

# THE EXISTENCE OF PANCASILA IN RESOLVING CONFLICTS OF DIFFERING VIEWS ON RELIGIOUS RIGHTS IN INDONESIA

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## *Abstract*

*This research investigates how Pancasila (the Five Principles) could serve as an equilibrium in regulating the freedom of religion in Indonesia and how these five principles could negotiate the concept of this freedom within the coverage of national Human Rights affected by western human rights related to the concept of the freedom of religions within the scope of Islam. The three different regulatory concepts regarding freedom of religion in Indonesia, constituting Islamic law, International Human Rights, and Particular Human Rights, have always sparked conflict unless these three concepts are accommodated by law. The analysis was performed by employing the doctrine of margin of appreciation. This research reveals that Pancasila could serve as the fundamental of Indonesia in facilitating the freedom of religion. This research also employed a normative-juridical method, interdisciplinary, statutory, and conceptual approaches.*

**Keywords:** Pancasila; Religious Rights; Freedom of Religions

## 1. Introduction

Indonesia is the world's largest multicultural country with its diverse and complex socio-cultures and geographical features. "Indonesia is a home to diverse ethnics, cultures, religions, and others that represent plurality and heterogeneity".<sup>1</sup> In Islam, diversity is a God's gift, a natural phenomenon or *sunatullah* in Koran.<sup>2</sup>

What needs to be highlighted in this discussion is the fundamental constitutional guarantee for the freedom of religion for every individual in Indonesia, and this guarantee is further governed in law Number 39 of 1999 concerning on Human Rights<sup>3</sup> and the International Covenant on Civil and Political Rights (ICCPR) once ratified in Indonesia. This asserts that the freedom of religion is a constitutional right that every individual in Indonesia deserves.<sup>4</sup> However, its practice is not without violations. Setara Institute recorded that in the last 12 years to 2019, there were 2,400

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<sup>1</sup> Kusumohamidjojo, *Kebhinnekaan Masyarakat Indonesia: Suatu Problematik Filsafat Kebudayaan* (Jakarta: Grasindo, 2000).

<sup>2</sup> Alwi Shihab, *Islam Inklusif, Menuju Sikap Terbuka Dalam Beragama* (Bandung: Mizan, 1997).

<sup>3</sup> Fatmawati, "Perlindungan Hak Atas Kebebasan Beragama Dan Beribadah Dalam Negara," *Jurnal Konstitusi* 8, no. 4 (2011): 489–520.

<sup>4</sup> Muwaffiq Jufri, "Pembatasan Terhadap Hak Dan Kebebasan Beragama Di Indonesia," *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*, 1, no. 1 (2016): 41–47.

violations of the freedom of religion committed by state or non-state actors.<sup>5</sup> Law enforcers are often found not to take strict measures against those involved in anarchic acts in intolerance-related cases, or some regional government policies still tend to highlight certain religious teachings.<sup>6</sup>

In the national scope, several laws are found to be incongruent, and several techniques aimed at guarantee the freedom of religion are minimum.<sup>7</sup> These issues seem to have led to the violations of the freedom of religion. Law Number 1/PNPS/1965 concerning Prevention of Misuse of Religion and/or Blasphemy is one of those incongruent laws. Most parties such as NGOs in law and Human Rights, national figures such as KH. Abdurrahman Wahid and Yursil Ihza Mahendra, religious groups and civilians who think their rights are violated have been complaining about substantial problems in the law. Their grievance has led further to judicial review submitted to Constitutional Court calling for the law to be declared unconstitutional or conditionally unconstitutional, recalling that the freedom of religion has been violated. From 2010 to 2019, there had been four petitions regarding the law concerning blasphemy reported on the Constitutional Court website.

This research is intended to fill the gap where no references are written to discuss the encounter between Islamic Human Rights and International Human Rights, while both are existing and growing next to each other in Indonesia. These two concepts of the freedom of religions either in terms of Human Rights or in terms of Islamic Law are required to resolve conflict and the potential of violations of the freedom of religions, recalling that the majority of the people in the country are Moslems, and the Human Rights follow firm constitutional fundamentals. These two concepts also set a difference between this research paper and previous ones. Most research papers dealt with sole perspectives about either Islam or International Human Rights, but this research paper was composed by employing an interdisciplinary method aiming at finding out the effects of Human Rights and Islamic Law on the freedom of religion in Indonesia. To resolve the polemic concerning freedom as elaborated above, several studies were compared to this research to find out to what extent has the polemic been so far.<sup>8</sup>

In Indonesia, we have Pancasila, which is the grundnorm of the Indonesian state, in which Pancasila is in charge of all the laws and regulations under it. All aspects of life that are regulated

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<sup>5</sup> Ibid.

<sup>6</sup> Victorio H Situmorang, "Kebebasan Beragama Sebagai Bagian Dari Hak Asasi Manusia," *Jurnal HAM* 10, no. 1 (2019): 57–68.

<sup>7</sup> Ihsan Ali-Fauzi, Samsu Rizal Panggabean, and Trisno S. Susanto, *Membela Kebebasan Beragama* (Jakarta: Democracy Project, 2011).

<sup>8</sup> Fokky Fuad, "Islam Dan Ideologi Pancasila, Sebuah Dialektika," *Lex Jurnalica* 9, no. 3 (2012): 164–170.

in a regulation refer to Pancasila. The same applies to religious regulations. In the first precepts, it is regulated regarding belief in God Almighty. This means that Pancasila wants an Indonesian state that is divine, with all its people believing in the existence of one God. This is in line with the guidance in Islam that every human being is obliged to uphold the religion of Islam and be devoted to Allah. The values contained in this first precept are so universal that both Muslims and non-Muslims can make them the basis for religious life. This is one of the keys to how Pancasila can accommodate a multicultural population, especially in viewing human rights, both those who view human rights in Islam and western human rights.

As part of the approach used in this research, interdisciplinary Islamic study develops and elaborates on philosophical, sociological, and historical topics more emphasized in the aspect of the application.<sup>9</sup>

## **2. Method**

This research employed a normative-juridical. According to Peter Mahmud Marzuki, normative legal research is prescriptive where the object of legal science is the coherence between legal norms and legal principles, between legal rules and legal norms, and between individual behavior and legal norms. In this paper the juridical-normative method involved the analysis of legislation, the theory of law, legal concepts and principles regarding the freedom of religion. A statutory approach was also used to analyze several regulatory provisions concerning religion in Indonesia. A conceptual approach was employed to investigate the concept of the rights to and the freedom of religion in Islam and national law, completed by an interdisciplinary approach. Interdisciplinary Islamic study elaborates philosophical, sociological, and historical approaches which are more emphasized on the aspect of how they are applied.<sup>10</sup>

## **3. Results and Discussion**

### **3.1. The Concept of the Freedom of Religion in Islam**

In Islam, a newborn baby is like a blank and spotless white piece of paper and without religion until the baby's parents decide it for him/her. Parents play a dominant role in giving

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<sup>9</sup> Ratu Vina Rohmatika, "Pendekatan Interdisipliner Dan Multidisipliner Dalam Studi Islam," *Al Adyan* 14, no. 1 (2019): 115–132.

<sup>10</sup> *Ibid.*

religion to the child.<sup>11</sup> That is, the freedom of religion from the perspective of Islam is not defined as an individual right to choose his/her religion since religion initially came from parents.

The freedom of religion in Islam is often described as the right of each individual who belongs to a religion that cannot be taken, and an individual also cannot be forced to convert to another faith or religion that others believe in. A person has his/her right to see the truth and evil as he/she believes in, but coercing somebody to follow a certain religion or faith is very intolerable. Several verses in Koran serve as the starting points of the discussion about the freedom of religion, and Surah Al-Baqarah/2:256<sup>12</sup> is one of them:

*There shall be no compulsion in religion: the right way has become distinct from the wrong way.*

Surah Yunus /10:99:

*Had your Lord willed, everyone on earth would have believed. Will you compel people to become believers?*

Surah Al-Kafirun/109:6

*You have your way, and I have my way.*

Surah Al-Mumtahina 60:8

*As for those who have not fought against you for your religion, nor expelled you from your homes, God does not prohibit you from dealing with them kindly and equitably. God loves the equitable.*

And Surah Al-Kahf/18:29

*And say, "The truth is from your Lord. Whoever wills—let him believe. And whoever wills—let him disbelieve."*

With all those principles and among others, Islam has developed the concept of the freedom of religion. Furthermore, both the internal aspect representing religious tolerance and the external aspect implying that religion is one package of aspects lie within those concepts.<sup>13</sup>

These fundamental concepts of the freedom of religions as written in the above surahs of the Koran indicate that Islam recognizes diverse beliefs and religions growing in society, but it does

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<sup>11</sup> Syakir NF, "Masa Depan Anak Tergantung Orang Tuanya," *NUonline*.

<sup>12</sup> M. Quraish Shihab, ed., *Passing Over, Melintasi Batas Agama* (Jakarta: Gramedia Pustaka Utama, 2001).

<sup>13</sup> *Ibid.*

not take other religions as right. Every religion has its firm bases for its followers to believe in. Islam has the firm value of tolerating the existence of other religions. That is, no compulsion is necessary to coerce others to believe in another religion they do not belong to since Islam upholds the values of tolerance and peace.

Religious preaching and teachings are common in all religions, including Islam. Some preaching even requires a religious figure to come to a venue to give his preaching about life in this world and hereafter (Surah An-Nahl 16:125; Al-Hajj 22:67; Fussilat 41:33). Since preaching is a ‘call’, it should not involve any compulsion---*La ikraha fi al-din* (Surah Al-Baqarah 2:256).<sup>14</sup> Islam is a religion of preaching, not a religion of conflict.<sup>15</sup>

Not only are Islamic teachings sourced from Koran, but the freedom of religion also came from what the Prophet Muhammad SAW brought. Historical records reported that the politeness Muhammad SAW demonstrated when he mingled with Jewish people and hypocrites when he was in Madinah after migrating. The Prophet accepted what they believed in and let them keep believing in their religions, and he even warned his comrades no to fight against and hurt them. Several authentic hadiths mention the tolerance the Prophet held on to when he interacted with non-Moslems around him. Muhammad even pawned his armor to Abu Syahm, a Jewish. His friendliness to all people, including to Jewish women when he mingled and interacted with them and when he welcomed Christian people of Najran in Nabawi Mosque was obvious, as reported in the story by Ibn Ishak and Ibn Sa’ad.<sup>16</sup>

Ali Mustafa, however, asserted that the tolerance described does not transcend worldly matters and is not at all related to beliefs and worship. Islam indeed recognizes the religious plurality as outlined in Al-Kafirun verse 6: “*You have your way and I have my way*”. This verse was revealed when the unbelievers of *Quraisy* came to see the Prophet and persuaded Muhammad to worship their god for a year in exchange for their promise to also worship his God, Allah, for the same one year. Following this fallacious approach, Allah revealed this verse implying that Islam does not recognize the truth of other religious teachings other than Islam itself although Islam recognizes the existence of other religions.<sup>17</sup>

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<sup>14</sup> Azyumardi Azra, “Toleransi Agama Dalam Masyarakat Majemuk: Perspektif Muslim Indonesia,” in *Merayakan Kebebasan Beragama: Bunga Rampai Menyambut 70 Tahun Djohan Effendi* (Jakarta: ICRP, 2001).

<sup>15</sup> Yayan Sopyan, “Menyoal Kebebasan Beragama Dan Penodaan Agama Di Indonesia,” *Jurnal Cita Hukum* 3, no. 2 (2015): 195–212.

<sup>16</sup> Yunal Isra, “Belajar Toleransi Beragama Dari Nabi Muhammad,” *Nu Online*.

<sup>17</sup> Ibid.

From the above concepts, it is obvious that Islam taught *forum internum* and *forum externum* to its believers far earlier clearly and simply, emphasizing that people have their own beliefs (*forum internum*) while coercing (*forum externum*) others to believe in a certain religion is not tolerable. As a Moslem, it is necessary to spread the teachings of religious tolerance that upholds Human Rights.

Islam governs the freedom of religion for its people in harmony and justice. Tolerance as another form of a religious good deed is external and applicable, and it serves as the spearhead to promote peace. The teaching of the determination that is intended to maintain the faith as a religious internal and individual element saves people from hypocrisy and evil. In other words, Islam is laden with tolerance to the people of different beliefs as long as their existence does not spark conflict against Islam. Islam also assertively enforces *aqidah* (the faith) and the belief in Allah SWT.

### **3.2. The Concept of the Freedom of Religions in International Human Rights Instruments**

The concept of the freedom of religion is outlined in International Human Rights instruments, the Universal Declaration of Human Rights (UDHR), other documents such as Rights of Man France 1789, Bill of Rights of USA 1791, and International Bill of Rights 1966. Article 2 of the UDHR states:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The principle of the freedom of religion and belief is outlined in Article 18:

“Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”

The right to the freedom of religion is also stated at length in ICCPR Article 18. This covenant was ratified through Law Number 12 of 2005, highlighting: (1) everyone has the right to freedom of thought, belief, and religion. This right constitutes the freedom to follow a belief or a religion he/she believes in anywhere anytime and to follow any religious practices that allow a person to worship, to be faithful to the religion, to get religious experience, and to get involved in

the religious teachings without any compulsion from others; (2) Not a single person can be coerced to follow a certain religion.

The right to the freedom of religion is categorized into the fundamental human rights that are absolute and included in *forum internum* as the embodiment of inner freedom (freedom to be). This right is categorized into *non-derogable* rights, meaning that this right is specifically outlined in the agreement concerning Human Rights whose fulfillment that has to be met by the state cannot be postponed under any circumstances, even when civil wars or military invasion are in progress.<sup>18</sup> However, the freedom of religion to manifest and implement religions or beliefs people follow, including preaching and building places of worship, is deemed to be the freedom to act. The freedom of religion of this kind can be restricted, modified, or even postponed.<sup>19</sup> In other words, the freedom of religion consists of two parts: *forum internum* that is absolute and cannot be restricted even when an emergency state is in place; and *forum externum* that represents the right to express or manifest a religion or belief under certain conditions or for specific purposes, and this can be restricted.<sup>20</sup>

In *forum internum*, several matters must not be intervened, coerced, or affected with manipulation, doctrines, brainwashing, drugs, and others by a state or another party. *Forum internum* deals with choosing a religion, a belief or a faith, choosing to be faithful to a sect or religious cult, choosing to be faithful or unfaithful to religious teachings, thinking, understanding, and contemplating, interpreting, and developing religious thought (See the Summary of Constitutional Court Decision Number 56/Puu-Xv/2017).

*Forum externum* involves: performing a ritual, non-worshipping religious teachings, such as religious preaching, religious congregation, education, celebrations of feast days, broadcasting religion, and others, establishing and managing places of worship, the freedom to use religious symbols, the freedom to independently appoint religious leaders, establish and manage religious facilities such as education, meeting hall, religious studies, establish and run a religious-based organization with legal protection, manage religious schools, freedom to write, to teach, and to spread religious teachings, to get a religious status, to be educated and to receive religious teachings according to the religion given by parents or guardians, to get access to marriage and

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<sup>18</sup> Siti Musdah Mulia, "Hak Asasi Manusia Dan Kebebasan Beragama," in *Diskusi Panel: Perkembangan Konsep Tindak Pidana Terkait Dengan Agama Dalam Pembaharuan KUHP* (Jakarta: Aliansi RKUHP, 2007).

<sup>19</sup> Ibid.

<sup>20</sup> Zainal Abidin Bagir et al., *Membatasi Tanpa Melanggar - Hak KBB* (Yogyakarta: Center for Religious and Cross-cultural Studies (CRCS) Progam Studi Agama dan Lintas Budaya Sekolah Pascasarjana Lintas Disiplin, Universitas Gadjah Mada, 2019).

divorce registry services and death-related services, and to get the rights as a citizen without any discrimination in religions and beliefs (See the Summary of Constitutional Court Decision Number 56/Puu-Xv/2017).

Imdadun Rahmat, an expert in law and Human Rights, opines that *forum externum* is divided into two groups: the one done in both public and private spheres, in which what is done in the latter is similar to that of *forum internum*. Activities in the scope of *forum externum* are performed by the followers of religions within a sphere attended by only internal members, and this matter does not fulfill the restriction as outlined in Article 28 J of the 1945 Indonesian Constitution. Thus, under no circumstances should it be restricted. If it has to be restricted, no rights of individuals should be violated (See the Summary of Constitutional Court Decision Number 56/Puu-Xv/2017). Therefore, principles and assessments must be further regulated.<sup>21</sup>

From the above discussion, it is clear that there are several fundamental similarities in the freedom of religion according to Islam and the right to freedom of religion from the perspective of International Human Rights, both of which divides Human Rights into two spheres: *forum internum* (internal aspects) and *forum externum* (external aspects). These forums must not be restricted, spoiled, and coerced by anyone since it deals with faith and belief of a person. Similarly, in Indonesia, according to Artidjo Akostar, the dimension of post-reform Human Rights marked the acceptance of the concept of universal and international Human Rights and, thus, it is no longer particular.<sup>22</sup>

### **3.3. Distinct Concepts of the Freedom of Religion from the Perspective of Islam and International Human Rights**

Apostasy is one of the controversial issues in the relationship between Islam and the freedom of religions as part of Human Rights. The term apostasy is not only restricted to converting to another religion from Islam, but according to the classic literature of Islam, this term, in a traditional scope, is described as “*riddah*” in Arabic—consisting of three elements: *murtad* (converting from Islam), *sabb* (blasphemy), and/or *zandaqah* (heresy).<sup>23</sup>

Islam highlights conversion to another religion is a serious sin or *murtad*, and Islam seriously condemns those converting to another religion. The punishment includes, inter alia, the death

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<sup>21</sup> Hwian Christianto, “Arti Penting UU No. 1/PNPS/1965 Bagi Kebebasan Beragama: Kajian Putusan Mahkamah Konstitusi Nomor 140/PUU-VII/2009,” *Jurnal Yudisial* 6, no. 1 (2013): 1–16.

<sup>22</sup> Artidjo Alkostar, *Pengadilan HAM, Indonesia Dan Peradaban* (Yogyakarta: PUSHAM UII, 2004).

<sup>23</sup> Azis Anwar Fachrudin, “Islam, Kebebasan Beragama, Dan Hukuman Murtad,” *Center for Religious and Cross\_cultural Studies Universitas Gajah Mada*.



penalty and other forms of derivative punishment such as divorce from a Moslem spouse and revoked right to the property or asset since it is deemed to be seized objects during the war and, thus, it shifts to the ownership of the state/*daulah*<sup>24</sup>, as outlined in classic *fiqh*. Several countries like Malaysia govern *murtad* in its positive law since it is an Islamic country. The freedom of religion in both National and International Human Rights in Indonesia implies that converting to another religion is the right of every individual.

In terms of the formulation regarding Human Rights as outlined in UDHR seen from the perspective of Islam, there seems to be a fundamental matter contravening Islamic teachings. Article 16 concerning cross-religious marriage and Article 18 concerning the right to freedom to convert to another religion are the principles contrary to the Islamic teachings condemning *murtad* people and a marriage between a Moslem and a non-Moslem since it is deemed *haram* (forbidden). Following this contravention, the Organization of Islamic Cooperation formulates matters related to Human Rights based on the references sourced from Koran and *Sunnah* declared in Cairo, Egypt on the 5th of August 1990. This formulation consists of 25 Articles and was further called the Cairo Declaration on Human Rights in Islam (CDHRI). This declaration was intended to correct articles deemed to contravene the principles of Islamic teachings, not to make a new formulation of Human Rights. The remaining articles not contravening the Islamic principles were strengthened by adding some principles sourced from Koran and *Sunnah*.<sup>25</sup>

**Table 1.**  
**Difference between Human Rights in UDHR/Western and Islam**

HUMAN RIGHTS IN UDHR/ (WESTERN)	HUMAN RIGHTS IN ISLAM
1. Sourced from only philosophical thought	1. Sourced from the Koran and the <i>Sunnah</i> of Prophet Muhammad SAW.
2. Anthropocentric	2. Theocentric
3. Rights over Obligations	3. Equality between rights and obligations
4. More individualistic	4. Social interest as a priority
5. Humans as full right holders	5. The rights that humans have are from God, and humans have their responsibility to take care of them and thank for them.

Source: Daniel Alfaruqi, *Korelasi Hak Asasi Manusia dan Hukum Islam*, SALAM: Jurnal Sosial dan Budaya Syar-i, Vol. 4 No. 1 (2017): 57-76

<sup>24</sup> Ibid.

<sup>25</sup> Daniel Alfaruqi, "Korelasi Hak Asasi Manusia Dan Hukum Islam," *SALAM: Jurnal Sosial dan Budaya Syar-i* 4, no. 1 (2017): 57–76.

The principle of Human Rights, according to western thought, is constructed by human thought, and these rights allow people to perform their freedoms without restrictions. Human Rights in Islam, however, are part of the general pattern of sharia. These rights are seen as sacred as the sharia laws and, thus, these rights must be governed according to shariah. Nothing in the universe could hamper or stop what God has allowed to take place for the sake of human rights. All the laws outlined in sharia should restrict the scope of human rights.<sup>26</sup>

### **3.4. Polemics of Freedom of Religion in Indonesia**

Controversy is inevitable following the effectuation of Law concerning Blasphemy. The articles of the law destruct the position of the state as a protector for all religions and beliefs according to Pancasila and legitimate the deeds of the state apparatuses that are intervening and discriminative. Blast firmly law that is more common in other countries not only bans all forms of blasphemy but also bans the interpretation of religions deemed violating religious principles, and this is considered odd (Summary of Constitutional Court Decision Number 56/Puu-Xv/2017).

The effectuation of this law has gone too far into *forum internum* of an individual who should not be affected by even a state. That is, this effectuation has violated the Human Rights of a person within his/her *forum internum*. The Law concerning Blasphemy states “to guarantee religious peace, the Presidential Regulation is mainly aimed at prevent any misappropriation of religious teachings that spoil the fundamental teachings brought by the religious leaders (Article 1-3);” this regulation has given protection twice for the peace as expected against blasphemy/mockery and fallacious teachings persuading others to follow religions not based on the principle of only one God (Article 4).

This elaboration is relevant when related to the previous explanation emphasizing the growing mysticism that potentially stains existing religious values in Indonesia. Without such an elaboration, multi-interpretation may have arisen and it could have offended certain parties such as “religious leaders concerned”. In terms of religious radicalism issues growing in the society in Indonesia and tending to spark conflict, some questions are raised: which religious leaders may be affected? Are they from the major streams? What about the minority? Will those of the minority be unheard of and deemed wrong? These questions tend to lead to multi-interpretation.

The aberration of religious teachings is mainly banned by Law Number I/PNPS/1965 in Indonesia. This act may be related to the interpretation of religious teachings, religious activities

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<sup>26</sup> Syaukat Hussain, *Hak Asasi Manusia Dalam Islam* (Jakarta: Gema Insani Press, 1996).

of religion similar to that believed in, and many more. To find out whether aberration arises, standard protocols that underpin assessment are needed. Interestingly, Law Number I/PNPS/1965 does not directly state to whom the authority to assess the existence of aberration is given. Article 1 of Law Number 1/PNPS/1965 only highlights “as long as it does not violate the provisions of this law or other laws”. However, the limitation and the extent in which mysticism or certain faiths or beliefs could be deemed to stain existing religions remain unclear.<sup>27</sup> Thus, it is important that limitations and the principles of assessment be regulated further.<sup>28</sup>

So far, several researchers conducting studies on the freedom of religion agree that the regulation concerning the freedom of religion has violated Human Rights. If the state refers to the regulation concerning blasphemy, this regulation must be proportional, clear, assertive, and non-discriminative.<sup>29</sup> The government also plays a vital role in providing compensation, restitution, and rehabilitation to the victims of Human Rights violations.<sup>30</sup> Law must also be strictly enforced against parties or even the governments allowing Human Rights violations. Enforcement should be made assertive and strict regarding the concepts of limitation of the right to the freedom of religion to avert any potential of multi-interpretation in society since it could potentially justify the oppression of religious minority groups in Indonesia.<sup>31</sup>

### **3.5. The Existence of Pancasila to Govern the Freedom of Religion in Indonesia**

The freedom of religion is inextricable from the entirety of all the principles in Pancasila, especially the first principle “Belief in the One and Only God” and the second principle “A Just and Civilized Humanity”. The freedom of religion not only deals with the harmony between humans and their God, but it also demands harmony among people across religions. The Unitary State of the Republic of Indonesia (NKRI) is mainly based on one and only God according to the Pancasila. In other words, this state is not the state of religion but a religious state.<sup>32</sup>

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<sup>27</sup> Hwian Christianto, “Arti Penting Pemberlakuan UU NO. 1/PNPS/1965,” *Jurnal Hukum & Pembangunan* 41, no. 3 (2011): 359.

<sup>28</sup> Christianto, “Arti Penting UU No. 1/PNPS/1965 Bagi Kebebasan Beragama: Kajian Putusan Mahkamah Konstitusi Nomor 140/PUU-VII/2009.”

<sup>29</sup> Anak Agung Ayu Nanda Saraswati, “Perkembangan Diskursus Pelindungan Agama Dari Penghinaan Dan Kritik Dalam Aturan Penodaan Agama,” *Arena Hukum* 12, no. 3 (2019): 556–575.

<sup>30</sup> Rizky Adi Pinandito, “Implementasi Prinsip Kebebasan Beragama Dan Berkeyakinan Di Indonesia (Studi Kasus: Tanggung Jawab Negara Dalam Konflik Sampang, Madura),” *Jurnal Pembaharuan Hukum* 4, no. 1 (2017): 91–96.

<sup>31</sup> Jufri, “Pembatasan Terhadap Hak Dan Kebebasan Beragama Di Indonesia.”

<sup>32</sup> Ahmad Jazuli, “Penyelesaian Konflik Penodaan Agama Dalam Perspektif Hukum Pidana Di Indonesia,” *Jurnal Penelitian Hukum De Jure* 17, no. 3 (2017): 329–350.

The main principles of the freedom of religion in Pancasila are congruent with the concept in Islam. The majority of religious figures of Islam agree that God expects differences that make every individual unique over other creatures. God did not create His followers with the same perspectives, way of life, and thoughts, or they would have been no different from animals, plants, and other dead things with no capability to choose. If they were all created the same, there would be only one single thought of anything.<sup>33</sup>

The doctrine of margin of appreciation has served as the threshold for the continuity of the values of local cultures and religious values amidst Human Rights international law. In Islamic law, *mashlahah* (interests) act as the bridge that gives access to human rights in the Islamic world. With *mashlahah* or interest- and merit-oriented conditions for social welfare, Islamic law could go in line with the international law of Human Rights. Dragging away classical problems such as the static interpretation of traditional Islamic law becomes the key to ratifying international law of Human Rights in Islamic countries.<sup>34</sup> With the above definition, the doctrine is deemed in line with the Pancasila because the principles in Pancasila embrace the religious, adat, cultural values, and other values living in society and the development of ideology in the world these days.

This doctrine is necessary to help adjust the application of the instruments of international Human Rights ratified by Indonesia. The existing concept of universal Human Rights existing today was introduced in western cultures and civilizations that are secular. It is, thus, quite important to understand and implement Human Rights within the context of a certain culture and philosophy not similar to that of western civilization.<sup>35</sup> The doctrine of the margin of appreciation is obvious in the restriction governed in Article 28 J of the 1945 Indonesian Constitution since it is not possible for the principle of western universalism carried in western Human Rights to be fully applied. This restriction is known as the margin of appreciation in Human Rights, a concept introduced by the European Court of Human Rights.<sup>36</sup>

We collectively agree on one thing that Indonesia is the state whose major population is Islam, but in terms of political and ideological concerns, Indonesia is not an Islamic state; Indonesia is just a country that believes in God<sup>37</sup> that officially refers to Pancasila. These Five

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<sup>33</sup> Zainal Abidin, "Teologi Inklusif Nurcholish Madjid: Harmonisasi Antara Keislaman, Keindonesiaan, Dan Kemoderenan," *Jurnal Humaniora* 5, no. 2 (2014): 665–684.

<sup>34</sup> Hamdan, "Hak Asasi Manusia Dalam Perspektif Hukum Islam," *Tasamuh* 14, no. 1 (2016): 85–98.

<sup>35</sup> Masykuri Abdillah, "Islam Dan Hak Asasi Manusia: Penegakan Dan Problem HAM Di Indonesia," *MIQOT: Jurnal Ilmu-ilmu Keislaman* 38, no. 2 (2014): 374–394.

<sup>36</sup> Ibid.

<sup>37</sup> M Saifullah Rohman, "Kandungan Nilai-Nilai Syariat Islam Dalam Pancasila," *Millah* 13, no. 1 (2013): 205–215.

Principles unite people of different cultures and religions. As the basis of the unitary state of the Republic of Indonesia, Pancasila holds noble values as the cornerstone of the country. From the formulation of independence to the formulation of the ideology of the country before the Independence, the founding fathers of this country began to think about freedom for people of all ethnicities to live in peace in Indonesia. The ideology of this state is intended to embrace all people of all ethnic groups. Bung Karno, the First President of Indonesia, in his speech on the 1st of June 1945 asserted that the Independence of Indonesia was not only for certain groups or aristocrats but for the entire human beings in the Archipelago.

Pancasila as a national ideology started to be accepted with open arms by all parties following the protracted debate and the acceptance of the principle of assimilation. Monotheism is echoed in the first principle of the Pancasila, and this principle is the pure concept introduced by Soekarno, and this principle is generalized into “Belief in God”. Soekarno suggested that this principle be shifted to the fourth principle, but it was challenged by Moslems insisting that this principle remain the first and paramount.<sup>38</sup>

The freedom of religion in the Indonesian context is a traditional Islamic religious awareness of the next level in the modern perspective.<sup>39</sup> For the sake of religious integrity, the state should not compel people to follow certain religions. As previously discussed, according to the Koran, plurality deals with the structure of human life; this is *sunatullah* (the law of God). This is the privilege of God to explain the next level of life of every person regarding why he/she can be different from others: “*And We revealed to you the Book, with truth, confirming the Scripture that preceded it, and superseding it. So judge between them according to what God revealed, and do not follow their desires if they differ from the truth that has come to you. For each of you, We have assigned a law, and a method. Had God willed, He could have made you a single nation, but he tests you through what He has given you. So compete in righteousness. To God is your return, all of you. Then He will inform you of what you had disputed. (Surah Al-Maidah/5:48)*

In response to differences and uniqueness, everyone should learn the guidance of tolerance in Islam for them to hold on to. All the values are outlined in Pancasila as the national ideology that has been perfected to encourage unity and create peace in Indonesia.

Hamka Haq argues that Pancasila is the manifestation of Islamic teachings. Islam is a friendly religion to all elements of nature, it encourages brotherhood and sisterhood, tolerance,

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<sup>38</sup> Komaruddin Hidayat, ed., *Passing Over, Melintasi Batas Agama* (Jakarta: Gramedia Pustaka Utama, 2001).

<sup>39</sup> Ibid.

justice, gender equality, and it involves all aspects of life everyone is living. The values of sharia of Islam are outlined either implicitly or explicitly in Pancasila. The first principle in Pancasila implies the spirit of Islam through “Belief in the One and Only God”. This first principle is believed to represent Islamic teachings either directly or indirectly. God is only one in Islam and none comes second. “Belief in the One and Only God” implies that although Indonesia is not the state of religion, religion has been the noble value this country is upholding to run the state administration.<sup>40</sup>

The harmony between the first principle and the sharia of Islam is obvious in Koran that encourages humans to always believe in one God, as voiced in Surah Al-Baqarah verse 163: “Your God is one God. There is no god but He, the Benevolent, the Compassionate.” This concept implies that the main principle in life is divinity. In Islam, this concept is called *hablum min Allah* representing the essence of tauhid describing the relationship between humans and Allah SWT.<sup>41</sup> The first principle “Belief in the One and Only God represents the following values:<sup>42</sup> 1) Everyone in Indonesia worships their God according to their religions and beliefs; 2) Performing their religious activities and beliefs with civilized manner and respect to others; 3) All religions and beliefs are to be treated and recognized equally.

Islam is the major religion in Indonesia that is *Rahmatan Lil ‘Aalamiin* towards the concept of *laa ikrohu fiddin*, meaning that no compulsion in religions. Religious tolerance in Islam is high, as outlined in *Al-Kafirun* verse 6 *lakum diinukum waliyadin*: You have your way, and I have my way. This verse describes religious tolerance that restricts people from performing religious activities representing other religions and beliefs, and this concept is applicable in the tolerance of religions in Indonesia.<sup>43</sup>

Pancasila as the national ideology with its first principle regarding divinity not only serves as the religious and moral principle of a country, but it also implicitly refers to religious tolerance. The concept of the right to the freedom of religion and worshipping is based on the first principle of Pancasila that gives vigor to Article 28 E paragraph (1) and Article 29 of the 1945 Indonesian Constitution. Religious tolerance encourages respect to other religions and beliefs without necessarily having to follow those religions and beliefs. However, this tolerance comes with some limitations the citizens of Indonesia have to understand: not performing the religious activities of

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<sup>40</sup> Ibid.

<sup>41</sup> Sabitul Muttaqien, “Keselarasan Nilai-Nilai Pancasila Dengan Ajaran Islam,” *UIN Malang*.

<sup>42</sup> Sekar Anggun Gading Pinilih and Sumber Nurul Hikmah, “Aktualisasi Nilai-Nilai Pancasila Terhadap Hak Atas Kebebasan Beragama Dan Beribadah Di Indonesia,” *Masalah-masalah Hukum* 47, no. 1 (2018): 43.

<sup>43</sup> Ibid.

the religions or beliefs of others. By not doing this, people could still have their respect for other religions and beliefs without staining them.<sup>44</sup>

Islam is a religion for the life in this universe and hereafter. Not only does this religion teach faith and worship, but it also embraces legal and political principles. Koran requires people to bring merit for all Moslems in particular and the entire people in general.<sup>45</sup> Respecting other people's rights is also part of what Islam requires. Willing to omit the phrase "with responsibilities to act according to the sharia of Islam of its followers" coming after the principle "Belief in the One and Only God" during the ratification of the Constitution on 18th of August 1945 is inextricable from the ideology asserting that Pancasila should be capable of maintaining and guaranteeing the unity and relationship of all components of the state.<sup>46</sup> This indicates the harmony between the Islamic teachings and Pancasila. Any country with the instrument of a positive law banning a person from following a different belief is deemed to violate the Islamic principle and international Human Rights, both of which demand absoluteness in recognizing differences. This is aimed to establish harmony among humans.

#### **4. Conclusion**

The freedom of religion is guaranteed under Islam and International Human Rights in Indonesia. The implementation of the freedom of religion in the country involves three principles of Human Rights under one formulation that serves as the fundamental principle of Pancasila. The doctrine of the margin of appreciation serves as the threshold for the continuity of the values of local cultures and religious values without overlooking international Human Rights. This doctrine in Indonesia is obvious in the restrictions given in Article 28 J of the 1945 Indonesian Constitution since the principle of western universalism as outlined in western Human Rights is not entirely applicable. This doctrine is congruent with Pancasila, recalling that the sources of Pancasila embrace religious, adat, and cultural values, and other values living in society and the development of ideology globally.

In Indonesia, Pancasila serves as *kalimatun-sawa*— a meeting point in the enforcement of international Human Rights ratified by Indonesia and Human Rights in Islam as expected by the

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<sup>44</sup> Ibid.

<sup>45</sup> Ali Ismail Shaleh and Fifiiana Wisnaeni, "Hubungan Agama Dan Negara Menurut Pancasila Dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [Relationship between Religion and State According to Pancasila and the 1945 Constitution of the Republic of Indonesia]," *Jurnal Pembangunan Hukum Indonesia* 1, no. 2 (2019): 237–249.

<sup>46</sup> Ibid.

majority of religious groups in Indonesia. The formulation of the first principle “Belief in One and the Only God” indicates that every religion can grow amidst the diversity and peace in Indonesia without spoiling or being disrespected by other religious groups. Tolerance in demonstrating religious worship (*forum externum*) is the key to the establishment of harmony and peace across religions. However, this tolerance is not applicable in the faiths and beliefs in *forum internum*. Whoever cannot coerce others to follow a certain religion as he/she believes in, not to mention the coercion involving violence or threats. All forms of laws concerning the freedom of religions governing and intervening *forum internum* of a person seemingly contravene Human Rights either in Islamic or international scope. When this is the case, adjustment of all regulations to Pancasila regarding the freedom of rights as in particular Human Rights is necessary. Another adjustment to Law Number 1 concerning Prevention of Misuse of Religion and/or Blasphemy, especially in Article 1 related to Article 28 E paragraph 91) and (2), Article 28 I, Article 28 J, and Article 29 of the 1945 Indonesian Constitution and Law Number 39 of 1999 concerning Human Rights as the instrument of the ratification of Human Rights and the International Covenant on Civil and Political Rights is also to be taken into account.

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