 300,000 to 500,000. A very significant change in the way religious leaders and people in Indonesia react to the Ahmadiyah occurred after the year 2000, with physical violence escalating in some areas, especially West Java and Lombok. In 2005, the Indonesian Council of Ulama renewed and strengthened its 1980 fatwa that declares the Ahmadiyah as not part of Islam. At that time, the Council asked the government to completely ban the organisation. Attacks on the Ahmadiyah around this time intensified, targeting their headquarters and mosques, and disrupting their meetings.105

---

103 The sources used for this Part are mainly three regular annual reports published in Indonesia since around the year 2008. The three national reports are published by the civil society organisations the Setara Institute and the Wahid Institute, and by an academic program based at Gadjah Mada University’s Center for Religious and Cross-cultural Studies (CRCS). All these organisations started publishing their reports in 2008. Although these reports use different methodologies, in so far as identifying the main problems they are generally in agreement. For cases before this year, the author uses mainly journal articles that discuss specific issues. Another source used for this Part are occasional reports issued by the Indonesian Legal Aid Foundation, the NHRC and the NCVAW International Crisis Group and Institute for Policy Analysis of Conflict on more particular issues.

104 The most common spelling in English of the group is Ahmadiyya. The spelling used here follows the spelling more common in Indonesia.

105 To understand the turn of events around this time, see Martin van Bruinessen, ed., Contemporary Developments in Indonesian Islam: Explaining the “Conservative Turn” (Singapore: ISEAS, 2013); with regard to MUI and the Ahmadiyah, see Moch. Nur Ichwan’s chapter in the book: “Towards a Puritanical Moderate Islam: The Majelis Ulama Indonesia and the Politics of Religious Orthodoxy”.
The perpetrators of the attacks were hard-line Muslim groups, including some vigilante groups, many of which came into existence only after the Reformasi of 1998. The two largest and oldest Indonesian Muslim organisations, Muhammadiyah and Nahdhatul Ulama, disagreed with the Ahmadiyah teachings but in general were involved in more civil debates. Even if there were tensions here and there, they never became sustained attempts to attack the group and destroy their properties. Weak law enforcement, even in cases where physical violence has taken place, is another factor that has contributed to an increase in conflicts and violence against the Ahmadiyah. It is difficult to deny that in the majority of attacks the perpetrators were given space by the police in name of getting rid of defamation of Islam.106 Such conduct, when systematic, can reflect a policy of acquiescence and encouragement of persecution by governmental institutions.

In June 2008 in the capital city Jakarta there was an attack not on the Ahmadiyah themselves but on a group of civil society organisations known for defending the rights of Ahmadis. Following the attack, the government issued a Joint Decree (by the Ministers of Religious Affairs, Home Affairs and the Attorney General), which restricts the activities of the Ahmadiyah severely. The Joint Decree was issued allegedly to maintain public order. The fact that police allowed the attacks to occur, however, encouraged the violation of public order and encouraged further such events. Attacks on the group, in fact, continued. While the attacks took place sporadically and generally did not claim any lives, properties were destroyed (including houses and mosques) and victims were injured. Police were often present but did not intervene. The incident in Cikeusik village, West Java, in February 2011 was the most brutal, resulting in three deaths (one other death reported was in 2001, in Lombok, West Nusa Tenggara.)

In the case in Lombok, attackers murdered three Ahmadis in front of the police when they defended their house against a mob. National and international human rights organisations as well as foreign countries reacted to this incident very strongly. The attackers were tried and received light sentences of 1 – 6 months in prison, while an Ahmadi involved in the incident was also sentenced to prison because he was regarded as guilty for attacking the attackers in self-defence. His actions were regarded as contributing to provocation for the attack when he refused to leave the scene on the recommendation of the police before the attack started. In the aftermaths of the Cikeusik incident, further regulations were issued at the local level to restrict the Ahmadiyah activity, including in the district where the incident took place. The incident apparently was taken as a proof that Ahmadiyah, due to its being a deviant sect, disturbs public order. Justice institutions in such cases, rather than protecting the victims of violence, appear to regard the victims as the “perpetrators”, prosecuting them and blaming them for the violence perpetrated against them.

Another form of persecution of the Ahmadis is that some groups have been forcibly relocated from their homes and are unable to return. Since 2006 there are more than 100 Ahmadi refugees living in Mataram, West Nusa Tenggara. They were forced to leave their homes from different villages in the area and ultimately ended up in an unused government building. With no regular supply of basic needs and a shortage of clean water and electricity, they have lost not only their right to practice their religious beliefs but also basic rights to property and physical security from violence. Their civil and political rights are also being eroded, such as access to education for their children and the right to vote in general elections. In other places, some face discrimination in civil administration, such as in registering marriage. With all of these incidents, the Ahmadis can be considered as the group suffering the worst persecution in Indonesia today.

106 This was also the conclusion of the NCHR report on the Ahmadiyah. See footnote #40.
2. Shi’a community

The Shi’a have also had a very long history in Indonesia, although they were not always considered to be separate from the mainstream Islam of the archipelago. There is evidence that, to some extent, Shi’a practices have permeated some local cultures and are not considered specifically Shi’a anymore. A rise in attention to Shi’a in Indonesia (as well as other Muslim countries) occurred after the 1979 Islamic revolution in Iran, which is a country of Shi’a majority. More books on Shi’a were published, and more people were attracted, which in turn also attracted controversies. Unlike the Ahmadiyah, although Shi’a Islam has different theological teachings and practices, international Muslim leaders and organisations generally accept it as part of Islam.107 An estimate puts the number of Shi’a followers in Indonesia to be between two to five million.

There were debates about the presence of the Shi’a, but as a group they are in general less visible as they have not, until recently, organized themselves formally and do not usually have their own mosques. Verbal campaigns against Shi’a have seemingly existed for some time, but even after increased attacks on the Ahmadiyah around in 2005 the Shi’a community was not specifically targeted. As analysed by Sidney Jones, the recent anti-Shi’a movement consists of several strands: anti-Shi’a discourse promoted mostly by the pro-Saudi salafi groups; the local incidence of violence in Sampang, Madura (East Java); and most recently, anti-Shi’a sentiments among hard-line Muslim groups triggered by the Syrian conflict.108

The second strand was initially marked by an incident in late December 2011, when a small Shi’a community in an isolated village in Sampang was attacked. Tensions had been building in the area for several years involving a complex relation between the local head of district, the religious leaders who saw Tajul Muluk, the young leader of the Shi’a community, as their rival, and an internal conflict within Muluk’s family. Ultimately the issue that was used to mobilize people was the heresy of the community. Just like in the Ahmadiyah case, the issue of heresy can be directly related to the crime of defaming religion. In December 2011, the Shi’a community was forced to flee their homes. The community returned to their village in January 2012, but the public debate about the heresy of the Shi’a continued. Eventually Tajul Muluk was charged under Article 156A of the Penal Code with defamation of religion.

On the 26th of August 2012, with their leader already in prison, a more coordinated attack took place on the Shi’a in the same area. This time one Shi’a follower was killed and more than 30 houses were burned down. The families fled their homes again, but now they could not come back. More than 100 persons were initially housed in the Sampang Stadium and were then relocated to Sidoarjo, outside the island, approximately a two-hour journey from their village. They are still there today. The central government has given conflicting signs as to whether they are committed to returning the people to their village. The local (province and district) governments, on the other hand, seem to regard that the issue is settled and that relocation to Sidoarjo is the solution. The people themselves refuse permanent relocation and still demand that the government helps to return them to their village and to guarantee their safety. Local officials used the defamation of religion law to prosecute victims of persecution and denied them basic protection from violence, thus acquiescing in and encouraging the persecution.

107 In 2005 the Jordanian King convened an international Islamic conference in which more than one hundred Muslim leaders, many of whom are regarded as authoritative leading scholars internationally, from tens of Islamic countries signed the Amman Message. Among other things, the Message mentions groups considered as within Islam. Mainstream Shi’a is one of them. The number of signatories has now reached more than 500. See http://www.ammanmessage.com/.

So far the case with the Shi’a community in Sampang is isolated. Even other Shi’a communities in nearby villages have been safe. However while they can still organize their programs and public rituals in many places, a very recent development, which may not be directly related to what happened in Sampang, is the rise of nation-wide anti-Shi’a campaigns. In 2013 threats were made to disband the yearly Shi’a Ashura rituals that have normally been held in several cities, and others were cancelled. On March 2014, a large anti-Shi’a declaration was held in Bandung where protestors demanded that the government ban the group, among other things. There were concerns that similar to what occurred when the wide anti-Ahmadiyah movement was consolidated in 2005, this kind of gathering would be replete with anti-Shi’a hate-speech. The Ashura rituals in November 2014, however, did not repeat the incidents in the previous year; in general the rituals in many places ran smoothly.

3. “Unofficial religions”

While the term “official religion(s)” is not used, the Law on Civil Administration mentions “religions which are not recognized yet”. As has already been explained in some detail in the Introduction to this report, religious traditions other than the six so-called “world religions” (including, in fact, other generally recognized “world religions”, such as Judaism) are not regarded as “religion” per se in Indonesia. These are Aliran Kepercayaan (lit. stream of spiritual belief) and what scholars term as “indigenous religions”. Due to the way religious affiliation is administered, followers of these religious traditions tend to be discriminated against.

Firstly, the difficulty in registering their religions for the purpose of obtaining a national identity card has many implications. These groups, whose religious affiliation remains largely unrecognised by the state, were associated with the Communist Party in the 1960s and therefore seen as the political rival of religious communities. There are reports about the difficulties stemming from the religion column on the ID card. The Law on Civil Administration provides a way out, by allowing citizens the opportunity to leave the religion column blank (or to fill it in with the term “Others”). However, this still retains the distinction between these groups and the communities of world religions, which could still be the basis for discrimination. Furthermore, this half-hearted improvement has not been implemented uniformly across local government offices throughout Indonesia.

Additionally, however this form of non-recognition on a person’s national ID card carries serious ongoing consequences in terms of the fulfilment of his/her rights. This includes: difficulties in registering the marriage of couples belonging to a group with no clear religious designation; obtaining birth certificates for children born out of such marriages; registering these children in public schools; and determining what religious education the children can get in school since religious education is a compulsory subject. Later in life, these issues can reduce access to employment, both in terms of recruitment for employment and job promotion. In this way, administrative discrimination that starts from the ID card may amount to serious restrictions on the enjoyment of people’s fundamental rights. There are not many violent conflicts surrounding this group, but violence can occur when certain hard-line groups assume that these individuals practice a deviant religion.

4. Christian communities

Similar to the Ahmadiyah and Shi’a cases, the experience of Christians with regard to enjoyment of fundamental rights varies across geographical locations, partly reflecting demographic differences. At the national level, Protestantism and Catholicism are regarded as two separate religions and both have been acknowledged as such by the Ministry of Religious Affairs since the first year

---

of its establishment. In this regard, the Protestant and Catholic Directorates in the MORA receive some funding for religious education (schools and religious tertiary education as well as informal education) and religious facilities. To some extent, Christian holidays are also acknowledged as national holidays.\textsuperscript{110}

On the one hand, Indonesian Christians, who account for ten percent of the population, are generally free to practice their faith and by law there is no difference in their civil, political and economic rights. On the other hand, more complex situational negotiations are reflected in practice. For example, Christians occupy several official positions up to the level of Minister as part of an unwritten convention (in all Cabinets since Independence). This, however, does not mean that in practice selection of public officials is fully based on merit, without consideration of religious (as well as ethnic) background. These kinds of issues are seldom discussed completely, and as such it is difficult to obtain reliable data about these negotiations. Regardless of what the facts are, these political issues may strengthen mutual suspicion between certain Muslim and Christian communities. A significant source of Muslim-Christian distrust was the government’s anti-communist policy after 1965, which opened the space for religious conversion as a way to oppose communism. The number of Christians increased significantly during that period, but in the end it created an air of suspicion about “Christianization” with impacts that endure until today. This theme is recurrent in contemporary disputes over houses of worship, and has been used to mobilize objections against churches. Unfortunately, certain Christian groups strengthen this image of “Christianization” through what is perceived as being an aggressive form of evangelical conduct.\textsuperscript{111}

One trend that deserves particular attention is the increasingly visible difficulties experienced by Christians in building their houses of worship over the past few years. The regulations about building houses of worship are sometimes the cause of the difficulties associated with this process for Christians. Several prominent examples were discussed in Part I of this report.\textsuperscript{112} Anecdotal evidence would tend to suggest that many other churches in different parts of Indonesia have experienced the same or similar difficulties.\textsuperscript{113}

According to data issued by the MORA in 2013 (collected through local MORA offices), out of 388,448 houses of worship in Indonesia, there are 289,951 mosques (75%), 61,796 (16%) Protestant churches, 7,907 (2%) Catholic churches, 24,801 (6.4%) Hindu houses of worship, 3,342 (0.9%) Buddhist and 651 (0.2%) Confucian houses of worship. Drawing from this data, MORA found that the Hindus have the largest number of houses of worship per capita, followed by the Confucians and the Protestants (one church for 267 Protestants). Muslims and Catholics have significantly less houses of worship (one church for 874 Catholics and one mosque for 715 Muslims).\textsuperscript{114} One conclusion that has been drawn by some government officers from this data is that despite all of the difficulties faced by Christians (and in particular, Protestants), in

\textsuperscript{110} \textsuperscript{110} See in particular Section I.B.2(d) of this report regarding observance of religious holidays.

\textsuperscript{111} \textsuperscript{111} International Crisis Group, \textit{Indonesia: “Christianisation” and Intolerance} (Asia Briefing No. 114), Jakarta/Brussels, 2010.

\textsuperscript{112} \textsuperscript{112} Note in particular the discussion concerning the Taman Yasmin Church and the Filadelfia Church, both in West Java; and the closing of 16 churches in the district of Aceh Singkil in May 2012. See in particular Part I.B.2.b and Part I.C.1.b of this report.

\textsuperscript{113} \textsuperscript{113} As is evident from the annual reports on religion in Indonesia published over the last few years, the building of houses of worship constitutes a major issue in relations between religious communities and with the state. Indeed, it is not only Christians who experience difficulties in building their houses of worship. There are cases of Muslims in non-Muslim neighbourhoods, as well as Hindus and Buddhists in neighbourhoods dominated by other religious communities who found it challenging to build their houses of worship. However, partly reflecting the fact that Christians are the largest minority and due to the existence of many denominations in Christianity, issues over churches occur more frequently.

\textsuperscript{114} \textsuperscript{114} Ministry of Religious Affairs, \textit{Laporan Tahunan Kehidupan Keagamaan di Indonesia} 2013, 2014, 14-15.
general they have more houses of worship per capita, implying that their needs should have been fulfilled. Looking at the issue more closely, however, reveals deeper problems.

The reports published in Indonesia since 2008 provide sufficient knowledge about such events in the past few years. The patterns of problems with churches are similar, mostly centred on the regulation of houses of worship as discussed in Part I. In many cases, the main reason cited to object to the building of churches is that they are illegal in the sense they do not have a licence, or that religious services are held in a house or a rented shop.

Anecdotal evidence suggests that it is quite difficult to get a licence to build a church in non-Christian majority areas. First, part of the process to get a licence is to show proof of at least 90 users and to obtain a written approval 60 other persons from the neighbourhood. The idea behind the regulation is that there should be social acceptance of the house of worship, but this requirement does not always work as expected. It can become a means to express intolerance and hinder the attempt to build a place of worship.

One critique that has been mounted against the government is its repeated failure to protect affected Christian communities from attacks or threats from these kinds of organisations. Additionally, in a number of cases the churches have fulfilled the requirements spelled out in the regulation, but their licence still is not issued. While the incidents do not affect churches uniformly, a very significant impact is the loss of legal certainty that results in the denial of the enjoyment of basic rights, including rights to property and physical security from violence.

E. Significant Events of Inter-Religious Conflict

Between 1990 and 2008, more conflicts took place during the transition to democracy (1998-2004) than in the previous New Order period (1990-1998) and the new democratic regime (after 2004). During the transition to democracy, there were several large communal conflicts between Muslims and Christians, which involved the mobilization of religious communities. The worst violent conflicts took place in Ambon and Maluku, and in Poso, Central Sulawesi. These originated as local conflicts but then drew people from other places to join in the violence. In Ambon and Maluku some 10,000 people died. In Poso, hundreds of Muslims and Christians were killed. Between 2003-2004, however, peace agreements were signed and most of the communal conflicts were contained. The consequences of the conflicts, such as increasing Muslim-Christian segregation in Ambon, remain until today. However, mostly it was the community itself that controlled several potential conflicts that threatened to escalate in recent years.

Starting from 2005, inter-religious conflicts tended to be smaller but more dispersed geographically. Two main sources of these conflicts concern issues around defamation of religion and houses of worship. These conflicts are smaller, claim less lives and are more localized, but are also more frequent. The main sites of conflict that have been identified are the three adjacent provinces of West Java, Banten and Jakarta, East Java, Central Java, and North Sumatera, but conflicts are spreading to other areas. The conflicts around those issues overlap with places where violations of religious freedom took place. An interesting phenomenon here is what Crouch\textsuperscript{116} calls the “judicialization of inter-religious disputes”, that is when conflicting

---


\textsuperscript{116} Melissa Crouch, \textit{Law and Religion in Indonesia Conflict and the Courts in West Java} (London: Routledge, 2014).
groups exploit laws and regulations to justify their grievances. These conflicts are not always violent, but tense situations are easily exploited to transform the disputes into violent conflicts. In this regard, crucial moments such as local elections sometimes exacerbate the situations.

**F. Significant Events of Terrorism and/or Terrorist Threats**

Recent terrorism in the name of religion has taken place in the context of democratization, but appears to have been triggered by international events (such as 9/11) and the ensuing repercussions in Muslim countries. Since 1998 there have been several bombings, but beginning in 2002 larger bombings became more frequent, taking place every year (Kuta, Bali, 2002; JW Mariott Hotel, Jakarta, 2003; Australian Embassy, Jakarta, 2004; and Jimbaran and Kuta, Bali 2005). After 2005, due mostly to successful counter-terrorism measures effected by the police there was a significant weakening of terrorist activity, though it does not mean that the threat is completely over. In August 2013, a bomb exploded in a Buddhist temple in Jakarta, apparently related to concerns about the persecution of the Muslim Rohingya minority in Burma.117

Terrorism is another kind of conflict that for some time was distinguished from communal conflicts as well as the newer trend of smaller but more frequent and dispersed conflicts. It was vigilante groups, not terrorists, who were usually responsible for the latter. Along with the decrease in acts of terrorism, however, there was another trend that links these disparate kinds of violence and groups of actors. After the peace agreement in 2003 ended the communal conflict in Poso, the place became a site of terrorist acts where bombings and mysterious killings took place.118 The 2011 bombings of a mosque in the police complex in Cirebon and an evangelical church in Solo were carried out by suicide bombers (a mode of terrorism) who were known to be active in vigilante groups that have pursued anti-Ahmadiyah and anti-vice campaigns.119

The latest phenomenon of the involvement of around 100 Indonesian militants in the conflict in Syria (and more recently moving to Iraq) may result in additional terrorist activities in Indonesia.120 In this respect, it is important to note that the Syrian conflict is conceived as a sectarian Sunni-Shi’a conflict by the hard-line Indonesian media. The sectarian agenda, as discussed in many places in this chapter, has found its legal justification in the defamation of religion law.

**G. Significant Cross-Border Incidents**

As of April 2014 UNHCR states there were 7,181 registered asylum seekers and 3,489 refugees in Indonesia, coming from Myanmar, Sri Lanka, Afghanistan, Iran, and Somalia.121 It is not clear how many of them left their countries because of religious conflicts. With regard to refugees or asylum-seekers from Myanmar, however, many of them are Rohingya who fled persecution in their home country. A 2012 report mentions that there were around 400 Rohingya in Indonesia, mostly in North Sumatera.122 In April 2013, there were riots between Rohingya refugees and illegal fishermen from...
Myanmar in the immigration detention facility in Belawan, North Sumatera. This conflict led to eight deaths. The significance of the Rohingya issue in Indonesia is evident in the bombing of a Buddhist temple in Jakarta in 2013; there is a concern that Indonesian Buddhists could become a target of radical extremists as a way to retaliate against the persecution of the Rohingya.

H. Governmental Response

The problems discussed in the previous sections concerning persecution and inter-religious conflicts, especially the trend noted above of the judicialization of inter-religious disputes, lie partly in policies that open the possibility for discrimination, weak law enforcement, and intolerance. One of the legislative measures to deal with these conflicts was the enactment of the Law on the Management of Social Conflict that addresses inter and intra-religious disputes. It draws a connection between respect for FOTCR and the principle of non-discrimination with regard to both the prevention and resolution of conflict. Social conflict needs to be handled by taking into account cultural, religious and ethnic diversity (Art. 2 (c)). Conflicts shall be prevented by, among other things, law enforcement, without discrimination based on religion or other sources of diversity (Art. 9(e)). To keep the peace, everyone shall develop tolerance and mutual respect for others’ freedom of religion and belief (Art. 7(a)), acknowledge equality regardless of differences in ethnicity, religion, belief, sex, or skin colour (Art. 7(d)), and respect the views and freedom of others (Art. 7(f)).

A law on inter-religious harmony has been in draft form since 2003, but has attracted strong controversy. The law contains provisions taken from existing lower level regulations concerning all aspects related to religious life (religious holidays, houses of worship, proselytization, foreign aid for religious organisations, as well as the criminal law on the defamation of religion). The draft law was again introduced to the national legislative agenda in 2009 with minor revisions. Part of the reason for its re-emergence was to respond to increasing inter-religious disputes. In 2011 it was prioritized and discussed briefly in the parliament, and still drew controversy. If enacted as in the draft, it would retain the substance of the defamation of religion law with no significant change. In 2012 it was dropped from priority before the discourse went far enough, and has not been prioritized again until now. While in 2003 the draft was rejected outright by many civil society organisations, in 2011 it motivated some CSOs to propose revisions and counter-legal drafts, one of which would make it not a law on inter-religious harmony, but religious freedom.

There are two other legislative responses to specific inter-religious disputes, both of which have already been discussed in depth in this report. The first is the 2008 Joint Decree by the Ministers of Religious Affairs, Home Affairs and the Attorney General that significantly restricts the activities of Ahmadiyah followers. The second legislative response is the revision of the 1969 regulation in houses of worship by a 2006 Joint Ministerial Decree of the Ministers of Religious Affairs and Home Affairs. While the Decree does improve the older regulation, and ensures that the government must guarantee that the needs surrounding houses of worship are fulfilled, its establishment of Forums for Inter-religious

123 http://www.republika.co.id/berita/internasional/asean/13/04/05/mksk7w-pbb-khayatir-konflik-rohingya-melual-ke-asean.

124 The sentiment to defend the Rohingya actually is present not only among the extremists, but also moderate Muslim organisations and even the parliament. See http://www.understandingconflict.org/conflict/read/9/INDONESIAN-EXTREMISTS-AND-THE-ROHINGYA-ISSUE.


126 See in particular Part II.A, and Part II.D.1 of this report. The Decree was issued in response to attacks on the Ahmadiyah which is regarded as a source of public disorder to due its teachings which have been deemed as ‘deviant’.
Harmony have proved to have mixed results. In terms of the prosecution of perpetrators, in large conflicts such as the 2011 anti-Ahmadiyah attack in Cikeusik and the 2012 anti-Shia attack in Sampang, the perpetrators of specific attacks were at least nominally brought to justice. However, there has been criticism of the light sentence of 1-6 months that was received by the killers of the three Ahmadies, and the fact that one Ahmadi involved in the conflict was also sentenced to six months in prison. In the Sampang case, the perpetrators of the attack were put in prison, but those regarded as the leaders of the attack went free. Other than direct action towards actors in violent conflicts, human rights activists have suggested that the police could attempt to prevent attacks by acting on the emergence of hate speech, which usually precede such attacks.

I. Analysing the Trends

The discussions heretofore show that understanding trends in freedom of thought, conscience and religion in Indonesia is not straightforward: there does not appear to be a linear trajectory in regard to the manner in which the issue is dealt with, in part because national policies and laws appear to be subject to distinct local variation in interpretation. However, in terms of the enactment of laws, there appear to have been two countervailing forces at work. One is promotes greater freedom, while the other seeks to restrain the progressive changes made. One way to describe these developments is in looking at the international human rights conventions that Indonesia has ratified (especially ICCPR and its two General Comments) as the normative benchmark established by Indonesia’s government. In this way, it may be argued that the sweeping changes post-1998 started a series of progressive changes in the direction of strengthening the foundation of FOTCR, but there has been a failure of harmonization. In this light, the task of the government is to strike out objectionable laws, such as the old law on the defamation of religion.

However, rather than viewing the adoption of these international conventions as creating a new normative benchmark, one may also see this as the latest development in Indonesian history whereby progressives attempt to challenge a prevailing orthodoxy that do not wish to enable such a shift toward secularisation within the Indonesian state to ever truly take hold. Viewed in this light, Indonesian governmental institutions will always be characterized by a duality in which certain forces will continue push for more religious freedom, and other forces will continue to assert the old politics of religion placing greater emphasis on harmony and stability. These tensions and the attempt to find a “middle path” between them is best captured in the 2010 constitutional review of the Defamation of Religion Law, where the Court itself indicated it was trying to find a “middle path”. It may be debated whether the Court was successful in this regard, but this shows the strength of the pull of the old politics of religion until today.

As is clearly evident from the review of redress mechanisms provided in Part I.C of this report, the government and the judiciary institutions (especially the Constitutional Court) maintain that human rights in general, and more particularly FOTCR, have to take into account Indonesian political and social-cultural history, and that such accommodation is within the permissible bounds of the interpretation of international law. This position continues to be maintained, despite the fact that Indonesia has not entered any reservations pertaining to freedom of thought, conscience and religion in its ratification of international human rights conventions.

---

129 Judging from the process of the review, it seems that at the societal level, including among moderate Muslim groups, this latter view is also more prevalent.
These debates show that despite sweeping reforms in the post-1998 period, there has been no unequivocal movement in support of freedom of thought, conscience and religion in Indonesia. It seems likely that the tensions identified here will remain a concern for some time, and will continue to frame the debates on freedom of religion for some time.

However, regardless of this theoretical debate, a more unambiguous question relates to the presence of violent conflicts as a result of this seeming ambiguity in the approach to issues pertaining to religious freedom. The conflicts occurred because of some laws and regulations that (potentially) discriminate against vulnerable religious groups, but also because of weak or absent law enforcement. The state’s inaction in such cases has emboldened intolerant groups and may be viewed by them as acquiescence or encouragement. While the theoretical debate takes time and the outcomes are not all predictable, the least one can say is that there should be zero tolerance for violence. If this stance were taken, the situation with regard to FOTCR would already look much brighter.

PART THREE: NEGATIVE AND POSITIVE CONTRIBUTING FACTORS AND SURROUNDING CIRCUMSTANCES

In this section negative and positive contributing factors will be discussed in terms of different actors relevant to the issue of FOTCR. Post-1998 Indonesia is a very open arena where many actors, both state and non-state, assert their influences to shape the country. Perhaps unsurprisingly, it can be challenging to determine which actors contribute positively and which actors contribute negatively to the situation of religious freedom in Indonesia: in many respects, actors can have a both negative or a positive impact on the situation of religious freedom in Indonesia, depending on the context and time-frame in which their role is viewed.

1. The State, the Muslim majority and democratization

In their report to the Human Rights Council during the second Universal Periodic Review (UPR, May 2012), Indonesia’s representatives mentioned the challenge of human rights in a newly democratic country: “While democracy brings freedom, it can also provide openings for extremists to exploit the democratic space for their own gains, often promoting religious intolerance and triggering communal conflicts, against democratic principles. For Indonesia, given its size and diversity, the challenges are multiplied.”130 This statement summarizes well, though only partially, the situation in guaranteeing FOTCR in today’s Indonesia. Other challenges include some weaknesses within the state, now also diversified. The negative contributing factors come from the society as well as from the state.

Indonesia has traditionally been a pluralistic society, but religion has always played an important role in the lives of its citizens. Muslims, as the majority religious community, have always played a central role in politics, so the character of Islam developed here to a significant extent determines the state-religion relation, inter-religious relations, and FOTCR in general. While there has always been a significant Muslim portion of the population who maintains aspirations for an Indonesia that is formally “more Islamic” and as such it in tension with the pluralist democracy, results of the free general elections reflect the fact that Muslims are diverse and those committed to a plural, democratic Indonesia are the majority. More specifically, a force that Robert Hefner calls “Civil Islam” is central in the 1998 democratization process.131 Its proponents include prominent Muslim intellectuals such as Nurcholish Madjid and Abdurrahman Wahid (who later became the President in 1999-2001).

---


This reformist, pluralist democratic movement developed in 1980s and 1990s as an alternative to “statist Islam”, a political struggle for an Islamic state that had been dominant for decades, and played an important role in Indonesian democratization in 1998. Commenting on the pre-1998 development, Hefner warned that the potential of civil Islam might be hindered by the uncivil authoritarian state. After the 1998 democratization, while the state is more ambiguous, the uncivil society has become a more important competitor for civil Islam.

2. Extremist and conservative views espoused by religious and quasi-religious organizations

As noted in the above report to the Human Rights Council, political liberalization has also opened up a space for certain uncivil forces to be given voice and a place in Indonesian political life. Groups previously repressed by the authoritarian regime now have equal rights to freedom of expression. The rise of new vigilante and extremist violent groups are seen as part and parcel of the weakening of the previously authoritarian state.

Additionally, the oldest and largest moderate Muslim organisations (namely, Muhammadiyah and Nahdhatul Ulama) have also been experiencing tensions between their more liberal and conservative factions, and while it would be wrong to characterize the views espoused by them as ‘extremist’ they have evinced a tendency toward being more conservative. These two organisations, which make up a significant part of “civil Islam”, continue to be central and dominant representatives of moderate Islam. This became evident during the 2010 Constitutional Court’s review of the Defamation of Religion Law. Hence, while they are moderate, tolerant, and strongly anti-extremist, they are not liberal. In this respect, while they accept the universality human rights in general, they are concerned to maintain the centrality of religious values as a source of social norms. On minority issues, they hold a constructive, inclusive view, but may have not realized their full potential to shape the discourse among the majority of Indonesian Muslims.

Another case in point is the semi-governmental Council of Ulama (Majelis Ulama Indonesia or “MUI”) that is also undergoing transformation. Established by the New Order government in 1975, MUI was designed to function as the moderate, pro-government representation of Islam. However, since 1998, it has repositioned itself to be more independent from the state, aligning its stance closer to factions of Muslims who want to assert a more visible Islamic identity, yet at the same time pressures the state to enforce its fatwa, which in many cases represent conservative Islam. In this new function it assumes for itself a role to define and control Islamic orthodoxy. It is here that the MUI may become a negative contributing factor. Nevertheless, on other issues where it is easier to draw the line, such as in the case of terrorism (or more recently, responding to the rise of the self-titled Islamic State in Syria and Iraq), its stance is clear: it rejects terrorism and even works together with state counter-terrorism agency, to the disappointment of the hard-line Muslim groups.

The state’s effort to develop FOTCR works in this arena, with all its strengths and weaknesses. The MUI’s (and other Muslim organisations’) support to counter terrorism is significant in lending legitimacy to the state’s effort to curb terrorism in the name of religion. However, its fatwa that Ahmadiyah is not part of Islam, for example, does not help to encourage the police to take a stance

132 Robin Bush and Budhy Munawar Rachman ‘NU and Muhammadiyah – Majority Views on Religious Minorities in Indonesia,’ in Bernard Platudasch and Johan Saravanamuttu (eds), Religious Minorities in Muslim-majority States in Southeast Asia: Areas of Toleration and Conflict (Singapore: ISEAS, 2014).


against violent anti-Ahmadiyah movements. It may even have encouraged bold vigilante actions against non-conformist religious groups.\textsuperscript{135}

3. The Police

The police force itself has performed variably. The area where Indonesian police have been praised is in dealing with terrorism, though there are also criticisms about the way the police handled some suspected terrorists. By many accounts, however, the work of the police in this regard is considered successful. Besides prosecuting convicted terrorists, in 2010 the National Anti-Terrorism Agency (\textit{Badan Nasional untuk Penanggulangan Terorisme}) was established with programs on deradicalisation and counter-radicalisation. The situation is different in the case of inter- and intra-religious conflicts, in which the actions of the police have often been criticised. Even though there are also a few examples where police resisted pressure from violent religious groups and in that way successfully protect the minority,\textsuperscript{136} such as what happened in a village in Kuningan West Java in 2011, in general the police have not done what they were supposed to do to protect vulnerable religious minorities.

4. Ministries

Within the state, the President and Ministers are not always of one voice on religious freedom issues. Their political support is, to say the least, greatly needed. The most relevant Ministries here are the Ministries of Religious Affairs, Home Affairs, and Law and Human Rights. While human rights issues clearly are closer to the jurisdiction of the Ministry of Law and Human Rights, religious freedom issues find their home more prominently in the Ministry of Religious Affairs. This may reflect the ambiguity of the role of the Ministry, which does not deal only with administration of religious communities, but also, in one way or another, with religious issues within each community. This involvement of religion within the state is illustrated in the fact that high-ranking officials within each of the divisions representing different religions in the Ministry usually have theological degrees. This is an illustration of the historical fact that the make-up of the Indonesian state has defied the strict separation of religion and the state since its inception.\textsuperscript{137}

The Ministry of Religious Affairs has traditionally been a moderating and pro-development force within the religious communities it represents through its religious education function.\textsuperscript{138} In general, regardless of the question of effectiveness, in addition to the general directorates representing religions, there is a centre for inter-religious harmony that is directly under the general secretary of the Ministry.

Despite this generally moderate stance toward religious on issues related to religious freedom, the Ministry has not shown itself to be a progressive force. This may be said to be the case with other ministries as well. Of particular note is the fact that the governmental ministries who sought a review of the Law on Defamation all defended the law in their submissions to the Constitutional Court.\textsuperscript{139}

On more specific issues such as the government’s perspective on the Ahmadiyah and the Shi’a, the Ministry in general has been very careful to avoid making theological judgments about the groups and to maintain a position that their stance simply reflects the mainstream Muslim view. An exception is the previous Minister of Religious Affairs,\textsuperscript{137}

\begin{flushright}
\textsuperscript{137} Explicit pronouncements to that effect are available in the 2010 Constitutional Court’s review of the defamation of religion law as discussed above. Another interesting example that shows how the state sees it as its task to improve citizens’ piety can be seen in the discussion on the law on correctional centers, discussed in Part One B.4.d on persons deprived of their liberty.
\textsuperscript{138} More literature is available on Islam than on other religions. In the case of Islam, see for example Ichwan (2006) and Saeed (1999).
\textsuperscript{139} See in particular the discussion at Part II.C.1.a. above.
\end{flushright}
Suryadharma Ali, who on occasion has suggested that the Ahmadiyah and the Shi’a are deviant (though later he tried to qualify his statements). On the issue of churches which do not get a licence to build their houses of worship, or whose licence was revoked, in general he maintains that it is all an administrative issue that has nothing to do with discrimination or intolerance.

5. The President’s office

Indonesia’s previous President Susilo Bambang Yudhoyono frequently and strongly stated his commitment to maintaining the tolerant character of Indonesia and upholding religious freedom, but the reality on the ground was different. Part of the issue appears to have been that his subordinates did not always share his stance and he did not insist on it; furthermore, there were several occasions in which he made statements that reflected his taking sides with the more conservative religious groups. A case in point was his statement that opened the Seventh National Congress of the MUI in July 2005, the Congress that issued the fatwa declaring the Ahmadiyah as outside Islam. In his speech, Yudhoyono asked the MUI to help the government by giving its views and fatwas to respond to issues related to Muslim life. He would “receive the thoughts, recommendations and fatwas from the MUI and ulama at any time, either directly to [him] or the Minister of Religious Affairs or other branches of government.” In 2012, speaking at the UN General Assembly, he proposed that the UN member states adopt a legal instrument to prevent defamation of religion, to protect religious symbols and to promote dialogue between different faiths. Such an instrument is expected to prevent incitement to violence based on religion—this was at the time when Indonesia was recommended to annul its own defamation of religion law at the 2012 UPR forum.

On specific issues such as the relocation of the Shi’a community of Sampang, the President promised in July 2013 to return them to their village very soon, but it took until he ended his term in October 2014. On the issue of the Taman Yasmin Church, after all the legal avenues were exhausted and the Bogor Mayor still maintained the revocation of their licence, the President was expected to be the highest authority to intervene. Instead he took the position that, based on the law on regional autonomy, he could not constitutionally intervene in local affairs.

6. Regional autonomy and local actors

Beyond these specific cases, the new situation of regional autonomy, as a direct consequence of democratization, indeed has made the issue of religious freedom more complex. While religion is one of the sectors excluded from the authority of local governments, the head of the local government is responsible for maintaining public order in his or her area, and many of the issues related to religion as discussed in this chapter could indeed be interpreted to have elements of public order, including the need to nurture harmony between religious communities. This is true with regard

140 Minister Suryadharma Ali assumed his position in the 2009-2014 cabinet, but in May 2014 the Corruption Eradicating Commission made him a suspect in a corruption case related to the management of hajj funding and soon he left his position. At the time of this writing his replacement has just been appointed.

141 www.presidenri.go.id/index.php/pidato/2005/07/26/370.html. Part of the statement is quoted in

142 http://www.thejakartapost.com/news/2012/09/26/yudhoyono-touts-blasphemy-ban-un.html. It is stated here that the proposal was related to the decade-old attempts by the Organisation of Islamic Cooperation to push for anti-defamation resolutions in UN forums. However in April 2011, the OIC actually had dropped the initiative, replaced by a resolution that was adopted by the Human Rights Council as Resolution 16/18 on “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief” (Document No. A/HRC/RES/16/18, 12 April 2011).

to the local authorities governance of so-called ‘deviant’ sects, the issuing of licences to build houses of worship\textsuperscript{144}, as well as religious-based local laws.

Especially on the last issue, the NCVAW has pointed out in its reports on discriminatory local laws that besides the structural issue of the review mechanism at the central state level (which is discussed in Part I of this chapter), two other problems are the conceptual and political issues related to the local governments. The conceptual issue concerns lawmakers’ knowledge about Indonesian commitment to human rights and how they should be reflected in all regulations as well as the skill to draft laws that reflect the commitment. The political issue concerns the local political pressure to accommodate sectarian aspirations for the sake of obtaining votes that weakens the will of the political elites to eradicate discrimination. These weaknesses of local governments remain one of the main challenges in realizing a strong commitment to freedom of thought, conscience and religion in Indonesia.

\textbf{PART FOUR: CONCLUSION}

The situation with regard to freedom of thought, conscience and religion in democratizing Indonesia resists a straightforward assessment. The overall picture that emerges is one of pervasive tensions that began in 1945 and which have remained throughout different historical periods until today. Since 1998, while Indonesia’s normative commitment to international human rights has become unquestionable, it has also become clear that in practice the situation is more complex and that infringement on, or denial of, religious freedom persists in a variety of forms. The lack of a separation between religion and state, the administration of religion through state and semi-official institutions, the prosecution of minority beliefs under the rubric of religious defamation law, and political decentralization are all institutional factors which continue to enable religious freedoms to be curtailed in a manner that appears inconsistent with Indonesia’s human rights obligations. The influence of groups propagating intolerance and persecution is another factor, though the strength of this influence varies locally, as does the degree of permissiveness, encouragement, or participation in persecution by local officials, police, or various kinds of vigilante groups.

In terms of legal developments, while religious freedom was already present as early as in Indonesia’s 1945 Constitution, written even before the UDHR, post-1998 Indonesia shows a progressive stance to uphold human rights in general, and FOTCR particularly, which goes far beyond that initial commitment. This is shown in the insertion of an extensive bill of rights, the ensuing attempt at mainstreaming human rights, and the establishment of a number of new institutions, such as the Constitutional Court and independent bodies like the National Human Rights Commission and the National Commission for Violence Against Women. However, all of these developments must be considered in light of existing laws that continue to represent an older policy paradigm that emphasizes control, public order and harmony, sometimes at the expense of religious freedom. Human rights have been mainstreamed into newly enacted laws and regulations, but at the same time these laws have to be qualified to ensure that the protection of religious values, especially as asserted by some Muslim groups, occupies a central place in the state management of citizens’ lives. The independent bodies such as the NHRC and the NCAVW have shown that they can work as mechanisms to check the implementation of human rights, but they do not have sufficient power to alter the situation as significantly as expected. This is especially true in light of the institutional factors that enable, permit, or protect denial of religious minority rights. The redress mechanisms are well in place, but they

\textsuperscript{144} It is to be noted that the regulation on the building of house of worship is contained in a joint ministerial decree (Ministers of Religious Affairs and Home Affairs) on the tasks of heads of regions (provinces and districts) to maintain inter-religious harmony, the empowerment of of religious harmony forums, and the establishment of houses of worship.
have not covered all possible loopholes and, more importantly, also reflect the tensions between the old and the new.

In terms of FOTCR issues that deserve special attention, there are a few main problems that stand out. First, in almost all parts of this report, on legal developments, redress mechanisms, law enforcement and incidents of persecutions, the Defamation of Religion Law appears to serve two functions—as a source of the definition of ‘religion’ and as the basis of criminalizing religious activities deemed ‘deviant’ by the state. This 1965 law indeed occupies a central place in the history of state-religion relations and reflects a crucial point in the nexus between state and religion. The latest trend is that the law has been used to marginalize religions other than the six that receive special recognition, as well as to discriminate against minority but significantly large religious groups within a religion such as the Ahmadiya and the Shi’a. If the trend goes unchecked, it may soon hit other non-conformist groups. This tension does not always transform into violence, but leaves those minority religious groups vulnerable to attack. More importantly, the law provides a tool for the repression of allegedly “unorthodox” beliefs or minority religious practices in the name of preserving “public order.” But, as has been seen, in many instances public order is preserved by blaming the victims of violence rather than by prosecuting the perpetrators. Local law enforcement institutions, such as the police and prosecution, often do not protect the victims of violence and persecution and in some cases use the Defamation of Religion Law instead to prosecute them.

Second, while post-1998 terrorism in the name of religion and large violent communal conflicts that pitted different religious communities against each other have in general been overcome, more frequent inter-religious disputes have occurred. This has mostly manifested itself as between Muslims and Christians concerning houses of worship. It is surely not only about the administrative issues of how to find an arrangement agreed upon by all parties representing different religious communities. The problems pertaining to houses of worship may be seen as symbolic of a decades-old mutual suspicion about the role and place of Christianity in Indonesia. This history of mutual suspicion finds its expression in several issues, such as suspicion of religion-based discrimination in employment or promotion in offices, regulation on religious education, child protection, and even the Law on Marriage. Today, tension over houses of worship is the most visible manifestation of this suspicion. As recommended in some reports, for these first two problems, besides improvement in terms of policies, a better system of law enforcement that is supported by the elite’s political will to resolve issues would help to improve the situation.

Third, the most recent development of decentralization has become an effective avenue to express aspirations for shari’a, which in many but not all cases has led to discrimination against religious minorities and women. The source of this phenomenon is partly in a strong religious identity that may be the motivation for a small group of conservative religious elites. More importantly and directly, shari’a by-laws and regulations are often being drafted and administered by local lawmakers who have limited competence and governance capabilities to do so. This is a serious problem, considering that ‘local’ refers to more than 500 provinces and districts/cities and thousands of lawmakers in local parliaments.

The very existence of difficult problems and a complex history may be a source of pessimism with regard to the prospect of religious freedom in Indonesia. However, optimism may come from the fact that, more than 15 years after the start of its democratization process, the situation does not appear to be characterized by a lawless jungle, but instead by a discrete set of issues that can be isolated, receive special attention and with time, hopefully be overcome. Although undoubtedly imperfect, there is already a working system in place, in which freedom of thought, conscience and religion stands on firm legal ground at the very foundation
of the state, and through which several redress mechanisms, including independent institutions, have been built and are operational. On the other hand, that legal ground has been interpreted by the Constitutional Court and by governmental institutions at the national and local level in ways that undermine the guarantees it should provide. This reflects the underlying tensions that make religious freedom such a complex and controversial issue in Indonesia today.

While many vibrant civil society organisations, which are not discussed specifically in this report, work to protect the rights of persecuted groups, countervailing societal groups and organizations seek to enforce the orthodoxy and repress any beliefs they find offensive. The picture of religious freedom in Indonesia is thus one that to some extent reflects the geographical, political and social diversity of the country itself: the contestation over the meaning and implementation of rights guaranteed by the Constitution and Indonesia's international obligations in fact evinces the plurality of views and opposing forces within the state. Perhaps not surprisingly, this has meant that freedom of thought, conscience and religion is as yet unable to be fully realized at the national and local level.

The road to a better guarantee of FOTCR in Indonesia is not a linear path: new changes are afoot, but the historical place of both state-religion and inter-religious relations remains apparent. While it seems unlike that there will be a reversal in the state's general commitment to freedom of thought, conscience and religion specifically, and to human rights generally the ongoing challenge remains to be how the country will navigate these different forces while still addressing more particular challenges, and ensuring that its vibrant, pluralistic democracy continues to flourish.

**BIBLIOGRAPHY**


9. Robin Bush and Budhy Munawar Rachman ‘NU and Muhammadiyah – Majority Views on Religious Minorities in Indonesia,’ in Bernard
Platzdasch and Johan Saravanamuttu (eds), *Religious Minorities in Muslim-majority States in Southeast Asia: Areas of Tolerance and Conflict* (Singapore: ISEAS, forthcoming).


27. Mujiburrahman, Feeling Threatened: Muslim-Christian Relations in Indonesia’s New Order (Leiden: ISIM; Amsterdam: Amsterdam University Press, 2006).


Reports:


Internet links:


For further information about HRRC:

**Human Rights Resource Centre**
University of Indonesia, Depok Campus
Guest House Complex/Ex Rumah Dinas Rektor UI
(next to VOKASI Building)
West Java 16424
Phone/fax: 6221-7866 720
E : info@hrrca.org
W : www.hrrca.org