

A Comparative Study of Religious Freedom Between Indonesia – Russia and Its Limitations

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Abstract

This paper is a study or comparative study between Indonesia and Russia on the regulation of one of the fundamental rights in human rights, namely the right to freedom of religion. As a constitutional state based on law, Indonesia and Russia have made arrangements for this in their constitutions, the most basic of which is contained in the 1945 Constitution (Indonesia) and The Constitution of the Russian Federation (Russia). Universal rules such as human rights play an important role as an instrument that

ensures the preservation of the rights of citizens and the implementation of state functions to fulfill these rights. The right to freedom of religion is one of the rights guaranteed in Article 19 of The Constitution of the Russian Federation in Russia, and the 1945 Constitution, as well as several regulations on human rights in Indonesia. Article 19 of the Russian constitution states that The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, religion, and also of other circumstances. All forms of limitations of human rights shall be banned. And Article 28I paragraph 1 of the 1945 Constitution states that the right to religion is stated as a right that cannot be reduced under any circumstances, as well as the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right not to be enslaved, the right to be recognized as a human being. person before the law, and the right not to be prosecuted on the basis of retroactive law. As one of the rights that cannot be reduced, the right to religion should apply universally and non-discriminatory.

Keywords: Religious Freedom, Indonesia-Russia, Limitation

A. Introduction

Human rights concept is now widely acknowledged as a moral, political, and legal framework, as well as a guideline for creating a more peaceful society devoid of fear, injustice, and unjust treatment. As a result, the guarantee of human rights protection is regarded an absolute characteristic that must exist

in any country that can be termed *rechtsstaat* in the concept of the rule of law.¹ Immanuel Kant, Paul Laband, Julius Stahl, and Fichte, among others, created the notion of the rule of law in Continental Europe in modern times, adopting the German word *rechtsstaat*. Meanwhile, the notion of the rule of law was established by the pioneering A.V. Dicey and is known as The Rule of Law in the Anglo-American tradition. According to Julius Stahl, the idea of the rule of law, which he refers to as *rechtsstaat*, consists of four key components, they are:²

1. Protection of human rights.
2. Power sharing.
3. Government by law.
4. State administrative court.

Meanwhile, Human Rights (HR) refers to a collection of rights that are inherent in the nature and existence of humans as creations of God Almighty, and which must be honored, supported, and defended by the state, the government, and everyone for the purpose of honor and defense of human dignity.³ In terms of the rule of law, national legal politics has concluded that Indonesia is a state of law, as stipulated in Article 1 paragraph (1) of the Republic of Indonesia's 1945 Constitution (Marbun: 2014). As a result, Indonesia is a state of law, as stated in the Republic of Indonesia's Constitution of 1945, and the endeavor to safeguard and defend human rights is to incorporate them into national law.⁴ Furthermore, Indonesia has enacted basic human rights legislation, which is included in the 1945 Constitution. This may be seen, for example, in Article 29 of the 1945 Constitution, which deals with religious freedom and implies that the freedom to embrace religion and worship according to one's religion is based on God, meaning the

¹ Jimly Asshidiqie, *Pengantar Ilmu Hukum Tata Negara*, 2009.

² Retno Kusniati, "Sejarah Perlindungan Hak Hak Asasi Manusia Dalam Kaitannya Dengan Konsepsi Negara Hukum," *Inovatif: Jurnal Ilmu Hukum* 4, no. 5 (2011): 79–91, <https://online-journal.unja.ac.id/index.php/jimih/article/view/536>.

³ Harkristuti Harkrisnowo, "Pengantar Hak Asasi Manusia Dan Humaniter," n.d., 1–65.

⁴ Bobi . Kholis Roisah Aswandi, "Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak," *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (2019): 128–45, <http://ejurnal.ung.ac.id/index.php/jalrev/article/view/2399>.

acknowledgment of the existence of one God who is the foundation of the state, therefore every citizen is obliged to embrace a religion that recognizes God.⁵

Human rights in Russia are governed by the Russian Federation's Constitution, which was adopted in 1993. In general, the fundamental regulation of human rights is similar to that in Indonesia; what this means is that the basic constitution will be used to govern this, and it will then be regulated more explicitly in other legislation. We can also observe that, like Indonesia, Russia provides the right to freedom of religion to its citizens in article 28 of The Constitution Of The Russian Federation from 1993. However, this does not imply that the two countries are identical; Indonesia and Russia each have unique legal policies, particularly in regards to religious control. Based on the brief description above, the author raises 3 problem formulations that will be discussed in this paper, namely how are the regulations regarding religious freedom in Indonesia? How is the regulation of religious freedom in Russia? Then are there any limitations imposed by the government regarding this freedom?

B. Literature Review

Specifically, regarding the regulation of religious freedom in Indonesia, several writers such as Muwaffiq Jufri and Rohit Mahatir Manese have investigated the issue. Muwaffiq Jufri in his research "Pembatasan Terhadap Hak Dan Kebebasan Beragama Di Indonesia or Restrictions on Religious Rights and Freedoms in Indonesia" explains the theory of religious freedom and the legal basis for carrying out religious freedom, from this research there are similarities, namely studying religious freedom in Indonesia. Rohit Mahatir Manese in his research "Pembatasan Terhadap Hak Dan Kebebasan Beragama Di Indonesia or Restrictions on Freedom of Religion and Belief in Indonesia and its Implications" explains the problem of limitations or restrictions on religious

⁵ Febri Handayani, "Konsep Kebebasan Beragama Menurut Uud Tahun 1945 Serta Kaitannya Dengan Ham," *Toleransi* 1, no. 2 (2009): 218–31, <https://doi.org/10.24014/trs.v1i2.453>.

freedom in Indonesia, the similarity of this research and this research is in the study of the application of restrictions on religious freedom. Concerning Russia, there are also many experts who study the issue of human rights in Russia, especially the right to freedom of religion such as Marat S. Shterin And James T. Richa in their research "Local Laws Restricting Religion in Russia: Precursors of Russia's New National Law" which examines Law in Russia at the time, in particular the 1990 Law. Besides them, Yuri Rapoport in his research "A Critical Analysis of the Extent to Which the Personal Civil Rights Recognized in the Constitution of the Russian Federation are Enjoyed under Russian Law.". In his writings, he also researched on various civil rights in Russia, and the right to religious freedom is also included in the studies discussed.

C. Result & Discussion

1. Regulation of Religious Freedom in Indonesia

The Preamble of the 1945 Constitution, Paragraph III, states that Indonesia's Independence is the blessing of the grace of Allah the Almighty. Furthermore, in the fourth paragraph it is clearly stated that the Indonesian nation is a state based on the One Godhead. The notion of the Almighty God requires an acknowledgment of the Almighty God, the Expensive One, that God is actually sovereign over our lives. All. This means that the Unitary State of the Republic of Indonesia is not a religious or theocratic state and also not a secular state, but a Pancasila State where the first precepts of the One Godhead animate other precepts. This shows the Indonesian people's belief in God Almighty or monotheism in the category of Tawhid Islam or a religious nation.⁶

Freedom of religion is clearly emphasized in the provisions of Article 28E Paragraph (2) which reads "that everyone is free to embrace religion and worship according to his religion". Thus, this article is intended to protect the most basic human rights, applies universally and crosses territorial boundaries, customs, culture, and other socio-political differences. In addition, Article 28E

⁶ Budiyono, *Pengatur Kebebasan Beragama Berkepercayaan*, 1st ed. (Bandar Lampung: Justice Publisher, 2014).

paragraph (2) of the 1945 Constitution of the Republic of Indonesia also stipulates that everyone has the right to freedom to believe in beliefs, to express thoughts and attitudes, according to his conscience. This article seems to make it clear that freedom of religion cannot be separated from the freedom to believe in beliefs, express thoughts and attitudes according to one's conscience, all of these elements are a unit that cannot be separated from one another. This article also emphasizes that apart from religion, belief also gets an honorable position to be believed in and practiced by every individual in Indonesia.

In line with the statement above, John Stuart Mill put forward his idea of the "harm principle". This idea provides an explanation that an individual is free to act as he pleases as long as he does not interfere with the rights of others by his actions. That is, the freedom is not given without any limitations in its implementation. Freedom stops when there is a conflict with the rights of others. Such contact certainly limits one's freedom so as not to interfere with or harm the rights and freedoms of others. In the context of freedom of religion, the harm principle means that everyone is free to express their beliefs as long as they do not interfere with the rights of others to believe. This means that in principle, everyone is free to express their rights, the limit is only when those rights intersect with the rights of others. In line with what was conveyed by John Stuart Mill, John Rawls gave his view that freedom is the most important right and all other rights are its complement. Freedom can and may only be limited by freedom itself, that is, only if, First, it will strengthen the whole system of liberties enjoyed by all; and second, to ensure that the same or different fundamental freedoms are properly protected. On a contrario basis, there should be no restrictions other than those two things. According to this theory, a person's religious rights and freedoms can be limited with the aim of ensuring the implementation of the rights to religious freedom of others or rights that are different from others can be fulfilled. In other words, religious

freedom can be limited by religious freedom itself, as well as basic freedoms that are different from other people.⁷

2. Legal Politics of Religious Freedom and Human Rights in Indonesia

Legal politics here is defined as state policy regarding laws that will or will not be enforced in the country which can take the form of the formation of new laws or the repeal and replacement of old laws to suit the needs of the community. Chronologically, the politics of human rights law can be traced as follows:⁸

First, in the 1945 Constitution before the amendment, it can be concluded that it has guaranteed human rights to citizens for seven things, namely:

1. the right to equal status in law and government (Article 27 paragraph 1);
2. the right to work and a decent living for humanity (Article 27 paragraph 2);
3. freedom of association and assembly, expressing thoughts verbally and in writing and so on (Article 28);
4. the freedom of each resident to embrace his own religion and to worship according to his religion and belief (Article 29 paragraph 2);
5. the right to participate in state defense efforts (Article 30 paragraph 1);
6. the right to receive teaching (Article 31 paragraph 1); and
7. the right for the poor and neglected children to be cared for by the state (Article 34).

Second, the establishment of the National Human Rights Commission (Komnas HAM) based on Presidential Decree no. 50 of 1993. The establishment of Komnas HAM can be interpreted as a surprising breakthrough, because Komnas HAM was formed in the midst of the New Order era under the

⁷ Muwaffiq Jufri, "Pembatasan Terhadap Hak Dan Kebebasan Beragama Di Indonesia," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 1, no. 1 (2016): 40–47, <https://doi.org/10.17977/um019v1i12016p040>.

⁸ Hasyim Asy, "Politik Hukum Kebebasan Beragama Di Indonesia," *Pandecta: Research Law Journal* 6, no. 1 (2013), <https://doi.org/10.15294/pandecta.v6i1.2319>.

leadership of President Soeharto, which is often seen as an authoritarian regime.

Third, Decree of the People's Consultative Assembly of the Republic of Indonesia (TAP MPR) No. XVII/MPR/1998 concerning Human Rights. TAP MPR No. XVII/MPR/1998 concerning Human Rights, contains assignments to state officials to respect, uphold and disseminate human rights, assigns the President and DPR to ratify UN international human rights instruments, views and attitudes of the Indonesian nation towards human rights, and the Human Rights Charter. The Human Rights Charter contains the right to life, the right to have a family and continue offspring, the right to self-development, the right to justice, the right to independence, the right to freedom of information, the right to security, and the right to welfare.

Fourth, Law no. 39 of 1999 concerning Human Rights. The presence of this law can be interpreted as the implementation of TAP MPR No. XVII/MPR/1998. This law regulates: basic principles, human rights and basic human freedoms (right to life, right to have a family and continue offspring, right to develop oneself, right to obtain justice, right to personal freedom, right to security, right to welfare, right to participation in government, women's rights, children's rights, basic human obligations), government obligations and responsibilities. This law is also the basis for strengthening the position of Komnas HAM.

Fifth, Law no. 26 of 2000 concerning the Human Rights Court. This law is a follow-up to Law no. 39 of 1999, which stipulates the establishment of a human rights court to enforce the law against gross human rights violations.

Sixth, Law no. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights). The law as one of the implementations of TAP MPR No. XVII/MPR/1998.

Seventh, the 1945 Constitution as a result of the Amendment provides an expansion of guarantees for the protection of human rights. Amendment The second constitution provides fundamental changes in providing guarantees for human rights.

3. Constitutional Guarantee for the Right to Religious Freedom in Indonesia

Normatively, the substance of the guarantee of human rights in the constitution of the 1945 Constitution as a result of the amendment is the adoption of the substance which was originally at the level of TAP MPR No. XVII/MPR/1998 and Law no. 39 of 1999. Based on the historical chronology, it can be seen that the politics of human rights law in Indonesia has made very significant and meaningful progress. Recognition and protection of human rights covers a very wide scope, and gets a stronger legal status, namely guarantees at the juridical-constitutional level. The third discussion is regarding the legal substance of religious freedom. At the juridical-constitutional level, the right to freedom of religion can be found in a number of provisions in the amended 1945 Constitution.⁹

First, the commitment to guarantee the right to freedom of religion can be seen from the oath and promise of the President and Vice President. Article 9 (1) stipulates that before taking office, the President and Vice President take an oath according to their religion, or make a solemn promise before the People's Consultative Assembly or the People's Representative Council.

Second, the constitutional basis for freedom of religion is stipulated in Article 29 (1) and (2), namely: (1) The state is based on the One Godhead; (2) The state guarantees the independence of each resident to embrace his own religion and to worship according to his religion and belief.

Third, if worship is interpreted broadly including marriage, then there are other provisions relating to freedom of religion, namely Article 28B paragraph (1) which guarantees that everyone has the right to form a family and continue their offspring through a legal marriage.

Fourth, wider guarantees in religious freedom include freedom to embrace religion, worship according to one's religion, the right to freedom to believe in beliefs, and freedom to form religious organizations. This guarantee is contained in Article 28E, namely: (1) Everyone is free to embrace religion and

⁹ *Ibid.*

worship according to his religion, choose education and teaching, choose work, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return; (2) Everyone has the right to freedom of belief, expression and attitude, according to his conscience; (3) Everyone has the right to freedom of association, assembly and expression.

Fifth, as a consequence of freedom of religion, worship and belief, the constitution also provides protection for personal rights, property, guarantees for the right to security, protection from fear, and the right to be free from torture or degrading treatment of human dignity. Article 28G explains that: (1) Everyone has the right to personal protection, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right. ; (2) Everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country.

Sixth, as a respect for the use of other people's rights (restrictions on rights), the constitution provides restrictions in the form of "human obligations", regulated in Article 28J, namely: (1) Everyone is obliged to respect the human rights of others in the orderly life of society, nation and state. patriotic; (2) In exercising his rights and freedoms, everyone is obliged to comply with the limitations stipulated by law for the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of morals, values and principles. religious values, security, and public order in a democratic society.

Seventh, in developing the right to freedom of religion through education and cultural development. This is stipulated in Article 31 paragraph (3) and Article 32 paragraph (1): The government shall endeavor and implement a national education system, which increases faith and piety as well as noble character in the context of the intellectual life of the nation, which is regulated by law. The state advances Indonesian national culture in the midst

of world civilization by guaranteeing the freedom of the people to maintain and develop their cultural values.

4. Limitation by the Indonesia Government

In 2020, the situation in Indonesia regarding religious freedom remained unchanged. President Joko Widodo's administration continued to promote its preferred interpretation of Islam through state efforts such as attempting to revamp Pancasila's state ideology, establishing a voluntary certification program for religious officials, and installing "moderate" voices within the quasi-governmental Indonesia Ulema Council (MUI). These initiatives, on the other hand, were designed to fight emerging extremist or hardline Islamist movements and promote tolerance within officially recognized religions only; they did not encourage broader religious freedom or increase recognition of other religious minority. Religious radicals posed a severe threat to religious minorities and others in the United States. In Central Java, a violent fanatic assaulted the deputy police head with a knife in June. The extreme Islamist organization East Indonesia Mujahideen (MIT) carried out a series of sectarian attacks in Sulawesi, murdering four Christians and torching a residence used by local Christians as a place of worship.¹⁰

Pancasila democracy which is in accordance with the first principle of Pancasila, namely "Belief in One Supreme God" is given freedom of religion. In its pure sense, religious liberty (religious liberty) has four main aspects; freedom of conscience (liberty of conscience), freedom of religious belief (liberty of religious expression), freedom of religious association and freedom to institutionalize religious teachings (liberty of religious institutionalization). Among these four aspects, the first aspect, namely the aspect of freedom of conscience, is the most genuine and absolute right in the sense that the inalienability of a person exceeds the other three aspects. Because freedom of conscience is the most absolute right, the concept of freedom of religion must include the freedom to choose and not to choose a religion.

¹⁰ USCIRF, "INDONESIA," in *UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM ANNUAL REPORT 2020*, 2021.

With the above limitations, personal truth must be considered as the most noble and sublime value (supreme value). It requires a deep personal commitment and accountability. This personal commitment and responsibility must be above commitment to other authoritative agencies such as society, government and even commitment to God. It is in this sense that the principle of religious freedom should be defined. Also, it is in this sense that the wholeness or authenticity of man as "human" must be placed. Since the principle of democracy philosophically implies the freedom of citizens to express themselves as a complete human being, the freedom to determine and find themselves based on their conscience must find space in a country that adheres to democratic principles. However, considering that many destructive acts are carried out in the name of religion, it is necessary to have rules that can regulate traffic in the right to freedom of religion. It is for this purpose that freedom must be viewed from two dimensions; internal dimensions and external dimensions. Freedom of conscience is included in the internal dimension, while freedom to express religious teachings, freedom to form religious associations and freedom to institutionalize religious teachings is included in the external dimension. If the internal dimension is absolute, then the external dimension is relative, in the sense that the right to express religious beliefs, the right to institutionalize religious teachings and the right to form religious associations are closely related to other social institutions such as law and politics.¹¹

Restrictions on religious freedom mainly follow the understanding and values of religion which are rooted in Law No. 1 PNPS 1965 concerning the Prevention of Blasphemy and Misuse of Religion. Religious values pivot on the dominant religion, namely the officially recognized religion. The definition of religion refers to the Department of Religion in 1952 that religion has certain elements, such as prophets, scriptures, and international recognition. Existing

¹¹ Abu Hafsin, "Demokrasi Di Indonesia Antara Pembatasan Dan Kebebasan Beragama" XVII, no. 01 (2010): 9–18.

religions must follow this rule. Policy-wise, restrictions on religious freedom are regulated in Article 28 J of the 1945 Constitution which reads:¹²

1. Everyone is obliged to respect the human rights of others in the orderly life of society, nation and state.
2. In exercising their rights and freedoms, everyone is obliged to comply with the restrictions stipulated by law with the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of morals, values and principles. religious values, security, and public order in a democratic society.

Provisions on restrictions on religious freedom can also be found in Article 18 Paragraph (3) of Law Number 12 of 2005 concerning Ratification of the International Convention on Social and Political Rights (ICCPR Law). The provision states that: "The freedom to practice and determine one's religion or belief may only be limited by provisions based on law, and which are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others." The provisions of this law add and also emphasize that health considerations can be a reason to limit religious rights and freedoms. With the intention that the limitation on religious freedom is not only because it interferes with the rights and freedoms of others, disrupts public security and order, but can also be for health reasons.¹³

Based on some of the provisions of the laws and regulations above, at first glance it appears that the state's authority is in an effort to limit religious rights and freedoms. This can be investigated from the existence of provisions for restrictions that must be subject to and based on law. As contained in the provisions of Article 29 Paragraph (2) of the UDHR, Article 28 J Paragraph (2), Article 73 of the Human Rights Law, and with a different editorial namely "based on the legal provisions of Article 18 Paragraph (3) of the ICCPR Law. The word law and legislation implies that as a state of law, the Indonesian state

¹² Rohit Mahatir Manese, "Pembatasan Kebebasan Beragama Dan Berkeyakinan Di Indonesia Serta Implikasinya," *Societas Dei: Jurnal Agama Dan Masyarakat* 8, no. 1 (2021): 85–107, <https://doi.org/10.33550/sd.v8i1.209>.

¹³ Jufri, "Pembatasan Terhadap Hak Dan Kebebasan Beragama Di Indonesia."

has the right to limit the rights and freedom of religion for its people. In line with some of the provisions above, Immanuel Kant provides views regarding human rights and freedoms. According to him, each individual will tend to fight for their independence in freedom and autonomy. However, the exercise of one's independence may be detrimental to the rights of others. For this reason, a law is needed so that there is no violation of the rights of others as a result of the implementation of one's freedom.

In this discussion, Kant argues that the state has the authority to impose restrictions on religious freedom with the aim that between religious adherents there will be no disagreements and wars in the name of religion. Thus, restrictions on the exercise of the right to freedom of religion may be carried out on condition that the restrictions must be carried out with legal provisions. In this case, the law functions to limit freedom because when these freedoms are left unrestricted, what will happen is a collision between each freedom. The state through its laws is needed in an effort to avoid conflicts of rights and balance these various rights and freedoms. Based on Immanuel Kant's explanation, the state has the right to impose restrictions on the right to freedom of religion whose purpose is to maintain a balance between several rights and freedoms, and so that there are no conflicts of rights and freedoms, especially in terms of the right to freedom of religion.¹⁴

5. Regulation of Religious Freedom in Russia

The Russian Revolution of 1917 was a Great Revolution that had an influence in this part of the world, so it became a very interesting study by scientists. When the Soviet Union experienced an economic downturn, the country tried to look back on its basic ideological principles. Under Gorbachev's leadership, the Soviet Union sought to become a great country in the world but at the same time become a more democratic country. Since the roll out of perestroika and glasnost in 1991 which was also marked by the dissolution of the Soviet Union, religious life in Russia has found new momentum. Religious life, which had always been emphasized under communist rule, is now like dry

¹⁴ *Ibid.*

grass getting a rain shower, rising to the social surface with great enthusiasm. People are no longer afraid to openly introduce their ethnic and religious identities.¹⁵

6. Pre-Modern Russia (1990)

Following the disintegration of the Soviet Union, the role of religion has begun to be recognized and even valued by the state. However, religious limitations and religious ideas like as opium continue to have an impact on Russian culture. As a result, it's not surprising that most religious individuals in Russia, with the exception of a tiny minority, do not genuinely practice religion.¹⁶ This matter goes on until The Supreme Council of the Russian Federation established the Legislation on Freedom of Religions in 1990 (known as the 1990 law), which was followed by the USSR Law on Freedom of Conscience and Religious Organizations. The 1993 Russian Constitution, which was approved following the legendary struggle between President Yeltsin and the Parliament, confirmed the primary concepts of these legislation. According to an examination of the 1990 Law, it mostly adheres to the provisions of the Universal Declaration of Human Rights, the European Convention on Human Rights, and other European agreements. In certain ways, Russian constitutional provisions and the concepts of the 1990 Law are quite similar to the American model of church-state relations: nonestablishment, strong separation of church and state, and legal equality for all religions. Russian citizens and foreigners, according to the Constitution (Article 28) and the 1990 Law, have the essential rights to adopt and practice the religion of their choosing, as well as to create groups that can get legal status through a very simple procedure. The freedom to "promote religious thought and beliefs in oral, written, or any other form" is

¹⁵ Inaa Lailatus Siami, "RUSIA – INDONESIA: Perbandingan Diferensiasi Agama Masyarakat Dan Kaitannya Dengan Upaya Negara Mengatasi Disitegrasi Nasional" 20170213, no. 1 (2013): 1–12.Ibid.

¹⁶ Nur Rohim Yunus, "Kedudukan Agama Dalam Konstitusi-Konstitusi Rusia" 1 (2017): 51–52.

important to us. 5 In this regard, neither the Constitution nor the 1990 Law make any distinction between "foreign" and "Russian" faiths or missionaries.¹⁷

Russia was a clerical state prior to the Revolution. The Russian Orthodox Church, which was a component of the government's political apparatus, was the dominant church. The synod (or ecclesiastical assembly) was made up of representatives of the clergy who were selected by the Tsar. It was led by a chief-prosecutor, who was a secular officer with the authority to intervene in Orthodox Church internal matters, including the appointment of higher-ranking clergy members. Only individuals who practiced the Orthodox religion were eligible for appointment to the highest levels of government, according to tradition. Some features of the Russian Orthodox Church (such as crimes against faith including apostasy, heresy, and schism) were gaining favor in pre-revolutionary Russia, whereas similar notions were being phased out in western Europe. For example, Napoleon's Penal Code of 1810 had just five articles on crimes against faith; Germany's Charter of Criminal Procedures had three; and the Russian Code of Criminal and Corrective Penalties of 1845 included eighty-one articles on offenses against the Russian Orthodox faith.¹⁸

Many people believed that religious groups' activities ought to be regulated prior to 1997. It was widely claimed that if the state did not control these groups, they would misuse their privileges. This argument was bolstered by the fact that Russia does not have a long history of religious diversity, and that relying on the "invisible hand" of market forces might lead to a slew of difficulties. The proponents of this viewpoint use the example of recent religious occurrences that are commonly regarded as not being genuine religions. Their actions are viewed as a threat to the individual's psychological and physical well-being, as well as the state's interest (national security). As a

¹⁷ M. S. Shterin and J. T. Richardson, "Local Laws Restricting Religion in Russia: Precursors of Russia's New National Law," *Journal of Church and State* 40, no. 2 (1998): 319–41, <https://doi.org/10.1093/jcs/40.2.319>.

¹⁸ Yuri Rapoport, "A Critical Analysis of the Extent to Which the Personal Civil Rights Recognised in the THESIS A Critical Analysis of the Extent to Which the Personal Civil Rights Recognised in the Constitution of the Russian Federation Are Enjoyed under Russian Law .," 2007.

result, the government must take preventative measures against them. These policies were frequently viewed as an odd "national religious security strategy."

Apart from that, many people believed that in free competition with non-Orthodox religions, the Russian Orthodox Church (ROC) would necessarily be at a disadvantage due to losses suffered during the Soviet period and the fact that Western religious groups are far better situated financially. The idea that the Russian Orthodox Church is the embodiment of Russian national tradition, the heart of Russian national identity, and the custodian of the nation's psychological well-being added to and reinforced this viewpoint. As a result, any proselytizing actions by "foreign faiths" might be considered interventionist and potentially harmful. This viewpoint was frequently supported by examples from Western European countries, where established churches are given preferential treatment over other religions and where unorthodox churches are purportedly subjected to different limitations. England, Greece, and Germany are most commonly quoted as examples of this type of church-state relationship.¹⁹

Throughout time, the importance of each of these arguments altered. However, there was a general trend for all of them to integrate and form a sort of religious hierarchy:²⁰

- 1) the Orthodox Christianity versus all others;
- 2) the traditional to Russia religions which include, apart from the Orthodox Christianity, Islam, Buddhism, and Judaism versus the rest;
- 3) religions seen as bona fide elsewhere but historically new or non traditional to Russia, the proliferation of which would require proselytising efforts (e.g., Catholicism, Protestantism, and some forms of Buddhism) versus the rest;
- 4) and, finally, the potentially dangerous new religious phenomena commonly referred to in Russia as "totalitarian sects."

¹⁹ Shterin and Richardson, "Local Laws Restricting Religion in Russia: Precursors of Russia's New National Law."

²⁰ *Ibid.*

This hierarchy was meant to be enshrined in law by crafting laws in which each of these faiths is granted various rights based on its prominence and credibility.

7. Modern Russia

The constitution declares the state to be secular and guarantees religious freedom, freedom of conscience, and freedom of religious worship, as well as the right to "proclaim any religion, individually or jointly with others, or to profess no religion." It guarantees residents the right to "freely select, acquire, and spread religious or other views, and to act in accordance with them," as well as equality of rights and liberties regardless of religious convictions.²¹ The major elements of separation are also included in the Russian Constitution: no established religion, institutional separation, secularity of the state, and equality of faiths. This is the logical outcome of Russia's historical process. The Constitution particularly addresses the issues of religion and religion-State relations. A number of provisions of the Russian Federation's Constitution, approved on December 12, 1993, safeguard religious and belief freedom.²²

Constitution of Russia Federation (1993):²³

Article 13

1. In the Russian Federation ideological diversity shall be recognized.
2. No ideology may be established as state or obligatory one.
5. The creation and activities of public associations whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife shall be prohibited.

²¹ "RUSSIA 2020 INTERNATIONAL RELIGIOUS FREEDOM REPORT," 2020.

²² Elena Miroshnikova, "National Report on the Political Aspects of Religion : Russia," no. August (2009): 573–90.

²³ European Commission, F O R Democracy, and Through Law, "RUSSIAN FEDERATION CONSTITUTION (*)," no. 992 (2021).

Article 14

The Russian Federation is a secular state. No religion may be established as a state or obligatory one. Religious associations shall be separated from the State and shall be equal before the law.

Article 15

4. The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.

Article 19

The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of human rights on social, racial, national, linguistic or religious grounds shall be banned.

Article 23

1. Everyone shall have the right to the inviolability of private life, personal and family secrets, the protection of honour and good name.

Article 28

Everyone shall be guaranteed the freedom of conscience, the freedom of religion, including the right to profess individually or together with any other religion or to profess no religion at all, to freely choose, possess and disseminate religious and other views and act according to them.

Article 29

Everyone shall be guaranteed the freedom of ideas and speech. The propaganda or agitation instigating social, racial, national or religious hatred

and strife shall not be allowed. The propaganda of social, racial, national, religious or linguistic supremacy shall be banned.

No one may be forced to express his views and convictions or to reject them.

Everyone shall have the right to freely look for, receive, transmit, produce and distribute information by any legal way. The list of data comprising state secrets shall be determined by a federal law. The freedom of mass communication shall be guaranteed. Censorship shall be banned.

Article 30

1. Everyone shall have the right to association, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed.

2. No one may be compelled to join any association and remain in it.

In the scope of the Russian Constitution, there is no favored or favoured religion. There is no mention of religion as a source or foundation of state law. There is no explicit reference of the State's neutrality on religious problems, although there is a constitutional clause stating that all religions are equal before the law. Religion's place in modern Russia is improving as a result of many government legislative actions. The advancement of religious freedom in this area is critical. There is particular legislation governing the relationship between the state and the church.²⁴

The Russian Federation is a secular state as defined by Article 14 of the Russian Constitution. This means there is no official religion, no ecclesiastical authority above state authorities, no religious authority performing administrative functions on behalf of the state, no mandatory religion for civil servants, no religious rules serving as a source of law, no compulsory religious education linked to state schools, no state influence over citizens' attitudes and beliefs about religion, and no state interference in 'inter-church' acts. The state, in particular, does not intervene in the content of dogmas, cult rites or ceremonies, or other forms of religious satisfaction, in the internal self-

²⁴ Miroshnikova, "National Report on the Political Aspects of Religion : Russia."

management of religious organizations, in the mutual relations between branches of religious organizations, in their relations with believers, or in religious expenditure. Furthermore, there is no state control over religious leaders' activities, and religious organizations have no political engagement.²⁵

The Russian Constitution, however, contains provisions that allow people to observe religious practices. For example, a prohibition against the kindling of religious dissension, hatred or enmity, equality of human and citizen's rights and freedoms, irrespective of their attitude towards religion, religious beliefs, membership of public religious associations, and the prohibition of any forms of limitation of the rights and freedoms of citizens on the basis of religious adherence, a prohibition against coercion of those who express religious beliefs, liberty of conscience, and the right of the citizen to choose civil service as an alternative to military service on religious grounds.²⁶

8. The Federal Law on Liberty of Conscience and Religious Associations 1997 (LCRA Law)

The Russian Constitution, however, contains provisions that allow people to observe religious practices. For example, a prohibition against the kindling of religious dissension, hatred or enmity, equality of human and citizen's rights and freedoms, irrespective of their attitude towards religion, religious beliefs, membership of public religious associations, and the prohibition of any forms of limitation of the rights and freedoms of citizens on the basis of religious adherence, a prohibition against coercion of those who express religious beliefs, liberty of conscience, and the right of the citizen to choose civil service as an alternative to military service on religious grounds.²⁷

The freedom to alter one's faith is established under Article 3 of the LCRA Law. It safeguards those who change their faith as a consequence of persecution

²⁵ Rapoport, "A Critical Analysis of the Extent to Which the Personal Civil Rights Recognised in the THESIS A Critical Analysis of the Extent to Which the Personal Civil Rights Recognised in the Constitution of the Russian Federation Are Enjoyed under Russian Law ."

²⁶ *Ibid.*

²⁷ *Ibid.*

by previous co-religionists, for example. The right to change one's religion has significant value, but in today's world, when the church is independent of the state, the right to change one's religion has little value, especially when the right to profess any religion entails the freedom to choose a religion, which implies the right to change one's religion. Article 3 of the LCRA Law further states that "no one in Russia is obligated to declare their attitude toward religion, and they may not be forced to disclose it." It indicates that the right to privacy in regard to one's religious beliefs is a significant legal accomplishment.

Furthermore, citizens of Russia have the option of performing alternative civilian duty instead of mandatory military service if the latter conflicts with their religious beliefs. Furthermore, no one is obligated to reveal their religious beliefs. Nobody shall be coerced to confess or refuse to profess any religion, or to attend or not attend worship services or religious groups. It is against the law to recruit kids into religious organizations or to instruct them against their will or without the approval of their legal guardians. Also, restrictions on religious freedom are forbidden. And it is forbidden to conduct public affairs and circulate words and pictures that offend people's religious sensibilities in close proximity to places of worship.

The LCRA Law therefore specifies in Article 6 that a religious organization is formed to carry out its activities through its own institutional structure and must not undertake the tasks of public authorities, other state entities, state institutions, or local government bodies. The Russian Orthodox Church is prohibited from participating in the election of public officials or local government bodies, as well as in the activities of political parties or movements. This does not rule out the possibility of religious leaders being elected to public office or local government entities. They can be chosen if they do not operate as religious representatives in any official capacity.

Other than that, the LCRA Law provides legislative protection for the freedom of conscience and religion. It governs legal relations in the field of human rights in respect of liberty of conscience and freedom of religion, as well as the legal status of religious associations. Article 4 of the LCRA Law provides that all religious associations are equal before the law, and that the state must

not interfere with peoples' religious preferences; religious education of children and with the lawful activity of religious associations. Moreover, the state is obliged to protect the lawful activity of religious associations. However, the government goes beyond simple protection, and provides tax exemptions and other privileges such as rendering financial support for the restoration, maintenance and protection of religious monuments and buildings. Such support accords with Article 14 of the Russian Constitution; that is, it helps to ensure the freedom and equality of all religions in the country

9. Limitation by the Russia Government

The "On Fighting Extremist Activity" Law of 2002 empowers authorities to outlaw a wide range of religious speech, books, and activities. The definition of what exactly counts as extremist action was widened in 2006, among other revisions to the legislation, to include nonviolent acts of civil disobedience. As a result, extremist conduct is now defined as encouraging racial, nationalistic, or religious animosity, as well as social animosity. The word "extremism" and extremist conduct are both vaguely defined under this regulation. This bill also lacks a legal definition of the word "religious extremism".²⁸

Russia's religious freedom situation decreased in 2020. Fines, detentions, and criminal prosecutions were continued against "non-traditional" religious minority by the government. Russian law criminalizes "extremism" without properly defining the word, allowing the government to punish a wide spectrum of peaceful religious practice. The state filed 188 criminal proceedings against Jehovah's Witnesses in 2020, after they were declared an extremist organisation in 2017. There have been 1,274 raids and searches of members' residences since then, with 477 scheduled for 2020. Torture was used during raids and interrogations, and it remains uninvestigated and unpunished. During the year, 72 Jehovah's Witnesses were arrested under pretrial detention, house arrest, or jail, including at least six from Russian-occupied Crimea. The government also utilized its anti-extremism statute to target religious

²⁸ Miroshnikova, "National Report on the Political Aspects of Religion : Russia."

minorities, especially Muslims, in 2020.²⁹ The lawsuit had been initiated by a private organization in 1998, but had been dragged on by legal officials for years, with a series of adjournments caused by the Witnesses' lack of proof of injury to persons and judges' unwillingness to dismiss the case (perhaps for political reasons).³⁰

The International Helsinki Federation for Human Rights (IHF) deemed the Jehovah's Witnesses to be one of the principal targets of religious persecution in Russia in 2001, and the UNHCR stated in June 2002 that they were on the official blacklist of religious organisations in Russia. In addition, all Jehovah's Witness operations, including the group's websites and regional branches, are prohibited after the 2017 Supreme Court judgement labeling the Jehovah's Witnesses Administrative Center an extremist organization. According to the court's decision, the constitution provides religious freedom, but it is restricted by other rights, such as "existing civic peace and concord".³¹

D. Conclusion

Because of the two countries have diverse historical and cultural backgrounds, religious freedom regulations in Indonesia and Russia have their own differences. One evident distinction is that Indonesia legally acknowledges six religions (Article 1 of Law No. 1/PNPS/1965), whereas Russia only recognizes five religions (1997 Law). Indonesia is still a conflict-ridden multicultural society. The government's efforts to settle the matter have taken much too long, and the result is that national disintegration instability still happens frequently, demonstrating the complexity of Indonesia's multicultural culture. The government's power to establish policy is a determining factor in raising public political awareness so that there is no conflict between these religious groupings. In Russia, the government recognizes that religious

²⁹ USCIRF, "RUSSIA," in *UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM ANNUAL REPORT 2020*, 2021.

³⁰ James T. Richardson, Galina A. Krylova, and Marat S. Shterin, "Legal Regulation of Religions in Russia," 2004, 247–57, https://doi.org/10.1007/978-1-4419-9094-5_16.

³¹ "RUSSIA 2020 INTERNATIONAL RELIGIOUS FREEDOM REPORT."

communities have a sizable demography, thus policies are implemented in a way that is consistent with their existence and demands, such as legal protection, the right to change one's religion, the right to convert, etc. Even though in reality we can still find many conflicts based on this issue, for example Jehovah's Witnesses that have been going on for more than a decade. "On Fighting Extremist Activity" Law of 2002 contributed the most on this matter, because extremist conduct is now defined as encouraging racial, nationalistic, or religious animosity, as well as social animosity. The term "extremism" and extremist conduct are both vague also lacks a legal definition under this regulation.

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