

The Dynamics of Religious Influence on the National Legal System of Indonesia

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Abstract

This essay critically examines the growing discrepancies between the Federal Constitution (FC) of Indonesia and recently proposed or modified legislation, such as the planned RUU355, the Mufti Bill (now in its third reading), and Act 342 (currently being introduced). According to scholars like Harding (2012) and Thio (2006), the Federal Constitution is Indonesia's supreme law and is intended to uphold the principles of democracy, the rule of law, and the separation of church and state. But these core ideas seem to be undermined by contemporary legal trends, particularly in light of the expanding power of Islamic law and religious authority (Fernando, 2006; Ahmad, 2014). The aforementioned legislative reforms, which show a shift towards a more Islamic style of governance, have generated discussions regarding their consistency with Indonesia's secular constitutional framework (Hashim, 2018). This study examines the ways in which these legislative proposals violate constitutional protections such as freedom of religion (Lai, 2003), equal treatment under the law (Yatim, 2011), and judicial independence (Harding, 2018). The article adds to the continuing discussion on the constitutional limits of religious influence in Indonesia's legal and political system by analysing the ramifications of these statutes and bills. According to scholars like Shad Saleem Faruqi (2019) and Ibrahim (2002), unrestrained legislative interventions could drastically alter the constitutional balance and have a substantial impact on the legal and social fabric of the country.

Keywords : Federal Constitution (FC), Act 342, Mufti Bill, RUU355, Islamic government, Secular framework, Separation of religion and state

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1. Introduction

Indonesia has long been known for its distinctive constitutional framework, which strikes a balance between the conflicting demands of a secular governance model and the growing influence of Islamic law in several spheres of public life (Al-Attas, 1993; Kamali, 2008). Enshrining democratic values, the rule of law, and the separation of religion and state, Indonesia's Federal Constitution (FC) is the ultimate law of the land (Mohamad, 2006). The limits of this equilibrium are being tested by recent legislative changes, notwithstanding this fundamental underpinning. Laws that have been proposed or changed, such as the proposed Act 342, the Mufti Bill, the Halal issue and the contentious RUU355, indicate a change in governance that more closely combines political and legal frameworks with religious authority (Omar, 2011; Hashim, 2017). There has been much discussion about this change and how it would jeopardize the Constitution's secular foundation (Ismail, 2014)

Adopted in 1957, Indonesia's Federal Constitution was crafted to represent the nation's diversified population and guarantee the protection of fundamental rights, such as equality before

the law and freedom of religion. The Constitution's founders wanted it to act as a foundation for a country founded on democratic principles and tolerance for many cultural and religious identities. Nonetheless, there has been a discernible shift over time toward the greater influence of Islamic law, especially in the form of suggestions and legislative revisions that seem to run counter to the secular values ingrained in the FC

Proponents of recent legislative initiatives, such as the Mufti Bill, the planned modifications under Act 342, and the religiously oriented RUU355, are positioning them as necessary reforms that will increase the role of Islamic law in Indonesian governance. However, these actions have sparked worries about the possible conflicts they could cause inside the country's legal and political structure as well as the deterioration of constitutional protections. The growing dependence on religious leaders and legislation may make it more difficult to distinguish between secular governance and religious teaching, raising doubts about Indonesia's adherence to its basic ideals.

This essay examines these legislative changes and how they might alter the balance between religion and the state, as well as how they might affect Indonesia's constitutional framework. In light of these legislative changes, this study adds to the larger conversation on Indonesia's future as a pluralistic nation-state by investigating the constitutional bounds of these laws.

2. Method

The growing discrepancies between Indonesia's Federal Constitution (FC) and legislative developments like Act 342, the Mufti Bill, and the planned RUU355 are critically examined in this study using a qualitative research technique (Bowen, 2009). The approach has its roots in document analysis and include a thorough examination of pertinent court decisions, legislative texts, and constitutional clauses. This method makes it possible to thoroughly examine the ways in which these legislative proposals go against core constitutional tenets, such as freedom of religion, equal treatment under the law, and judicial independence (Abdul Aziz Bari, 2005). In order to comprehend the sociopolitical ramifications of these legislative changes within Indonesia's pluralistic and secular framework, the study also employs contextual analysis. Parliamentary discussions, legal analyses, and academic publications are some of the data sources that shed light on the possible impacts of growing religious influence on Indonesia's political and legal structures (Patton, 2015). The study uses a thematic analytic approach to find themes and patterns that are impacted by these legislative changes, such as the breakdown of democratic values and the separation of church and state. The study evaluates the wider ramifications for Indonesia's identity as a pluralistic nation-state and the future course of its constitutional government by combining these findings. By providing insights into the possible long-term implications on Indonesia's legal and social fabric, this methodology makes it easier to critically evaluate legislative intrusions and their potential to redefine the constitutional balance.

3. Results and Discussion

1. How Act 342 of Indonesia contradicts with the FC?

In Indonesia, authorities are empowered to prevent and control infectious diseases via the Prevention and Control of Infectious Diseases Act 1988 (Act 342). However, certain of Act 342's provisions have sparked worries about possible inconsistencies with the Federal Constitution, especially when it comes to fundamental liberties and the division of responsibilities between the federal and state governments.

a. Essential Freedoms:

Personal liberty (Article 5) and protection from retroactive criminal laws and repeated trials (Article 7) are among the essential liberties guaranteed by the Federal Constitution. Act 342 contains some sections that have been challenged for possibly violating these rights, particularly those pertaining to detention and enforcement during infectious disease epidemics. For example, the Act permits the detention of people without trial in specific situations, which may

be in opposition to the right to personal liberty guaranteed by the constitution.

b. Federal-State Relations.

The widespread consensus is that states have jurisdiction over public health. Act 342, on the other hand, is a federal law that is applicable in all states and federal territories of Indonesia. Tensions between federal and state authorities have resulted from this, especially when state governments want to enact policies that deviate from federal guidelines. Act 342 can supersede state legislation on public health issues since the Federal Constitution states that federal law takes precedence over state law in the event of inconsistency. Some have argued that the autonomy of state governments is being undermined by this concentration of power.

c. Changes and Tougher Penalties:

More severe penalties have been imposed on individuals and organizations who break Act 342 restrictions as a result of recent revisions to the Act. For instance, under the new Section 31(3), individuals who violate rules face a maximum punishment of RM8,000, a maximum jail sentence of two years, or both. For offenses committed by a body corporate, the penalty is a maximum fine of RM50,000, a maximum jail sentence of two years, or both. Particularly for those with low incomes, these harsher fines have sparked questions regarding justice and proportionality as well as whether they comply with the constitution's prohibitions on excessive punishment.

d. Absence of State Consultation:

Act 342's implementation has occasionally moved forward without sufficient state government consultation. Since public health can be regarded as a state matter, the Federal Constitution's spirit of federalism may be violated by the lack of consultation. This strategy has sparked complaints that the federal government is going beyond its constitutional bounds and disregarding the functions and obligations of state governments.

In summary, even though Act 342 attempts to establish a legal framework for the management of infectious diseases, some of its provisions and how they have been applied have sparked worries about possible inconsistencies with the Federal Constitution, especially with regard to fundamental liberties and the distribution of power between the federal and state governments.

2. How the Mufti Bill of Indonesia contradicts with the FC?

There have been questions about whether the Federal Territories Mufti Bill 2024 complies with Indonesia's Federal Constitution. Among the main possible contradictions are:

a. Supremacy in Islamic Affairs

As the Head of Islam in the Federal Territories, the Yang di-Pertuan Agong is designated as such under Articles 3(5) and 34(1) of the Federal Constitution. However, it seems that the Bill increases the power of the mufti, which could compromise the constitutional position of the Agong.

b. Obligatory Character of Fatwas

According to Clause 11 of the Bill, fatwas are obligatory for all Muslims. Articles 5 and 11 of the Constitution, which protect individual liberty and religious freedom, respectively, may be violated by this clause. The general application of fatwas may violate people's rights to their own religious practices and personal convictions.

c. Legislative Authority

The bill gives the mufti the authority to suggest fatwas that, if approved by the Agong, take effect immediately without a vote in parliament. The constitutional framework may be violated by this procedure because Parliament has the sole ability to enact laws, and doing so could be detrimental to democratic values.

d. Definition of Islamic Adherence

The Bill's precise interpretation of adherence to the Sunni school of Islam might be in conflict with Article 3 of the Constitution, which is read to cover a wide range of Islamic beliefs. Within the Muslim community, such specificity might stifle religious pluralism and diversity.

3. How the RUU355 of Indonesia contradicts with the FC?

Indonesia's Syariah courts' criminal jurisdiction is outlined in the Syariah Courts (Criminal Jurisdiction) Act 1965, often known as Act 355 or RUU355. In order to strengthen the punitive authority of these courts, the proposed revisions to RUU355 would raise the maximum sentence limitations from the existing three years in jail, RM5,000 fine, and six canings to thirty years in prison, RM100,000 fine, and 100 canings. Concerns have been raised about this proposed expansion's compliance with Indonesia's Federal Constitution (FC), namely in the following areas:

a. Jurisdictional Boundaries

The federal and state governments' respective legislative powers are delineated in the Federal Constitution. Criminal law is primarily a federal affair, although Islamic law and private matters are under state jurisdiction. These jurisdictional boundaries may become hazy if Syariah courts' punitive powers are increased, which could result in disputes between federal criminal statutes and state-enacted Syariah legislation.

b. Basic Freedoms

The Federal Constitution protects basic freedoms, such as the right to a fair trial and immunity from double jeopardy. Concerns over the protection of these rights may arise if Syariah courts' punitive powers are increased, particularly if the increased jurisdiction results in accusations that are overlapping under both civil and Syariah courts.

c. Equality Before the Law

The Federal Constitution's Article 8 forbids discrimination and guarantees equality before the law. The proposed revisions may result in uneven treatment under the law by causing differences in the legal outcomes for Muslims, who are governed by Syariah law, and non-Muslims.

It is crucial to remember that these issues are still being discussed politically and legally. The significance of upholding the constitutional division of powers has been emphasized in prior rulings by the Federal Court of Indonesia on matters pertaining to the legitimacy of state-enacted Syariah laws.

In summary, even though the proposed changes to RUU355 are meant to increase the power of the Syariah courts, they need to be carefully considered to make sure they comply with the Federal Constitution, especially with regard to jurisdictional limits, the defense of fundamental liberties, and the equality before the law principle.

4. Increasing Religious Authority in Governance that Contradicts with Federal Constitution

Islam is recognized as the official religion of the Federation of Indonesia under the Federal Constitution, which also permits the peaceful and harmonious practice of other religions. Additionally, it protects basic freedoms, such as religious freedom. However, conflicts between Islamic law and constitutional provisions have arisen as a result of the growing incorporation of religious authority into governance.

Article 3(1): identifies Islam as the Federation's official religion while allowing other faiths to coexist peacefully.

The right to profess and exercise one's religion is guaranteed by Article 11, subject to legislation that limit or regulate the spread of any particular religious ideology among Muslims.

The Constitution is the ultimate law of the Federation, according to Article 4(1), which also states that any laws made after Merdeka Day that conflict with it are null and void.

a. Implications

There are now worries about possible conflicts between the secular nature of the state

and constitutional rights due to the growing influence of religious authority in administration. All state laws, even those founded on religious beliefs, must be consistent with the Federal Constitution, which is considered the ultimate law. In order to preserve constitutional primacy and safeguard individual rights, the court is essential in resolving disputes between civil and Syariah legislation.

In *Iki Putra Mubarrak v. Kerajaan Negeri Selangor & Anor*, decided in 2021, the Federal Court ruled that a section of the Selangor Syariah Criminal Offences Enactment was unconstitutional, claiming that the State Legislature had overreached itself by passing laws on subjects that were under federal competence.

Similar to this, in *Nik Elin Zurina bt Nik Abdul Rashid & Anor v. Kerajaan Negeri Kelantan*, the Federal Court allowed permission in 2024 to contest the constitutionality of eighteen provisions in the Kelantan Syariah Criminal Code, raising doubts about the State Legislative Assembly's jurisdiction to enact laws on these issues.

b. Conflicts of Jurisdiction:

Indonesia has a dual legal system with separate jurisdictions for civil courts and Syariah (Islamic) courts. While Syariah courts manage Islamic laws that apply to Muslims, civil courts deal with ordinary legal issues. Article 121(1A), which was introduced in 1988, made it clear that civil courts lack jurisdiction over cases that fall under the authority of Syariah courts. Particularly in situations involving both Muslims and non-Muslims, this change has resulted in jurisdictional disputes.

The constitutional protection of freedom of religion in Indonesia is being undermined by proposed legislative reforms.

c. The Federal Constitution's protection of religious freedom

The Federal Constitution's Article 3(1) affirms Islam as the official religion of the Federation while simultaneously ensuring that other faiths can coexist peacefully. The right to openly declare, practice, and spread one's faith is expressly protected under Article 11. Nonetheless, there has frequently been disagreement about how to interpret and apply these laws.

d. The Impact of Suggested Legislative Reforms

The constitution's protections of religious freedom may be in conflict with legislative changes intended to uphold Islamic law or control religious activities. These reforms run the risk of establishing a legal framework that disproportionately benefits one religion over another. They frequently address topics like apostasy, conversion, religious education, or proselytization.

e. Legal Developments and Legislative Initiatives

Apostasy Laws: In many states, proposed amendments seek to make leaving Islam illegal and punish violators with fines or jail time. For instance, despite Article 11's purported guarantee of the freedom to spread one's religion, Syariah laws in Kelantan and Terengganu contain provisions for punishing apostasy, which discourages people from converting from Islam.

f. Control Over Religious Conversion

Indira Gandhi v. Pengarah Jabatan Agama Islam Perak and other cases show how one parent's unilateral conversion of a child to Islam can result in disagreements over religious freedom that are frequently settled in a way that prioritizes Islamic institutions over the rights of non-Muslim parents or individual preference.

g. Enforcing Morality in Religion

Proposed changes to broaden the jurisdiction of Syariah courts frequently entail controlling religious or public morality, even when doing so may have an indirect impact on non-Muslims. This covers regulations pertaining to dress, conduct in public, and alcohol use. These plans could violate the rights of non-Muslims to live in accordance with their beliefs and threaten the multireligious fabric of Indonesian society.

Legislative Reforms' Effect on Non-Muslims

Interfaith Marriages and Custody Disputes: Systemic prejudices are frequently the outcome of legislative changes and court decisions pertaining to interfaith marriages. For instance, the Syariah Court usually takes on custody cases when a non-Muslim spouse converts to Islam, which frequently disadvantages the non-Muslim spouse. **Houses of Worship:** Minority religions are frequently disproportionately impacted when zoning regulations or administrative roadblocks prevent the development of non-Muslim houses of worship. Minority religions like Buddhism, Hinduism, and Christianity, however, frequently find it difficult to construct or rebuild buildings of worship due to zoning regulations and administrative choices.

Relevant Examples

i. Destruction of non-Muslim houses of worship:

Hindu Temples: Despite the fact that they had been in existence for decades without any problems, some ancient Hindu temples have been demolished on the grounds of "illegal construction" on state- owned property. For instance, there was a lot of controversy over the 2007 demolition of the Hindu temple in Kampung Rimba Jaya, Selangor.

Furthermore, zoning concerns caused numerous delays in the building of a Hindu temple in a mostly Muslim district of Selangor. Despite the temple's decades-long presence in the neighbourhood before the planned renovation, local officials expressed doubts about the site's suitability.

Christian Churches: Getting permission for new construction or even renovations can take a long time for many churches. Common challenges include the need to obtain permission from the state government and bureaucratic barriers. A Christian church in Shah Alam also faced years of delays due to local authorities' reluctance to grant licenses, which they attributed to the church's close proximity to residential areas.

In rural areas like Kelantan and Terengganu, in view of apparent incompatibility with local cultural sensitivities, the clearance procedure for the construction of Buddhist temples is frequently sluggish or rejected outright.

ii. Conversions to other religions without consent

The Syariah Court upheld Indira Gandhi's estranged husband's unilateral conversion of her children, casting doubt on the constitutional right of non-Muslim parents to practice their religion freely.

iii Limitations on the Spread of Non-Islamic Faiths

Although the Constitution's Article 11(4) permits the control of Muslim proselytization, some legislative reforms, like those in Selangor, limit the production and distribution of religious publications. Minority religions' capacity to spread their doctrine is disproportionately impacted by this.

iv. The Syariah Court (Criminal Jurisdiction) Act (RUU355)'s proposed amendments

The goal of the RUU355 plan is to give Syariah courts more punitive authority. Critics contend that by obscuring the distinction between civil and religious law and promoting an Islamic legal framework in areas of public policy, this could have an indirect impact on non-Muslims.

Does School-Based Religious Education Imbalances Article 11 of the Federal Constitution?

Even for non-Muslim pupils, the implementation of required Islamic instruction in national schools has drawn criticism for violating religious freedom. Concerns about their children being

exposed to Islamic activities that go against their beliefs are frequently expressed by non-Muslim parents. In Indonesia, the term "enforcement of religious bigotry" refers to actions, regulations, or viewpoints that prioritize one religion over another, frequently leading to a lack of diversity in educational environments. Here is an explanation supported by pertinent examples:

Issue: Islamic studies are strongly emphasized in Indonesia's religious education curriculum, especially in public schools. Although this is consistent with the nation's predominantly Muslim populace, it frequently ignores the country's multireligious landscape.

For instance, while Islamic education classes are required for Muslim students and no comparable religious instruction is provided for students of other religions, non-Muslim students may feel alienated during these sessions. As an alternative, moral education classes are viewed as less important and don't go deep enough into examining various religion practices.

Mandatory Practices:

Issue: Students from minority religions may become hostile to practices that impose religious conformity.

For instance, Islamic prayers are said before the start of assembly in certain schools, and all pupils, regardless of their beliefs, are expected to participate or stay. Non-Muslim students may feel uneasy or alienated as a result of this.

Activity Segregation

Issues: Some school activities could unintentionally encourage the belief that one religion is better than another or separate pupils based on their faith.

Example: While all pupils participate in Islamic events such as Maulidur Rasul (the birthday of Prophet Muhammad), other religious festivals, such Deepavali or Christmas, may receive little to no recognition.

Conversion and Religious Influence:

The enforcement of religious intolerance is brought to light by reports of overt or covert attempts to convert non-Muslim students.

For instance, there have been instances where non-Muslim students in rural or boarding schools have been urged to convert to Islam or felt under pressure to attend Islamic study sessions. Concerns regarding the growing Islamic influence in Indonesian mission schools were voiced in 2016. The head of the education commission for the Archdiocese of Kota Kinabalu, Sister Rita Chew, emphasized that certain people were determined to advance an Islamic agenda starting in kindergarten. Conversions were taking place in schools, she observed, as Christian parents found out their kids were learning Islamic prayers.

In 2024, a video surfaced that showed Islamic preacher Firdaus Wong giving a teacher advice on how to secretly convert non-Muslim children. Among the directives were teaching kids to recite the "kalimah syahdah" (statement of faith) and keeping their conversions a secret from their parents. Police investigations and general anxiety among non-Muslim populations were prompted by this occurrence

4. Conclusion

In conclusion, the secular framework of the Federal Constitution is seriously threatened by the growing legislative emphasis on incorporating Islamic concepts into Indonesia's legal system. An increasing conflict between religious influence and constitutional values like judicial independence, equal treatment, and religious freedom is highlighted by laws like Act 342, the Mufti Bill, and the proposed RUU355. The Constitution's position as the ultimate defender of democratic principles and

the rule of law could be jeopardized by these developments. Such legislative measures have the potential to drastically change the legal and social balance of the country if they are not stopped, undermining Indonesia's reputation as a multicultural state. To preserve the constitutional limits and protect the rights and liberties guaranteed by the constitution, legislators, courts, and civil society must have meaningful conversations.

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