

The Right to FoRB in Indonesia

Creating a Framework Based on Understanding

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Abstract

The main goal of this thesis is to add to academic debates on the universality of human rights, in particular the right to Freedom of Religion or Belief (FoRB), by developing a locally grounded analytical framework and method. It intends to achieve this goal by doing two things. One is comparing the international view on religion and the right to FoRB, which is found in global and regional human rights documents, with the Indonesian view on religion and the right to FoRB, which is found in Indonesia's Constitution and several of its laws on these topics. The other is finding explanations for the similarities and differences between the two views found through this comparison by focusing on Indonesia's political history.

This thesis' main argument is that the Indonesian and international understandings of FoRB differ on three key issues in terms of content: the scope of FoRB, that is, who is entitled to claim the right to FoRB; the limits to coercion; and the justifications for limiting individual rights to FoRB. Furthermore, I argue that these differences in terms of content are caused by a difference in terms of the overall goal of policies on religion and the right to FoRB. While the international approach is built on an underlying commitment to protecting FoRB for as many individuals as possible, the Indonesian approach privileges public order and the stability of political structures and institutions.

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Introduction

Indonesia has political traditions “that emphasise communalism, nationalism and religion. These are political traditions that see individual freedoms as foreign or even subversive ideas.”¹ However, Indonesia is a party to the International Covenant on Civil and Political Rights (ICCPR).² This means that Indonesia has given “its explicit consent to be bound by the treaty.”³ These two pieces of information seem to contradict each other, as it does not seem to make sense that a state that has political traditions in which individual freedoms do not fit would become a party to the ICCPR. This puzzling situation could be a signal of there being a disagreement on what the general standards of human rights are. Such a disagreement is not helpful when trying to improve human rights records worldwide. In other words, in order to move forward, steps must be taken to create more agreement on human rights standards and their application. Therefore, understanding such a puzzling situation is necessary. This thesis focuses on investigating Indonesia’s view on the right to Freedom of Religion or Belief and on how this view came to be like it is now. The creation of such understanding is important in relation to continuous improvement of human rights records, as mutual understanding can be crucial in creating effective partnerships on such improvement.

The final sentence of the previous paragraph relates to the main objective of this thesis, which is to add to academic debates on the universality of human rights, in particular the right to Freedom of Religion or Belief (FoRB), by developing a locally grounded analytical framework and method. This thesis argues that international approaches to human rights are under-pinned by fundamentally different goals to those that drive the national Indonesian approach. Acknowledging these differences can contribute to building understanding between the Indonesian leadership and their international critics, paving the way for locally grounded approaches to FoRB that nonetheless adhere to international human rights standards.

The choice to focus on the right to FoRB was made for two reasons. The first reason is a practical one. Focusing on one human right will allow for an elaborate analysis that really gets to the bottom of the puzzling situation described above. The second reason relates to the quote above. As religion is such an important part of Indonesia’s political traditions, it makes sense to focus on a human right that is about religion.

This thesis adopts a critical constructivist approach. According to this approach, our world is constructed through language.⁴ This means that saying or writing something

¹ Robertus Robet and Alfindra Primaldhi, “Do Indonesians Still Care About Human Rights,” *Indonesia at Melbourne* (website), The University of Melbourne, accessed April 1, 2021, <https://indonesiaatmelbourne.unimelb.edu.au/do-indonesians-still-care-about-human-rights/>.

² “Status of Ratification Interactive Dashboard – International Covenant on Civil and Political Rights,” *United Nations Human Rights Office of the High Commissioner* (website), United Nations, accessed April 19, 2021, <https://indicators.ohchr.org>.

³ “Legal Obligations of Signatories and Parties to Treaties,” *Inside Justice – Equal Justice Under Law* (website), accessed May 29, 2021, https://www.insidejustice.com/intl/2010/03/17/signatory_party_treaty/.

⁴ K.M. Fierke, “Constructivism,” in *International Relations Theories Discipline and Diversity*, ed. Tim Dunne, Milja Kurki and Steve Smith, 3rd ed. (Oxford: Oxford University Press, 2013), 194 + 200 + 357.

actually brings “a particular state of affairs into being.”⁵ This perspective fits a thesis in which attention is drawn to the different meanings of language in different states and cultures. Moreover, this thesis focuses on how the language and definitions related to religion and FoRB can and have created a certain way of dealing with religion and FoRB.

To achieve the objective of the thesis, it is divided into four chapters, each with their own objectives, sub-questions and arguments. Together, these will lead to an answer to the main research-question of this thesis: What are the points of convergence and divergence between the international and the Indonesian understanding of the right to Freedom of Religion or Belief and how can a focus on historical political developments in Indonesia contribute to locally embedding the right to Freedom of Religion or Belief and all human rights?

The first chapter will address the debate about whether the right to FoRB can be seen as universal. The sub-question that will be answered in this chapter is the following one: What are the current disagreements and points of tension regarding how the right to Freedom of Religion or Belief is understood and applied? The answer to this question will lead to the identification of the main sources of disagreement between local and universal approaches to the right to FoRB. As we saw above, the objective of the thesis as a whole is to add to this academic debate. This chapter enables us to do this by providing us with knowledge on the content of this debate.

The second chapter has as its objective to find out what the international view on the right to FoRB is. To this end, this chapter will answer the following question: How has the right to Freedom of Religion or Belief been enshrined in international human rights documents? Answering this question is necessary, as in other sections of the thesis, the Indonesian view will be compared to this international view. In order to be able to make such a comparison, it is thus necessary to find out what this international view is exactly. By way of a content analysis of several documents, from global and regional organizations, on human rights, we will come to an answer to this question. A truly international view should be based on documents that are supported by many states.

The third and the fourth chapter will together form a case study on religion and the right to FoRB in Indonesia. The objective of this case study is to find out what the current legal Indonesian view is on the right to FoRB and to see whether political developments can be seen as explanatory factors in relation to this view and how such factors could help in locally grounding the right to FoRB.

The choice to have a case study on Indonesia was made on the basis of there being contradicting tendencies when it comes to the regulation of religion and the right to FoRB. As Paul Marshall says in the introduction of his article on FoRB in Indonesia:

⁵ K.M. Fierke, “Constructivism,” 200.

*"There is controversy about the extent of religious freedom in almost every country in the world. Governments are likely to stress the positive aspects in their polity while human rights defenders are likely to be more critical. But the disagreements about religious freedom in Indonesia are usually sharper than most, with reports depicting an increasingly violent and repressive country and others stressing extensive co-existence and harmony."*⁶

During the case study, we will find out more about the source of this confusion and disagreement by focusing on the legal situation in Indonesia regarding religion and FoRB. We will see that on the one hand, the Constitution of Indonesia presents a view on FoRB that is quite similar to the international view outlined in chapter two.⁷ On the other hand, we will see that laws and regulations on religion and FoRB do not resonate very much with the Constitution in the sense that these laws and regulations limit the scope and application of the right to FoRB. Thus, the case of Indonesia contains contradictory tendencies when it comes to the regulation and application of the right to FoRB. As we will see in this thesis, it seems that there was a tendency to allow for the right to FoRB when the Constitution was made, but that in the decades after that this tendency disappeared and came to be replaced with a tendency to limit the right to FoRB. The thesis attempts to explain these different tendencies by focusing on the main political developments. In other words, the laws on religion represent a different view on FoRB than the view found in the Indonesian Constitution. Therefore, looking at the reasons behind the existence of the view in the Constitution and these laws on religion can provide us with clues on what a more locally grounded view on FoRB would look like for Indonesia.

As should be clear by now, this thesis will solely focus on the case of Indonesia. Consistent with the theoretical assumptions of critical constructivism, this thesis aims to understand the specific historical circumstances related to political decisions on laws and regulations related to religion and the right to FoRB. Utilizing a single case enables a more in-depth understanding of a state's political history and how it contributes to developments related to the regulation and application of the right to FoRB.⁸

Specifically, the thesis focuses on the period 1945-1998. The starting point is 1945, as this year marked the year Indonesia proclaimed independent nationhood.⁹ Therefore, studying Indonesia in the period before 1945 would not make any sense. The end point of 1998 has also been carefully chosen. This year marks the end of the New Order period, the reign of President Suharto, and the start of the period called the 'Reformasi'. Within this period of 'Reformasi', changes were made to the constitution in order to make

⁶ Paul Marshall, "The Ambiguities of Religious Freedom in Indonesia," *The Review of Faith and International Affairs* 16, no. 1 (2018): 85, accessed February 14, 2020, <https://www-tandfonline-com.proxy-ub.rug.nl/doi/pdf/10.1080/15570274.2018.1433588?needAccess=true>.

⁷ "The 1945 Constitution of the Republic of Indonesia; As Amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002," *International Labour Organization* (website), accessed March 21, 2020, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50148/71540/F795093174/IDN50148%20English.pdf>.

⁸ K.M. Fierke, "Constructivism," 188.

⁹ Yuri Sato, "Democratizing Indonesia: Reformasi Period in Historical Perspective," *IDE Research Paper* no. 1 (2003): 6 + 8, accessed April 10, 2021, <https://core.ac.uk/download/pdf/7124046.pdf>.

Indonesia more democratic. A new period has not officially begun, but there are voices saying that the true Reformasi has stopped somewhere in the first decade of the 21st century. Some even argue that Indonesia is moving away again from liberal democracy and coin terms like the 'Neo-New Order'. However, as the year 1998 did mark a break with the past, this year has been chosen as the end point of our analysis of political history.¹⁰

The third chapter of this thesis will describe the current legal situation with regard to religion and the right to FoRB. The fourth chapter will then analyse Indonesia's political history from 1945 until 1998, as current laws and regulations of course largely have their origin in the periods before, as we will indeed see in this chapter. So, the period of Sukarno's presidency and the period of Suharto's presidency can be seen as leading up to this period of Reformasi. Therefore, it makes sense to stop the period of analysis at the point of the start of the Reformasi.¹¹

Executing this case study on Indonesia and achieving its above-mentioned objective will be done through answering several questions. Chapter three will answer the questions 'How is the right to Freedom of Religion or Belief enshrined in Indonesian law?' and 'What are the differences and similarities between the international view on Freedom of Religion or Belief and the way Freedom of Religion or Belief is enshrined in Indonesian law?' The answer to the first question will allow us to find out what the Indonesian view on the right to FoRB, which we need to answer the second question of the third chapter. The answer to this second question will allow us to know which differences we must attempt to explain in the remainder of the case study which will be executed in chapter four. In this fourth chapter, the following questions will be answered: 'Which political developments can be seen as key factors in explaining why Freedom of Religion or Belief in Indonesia came to be how it is now?' and 'How can these developments explain the differences between the Indonesian and the international view on Freedom of Religion or Belief?' The developments in Indonesia we will look at are the following: the desire for national unity, the bureaucratic quest for (religious) harmony and public order, and the ever-evolving relationship between the regime and the Muslim community in Indonesia.

The answers to all of these questions will lead us to an answer to the main question, which will be given in the conclusion. In response to this question, I argue that the Indonesian and international understandings of FoRB differ on three key issues in terms of content: the scope of FoRB, that is, who is entitled to claim the right to FoRB; the limits to coercion; and the justifications for limiting individual rights to FoRB. Furthermore, I argue that these differences in terms of content are caused by a difference in terms of the overall goal of policies on religion and the right to FoRB. While the international approach is built

¹⁰ Sato, "Democratizing Indonesia," 2-4 + 15-16 + 20 + 27. / "The 1945 Constitution of the Republic of Indonesia," <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50148/71540/F795093174/IDN50148%20English.pdf>. / Tim Lindsey, "20 Years After Soeharto: Is Indonesia's 'Era Reformasi' Over?," *Pursuit* (website), The University of Melbourne, accessed May 30, 2021, <https://pursuit.unimelb.edu.au/articles/20-years-after-soeharto-is-indonesia-s-era-reformasi-over>.

¹¹ Sato, "Democratizing Indonesia," 2-5 + 15-16 + 20.

on an underlying commitment to protecting FoRB for as many individuals as possible, the Indonesian approach privileges public order and the stability of political structures and institutions.

Chapter 1: An Exported Right? Debating the Universality of the Right to FoRB

This chapter will focus on the debates that are going on in the academic world regarding the universality of the right to FoRB. The chapter will be divided in two different, but related, parts. The first part covers the main strands of critique regarding the understanding of the right to FoRB. The second part focuses on the critique given on the application of the right to FoRB. The first sub-question will be the guiding question during this chapter: What are the current disagreements and points of tension regarding how the right to Freedom of Religion or Belief is understood and applied? Answering this question will be necessary to reach the goal of this chapter, which is to identify the main sources for the contestation between local and universal approaches to the right to FoRB.

The first part of this chapter will focus on those strands of critique related to definitional issues surrounding the right to FoRB. Many authors argue that religion is, to say the least, difficult to define. For example, Michael Lambek argues that, as religion is not something that is natural, it cannot be defined.¹² Michael Stokes Paulsen, on the other hand, does attempt to define 'religion' in one of his book reviews. However, according to Paulsen, he will do this "at the (great) risk of being reductionist."¹³ Mariam Rawan Abdulla agrees with Paulsen, mentioning that trying to devise a "clean and separate"¹⁴ definition of this term "has its limitations."¹⁵ Also, in her book *Beyond Religious Freedom*, Elizabeth Shakman Hurd mentions that "religion is too unstable a category to be treated as an isolable entity, whether the objective is to attempt to separate religion from law and politics or design a political response to "it."¹⁶ Generally, her argument is that the category of religion, due to its instability, cannot be used for "political definition"¹⁷ nor "legal regulation."¹⁸

Hurd can be seen as agreeing with Winnifred Fallers Sullivan regarding the impossibility of the (legal) application of 'religion' in her book *The Impossibility of Religious Freedom*.¹⁹ In this book, her main argument is that "what makes religious freedom impossible is the fact that laws regulating religion need to have some way of distinguishing what counts as religion."²⁰ So, she agrees with the other authors that defining religion is indeed problematic. There are other things that complicate the definition of FoRB even more, which are the non-universality of language, meaning, and understanding. We will

¹² Michael Lambek, "Is Religion Free?," in *Politics of Religious Freedom*, ed. Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood, and Peter G. Danchin (Chicago: The University of Chicago Press, 2015), 289.

¹³ Michael Stokes Paulsen, "Is Religious Freedom Irrational?," *Michigan Law Review* 112, no. 1 (2014): 1055, accessed March 25, 2020, https://www-jstor-org.proxy-ub.rug.nl/stable/23813064?seq=1#metadata_info_tab_contents.

¹⁴ Mariam Rawan Abdulla, "Culture, Religion, and Freedom of Religion or Belief," *The Review of Faith & International Affairs* 16, no. 4 (2018): 105, accessed March 9, 2020, <https://www-tandfonline-com.proxy-ub.rug.nl/doi/pdf/10.1080/15570274.2018.1535033?needAccess=true>.

¹⁵ Abdulla, "Culture, Religion, and Freedom of Religion or Belief," 105.

¹⁶ Elizabeth Shakman Hurd, *Beyond Religious Freedom The New Global Politics of Religion* (Princeton: Princeton University Press, 2015), 6, accessed January 27, 2020, <https://www-degruyter-com.proxy-ub.rug.nl/viewbooktoc/product/465938>.

¹⁷ Hurd, "Beyond Religious Freedom," 67.

¹⁸ Hurd, "Beyond Religious Freedom," 67.

¹⁹ Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom*, 2nd ed. (Princeton: Princeton University Press, 2019), 1.

²⁰ Sullivan, "The Impossibility of Religious Freedom," xx.

see how this is the case in two examples, a long and a short one, in the following paragraphs.

First the short one. As Christoph Grüll and Erin K. Wilson argue, the terms 'religion' and 'rights' do not mean the same thing to everyone in the world. Therefore, they argue that the language we use to denote certain things must always be made suitable for the local context in which it is used.²¹ However, they also mention that having different language does not always lead to completely different meanings. It can very well be that different language can, to a certain extent, still lead to meanings that resonate with each other. For example, within projects on the right to FoRB in Indonesia terms like 'diversity' and 'tolerance' are used, as these terms are more normal to use in Indonesian society. However, these two terms can still be seen as resonating with the general goals of the right to FoRB, but this is not always the case. Especially regarding the concepts of 'religion' and the right to FoRB, there are different meanings in different societies. For example, in some societies, religion and the right to FoRB are seen as something individual, while in others they are seen as communal.²²

The long example focuses on how different understandings of 'religion' can make the right to FoRB quite limited and exclusionary in its implementation and reach. Above, we have seen that there is general agreement that defining religion for the purposes of law and governance can be a tricky business. However, this has not stopped governments from defining it anyway and from using this definition in their policies, both domestic and foreign.²³ Various scholars note that these definitions generally only include belief-based religions,²⁴ even though "most scholars of religion departed some time ago from the equation of religion with interiority and belief"²⁵ and "have spent most of their energy in the last thirty years decoupling religion from belief."²⁶ Focusing on beliefs when

²¹ Christoph Grüll and Erin K. Wilson, "Universal or Particular ... or Both? The Right to Freedom of Religion or Belief in Cross-Cultural Perspective," *The Review of Faith & International Affairs* 16, no. 4 (2018): 89, accessed February 5, 2020, <https://www.tandfonline.com/doi/full/10.1080/15570274.2018.1535046>.

²² Grüll and Wilson, "Universal or Particular ... or Both?," 89 + 91 + 93 + 97-99.

²³ Jan Figel, Special Envoy for the Promotion of Freedom of Religion or Belief Overview of Country Visits: Main Meetings and Activities," *European Commission* (website), European Union, accessed March 9, 2020, https://ec.europa.eu/international-partnerships/system/files/jan-figel-mission-reports_en_1.pdf. / Barbara Ann Rieffler-Flanagan, "Promoting the Right to Freedom of Religion: Diverse Pathways to Religious Tolerance and Freedom of Religion and the Implications for American Foreign Policy," *Human Rights Quarterly* 41, no. 1 (2019): 19, accessed February 28, 2020, <https://muse.jhu.edu/article/716359>. / Mauro Gatti, "The Log in Your Eye: Is Europe's External Promotion of Religious Freedom Consistent With its Internal Practice," *European Law Journal* 22, no. 2 (2016): 251 + 254 + 260-262, accessed March 9, 2020, <https://onlinelibrary-wiley-com.proxy-ub.rug.nl/doi/pdfdirect/10.1111/eulj.12162>. / "H.R.2431 – International Religious Freedom Act of 1998," *Congress.gov* (website), accessed April 29, 2020, <https://www.congress.gov/bills/105th-congress/house-bill/2431/text>. / Thomas F. Farr, "Diplomacy in an Age of Faith: Religious Freedom and National Security," *Foreign Affairs* 87, no. 2 (2008): 111, accessed March 3, 2020, <https://www.jstor-org.proxy-ub.rug.nl/stable/pdf/20032584.pdf?refreqid=excelsior%3Af9911f8923748b5ed3bb2827e6fedcd6>. / Elizabeth Shakman Hurd, "Alevi Under Law: The Politics of Religious Freedom in Turkey," *Journal of Law and Religion* 29, no. 3 (2014): 418, accessed March 3, 2020, https://www-cambridge-org.proxy-ub.rug.nl/core/services/aop-cambridge-core/content/view/95271064FEDD4B6DACF6CA4B1F19889F/S0748081414000186a.pdf/alevis_under_law_the_politics_of_religious_freedom_in_turkey.pdf.

²⁴ Elizabeth Shakman Hurd, "Believing in Religious Freedom," in *Politics of Religious Freedom*, ed. Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood, and Peter G. Danchin (Chicago: The University of Chicago Press, 2015), 47 + 49 + 51. / Webb Keane, "What is Religious Freedom Supposed to Free?," in *Politics of Religious Freedom*, ed. Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood, and Peter G. Danchin (Chicago: The University of Chicago Press, 2015), 58 + 61. / Hurd, "Beyond Religious Freedom," 55-56 + 60.

²⁵ Hurd, "Believing in Religious Freedom," in *Politics of Religious Freedom*, 47.

²⁶ Yvonne Sherwood, "On the Freedom of the Concepts of Religion and Belief," in *Politics of Religious Freedom*, ed. Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood, and Peter G. Danchin (Chicago: The University of Chicago Press, 2015), 34.

determining which groups see themselves as a religious group has been criticized by these scholars for various reasons.

One of these reasons is that defining religion as being solely based on belief is seen by scholars as a non-universal understanding²⁷ that “has been kicked into the sidelines as a Christian and colonial imposition.”²⁸ Another reason is that focusing on belief only to determine the lines of the right to FoRB means that, as Hurd puts it, people and groups not fitting within this determined form of FoRB “fall between the cracks.”²⁹ In other words, a definition of religion that is focused on religion as belief makes the right to FoRB exclusionary with regard to certain forms of religion. As Sullivan argues, this is problematic in both the governance and the judiciary: “Courts, legislatures, and other government agencies judge the activities of persons as religious or not as protected or not, based on the models of religion that often make a poor fit with religion as it is lived.”³⁰ Sullivan, and others, are worried that the definition of ‘religion’ that is used now to implement the right to FoRB leads to exclusion of those religions or parts of religions that are not solely based on beliefs.³¹

From the above, we can conclude that devising one, worldwide, universal definition of religion that will be used to implement the right to FoRB will be very difficult, as the main ingredients of such a definition, language, meaning, and understanding, cannot be said to be universal. Let us now turn from the definition-side of the debate to the policy-side of the debate. As we have seen above, several authors argue that ‘religion’ cannot be defined and that those definitions of it that have been devised are not fit to base policies upon. The second part of this chapter will focus on the main strands of critique from the academic world regarding the promotion of policies on the right to FoRB.

One of these strands of critique is that so much focus on ‘religion’ and the promotion of the right to FoRB as a way to solve problems, makes them act like a mask behind which there are other factors that play a role in a problem, which remain unseen now.³² Hurd mentions various examples of such other factors. including “economic, historical and political contexts.”³³ Other examples are “possibilities of coexistence”³⁴ or “an official marker of difference”³⁵ other than those based upon ‘religion’. The promotion of the right to FoRB is sometimes also used as a mask for other activities of the promotor. For example, discourses of religious freedom have been used to violate state sovereignty and legitimise

²⁷ Hurd, “Believing in Religious Freedom,” in *Politics of Religious Freedom*, 47 + 49.

²⁸ Sherwood, “On the Freedom of the Concepts of Religion and Belief,” in *Politics of Religious Freedom*, 34.

²⁹ Hurd, “Beyond Religious Freedom,” 41.

³⁰ Sullivan, “The Impossibility of Religious Freedom,” 10.

³¹ Hurd, “Alevis Under Law,” 435. / Keane, “What is Religious Freedom Supposed to Free?,” 58 + 61. / Hurd, “Believing in Religious Freedom,” 45-46 + 49-51 / Hurd, “Beyond Religious Freedom,” 14 + 41 + 54-55 + 60 + 63 + 117.

³² Hurd, “Beyond Religious Freedom,” 12 + 42 + 47 + 111-112 + 116-119.

³³ Hurd, “Beyond Religious Freedom,” 12 + 42 + 47.

³⁴ Hurd, “Beyond Religious Freedom,” 62.

³⁵ Hurd, “Beyond Religious Freedom,” 42.

building an empire as well as colonial and neo-colonial agendas. Also, improving the right to FoRB for minorities has been used by some governments for electoral gain.³⁶

Above, we concluded that it is indeed very difficult to devise a universal definition of religion upon which a universal approach to the right to FoRB can be based. The strand of critique we will discuss now relates to this. Several authors disagree with each state having to take the same approach when it comes to implementing the right to FoRB. For example, Barbara Ann Rieffler-Flanagan argues that "It is also important to understand that not all societies developed religious freedom in the same manner. Thus, one-size-fits-all policies that apply the same approach to all countries and cultures are bound to fail."³⁷ Several authors agree with her, arguing that the historical development of the right to FoRB is different in each state, due to which a universal approach indeed will not work.³⁸ For example, according to David Little, "What religious freedom means in one national context may be altogether different from what it means in another."³⁹ Also, Méadhbh McIvor, in a review of various books on the right to FoRB, concludes that "a common thread is the ever contested (and ever contestable) nature of "religious freedom," an historical product that, although shaped by global powers, cannot be separated from the local context."⁴⁰ According to Rieffler-Flanagan, this strand of critique will not cease to exist until the right to FoRB is always addressed within the relevant historical context:

*"It also seems essential for policy-makers to understand the diverse paths to religious freedom throughout the world. There is no one size fits all recipe for religious freedom. Expanding the societies that enjoy religious freedom is possible, but it will take time and better knowledge of the dynamics at work."*⁴¹

In other words, it will take time and acquiring knowledge before the promotion of the right to FoRB can be seen as locally grounded. This thesis aims to contribute to this process.

Addressing the strand of critique that we will discuss now might also be helpful in achieving this goal. This third strand of critique has to do with the difference between the promotion of religious tolerance and the promotion of the right to FoRB. Rieffler-Flanagan

³⁶ Tisa Wenger, *Religious Freedom: The Contested History of an American Ideal* (Chapel Hill: University of North Carolina Press, 2017), 13-14 + 98, accessed March 4, 2020, https://www-jstor-org.proxy-ub.rug.nl/stable/10.5149/9781469634630_wenger. / Anna Su, *Exporting Freedom Religious Liberty and American Power* (Cambridge: Harvard University Press, 2016), 159, accessed March 11, 2020, <https://hup-degruyter-com.proxy-ub.rug.nl/view/title/514506>. / Dian A.H. Shah, *Constitutions, Religion and Politics in Asia: Indonesia, Malaysia and Sri Lanka* (Cambridge: Cambridge University Press, 2017): 204-206 + 258, accessed October 24, 2019, <https://www-cambridge-org.proxy-ub.rug.nl/core/books/constitutions-religion-and-politics-in-asia/E5E7A39134CF57D7EB073413F6CDA19A>. / Saba Mahmood, "Religious Freedom, Minority Rights, and Geopolitics," in *Politics of Religious Freedom*, ed. Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood, and Peter G. Danchin (Chicago: The University of Chicago Press, 2015), 145 + 148.

³⁷ Rieffler-Flanagan, "Promoting the Right to Freedom of Religion," 35.

³⁸ Rieffler-Flanagan, "Promoting the Right to Freedom of Religion," 35 + 38. / José Casanova, "Balancing Religious Freedom and Cultural Preservation," in *Religion and Foreign Affairs Essential Readings*, ed. Dennis R. Hoover and Douglas M. Johnston (Waco: Baylor University Press, 2012), 511. / David Little, "Does the Human Right to Freedom of Conscience, Religion and Belief Have Special Status?," in *Religion and Foreign Affairs Essential Readings*, ed. Dennis R. Hoover and Douglas M. Johnston (Waco: Baylor University Press, 2012), 503 + 506. / Su, "Exporting Freedom," 3-4 + 161-162. / Méadhbh McIvor, "Religious Freedom and the Politics of Empire," *Religious Studies Review* 44, no. 1 (2018): 60 + 63, accessed February 28, 2020, <https://onlineibrary-wiley-com.proxy-ub.rug.nl/doi/pdfdirect/10.1111/rsr.13410>.

³⁹ Little, "Does the Human Right to Freedom of Conscience," 503.

⁴⁰ McIvor, "Politics of Empire," 63.

⁴¹ Rieffler-Flanagan, "Promoting the Right to Freedom of Religion," 38.

wrote an article in which she discusses these differences. According to her, those that say to promote the right to FoRB are actually promoting religious tolerance. Moreover, these two terms are actually often used interchangeably, which makes everything all the more confusing. However, Rieffler-Flanagan attempts to set the record straight when it comes to defining these two terms, saying that the confusion is caused due to these two terms not being clearly defined yet.⁴² Thomas F. Farr, agrees that promoters of the right to FoRB indeed confuse promoting religious tolerance with promoting the right to FoRB. In one of his articles, he writes the following on the US International Religious Freedom Act:

*"That law mandated that the promotion of religious liberty be a central element of U.S. foreign policy. But neither Democratic nor Republican administrations, nor the U.S. State Department, have seen the IRF Act as a broad policy tool – indeed as anything more than a narrow humanitarian measure unrelated to broader U.S. interests. A new policy on religious freedom can begin by tapping the law's considerable potential. But long-term success will require a significant broadening of the current emphasis on opposing religious persecution and getting religious prisoners out of jail."*⁴³

The right to FoRB, on the other hand involves far more, according to Rieffler-Flanagan: "The essence of FoRB is the ability of an individual or group of individuals (in association) to engage with a set of beliefs, or theological principles, and pursue related activities, without discrimination."⁴⁴

We have now come to the final strand of critique that will be discussed in this chapter. Several authors criticize the implementation of the right to FoRB for being too selective and too regulating, in the sense that state authorities decide which religion can count upon protection under the right to FoRB and which religion cannot.⁴⁵ As Sullivan says: "The right kind of religion, the approved religion, is always that which is protected, while the wrong kind, whether popular or unpopular, is always restricted or even prohibited."⁴⁶ Hurd agrees with this and in her book *Beyond Religious Freedom* we can find an example of which type of religion is seen as "the right kind of religion"⁴⁷ and which as "the wrong kind"⁴⁸ by using the United States (US) as an example. She describes the right kind of religion, 'right' as seen through the eyes of the US. According to the US, a right

⁴² Rieffler-Flanagan, "Promoting the Right to Freedom of Religion," 23-25.

⁴³ Farr, "Diplomacy in an Age of Faith," 111.

⁴⁴ Rieffler-Flanagan, "Promoting the Right to Freedom of Religion," 24.

⁴⁵ Hurd, "Beyond Religious Freedom," 84 + 112 + 54. / Heiner Bielefeldt, "Misperceptions of Freedom of Religion or Belief," *Human Rights Quarterly* 35, no. 1 (2013): 37 + 40, accessed March 3, 2020, <https://www-jstor-org.proxy-ub.rug.nl/stable/pdf/23352251.pdf?refreqid=excelsior%3A4efc749fde304f556bc646b42e3fafdf>. / Wenger, "Religious Freedom," 239. / Hurd, "Believing in Religious Freedom," 54-55. / Courtney Bender, "The Power of Pluralist Thinking," in *Politics of Religious Freedom*, ed. Winnifred Fallers Sullivan, Elizabeth Shakman Hurd, Saba Mahmood, and Peter G. Danchin (Chicago: The University of Chicago Press, 2015), 71. / James T. Richardson, "Managing Religion and the Judicialization of Religious Freedom," *Journal for the Scientific Study of Religion* 54, no. 1 (2015): 2, accessed March 2, 2020, <https://onlinelibrary-wiley-com.proxy-ub.rug.nl/doi/pdfdirect/10.1111/jssr.12172>.

⁴⁶ Sullivan, "The Impossibility of Religious Freedom," 154.

⁴⁷ Sullivan, "The Impossibility of Religious Freedom," 154.

⁴⁸ Sullivan, "The Impossibility of Religious Freedom," 154.

kind of religion is a religion that is "peaceful,"⁴⁹ "tolerant"⁵⁰ and "good."⁵¹ Moreover, it is a religion that conforms "to an American understanding of what it means for religion to be free."⁵² A good religion should also blend "seamlessly into support for the international authorities."⁵³ A wrong kind of religion, on the other hand is seen as "dangerous,"⁵⁴ "intolerant"⁵⁵ and "bad."⁵⁶ Moreover, it is seen as not conforming "to an American understanding of what it means for religion to be free."⁵⁷ A wrong religion also is seen as "fractious or seditious"⁵⁸ and as contravening international authorities.⁵⁹

This selectiveness leads to certain minority religions feeling the need to make changes to their religion in order to have a place in the category of approved religions. An example of this is the Buddhistic minority living in Bali, Indonesia. The people belonging to this minority changed their religion in such a way that it would be recognized by the government of Indonesia.⁶⁰ However, as we have seen now, the various authors critiquing the selectiveness and regulating forces surrounding the implementation of the right to FoRB feel like such changes should not have been necessary. As Heiner Bielefeldt argues in his article *Misperceptions of Freedom of Religion or Belief*: "When in doubt, it is best to err on the side of being too inclusive rather than run the risk of excluding some people from the protection of freedom of religion or belief."⁶¹

The question this chapter explored is 'What are the current disagreements and points of tension regarding how the right to Freedom of Religion or Belief is understood and applied?' The goal of answering this question was to identify the main sources for the contestation between local and universal approaches to the right to FoRB.

After immersing ourselves in the academic debate on defining and implementing the right to FoRB, the answer to this question can be said to be the following. The authors contributing to the debate on the right to FoRB both question its theoretical universality (conceptualizations of 'religion' and the 'right to FoRB') as well as its practical universality (the one-size-fits-all approach upon which spreading and implementing the right to FoRB seems to be based). The theoretical universality is questioned because the main ingredients of conceptualizations of 'religion' and the 'right to FoRB', which are language, meaning and understanding, are seen as non-universal. Therefore, these ingredients could not possibly lead to universal conceptualizations. The practical universality is questioned

⁴⁹ Hurd, "Beyond Religious Freedom," 10.

⁵⁰ Hurd, "Beyond Religious Freedom," 16.

⁵¹ Hurd, "Beyond Religious Freedom," 24 + 30.

⁵² Hurd, "Beyond Religious Freedom," 18 + 74 + 82.

⁵³ Hurd, "Beyond Religious Freedom," 36.

⁵⁴ Hurd, "Beyond Religious Freedom," 10.

⁵⁵ Hurd, "Beyond Religious Freedom," 16.

⁵⁶ Hurd, "Beyond Religious Freedom," 24 + 30.

⁵⁷ Hurd, "Beyond Religious Freedom," 18 + 74 + 82.

⁵⁸ Hurd, "Beyond Religious Freedom," 36.

⁵⁹ Hurd, "Beyond Religious Freedom," 36.

⁶⁰ Jeremy Menchik, *Islam and Democracy in Indonesia Tolerance Without Liberalism* (Cambridge: Cambridge University Press, 2015), 104-105, accessed February 3, 2020, <https://www.cambridge-org.proxy-ub.rug.nl/core/books/islam-and-democracy-in-indonesia/B7C0584E5C1F121C4C561474F5B2ECE6>.

⁶¹ Heiner Bielefeldt, "Misperceptions," 40.

for several reasons. First, solving problems by implementing the right to FoRB is seen as masking other aspects of these problems. Second, implementing the right to FoRB in the same way in different places can exclude other views on and understandings of the right to FoRB. Third, the focus on religion as belief creates a selective use of FoRB through which religions as lived are being excluded. And fourth, regulating religion and FoRB is seen as leading to the inclusion of too few religions.

Achieving the goal of this chapter means that we now know more about the difficulties that come with defining and implementing the right to FoRB universally and the reasons why it should be defined and implemented in a more locally grounded way. In the following chapters of the thesis, this will help us in finding a locally grounded approach to FoRB through the case study on Indonesia.

Chapter 2: International Perspectives on the Right to FoRB

In the previous chapter, we looked into the reasons that authors have for problematizing the act of defining religion and the implementation of the right to FoRB based on certain definitions. In this chapter, we leave theory to a certain extent and dive into practice: views on what the right to FoRB entails in the real world. These views can be found in international human rights documents and national constitutions. The full names of these documents and the specific articles on the right to FoRB can be found in Table 1. In this table, their abbreviated names that will be used in this chapter can also be found. In this chapter, a content analysis will be used to answer the following question: How has the right to Freedom of Religion or Belief been enshrined in international human rights documents? The content analysis will consist of looking at the articles in the documents we use and compare them to see which common elements can be found. We will see in this chapter that five common elements can be found, which together will make up the internationally agreed view (international view). We call this the international view, as the documents upon which this view is based come from international and regional organizations. In other words, this international view can be seen as the internationally agreed view, as many states support this view based on the documents that are part of the content analysis. It is critical to find this view in order to move forward with this thesis. During the case study that will be executed in the third and fourth chapter, we will compare the Indonesian view on FoRB to the international view. This of course necessitates establishing what this international view is, which is the goal of the current chapter.

We will start our content analysis by looking at human rights documents from the United Nations (UN). We will start with these documents, as many states are involved with them, which we will see below. Therefore, these documents can be seen as a great source when wanting to find out what the international view is.⁶² We will look at three UN-documents: the Universal Declaration of Human Rights (UDHR)⁶³, the International Covenant on Civil and Political Rights (ICCPR)⁶⁴ and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN Declaration).⁶⁵

Both the UDHR and the UN Declaration were proclaimed by the UN General Assembly (UNGA), which consist of all UN members.⁶⁶ At the time of the proclamation of the UDHR, 58 states were part of the UN.⁶⁷ This might not seem like that many states, but "The UDHR

⁶² "Member States," *United Nations* (website), accessed April 15, 2021, <https://www.un.org/en/about-us/member-states>.

⁶³ Stichting T.M.C. Asser Instituut, *Selected Course Materials Elementary International Law 2013*, (The Hague: T.M.C. Asser Press, 2013), 179.

⁶⁴ Stichting T.M.C. Asser Instituut, "Selected Course Materials," 185.

⁶⁵ United Nations General Assembly, "Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief," *United Nations Human Rights Office of the High Commissioner* (website), United Nations, accessed April 17, 2020, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>.

⁶⁶ "Functions and Powers of the General Assembly," *United Nations* (website), accessed April 25, 2021, <https://www.un.org/en/ga/about/background.shtml>. / "Universal Declaration of Human Rights," *United Nations* (website), accessed April 19, 2020, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. / United Nations General Assembly, "Declaration on the Elimination," <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>.

⁶⁷ *Encyclopaedia Britannica*, s.v. "Members of the United Nations," accessed May 29, 2021, <https://www.britannica.com/topic/Members-of-the-United-Nations-1788877>.

is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).⁶⁸ In other words, this document can be seen as very influential within the world of human rights documents, which justifies its inclusion in this content analysis. At the time of the proclamation of UN Declaration, the UN had 158 members.⁶⁹ The ICCPR was not proclaimed by the UNGA, but still 173 states are party to this covenant, which is a large number of states.⁷⁰ In other words, the articles in these documents on what the right to FoRB entails in practice can be said to be useful in relation to the goal of this chapter.

In the UDHR, article 18 is the article on religion and the right to FoRB. It says:

"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."⁷¹

In the ICCPR, article 18 is also the article on religion and the right to FoRB. This article says:

"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."⁷²

⁶⁸ "Universal Declaration of Human Rights," *United Nations* (website), accessed April 19, 2020, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

⁶⁹ *Encyclopaedia Britannica*, s.v. "Members of the United Nations," accessed May 29, 2021, <https://www.britannica.com/topic/Members-of-the-United-Nations-1788877>.

⁷⁰ "Status of Ratification Interactive Dashboard - International Covenant on Civil and Political Rights," *United Nations Human Rights Office of the High Commissioner* (website), United Nations, accessed April 19, 2020, <https://indicators.ohchr.org>.

⁷¹ Stichting T.M.C. Asser Instituut, "Selected Course Materials," 179.

⁷² Stichting T.M.C. Asser Instituut, "Selected Course Materials," 185.

The UN Declaration has eight articles, of which articles one and five are most relevant in relation to the goal of this chapter:

“Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.”⁷³

“Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.”⁷⁴

When looking at these specific articles of the three UN-documents, we see that they generally say the same things, even though the ICCPR and the UN Declaration provide more elaboration than the UDHR on justifications for limiting this right. The general components that we can take from this are the following:

⁷³ United Nations General Assembly, “Declaration on the Elimination,” <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>.

⁷⁴ United Nations General Assembly, “Declaration on the Elimination,” <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>.

1. The right to FoRB defined as the 'freedom of thought, conscience and religion'.
2. The possibility to choose every religion as your own and the parental right to choose your children's religion, without any coercion.
3. The possibility to change to another religion.
4. The possibility to manifest your religion, individually or in community and in both private and public places, through teaching, practice, worship and/or observance.
5. The possibility of limiting the right to FoRB to protect public safety, order, health, morals or the fundamental rights and freedoms of others.⁷⁵

As mentioned in the introduction, the overall goal of this thesis is to develop a locally grounded analytical framework and method in relation to the right to FoRB. In the spirit of locally grounding, it would be good to not only focus on what global documents from the UN say about the right to FoRB, but to also take into account regional human rights documents. It might be that they say different things with regard to the right to FoRB. Therefore, including these documents in our content analysis makes this international view supported at both a global and a regional level.

Let us start with the European Union (EU), from which we will consider two documents in our content analysis: the EU Charter on Fundamental Rights and the European Convention on Human Rights. We see in these documents that the EU agrees to a large extent with these general components. The only difference is that these documents do not mention anything on choosing your children's religion as a parental right and on choosing your religion without any coercion. However, you could argue that the text in these documents implies agreement with these two general components as well.⁷⁶

When looking at the other regional documents from Table 1 (the Arab Charter, the American Convention, the African Charter and the ASEAN Declaration), we also see that these documents are quite in agreement with the UN-documents. In other words, they do not necessitate us to change the five general components making up the international view states above. For example, all four documents use a definition of the right to FoRB that is similar to the one used in the UN-documents.⁷⁷ In the Arab Charter, we read "The freedom of thought, conscience and opinion."⁷⁸ In the African Charter, article 8 states that "Freedom

⁷⁵ Stichting T.M.C. Asser Instituut, "Selected Course Materials," 179 + 185. / United Nations General Assembly, "Declaration on the Elimination," <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>.

⁷⁶ "Article 10 – Freedom of Thought, Conscience and Religion," *EU Charter of Fundamental Rights* (website), European Union Agency for Fundamental Rights, accessed April 6, 2020, <https://fra.europa.eu/en/eu-charter/article/10-freedom-thought-conscience-and-religion>. / Stichting T.M.C. Asser Instituut, "Selected Course Materials," 253.

⁷⁷ Members of the League of Arab States, "Arab Charter on Human Rights" *refworld* (website), accessed April 6, 2020, <https://www.refworld.org/docid/3ae6b38540.html>. / Members of the Organization of African Unity, "African Charter of Human and People's Rights," *African Union* (website), accessed April 6, 2020, https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf. / Members of the Organization of American States, "American Convention on Human Rights: "Pact of San José, Costa Rica"," *United Nations Treaty Collection* (website), United Nations, accessed April 17, 2020, <https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf>. / Members of the Association of Southeast Asian Nations, "ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration," *Association of Southeast Asian Nations* (website), accessed April 6, 2020, https://www.asean.org/storage/images/ASEAN_RT_K_2014/6_AHRD_Booklet.pdf.

⁷⁸ Members of the League of Arab States, "Arab Charter," <https://www.refworld.org/docid/3ae6b38540.html>.

of conscience, the profession and free practice of religion shall be guaranteed.”⁷⁹ The American Charter mentions that “Everyone has the right to freedom of conscience and of religion.”⁸⁰ The definition of the ASEAN Declaration is the most similar to the one in the UN-documents: “Every person has the right to freedom of thought, conscience and religion.”⁸¹ Also, the American Convention allows the manifestation of religion or belief individually and in community and in private and public spaces as well as choosing your children’s religion as a parental right.⁸² Moreover, the component on allowed limitations can be found in some form in all of these four regional documents.⁸³

However, something that is also noticed when reading these regional documents is that many of the general components are not mentioned at all. This means that, based solely on these texts, these things are neither prohibited, nor allowed explicitly. However, it often seems the case that the documents imply that these things are allowed.⁸⁴ An example of this can be found in the African Charter, in which article 11 mentions “the right to assemble freely with others.”⁸⁵ This basically means that you can also manifest your belief or religion together with others, in a community. This brings us again to Grill and Wilson, whose article’s central argument is that “the *language* of FoRB is not universal.”⁸⁶ With this, they mean that different language can refer to the same, or similar, things.⁸⁷

These similarities can mean that there is agreement on certain things between the regional and the global level according to the text of the documents discussed. Therefore, the content of these regional documents does not necessitate changing the components of the international view states above. However, the fact that several of the general components are not mentioned at all in many of the regional documents means that the research done in this thesis is very necessary. Some of these general components not being mentioned, leaves us unable to determine whether or not there is agreement on these as well. This only underlines the relevance of the research done in this thesis, as we clearly need more knowledge on what a state’s legal position on FoRB is in order to ensure that we take adequate steps when attempting to improve human rights records worldwide.

⁷⁹ Members of the Organization of African Unity, “African Charter,” https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf.

⁸⁰ Members of the Organization of American States, “American Convention on Human Rights,” <https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf>.

⁸¹ Members of the Association of Southeast Asian Nations, “ASEAN Human Rights Declaration,” https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf.

⁸² Members of the Organization of American States, “American Convention on Human,” <https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf>.

⁸³ Members of the League of Arab States, “Arab Charter,” <https://www.refworld.org/docid/3ae6b38540.html>. / Members of the Organization of African Unity, “African Charter,” https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf. / Members of the Organization of American States, “American Convention on Human Rights,” <https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf>. / Members of the Association of Southeast Asian Nations, “ASEAN Human Rights Declaration,” https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf.

⁸⁴ Members of the League of Arab States, “Arab Charter,” <https://www.refworld.org/docid/3ae6b38540.html>. / Members of the Organization of African Unity, “African Charter,” https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf. / Members of the Organization of American States, “American Convention on Human Rights,” <https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf>. / Members of the Association of Southeast Asian Nations, “ASEAN Human Rights Declaration,” https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf.

⁸⁵ Members of the Organization of African Unity, “African Charter,” https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf.

⁸⁶ Grill and Wilson, “Universal or Particular ... or Both?,” 89.

⁸⁷ Grill and Wilson, “Universal or Particular ... or Both?,” 89.

The question we wanted to answer in this chapter was: How has the right to Freedom of Religion or Belief been enshrined in international human rights documents? The answer to this question was needed to identify the international view to which we can compare the Indonesian view during the case study. Based on a content analysis of UN-documents on human rights, we came to five general components of the right to FoRB which together will make up the international view used in this thesis. We also found that these five components can be seen as compatible with the text of several regional human rights documents. We will now use this international view during the case study in the following two chapters to see where the differences and similarities lie between this view and the Indonesian view on religion and the right to FoRB.

Table 1

Name of the Document	Name Used in the Analysis	Articles on the right to FoRB
The Universal Declaration on Human Rights	The UDHR (also part of UN-documents)	Article 18
The International Covenant on Civil and Political Rights	The ICCPR (also part of UN-documents)	Article 18
The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief	The UN Declaration (also part of UN-documents)	Article 1-8
The European Union Charter of Fundamental Rights	The EU Charter (also part of EU-documents)	Title II. Freedoms, Article 10
The European Convention on Human Rights	The EU Convention (also part of EU-documents)	Article 9
The Arab Charter on Human Rights	The Arab Charter	Article 26-28
The African Charter on Human and Peoples' Rights	The African Charter	Article 8 /11 / 17.3
The American Convention on Human Rights	The American Convention	Article 12 / 13
The ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the	The ASEAN Declaration	Article 22 / 24

ASEAN Human Rights Declaration (AHRD)		
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Chapter 3: Laws on Religion and the Right to FoRB in Indonesia

The start of this chapter marks the start of the case study on Indonesia. In chapter two, the goal was to identify an international view on FoRB which we needed to make the comparison with the Indonesian view. This chapter will be all about this comparison and consists of two sections. In the first section, our goal is to identify the second part of the comparison, which is the Indonesian view. Our guiding question will be 'How is the right to Freedom of Religion or Belief enshrined in Indonesian law?' In other words, just as in the previous chapter, we will look at legal documents on the right to FoRB. The goal of the second section of this chapter is to actually make the comparison and find out which similarities and differences there are between the international and the Indonesian view. Our guiding question during the second section will be 'What are the differences and similarities between the international view on Freedom of Religion or Belief and the way Freedom of Religion or Belief is enshrined in Indonesian law?'

The Current Legal Situation in Indonesia Regarding the Right to FoRB

This section of the chapter provides an overview of the current situation in Indonesia regarding the right to FoRB. We will first look at what the Constitution of the Republic of Indonesia says about the right to FoRB. After that, we will discuss the laws on religion that exist in Indonesia and the Ministry that makes and implements them.

The Constitution of Indonesia consists of several sections and the information on FoRB can be found in the sections on human rights and religion. Here, we find articles 28E and 29:

Article 28E:

"(1) Every person shall be free to choose and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.

(2) Every person shall have the right to the freedom to believe his/her faith (kepercayaan), and to express his/her views and thoughts, in accordance with his/her conscience.

(3) Every person shall have the right to the freedom to associate, to assemble and to express opinions."⁸⁸

⁸⁸ "The 1945 Constitution of the Republic of Indonesia," <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50148/71540/F795093174/IDN50148%20English.pdf>.

Article 29:

"(1) The State shall be based upon the belief in the One and Only God.

*(2) The State guarantees all persons the freedom of worship, each according to his/her own religion or belief."*⁸⁹

When looking at these articles of the Constitution on religion and the right to FoRB, they seem to mean that each Indonesian citizen should be able to fully execute all actions belonging to the religion of his or her choice. This actually is quite similar to what the international view that was presented in the previous chapter says. Of course, the constitution is not the only legal content that is used to govern religion and the right to FoRB in Indonesia. There also are various 'normal' laws on religion that govern religion and FoRB. We will discuss these laws in the remainder of this section and see whether these laws and their effects do make the Indonesian view on the right to FoRB differ from the international view.

These laws are devised and implemented by the Indonesian Ministry of Religious Affairs (MORA). This Ministry was founded in 1946⁹⁰ and has since then been one of the most important government institutions in Indonesia. This can be seen in the amount of funding it obtains. Only the Defence Ministry and the National Police obtain more funding. Moreover, the funding MORA receives for religious education amounts to more than the total amount of funding received by the Ministry of Education and Culture.⁹¹ Since its founding in 1946, MORA has made many laws on religion and FoRB.⁹² Some of these laws will be discussed in this chapter shortly and in greater depth in the fourth chapter.

In Indonesia, only six religions, and then only specific forms of those religions, are designated as an official religion: Islam, Protestantism, Catholicism, Confucianism, Buddhism and Hinduism. These religions are called the *agama* and are chosen because they are seen as adhering to the requirements for a religion.⁹³ These requirements were published in a 1952 regulation, which said that

"for a community to be recognized as having a religion (agama), it had to profess an internationally recognized monotheistic creed with a holy scripture, embrace the idea

⁸⁹ "The 1945 Constitution of the Republic of Indonesia,"

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50148/71540/F795093174/IDN50148%20English.pdf>.

⁹⁰ Melissa Crouch, "Shifting Conceptions of State Regulation of Religion: The Indonesian Draft Law on Inter-Religious Harmony," *Global Change, Peace & Security* 25 no. 3 (2013): 267, accessed May 10, 2020, <https://www.tandfonline-com.proxy-ub.rug.nl/doi/pdf/10.1080/14781158.2013.764859?needAccess=true>.

⁹¹ Martin van Bruinessen, "The Governance of Islam in Two Secular Polities: Turkey's Diyanet and Indonesia's Ministry of Religious Affairs," *European Journal of Turkish Studies* 27 (2018): § 3, accessed May 10, 2020, <https://journals.openedition.org/ejts/5964#text>.

⁹² Crouch, "Shifting Conceptions," 266.

⁹³ Marshall, "The Ambiguities," 86.

*of prophethood, and adhere to universal ethical teachings (i.e., teachings not exclusive to a particular race, tribe, or ethnicity).*⁹⁴

In the fourth chapter, we will explain more on why such a definition was deemed necessary within Indonesia.

In Indonesia, belonging to one of the *agama* does not just mean belonging to a recognized religion. It basically means being recognized by the state, as these religions are the only ones that can be placed in the religion-box on your Identity Card (ID). Without claiming to belong to such a religion, you cannot have an ID, which means that you will not be able to access government services. Belonging to an *agama* also allows you to build houses of worship and register marriages and child births.⁹⁵ For non-*agama* groups, like the *aliran kepercayaan* and the *aliran sesat*, this situation is very problematic.

The *aliran kepercayaan* are traditional religions. People belonging to these groups often combine their religion with one of the *agama* in order for their situation to become less problematic. However, the outcome of a Constitutional Court case in November 2017, might be more helpful. The Court stated that there should be a seventh option for the religion-box on the ID, especially for people belonging to the *aliran kepercayaan*.⁹⁶ This certainly places them in a better position than the *aliran sesat*, who are seen as heretics in relation to one of the *agama*, which means they are completely forbidden. Examples of religious groups belonging to the *aliran sesat* are the Shia, the Ahmadiyyah and the Gafatar, which all are seen as a heresy in relation to Islam. These groups face discrimination and often also violence against their houses of worship, schools or even adherents.⁹⁷

So, as we see above, there is a hierarchy of religions in Indonesia. Such a hierarchy, in which some religions are allowed and others are not seems to deviate from the Constitutional articles mentioned above, and thus seems to deviate from the international view as well. The laws on religion and FoRB in Indonesia are actually all very much linked to this hierarchy, as we will see beneath. Thus, it could be argued that the regulation on what are *agama* and what are not is the basis upon which all further policy regarding religion and FoRB has been based. This hierarchy being so clear and so influential, in terms of many other policies on religion being based upon this hierarchy, means that it is an important part of the current legal situation on FoRB in Indonesia. Therefore, it is important to find explanations for why and how this hierarchy came to be in place. We will have ample space for this in the next chapter.

⁹⁴ Yüksel Sezgin and Mirjam Künkler, "Regulation of "Religion" and the "Religious": The Politics of Judicialization and Bureaucratization in India and Indonesia," *Comparative Studies in Society and History* 56, no. 2 (April 2014): 464, accessed April 29, 2020, <https://www-jstor-org.proxy-ub.rug.nl/stable/pdf/43908509.pdf?refreqid=excelsior%3Ad878bf2e20b4254e62b70b1a7e8ed7d9>.

⁹⁵ Marshall, "The Ambiguities," 86.

⁹⁶ Marshall, "The Ambiguities," 87-88. / Andreas Harsono, "Indonesia Ruling Lifts Blasphemy Prosecution Threat to Religious Minorities," *Human Rights Watch* (website), accessed May 4, 2020, <https://www.hrw.org/news/2017/11/07/indonesia-ruling-lifts-blasphemy-prosecution-threat-religious-minorities>.

⁹⁷ Marshall, "The Ambiguities," 87 + 88-91

The Blasphemy Law can certainly be seen as a policy based upon this hierarchy, as it has been helpful in limiting diversions from the official religions. This law originates from a decree in 1965 by then President Suharto⁹⁸ and is also part of the Indonesian Criminal Code in the form of article 156A:

"By a maximum imprisonment of five years shall be punished any person who deliberately in public gives expression to feelings or commits an act,

- 1. which principally have the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia;*
- 2. with the intention to prevent a person to adhere to any religion based on the belief of the almighty God."⁹⁹*

In recent years, there have been quite some examples of the application of the Blasphemy Law. The most famous one is the Ahok case, concerning a man who is both Christian and Chinese and who was running for the office of governor of Jakarta. The reason he was convicted for blasphemy was a video (which turned out to be manipulated) in which he interpreted a Quran verse in a way that was seen as blasphemous by several Islamist groups.¹⁰⁰ In another case, a Buddhist woman was convicted for blasphemy after asking whether the volume of the call to prayer of a mosque nearby her house could be lowered.¹⁰¹ In yet another case, a mentally ill Catholic woman was convicted for blasphemy after she went looking for her husband in a mosque, accusing the people in the mosque of trying to make her husband convert to Islam so he could divorce her. The reason for her conviction also was that she entered the mosque wearing shoes and with her dog.¹⁰²

The blasphemy law has also been a basis for conviction of leaders and members of groups belonging to the *aliran sesat*, like the Gafatar.¹⁰³ The 2008 Ahmadiyya Decree, under the presidency of Susilo Bambang Yudhoyono (SBY) can also be seen as inspired by the Blasphemy Law, as the Ahmadiyyah are seen as a heresy in relation to the proper

⁹⁸ Marshall, "The Ambiguities," 89. / Shah, "Constitutions, Religion and Politics in Asia," 131-132.

⁹⁹ "Indonesian Penal Code," *United Nations Office on Drugs and Crime* (website), United Nations, accessed May 20, 2020, https://www.unodc.org/res/cld/document/idn/indonesian_penal_code_html/I.1_Criminal_Code.pdf.

¹⁰⁰ "Indonesia: Ex-Governor's Blasphemy Sentence Ends Prison Term Highlights the Law's Threat to Religious Minorities," *Human Rights Watch* (website), accessed May 1, 2020, <https://www.hrw.org/news/2019/01/23/indonesia-ex-governors-blasphemy-sentence-ends>. / "Indonesia Sends Jakarta Governor to Prison for Blasphemy Discriminatory Laws Put Religious Minorities at Risk," *Human Rights Watch* (website), accessed May 5, 2020, <https://www.hrw.org/news/2017/05/09/indonesia-sends-jakarta-governor-prison-blasphemy>.

¹⁰¹ Andreas Harsono, "Indonesia to Expand Abusive Blasphemy Law Revoke New Provisions Violating Basic Rights," *Human Rights Watch* (website), accessed May 5, 2020, <https://www.hrw.org/news/2019/10/31/indonesia-expand-abusive-blasphemy-law>. / Andreas Harsono, "The Human Cost of Indonesia's Blasphemy Law," *Human Rights Watch* (website), accessed May 5, 2020, <https://www.hrw.org/news/2018/10/25/human-cost-indonesias-blasphemy-law>.

¹⁰² Andreas Harsono, "Indonesian Woman With Mental Health Condition Charged With Blasphemy," *Human Rights Watch* (website), accessed May 1, 2020, <https://www.hrw.org/news/2019/07/18/indonesian-woman-mental-health-condition-charged-blasphemy>. / Associated Press, "Indonesia's Blasphemy Laws in the Headlines with Acquittal," *The Diplomat*, February 6, 2020, accessed May 5, 2020, <https://thediplomat.com/2020/02/indonesias-blasphemy-laws-in-the-headlines-with-acquittal/>.

¹⁰³ Andreas Harsono, "The Toxic Impact of Indonesia's Abusive Blasphemy Law," *Human Rights Watch* (website), accessed May 5, 2020, <https://www.hrw.org/news/2017/08/05/toxic-impact-indonesias-abusive-blasphemy-law>. / "Indonesia's Anti-Gafatar Campaign Ends in Blasphemy Convictions Religious Community Leaders Get Up to 5 Years for 'Deviant' Beliefs," *Human Rights Watch* (website), accessed May 1, 2020, <https://www.hrw.org/news/2017/03/07/indonesias-anti-gafatar-campaign-ends-blasphemy-convictions>.

Indonesian type of Islam.¹⁰⁴ This decree ordered the Ahmadiyyah “to stop spreading interpretations and activities that deviate from the principal teachings of Islam.”¹⁰⁵ The decree led militant Islamists to violently attack this community.¹⁰⁶

The Ahmadiyyah community is not the only religious community for which there are restrictions on the spreading of their religion. In 1978, a decree was issued which essentially meant a prohibition on proselytization:

"The spread of religion cannot be approved of when:

- 1) [it is] directed to a person or persons who already have another religion;*
- 2) [it is] done by resorting to enticement/distribution of money, clothes, food/drink, medicines and so on to attract persons who already have another religion;*
- 3) [it is] done by disseminating pamphlets, bulletins, magazines, books and other materials in areas/houses where the residents have another religion;*
- 4) [it is] done by making door-to-door visits on whatever pretext to those who already have another religion.”¹⁰⁷*

This does not, however, mean that people cannot switch religions. You can still convert to another allowed religion when it is really your own decision. However, this does not seem to happen a lot, as official conversion rates in Indonesia have always been very low.¹⁰⁸ The execution of the non-proselytization law thus means that options to change your religion to another religion of your choice are limited. This situation presents a deviation from the third aspect of the international law, which allows changing to another religion without any qualifications, as we saw in the second chapter.

During SBY's presidency, there was also another law issued, the 2006 Joint Regulation on Houses of Worship. This regulation administers whether a religious group can build a house of worship in a certain area based on support existing in this area for building it.¹⁰⁹ In order to determine whether there indeed is a sufficient amount of support, a religious group wishing to build a house of worship must fulfill the following requirements:

¹⁰⁴ Marshall, "The Ambiguities," 86-87 + 90-91.

¹⁰⁵ Andreas Harsono, "Indonesia's Ahmadiyah Push Back Against Discriminatory Laws Conversion Requirements for National ID Cards Prompt Protest," *Human Rights Watch* (website), accessed May 20, 2020, <https://www.hrw.org/news/2017/06/23/indonesias-ahmadiyah-push-back-against-discriminatory-laws>.

¹⁰⁶ Harsono, "Indonesia's Ahmadiyah Push Back."

¹⁰⁷ Hyung-Jun Kim, "The Changing Interpretation of Religious Freedom in Indonesia," *Journal of Southeast Asian Studies* 29, no. 2 (September 1998): 367, accessed May 7, 2020, <https://www-jstor-org.proxy-ub.rug.nl/stable/pdf/20072051.pdf?refregid=excelsior%3A8d50d44da769d0ea3d54a92e370e6e73>.

¹⁰⁸ Mirjam Künkler, "Law, Legitimacy, and Equality: The Bureaucratization of Religion and Conditions of Belief in Indonesia," in *A Secular Age Beyond the West Religion, Law and the State in Asia, the Middle East and North Africa*, ed. Mirjam Künkler, John Madeley, and Shylashri Shankar (Cambridge: Cambridge University Press, 2018), 108, accessed May 2, 2020, https://www-cambridge-org.proxy-ub.rug.nl/core/services/aop-cambridge-core/content/view/D1D5A28DB786E7E2C004E05F6A03562B/9781108417716c5_107-127.pdf/law_legitimacy_and_equality_the_bureaucratization_of_religion_and_conditions_of_belief_in_indonesia.pdf.

¹⁰⁹ Marshall, "The Ambiguities," 86-88.

1. "Prospective houses of worship must gather together the names and identity cards of at least 90 people who belong to the proto-congregation.
2. Prospective houses of worship must gather together the names and identity cards of at least 60 people who belong to other faiths, live in the area, and have no objection to the proposed building.
3. Formal approval must be gained from local head of the Religious Affairs Department.
4. Formal approval must be gained from the local inter-faith communication forum (Communication Forum for Religious Harmony (FKUB))."¹¹⁰

These requirements do not differ much from the ones stated in a 1969 document, which was revised by this Joint Regulation. The most important new addition is that if local residents are against the building of a certain house of worship, even though all of the above requirements are met, the local government must find another site for this house of worship. The Regulation also provides a temporary permit for 2 years for communities with less than 90 members. Also, local governments must protect houses of worship that have no permit yet and assist them in getting one.¹¹¹

Now that we have discussed many laws and regulations on religion, we can answer the question with which we started this section of the chapter: How is the right to Freedom of Religion or Belief enshrined in Indonesian law? We have seen that the right to FoRB is enshrined in law in such a way that only the official religions (the *agama*) are encouraged to practice their religion.

Similarities and Differences Between the International and the Indonesian view on the Right to FoRB

Now that we have discussed the international and Indonesian view on the right to FoRB, it is time to compare them. In the previous section, we already pointed to some ways in which the Indonesian view could be seen as similar to or different from the international view. In this section of the chapter, the goal is to look at the whole picture and find out to what extent these two views differ from each other by answering the question 'What are the differences and similarities between the international view on Freedom of Religion or Belief and the way Freedom of Religion or Belief is enshrined in Indonesian law?' We must know what the differences are between the two views in order to know which differences

¹¹⁰ Country Research Section of the Refugee Review Tribunal (RRT), "RRT Research Response," *refworld* (website), UNHCR The UN Refugee Agency, 5, accessed May 7, 2020, <https://www.refworld.org/pdfid/4b6fe1f00.pdf>.

¹¹¹ RRT, "RRT Research Response," 5.

are in need of explanation in the next part of the case study, which will be executed in chapter four.

Before starting the comparison, let us revisit the international view on religion and FoRB that we identified in chapter two:

1. The right to FoRB defined as the 'freedom of thought, conscience and religion'.
2. The possibility to choose every religion as your own and the parental right to choose your children's religion, without any coercion.
3. The possibility to change to another religion.
4. The possibility to manifest your religion, individually or in community and in both private and public places, through teaching, practice, worship and/or observance.
5. The possibility of limiting the right to FoRB to protect public safety, order, health, morals or the fundamental rights and freedoms of others.¹¹²

Previously, we talked about the 1952 decree, which contains the requirements determining which communities can officially call themselves religious communities in Indonesia and which cannot. In other words, the meaning of 'religion' is very clear in Indonesia. However, the implementation of these requirements seems to be not as consistent. For example, Judaism and Sikhism also can be seen as fulfilling the requirements stated in the 1952 decree. However, these are not recognized as official religions in Indonesia.¹¹³ So, the requirements are clear, but their implementation less so. In the first section of this chapter, we also concluded that this 1952 decree is the main determinant of what FoRB means in Indonesia, as it determines which religions are recognized and thus which religions are seen as worthy of protection under FoRB. Moreover, we concluded that the application of the other laws, decrees and regulations we discussed is based on which communities are recognized as a religion and which are not.

The same seems to be true when it comes to looking at the differences and similarities between the universal view on religion and FoRB, as identified in chapter two, and the current legal situation regarding religion and FoRB in Indonesia. As also discussed in chapter one, when making policy on FoRB, it needs to be clear what is seen as religion and what is not. In the previous section, we saw that MORA is very clear on which six religions are officially recognized and thus worthy of protection under FoRB: Islam, Protestantism, Catholicism, Confucianism, Buddhism and Hinduism. When making the comparison, this means that many of the elements of the international view are also true

¹¹² Stichting T.M.C. Asser Instituut, "Selected Course Materials," 179 + 185 / United Nations General Assembly, "Declaration on the Elimination," <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>.

¹¹³ Marshall, "Ambiguities," 86.

for Indonesia, but in the case of Indonesia really only for these six religions. The international view, on the other hand, seems to offer space for a far broader array of religions, as no lists of qualified religions can be found in the documents used in chapter two to identify the international view used in this thesis.¹¹⁴ This main difference causes, to a certain extent, differences in relation to all of the first four parts of this universal view.

With regard to the first one, there is a clear focus in Indonesia on these six religions, and not so much on non-religious beliefs or conscience. When it comes to choosing your own religion and the one of your children, this is very much possible in Indonesia, but again only when you choose one of the recognized religions. The same is true for conversion to another religion. This is possible, but only when it is really your own choice and only when you convert to one of the six recognized religions. When it comes to the fourth part of the universal view, we see that the same thing is happening. As we have seen in the first part of this chapter, only communities belonging to one of the six religions can build houses of worship. So, only people belonging to these six religions can manifest, practice, and observe their religion and worship according to their religion in public and in community. I think we can assume that, if it is allowed to manifest these religions in public and community, it is also allowed to do all this privately and individually. We also saw that teaching your religion is possible in Indonesia. This is happening a lot at schools. However, as the budget of MORA showed, it organizes and finances religious education in schools. Therefore, religious education in schools is only offered in relation to those religions recognized by MORA.¹¹⁵

So, what we see is that the main difference between the international view and the current legal Indonesian situation lies in the scope of FoRB. In Indonesia, the legal situation makes the scope of FoRB smaller than it is in the international view. The next chapter will focus on finding explanations on how and why this particular scope came into being by looking at political developments in Indonesian history. When discussing these developments, we will also keep the fifth element of the international view in mind. Identifying the Indonesian view on FoRB by only looking at the current legal situation has not yet told us enough to say something on differences and similarities between the Indonesian view and the fifth element of the international view. Focusing on political developments will hopefully allow us to also reach conclusions on this element.

In this chapter, we discussed the current legal situation on FoRB in Indonesia in order to identify the Indonesian view on FoRB and compare it to the international view we identified in the second chapter. There are two main things we need to take with us from this chapter

¹¹⁴ Stichting T.M.C. Asser Instituut, "Selected Course Materials," 179 + 185. / United Nations General Assembly, "Declaration on the Elimination," <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ReligionOrBelief.aspx>.

¹¹⁵ Kamaruddin Amin, "Evaluating Religious Education," *Jakarta Post*, November 15, 2013, accessed April 22, 2021, <https://www.thejakartapost.com/news/2013/11/15/evaluating-religious-education.html>.

to the next one. The first is the knowledge we now obtained on laws and regulations on religion and FoRB in Indonesia. The second is the observation we made on that the main difference between the international and Indonesian views is a difference in scope, which also forms the answer to the sub-question that was asked in the second section ('What are the differences and similarities between the international view on Freedom of Religion or Belief and the way Freedom of Religion or Belief is enshrined in Indonesian law?'). Finding explanations for this observation is the main goal of the next chapter.

Chapter 4: Local Political Explanations for the Legal Situation Regarding Religion and FoRB in Indonesia

The previous chapters have been building blocks for the fourth chapter of this thesis, which will consist of two sections.

In the first section of this chapter, our guiding question will be: Which political developments can be seen as key factors in explaining why Freedom of Religion or Belief in Indonesia came to be how it is now? We will discuss three developments: the desire for national unity, the bureaucratic quest for (religious) harmony and public order, and the ever-evolving relationship between the regime and the Muslim community in Indonesia. The choice for these developments was made for three main reasons.

The first reason is that focusing on political developments makes sense when trying to explain a legal situation. Fallers Sullivan argues that the way a state deals with religion and the right to FoRB is part of its political identity.¹¹⁶ Benjamin Berger agrees with this, arguing that laws on religion are made in such a way that they fit the political context in which they are implemented.¹¹⁷ In other words, politics decides which laws on religion and FoRB are devised and implemented, which necessitates a focus on political developments when wishing to find out how a certain legal situation on religion and FoRB came to be like it is. The second reason is that based on research on the religious and political history of Indonesia, the result of which we will see in the first section of this chapter, these developments can be seen as the main developments in relation to the coming into being of laws and regulations on religion and FoRB. The third reason is that these developments seem very helpful in explaining the difference in scope between the international and the Indonesian view that we found in the previous chapter.

The second section of this chapter will focus on how the three developments discussed in the first section can indeed be helpful in explaining this difference in scope. This second section will also look into whether these developments can help us in saying more on the fifth element of the international view, as we concluded in the third chapter that we needed more information in order to conclude on the differences and similarities between the two views regarding this element. Our guiding question in this second section of the chapter will be: How can these developments explain the differences between the Indonesian and the international view on Freedom of Religion or Belief?

Together, the two sections of this chapter will achieve its overall goal: showing how focusing on historical socio-political developments within a society can be helpful in locally embedding the right to FoRB.

¹¹⁶ Sullivan, "The Impossibility of Religious Freedom," 1.

¹¹⁷ Benjamin L. Berger, "Law's Religion: Rendering Culture," *Osgoode Hall Law Journal* 45, no. 2 (2007): 278 + 280-283 + 310, accessed May 13, 2021, <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1243&context=ohlj>.

Context Matters

The title of this first section of this chapter is, in very few words, the core of this thesis. From the introduction on, we have been saying that this thesis will look into how historical political developments within a society can help in locally embedding the right to FoRB, and other human rights. In this section, we will one by one address the three developments that were mentioned in the introduction to this chapter.

The Quest for National Unity

Indonesia is a diverse state in many ways. For example, there are many different ethnicities, religions, and islands, due to which it might seem impossible to hold this state together.¹¹⁸ However, since the declaration of independence in 1945, Indonesia has been an independent state.¹¹⁹ As can be concluded from Indonesia's official motto 'Unity in Diversity', Indonesian leaders have always intended to keep Indonesia both diverse and united.¹²⁰ In the following paragraphs, we will focus on unity and diversity with regard to religion and FoRB, as this is the topic of this thesis.

In the Netherlands, there is a television programme called 'Floortje naar het Einde van de Wereld' (Floortje Going to the End of the World), in which she visits people living in remote parts of the world. In episode five of the fifth season, she visits a group of sea nomads living on a small, remote island in the middle of the Wakatobi National Parc in Sulawesi, Indonesia. The episode mostly is about people's life on the island, but there is a section focusing on the religion of this group of people. The only Dutch woman that lives on the island, who is interviewed by Floortje, explains that the sea nomads traditionally have an animistic religion, but that they mix this religion with Islam due to the rules of the Indonesian government on religion. Here, we see an example of how far, even to very remote areas, the government is willing to go to make sure that everyone adheres to one of the six official religions.¹²¹ In this part of the thesis, we will look at how and why the governments of Indonesia have attempted to achieve a balance between unity and diversity when it comes to religion and the right to FoRB.

¹¹⁸ Leo Suryadinata, "Ethnic Groups and the Indonesian Nation-state," in *Routledge Handbook of Contemporary Indonesia*, ed. Robert W. Hefner (London: Routledge, 2018), 43, accessed May 7, 2020, <https://www-taylorfrancis-com.proxy-ub.rug.nl/chapters/edit/10.4324/9781315628837-3/ethnic-groups-indonesian-nation-state-leo-suryadinata?context=ubx&refId=71952db4-82b2-41e2-b0b6-583d83c288b5>. / Mirjam Künkler and Shylashri Shankar, "Introduction," in *A Secular Age Beyond the West; Religion, Law and the State in Asia, the Middle East and North Africa*, ed. Mirjam Künkler, John Madeley and Shylashri Shankar (Cambridge: Cambridge University Press, 2018), 23, accessed May 2, 2020, https://www-cambridge-org.proxy-ub.rug.nl/core/services/aop-cambridge-core/content/view/C0D50B6B4B9209C8120D9877BE0445B2/9781108417716c1_1-32.pdf/introduction.pdf.

¹¹⁹ Ismatu Ropi, *Religion and Regulation in Indonesia*, (Singapore: Springer Nature, 2017), 57, accessed May 15, 2020, <http://repository.uinjkt.ac.id/dspace/bitstream/123456789/43895/1/Ismatu%20Ropi%20Religion%20and%20Regulation%20in%20Indonesia.pdf>.

¹²⁰ Simon Butt, "Constitutions and Constitutionalism," in *Routledge Handbook of Contemporary Indonesia*, ed. Robert W. Hefner (London: Routledge, 2018), 68, accessed May 7, 2020, <https://www-taylorfrancis-com.proxy-ub.rug.nl/chapters/edit/10.4324/9781315628837-4/constitutions-constitutionalism-simon-butt?context=ubx&refId=f10b4032-fa51-47f0-b144-7c03d86b7bf1>. / Shah, "Constitutions, Religion and Politics in Asia," 63. / Künkler, "Law, Legitimacy, and Equality," 109.

¹²¹ "Floortje Naar het Einde van de Wereld, Season Five, Episode Five," *NPO Start* (website), accessed October 10, 2020, https://www.npostart.nl/floortje-naar-het-einde-van-de-wereld/25-01-2018/BV_101385626.

The start of the independent Republic of Indonesia can be characterized as quite messy, as witnessed by the existence of three constitutions in just five years (1945, 1949 and 1950). In the end, however, Indonesia fell back on the 1945 Constitution.¹²² The only constant in these three constitutions was the Pancasila. The Pancasila was first mentioned in public on 1 June, 1945 by Sukarno, one of the founding fathers of Indonesia. It has been in each of the three constitution's preamble and can thus be seen as an important constant in the constitutional history of Indonesia.¹²³ The Pancasila basically is a piece of text within the constitution's preamble in which five principles are mentioned that have since 1945 always been seen and used as the state's founding and dominant ideology.¹²⁴ These five principles, in the final version, are the following ones:

1. *Ketuhanan Yang Maha Esa (Belief in Almighty God);*
2. *Kemanusiaan Yang Adil dan Beradab (A Just and Civilized Humanity);*
3. *Persatuan Indonesia (The Unity of Indonesia);*
4. *Demokrasi; and*
5. *Keadilan Sosial (Social Justice).*¹²⁵

The journey of the Pancasila, the changes that were made to it and how it has been used by different Indonesian governments, is actually interesting to follow, as it really shows this quest for a balance between national unity and religious diversity.

In 1945, in 9 days, the 1945 Constitution was made by a Commission of 9 people. Five of those people were seen as the Nationalists and four of them as the Islamists.¹²⁶ Both groups had very different ideas about the future of Indonesia. The main goal of the Nationalists was to create a united Indonesian state. This is one of the main reasons why the 1945 Constitution, which was actually meant to be a temporary one in order to quickly solidify independence, does not include many civil and political rights and is mostly focused on making people servants to the new, independent state.¹²⁷ The Islamists, on the other hand, wanted Indonesia to become an Islamic State. They had several reasons for this. First, they were convinced that Islamic teachings would be able to cure all societal ills.

¹²² Ropi, "Religion and Regulation in Indonesia," 79. / Sjafruddin Prawiranegara, "Pancasila as the Sole Foundation," *Indonesia* no. 38 (1984): 75, accessed May 3, 2020, <https://www-jstor-org.proxy-ub.rug.nl/stable/pdf/3350846.pdf?refreqid=excelsior%3A5f62268606f04dc34416f58e616efd78>. / "The 1945 Constitution of the Republic of Indonesia," <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50148/71540/F795093174/IDN50148%20English.pdf>.

¹²³ Kim, "The Changing Interpretation," 358. / Butt, "Constitutions and Constitutionalism," 61.

¹²⁴ Hendro Muhaimin Sudjito and Agung Saras Sri Widodo, "Pancasila and Radicalism: Pancasila Enculturation Strategies as Radical Movement Preventions," *Jurnal Dinamika Hukum Faculty of Law, Universitas Jenderal Soedirman* 18, no. 1 (2018): 73-74, accessed May 2, 2020, <http://dynamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/1686/553>. / Menchik, "Islam and Democracy," 71. / Shah, "Constitutions, Religion and Politics in Asia," 69. / Kim, "The Changing Interpretation," 373 / Pranoto Iskandar, "The Pancasila Delusion," *Journal of Contemporary Asia* 46, no. 4 (2016): 725, accessed May 10, 2020, <https://www-tandfonline-com.proxy-ub.rug.nl/doi/pdf/10.1080/00472336.2016.1195430?needAccess=true>. / Donald E. Weatherbee, "The Pancasila State," *Southeast Asian Affairs* (1985): 134, accessed May 2, 2020, <https://www-jstor-org.proxy-ub.rug.nl/stable/pdf/27908524.pdf?refreqid=excelsior%3Ab8f4bfc33d246527ddf9c86ea00273d2>.

¹²⁵ Butt, "Constitutions and Constitutionalism," 61-62.

¹²⁶ Ropi, "Religion and Regulation in Indonesia," 57 + 70.

¹²⁷ Ropi, "Religion and Regulation in Indonesia," 73-74. / Butt, "Constitutions and Constitutionalism," 55. / Shah, "Constitutions, Religion and Politics in Asia," 53-54.

Second, they argued that Islam was the religion of the Indonesian people and that their allegiance to Islam disappeared only due to colonization. Finally, they argued that having an Islamic State would actually be very democratic, as the majority of the Indonesians were Muslim.¹²⁸ The Nationalists, however, were worried that choosing Islam as the state's religion would alienate people belonging to other religions from the state-building process, like the Christian people on Indonesia's Eastern Islands. Therefore, they wanted to be inclusive of all religions, so that everyone would feel sufficient allegiance to the Indonesian state.¹²⁹

In the end, there seemed to be a compromise: the Jakarta Charter.¹³⁰ This actually was a modification of the Pancasila:

"... independence of Indonesia is expressed in the Constitution of the Indonesian nation ... which is based upon: belief in God (KeTuhanan), with the obligation for adherents of Islam to practice Islamic law, in accordance with the principles of Humanity that is just and civilized, Unity of Indonesia, Democracy guided by the wisdom of representative deliberation, and Social Justice for all Indonesian people."¹³¹

In this modification of Pancasila, we see two things that we did not see in the version of the Pancasila that was quoted above. One of these things is that words are added that make adherents to Islam specifically mentioned and that obliges them to adhere to Islamic law.¹³² Another change is that the other four principles of the Pancasila are actually made subject to the first, which seems to prioritize the first one, Belief in God, over the others.¹³³

This makes the Jakarta Charter version of the Pancasila quite different from how Sukarno initially envisioned it. In his version, the first principle of Belief in God actually was the fifth principle. Also, Sukarno had meant for all principles to be equal, and he did not choose to include a specific religion in order for everyone in Indonesia to be able to recognize him- or herself in the Pancasila and therefore in the new Indonesian state.¹³⁴ The Pancasila should have been a "happy medium between three competing ideologies, namely, nationalism, Islamism and communism."¹³⁵

In the end, the Nationalists, in the person of Hatta, managed to get the Jakarta Charter out of the final version of the 1945 Constitution. This led the Islamists to not support the state-building process anymore. However, when the Dutch colonizer attempted to regain its colony, the Islamists came back in order to help make the Dutch leave. From

¹²⁸ Ropi, "Religion and Regulation in Indonesia," 64-66 + 70.

¹²⁹ Ropi, "Religion and Regulation in Indonesia," 60 + 63-64 + 66-69 + 72 / Shah, "Constitutions, Religion and Politics in Asia," 61 + 248 + 250 + 253. / Künkler and Shankar, "Introduction," 23. / Künkler, "Law, Legitimacy, and Equality," 110. / Iskandar, "The Pancasila Delusion," 725. / Kim, "The Changing Interpretation," 360-362. /

¹³⁰ Ropi, "Religion and Regulation in Indonesia," 70. / Kim, "The Changing Interpretation," 358.

¹³¹ Kim, "The Changing Interpretation," 358.

¹³² Ropi, "Religion and Regulation in Indonesia," 69-70.

¹³³ Kim, "The Changing Interpretation," 358.

¹³⁴ Ropi, "Religion and Regulation in Indonesia," 57 + 69. / Kim, "The Changing Interpretation," 358.

¹³⁵ Iskandar, "The Pancasila Delusion," 725.

then on, they were again supporting the process, mainly because they thought that after elections there would be a parliament that would agree with them and turn Indonesia into an Islamic State.¹³⁶ However, the Jakarta Charter never returned, and Indonesia never became an official Islamic State.¹³⁷

To this day, the Pancasila is part of the preamble of the Indonesian Constitution¹³⁸ and we see that it has been used to do certain things that help to explain the current situation in Indonesia regarding religion and FoRB. One such thing is the interpretation of the first principle about the Belief in God. The principles of the Pancasila have been described as being too vague to be part of the founding state ideology.¹³⁹ The first principle is no exception to this. This principle could mean that every religion in which there is a God can be adhered to in Indonesia. Such a situation would be very similar to how the right to FoRB is defined in the first aspect of the international view which was presented in the second chapter.¹⁴⁰ However, it has always been interpreted as meaning that only religions that are officially recognized by the Indonesian government can be adhered to.¹⁴¹ This is still the case today, as we saw in chapter three. The Pancasila as a whole has also been used, especially by President Suharto during the New Order period, as a way to suppress Political Islam. During the New Order, all organizations were obliged to have the Pancasila as their main ideology. Suharto wanted this to happen in order to not have opposition.¹⁴² However, Islamic organizations were not happy that something other than Islam would be the most important foundation of their organizations.¹⁴³ Therefore, in order to both suppress them and still have them on his side, Suharto passed certain laws that the Islamic organizations wanted to be passed, like the prohibition of proselytization of 1979, which is still a law in current times.¹⁴⁴ We will focus more on this dynamic between Suharto and Political Islam later in this section.

After the New Order Period, during the Reformasi, Political Islam obtained a little more space. This can especially be seen during the first elections in which there were a lot

¹³⁶ Ropi, "Religion and Regulation in Indonesia," 72-74 + 93. / Shah, "Constitutions, Religion and Politics in Asia," 249. / Kim, "The Changing Interpretation," 359. / Künkler, "Law. Legitimacy, and Equality," 110-111.

¹³⁷ Shah, "Constitutions, Religion and Politics in Asia," 39-42 + 248-249. / Bagir, "The Politics and Law," 291. / Iskandar, "The *Pancasila* Delusion," 725-726.

¹³⁸ Suryadinata, "Indonesian Nation-state," 61-62. / "The 1945 Constitution of the Republic of Indonesia," <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50148/71540/F795093174/IDN50148%20English.pdf>.

¹³⁹ Ropi, "Religion and Regulation in Indonesia," 74 + 83 + 89 + 93. / Kim, "The Changing Interpretation," 357 + 360 + 373. / Butt, "Constitutions and Constitutionalism," 61. / Shah, "Constitutions, Religion and Politics in Asia," 71. / Weatherbee, "The Pancasila State," 134.

¹⁴⁰ Shah, "Constitutions, Religion and Politics in Asia," 66.

¹⁴¹ Ropi, "Religion and Regulation in Indonesia," 74 + 89 + 93. / Shah, "Constitutions, Religion and Politics in Asia," 71-72 + 149-150. / Künkler, "Law. Legitimacy, and Equality," 112. / Zainal Abidin Bagir, "The Politics and Law of Religious Governance," in *Routledge Handbook of Contemporary Indonesia*, ed. Robert W. Hefner (London: Routledge, 2018), 286-287, accessed May 7, 2020, <https://www-taylorfrancis-com.proxy-ub.rug.nl/chapters/edit/10.4324/9781315628837-23/politics-law-religious-governance-zainal-abidin-bagir?context=ubx&refid=bea19779-6831-4f4a-ba0b-628593ef458d>. / Sezgin and Künkler, "Regulation of "Religion" and the "Religious", " 463. / Iskandar, "The *Pancasila* Delusion, 734 + 732-733.

¹⁴² Christopher Bjork and Raihani, "Moving Toward Stability; Development of the Indonesian Education System," in *Routledge Handbook of Contemporary Indonesia*, ed. Robert W. Hefner (London: Routledge, 2018), 72, accessed May 7, 2020, <https://www-taylorfrancis-com.proxy-ub.rug.nl/chapters/edit/10.4324/9781315628837-5/moving-toward-stability-christopher-bjork-raihani?context=ubx&refid=5be3bc5e-02bd-48b3-8f75-6ad875128c96>.

/ Suryadinata, "Indonesian Nation-state," 46. / Ropi, "Religion and Regulation in Indonesia," 146 + 167. / Weatherbee, "The Pancasila State," 135+137. / Prawiranegara, "Sole Foundation," 74. / Menchik, "Islam and Democracy," 71. /

¹⁴³ Suryadinata, "Indonesian Nation-state," 46. / Ropi, "Religion and Regulation in Indonesia," 167. / Weatherbee, "The Pancasila State," 135 + 137-138.

¹⁴⁴ Marshall, "Ambiguities," 87. / Künkler and Shankar, "Introduction," 23. / Kim, "The Changing Interpretation," 373. / Weatherbee, "The Pancasila State," 138. / Shah, "Constitutions, Religion and Politics in Asia," 82.

of Islam-based parties participating. However, the Pancasila-based parties were still winning the elections.¹⁴⁵ Also, during the last presidential elections, the candidate that was supported by hardline Islamist groups lost to the candidate that was supported by moderate Islamic organizations and religious minorities.¹⁴⁶ It could therefore be concluded that the influence of the Pancasila and the way it was used by Suharto is still very present in today's Indonesia.

So, in the end, we can say that the articles of the 1945 Constitution on religion and FoRB, which were quoted in chapter three, actually display a form of FoRB which can be said to be similar to the form found in the international view displayed in the second chapter, as they give room to everyone to choose his or her preferred religion. However, based on the information above, we can say that this situation does not exist due to Indonesia's founding fathers being such big fans of FoRB. Instead, they saw FoRB as a necessary means to an end: uniting all people within the new Republic of Indonesia.

At the end of the third chapter, we mentioned that it was not yet possible to make a tentative conclusion on similarities and differences between the international and Indonesian view with regard to the fifth element on legal reasons to limit the right to FoRB. However, we were hopeful that looking at political developments would help us in reaching a conclusion on this aspect in the end. It seems that in this part of chapter four we have indeed already found one such a reason for Indonesia, which is the need to create and maintain national unity.

MORA and the Desire for Religious Harmony and Public Order

In the previous part, we learned that national unity is very important to the leadership of Indonesia. In this part, we will learn more about several other goals that are very important to Indonesia's leadership: the maintenance of harmony and public order, the dominance of the regime, and the implementation of its policies. Harmony and public order are goals that are in general important in Indonesia's society. For example, harmony is very important within politics.¹⁴⁷ However, in this part we will focus on how these goals inform the way religion in society is handled by the governments of Sukarno and Suharto.

Between 1945 and 1998, Indonesia's leadership has gone to great lengths to ensure religious harmony and public order, as we will see beneath. The policies, rules and guidelines necessary to make this happen, were made and enforced mainly by (MORA).¹⁴⁸

¹⁴⁵ Iskandar, "The Pancasila Delusion," 725-726. / Suryadinata, "Indonesian Nation-state," 46.

¹⁴⁶ Alexander R. Arifianto, "Is Islam an Increasingly Polarizing Political Cleavage in Indonesia? What the Recent Election Shows," *Brookings* (website), accessed November 10, 2020, <https://www.brookings.edu/blog/order-from-chaos/2019/04/25/is-islam-an-increasingly-polarizing-political-cleavage-in-indonesia/>.

¹⁴⁷ Ropi, "Religion and Regulation in Indonesia," 104.

¹⁴⁸ Ropi, "Religion and Regulation in Indonesia," 111-112 + 117-118 + 128 + 168. / Künkler and Shankar, "Introduction," 20-21. / Mirjam Künkler, "Symposium Introduction The Bureaucratization of Religion in Southeast Asia: Expanding or Restricting Religious Freedom?," *Journal of Law and Religion* 33, no. 2 (2018): 194-195, accessed April 29, 2020, <https://www.cambridge-org.proxy->

MORA was meant to tame the religions in Indonesia in order to improve and maintain national unity.¹⁴⁹ The Ministry manages Indonesia's religious communities in a very bureaucratic way, bureaucratic meaning that it is involved in everything the religious communities of the six agama do. For example, it makes sure that there are teachers for religious education at every school and it arranges a lot of things related to the hajj for the Indonesian Muslim community.¹⁵⁰

These quite intrusive policies are all based on a model developed by Alamsjah, who was the first Minister of Religious Affairs.¹⁵¹ This model is known as the "Trilogy of Religious Harmony"¹⁵² and "promoted harmonious relations among the religious communities"¹⁵³, "within a particular community"¹⁵⁴ and "between the religious communities and the government"¹⁵⁵.

From the above paragraph, it becomes clear that MORA has always been a very important ministry for the Indonesian leadership and that it is very controlling when it comes to religion in order to make sure that there is no religious tension and/or violence. These things have happened in the past and the government is going to great lengths to prevent this from happening ever again.¹⁵⁶ It hopes to do this by controlling religion by law, through MORA, which it justifies by saying that control of religion will lead to religious harmony and public order.¹⁵⁷ The main way in which MORA has attempted to control religion is to limit the right to FoRB, both in terms of definition and application.

In terms of limiting the definition, the Constitution of the Republic of Indonesia is the main document to look at. When it comes to the constitution, we must look at two things: the first principle of the Pancasila and the articles on religion and religious freedom (28E(1 and 2), 28J(2) and 29).¹⁵⁸ The Pancasila is part of the preamble of the constitution and its first principle comes down to that the Republic of Indonesia is based "on a belief in the One and Only God"¹⁵⁹. This principle could maybe have been interpreted broadly, but Indonesia chose not to do this. Instead, it has chosen to only extend this principle to

ub.rug.nl/core/services/aop-cambridge-core/content/view/6155321071F404E593BF4D397588631B/S0748081418000383a.pdf/bureaucratization_of_religion_in_southeast_asia_expanding_or_restricting_religious_freedom.pdf. / Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 452.

¹⁴⁹ Ropi, "Religion and Regulation in Indonesia," 97 + 102-104. / Künkler, "The Bureaucratization of Religion," 194-195. / Künkler and Shankar, "Introduction," 27. / Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 450-452 + 473.

¹⁵⁰ Ropi, "Religion and Regulation in Indonesia," 103-106 + 108 + 111-112 + 131 + 139 + 141 + 146-147. / Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 449-451. / Künkler, "The Bureaucratization of Religion," 194-195. / Künkler, "Law. Legitimacy, and Equality," 108.

¹⁵¹ Ropi, "Religion and Regulation in Indonesia," 146.

¹⁵² Ropi, "Religion and Regulation in Indonesia," 146.

¹⁵³ Ropi, "Religion and Regulation in Indonesia," 146.

¹⁵⁴ Ropi, "Religion and Regulation in Indonesia," 146.

¹⁵⁵ Ropi, "Religion and Regulation in Indonesia," 146.

¹⁵⁶ Künkler and Shankar, "Introduction," 20. / Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 451. / Ropi, "Religion and Regulation in Indonesia," 144. / Zakiyuddin Baidhaw, "Building Harmony and Peace Through Multiculturalist Theology-Based Religious Education: An Alternative for Contemporary Indonesia," *British Journal of Religious Education* 29, no. 1 (2007): 17, accessed May 15, 2020, <https://www.tandfonline-com.proxy-ub.rug.nl/doi/pdf/10.1080/01416200601037478?needAccess=true>.

¹⁵⁷ Ropi, "Religion and Regulation in Indonesia," 111 + 117-118 + 128 + 140 + 168. / Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 472. / Künkler and Shankar, "Introduction," 20-21. / Bagir, "The Politics and Law," 287-288. / Baidhaw, "Building Harmony and Peace," 17. / Künkler, "Law. Legitimacy, and Equality," 123. / Shah, "Constitutions, Religion and Politics in Asia," 253.

¹⁵⁸ "The 1945 Constitution of the Republic of Indonesia,"

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50148/71540/F795093174/IDN50148%20English.pdf>.

¹⁵⁹ "The 1945 Constitution of the Republic of Indonesia,"

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50148/71540/F795093174/IDN50148%20English.pdf>.

monotheistic religions.¹⁶⁰ Article 29 of the Constitution on religion basically says the same as the first Pancasila principle.¹⁶¹ Article 28E (1 and 2) seems to contain a broader interpretation, but is limited by article 28J(2) on religious values.¹⁶² This article says that

*"In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society."*¹⁶³

These religious values are seen as making it possible to curtail each human right on the basis that it would go against these values, among which is the human right to FoRB. What exactly these values are has been determined by the religious authorities of the six agama, meaning that these values do not represent the opinion of the non-recognized religious communities.¹⁶⁴ Limiting FoRB to a certain extent was also seen as a way to maintain national unity, religious harmony and public order.¹⁶⁵

Throughout its existence, the government, mainly through MORA, has applied this limited definition to Indonesian society by making policies on religion. The outcome of all of these policies together is a limitation of the number of religions that are allowed in Indonesia. MORA has effectively limited the number of official religions in Indonesia through actions of recognition and non-recognition. The Ministry has chosen to only allow for those six official religions that were mentioned in chapter three. Other religious groups that see themselves as religious groups are not recognized. Non-recognition in Indonesia really means something. For example, as we already saw in chapter three, it means that you cannot get an ID-card with your religion mentioned on it, which in turn means that you cannot access vital government services. This action of non-recognition is also in line with the main task of MORA, which is to promote the state ideology by leading every Indonesian citizen to one of the recognized religions. There are several policies that have been very supportive in ensuring this limitation and thus in helping MORA with their main task.¹⁶⁶

¹⁶⁰ Shah, "Constitutions, Religion and Politics in Asia," 69-73 + 149-150. / Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 463.

¹⁶¹ "The 1945 Constitution of the Republic of Indonesia,"

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50148/71540/F795093174/IDN50148%20English.pdf>.

¹⁶² "The 1945 Constitution of the Republic of Indonesia,"

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50148/71540/F795093174/IDN50148%20English.pdf>.

¹⁶³ "The 1945 Constitution of the Republic of Indonesia,"

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50148/71540/F795093174/IDN50148%20English.pdf>.

¹⁶⁴ Shah, "Constitutions, Religion and Politics in Asia," 55-59 + 149-150.

¹⁶⁵ Ropi, "Religion and Regulation in Indonesia," 111-112 + 134 + 147 + 155. / Shah, "Constitutions, Religion and Politics in Asia," 10 + 26.

¹⁶⁶ Ropi, "Religion and Regulation in Indonesia," 91 + 108-109 + 117 + 119-120 + 135 + 147 + 155 + 161. / Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 448-449 + 472 / Künkler and Shankar, "Introduction," 20-21. / Künkler, "Law, Legitimacy, and Equality," 108 + 123. / Mirjam Künkler and John Madeley, "Conclusions: The Continued Prevalence of the "Marker State"," in *A Secular Age Beyond the West; Religion, Law and the State in Asia, the Middle East and North Africa*, ed. Mirjam Künkler, John Madeley and Shylashri Shankar (Cambridge: Cambridge University Press, 2018), 351 + 353, accessed May 2, 2020, https://www.cambridge-org.proxy-ub.rug.nl/core/services/aop-cambridge-core/content/view/23B7E3CD2188FB3F73697D46789F7BE1/9781108417716c14_342-

One of these is the Blasphemy Law, which came into existence in 1965 through a presidential decree.¹⁶⁷ This law can be seen as supportive in relation to the execution of a limited right to FoRB in two ways. First, it mentions the six religions that are allowed, which ensures that this guideline of MORA is also explicitly mentioned in law.¹⁶⁸ Second, it gives the Minister of Religious Affairs and Home Affairs the possibility to warn certain groups that they are seen as deviant by the government. MORA is often also involved in the practice of banning such groups after these warnings or fusing them with the allowed religion most close to the deviant group in terms of belief and practice. An example of the government banning non-recognized religious groups is the Anti-Ahmadiyah decree, which was issued during Suharto's presidency. Next to these warnings to groups, the Blasphemy Law also allows for the conviction of individuals. In other words, the law is very effective when it comes to limiting the number of religions by way of fusion with the official religions, banishment or conviction.¹⁶⁹ This is also exactly what it was meant to do:

*"The introduction of the Blasphemy Law in 1965 promoted the idea that citizens should have a fixed and bounded religious identity that could be monitored and controlled by the state. This law ensured religious leaders could protect the status and interpretation of the six religions from criticism through the legal system. The Indonesian term used in the Blasphemy Law is *penyalahgunaan dan/atau penodaan agama*, which means to misuse, besmirch or insult a religion. A person who is accused of blasphemy may be called *murtad* (apostate), *kafir* (infidel), *aliran sesat* (deviant group), *sesat* (deviant) or *aliran kepercayaan* (mystical belief). The use of these terms reinforces the distinction between local beliefs and religions ... and shows a concern for protecting the orthodox teachings of a religion."¹⁷⁰*

Such practices, especially the one of fusion, could be characterized as a deviation from the second aspect of the international view to a certain extent. One part of this aspect within the international view is that there should not be any coercion when it comes to choosing your religion. Being forced by the state to fuse your religion with a certain religion can be seen as impairing upon choosing your religion without coercion.

The requirements that MORA has devised to determine whether a religion can be officially allowed are also very supportive in regard to this main task. The Ministry can be seen as "the institutional watchdog for "the realization of Ketuhanan Yang Maha Esa,""¹⁷¹

[384.pdf/conclusions_the_continued_prevalence_of_the_marker_state.pdf](#). / Menchik, "Islam and Democracy," 67 + 165. / Bagir, "The Politics and Law," 286. / Iskandar, "The *Pancasila* Delusion," 731.

¹⁶⁷ Iskandar, "The *Pancasila* Delusion," 732. / Menchik, "Islam and Democracy," 65. / Marshall, "Ambiguities," 89.

¹⁶⁸ Ropi, "Religion and Regulation in Indonesia," 123-124. / Menchik, "Islam and Democracy," 65.

¹⁶⁹ Crouch, "Shifting Conceptions," 280. / Iskandar, "The *Pancasila* Delusion," 732. / Bagir, "The Politics and Law," 287. / Menchik, "Islam and Democracy," 79. / Shah, "Constitutions, Religion and Politics in Asia," 8-9 + 66-67. / Ropi, "Religion and Regulation in Indonesia," 121 + 125.

¹⁷⁰ Crouch, "Shifting Conceptions," 280.

¹⁷¹ Ropi, "Religion and Regulation in Indonesia," 108.

which is the first Pancasila-principle in Bahasa Indonesia.¹⁷² To this end, it developed several requirements which a religious community must fulfill in order to be considered for recognition:

"According to a 1952 regulation issued by the MORA, the Indonesian government defined agama as an internationally recognized monotheistic creed with a holy scripture, a concept of prophethood, and universal ethical teachings. Belief systems that did not meet these criteria were denied government recognition and their adherents were compelled to register as members of another religion."¹⁷³

So, MORA is responsible for both making and applying these requirements, which ensures that it can dominate the processes of recognition and non-recognition. In other words, these requirements form a very effective tool for limiting the number of allowed religions in Indonesia.

In order to maintain national unity, religious harmony and public order, the government, through MORA also takes measures to prevent the existence of tensions between or within those groups that are recognized by MORA as one of Indonesia's official religions. The Blasphemy Law can also be seen as one of these measures, as it can be seen as having

"its roots in the state's desire to safeguard public order and national unity. In this respect, the state identified the growth of spiritual belief groups that promote teachings or doctrines that are contrary to established religious principles as a threat to national unity and to existing religious groups in the country. A law that prevents the abuse or desecration of religion, it was believed, would further religious harmony and ensure that Indonesians are free to worship according to their own religion."¹⁷⁴

Another one is the non-proselytization law. This law prohibits converting people that already belong to one of the recognized religions to another religion, as we read in chapter three. Tensions on proselytization mainly existed between the Muslim and Christian communities. Therefore, ensuring that rules on proselytization were clear through a law might ease these tensions. Moreover, the Muslim community was very much against conversion, claiming such a thing did not fit into their religion. Making a law on this topic therefore could make sure that the members of this community would not create tension on this issue anymore.¹⁷⁵

¹⁷² Ropi, "Religion and Regulation in Indonesia," 110.

¹⁷³ Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 449.

¹⁷⁴ Shah, "Constitutions, Religion and Politics in Asia," 137.

¹⁷⁵ Künkler, "Law, Legitimacy, and Equality," 108. / Crouch, "Shifting Conceptions," 265 + 273-274. / Ropi, "Religion and Regulation in Indonesia," 85-86. / Bagir, "The Politics and Law," 290.

Another example of how tensions between religious communities are prevented is that the government goes to great lengths not to upset the recognized religious communities. It does this by consulting the communities' religious authorities when deciding upon the acceptability of minority groups and by organizing inter-faith conferences on topics which might cause friction between the communities. Such tensions mostly exist between the Muslim and the Christian community.¹⁷⁶ An example of such a conference was the 1968 conference on tensions caused by missionary activities. During this conference, there was agreement on the formation of a forum in which tensions between the recognized religious communities could be discussed. However, with regard to another topic, missionary activities, there was no agreement. The Muslim community wanted to restrict such activities to people of your own community or to people that did not yet belong to one of the recognized religions. However, the Christians saw such activities as part of their right to FoRB. The government did not want to obviously choose one position over the other, as both an angry Christian community and an angry Muslim community could cause unwanted religious disharmony and disorder in society. Therefore, no obvious governmental position was taken, which shows the great lengths the government is willing to go to in order to not upset any of the recognized religious communities.¹⁷⁷

Since its foundation, MORA was mostly used to create and maintain religious harmony and public order, next to national unity. MORA was also meant to ensure the Muslim community's happiness and compliance in an Indonesia that would not become an Islamic State by catering to this community's interests.¹⁷⁸ This latter role will be discussed more elaborately when we address the third development.

During the Suharto period, another task was added to MORA's list: ensuring the cooperation of the recognized religious communities with regard to Suharto's program of development.¹⁷⁹ Suharto already used religious communities in order to come to power in the first place, mobilizing the Muslim community against the communists.¹⁸⁰ However, during his presidency he also intended to mobilize all recognized religious communities in such a way that they would support his program for socio-economic development. Generating this support also happened mainly through MORA.¹⁸¹ For example, each recognized religious community has a consultative assembly within MORA through which new policies were communicated to society.¹⁸² These recognized communities were seen

¹⁷⁶ Ropi, "Religion and Regulation in Indonesia," 161-162 + 166 + 175-176.

¹⁷⁷ Ropi, "Religion and Regulation in Indonesia," 162.

¹⁷⁸ Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 452 + 473. / Künkler, "Law. Legitimacy, and Equality," 108. / Ropi, "Religion and Regulation in Indonesia," 101-107 + 112 + 128.

¹⁷⁹ Ropi, "Religion and Regulation in Indonesia," 127 + 139 + 141 + 143 + 145 + 161. / Künkler, "Law. Legitimacy, and Equality," 108. / Weatherbee, "The Pancasila State," 135.

¹⁸⁰ Bruinessen, "Governance of Islam," § 7. / Ropi, "Religion and Regulation in Indonesia," 161.

¹⁸¹ Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 472. / Bruinessen, "Governance of Islam," §§ 7 + 35-37. / Ropi, "Religion and Regulation in Indonesia," 127.

¹⁸² Crouch, "Shifting Conceptions," 265. / Bruinessen, "Governance of Islam," § 65. / Ropi, "Religion and Regulation in Indonesia," 147.

as partners of the state when it came to "creating religious social order."¹⁸³ On the basis of this, we can conclude that the state, through MORA, tried to make the religious authorities supportive of its policies in order to make the religious community as a whole supportive as well. One of the Ministers of Religious Affairs even made guidelines on how to justify the government's policies to the religious communities¹⁸⁴, as he saw these communities and mainly their ideology as a "threatening power, which may disturb the process of national development."¹⁸⁵

In the end, we can say that MORA has always been busy with religion, but that its role kept evolving throughout the period we are covering in this thesis, as new tasks were added. At the beginning, it was mostly a way to keep the Muslims happy in an Indonesia that would not become an Islamic State. During Sukarno's presidency, MORA was also meant to tame the different religious communities in favor of national unity. During Suharto's New Order, MORA started to really control the recognized religious communities:

*"while the roles of this Ministry as an instrument of the New Order's political and social agenda evolved from the late 1960's, in fact the new regime employed a strategy to steer the direction of policing religious affairs by putting them strictly under its own control"*¹⁸⁶

As we have seen in this part of the thesis, the regime did not only have MORA do this to create and preserve religious harmony and public order, but also to maintain its dominance in society by making sure its policies geared towards Indonesia's development were timely and correctly implemented. In other words:

*"the regime was able to transform MORA from being a so-called political representative of Islam within the state to a compliant institution allowed [sic] the Ministry to be used to promote the New Order's developmentalism policies. Following this development, the regime was able to dictate the new role of MORA as one of disseminating religious piety without the political activism of the past."*¹⁸⁷

So, we can conclude that, through MORA and the laws on religion and FoRB it devised, the Indonesian regimes under Sukarno and Suharto wanted to achieve two things: the maintenance of religious harmony and public order and the maintenance of the dominance of the regime and the implementation of its policies. In the previous part of this chapter, we concluded that we seemed to have found one reason Indonesia has to limit the right to FoRB, which was 'national unity'. The two desired achievements of the Sukarno and

¹⁸³ Menchik, "Islam and Democracy," 89.

¹⁸⁴ Ropi, "Religion and Regulation in Indonesia," 145.

¹⁸⁵ Ropi, "Religion and Regulation in Indonesia," 145.

¹⁸⁶ Ropi, "Religion and Regulation in Indonesia," 127.

¹⁸⁷ Ropi, "Religion and Regulation in Indonesia," 127.

Suharto regimes we discovered in this part can be seen as worthy to add to this list of reasons Indonesia has to limit the right to FoRB. We will make a final conclusion on this in the second section of this chapter.

(Political) Islam: Suppression and Cooperation

In previous parts of this thesis, it has come to the fore that Islam and the Islamic community have an important position within Indonesian society and politics. In this section, we will focus on the position of Islam in politics during the Sukarno and Suharto regimes. When looking at this position, we can actually discern three different, though related, periods. The duration of the Sukarno regime constitutes one of these periods. The second period constitutes the start of the Suharto regime until 1985.¹⁸⁸ The third period constitutes 1986 until the end of the Suharto regime in 1998.¹⁸⁹ We will visit each of these periods and look at the position of Islam in politics and the relation between the regime and the Islamic community.

As we remember from the part on national unity and the Pancasila, leaving out the Jakarta Charter of the Constitution upset the Muslim community. The foundation of MORA was seen as a way to compensate for the loss of the Jakarta Charter.¹⁹⁰ In this period, MORA was seen as a ministry that was almost solely there to arrange everything for the Muslim community and to ensure that their views were heard within policy-making in Indonesia, for example when it came to the exact interpretation of the first principle of the Pancasila.¹⁹¹ Moreover, the definition of religion we saw in the part on MORA and the desire for religious harmony and public order is also made upon the basis of the Muslim community's understanding of what a religion is.¹⁹²

MORA was actually criticized for the large amount of work it was doing for the Muslim community.¹⁹³ Some critics even viewed MORA as "a means "to make the care of Islamic religious institutions the essential duty of the state," or to promote Islam as the state's sole religion.""¹⁹⁴ MORA defended itself against this criticism by arguing that it was quite normal to focus on Islam so much, considering that Indonesia has a large Muslim majority.¹⁹⁵

However, already under Sukarno, it became clear that MORA's work in relation to the Muslim community was not solely for the sake of compensation. MORA

¹⁸⁸ Bruinessen, "Governance of Islam," §§ 37 + 46. / Ropi, "Religion and Regulation in Indonesia," 184 + 199.

¹⁸⁹ Bruinessen, "Governance of Islam," § 61. / Sato, "Democratizing Indonesia," 3-4.

¹⁹⁰ Ropi, "Religion and Regulation in Indonesia," 102 + 104-106.

¹⁹¹ Bruinessen, "Governance of Islam," §§ 9 + 16 + 18 + 45 + 65-66. / Crouch, "Shifting Conceptions," 266. / Ropi, "Religion and Regulation in Indonesia," 91-92 + 101 + 104-107 + 111-112 + 118-119 + 127 + 157 + 213. / Bagir, "The Politics and Law," 286.

¹⁹² Ropi, "Religion and Regulation in Indonesia," 119-120 + 127. / Kim, "The Changing Interpretation," 362-363.

¹⁹³ Ropi, "Religion and Regulation in Indonesia," 92 + 106 + 127.

¹⁹⁴ Ropi, "Religion and Regulation in Indonesia," 106.

¹⁹⁵ Ropi, "Religion and Regulation in Indonesia," 106.

"soon evolved into one of the largest ministries, and increasingly proved useful for putting organized Islam into the service of consolidating the power of the central administration. In this way the ministry came to play an important role in the nation-building process."¹⁹⁶

Suharto took this even further. His goal was to ensure that the Muslim community in Indonesia would solely consist of a religious branch, instead of a political one as well. In other words, Islam in Indonesia should only be a religion, instead of a political ideology as well.¹⁹⁷

Suharto's policy regarding the Muslim community from the beginning of his regime until the end of the 1980's could be seen as one of sticks and carrots, as he tried to both make them give up political aspirations while also giving in to some of their demands. There were two main ways in which Suharto attempted to force the Islamic political parties and organizations to give up their political aspirations so that they would not become too powerful. One was his decision to fuse all Islamic parties into one party, as one party is easier to control than several.¹⁹⁸ The other was the Social organization Law. This law was made, in general, to ensure that all (political) organizations would have one ideology in order to further the process of nation-building. This ideology was the Pancasila. The Islamic (political) organizations were very much against this law, as it would mean that Islam could not be the main source of their organization's ideology anymore. This was of course exactly what Suharto wanted to achieve with implementing this law in the first place. However, in the end, this law was implemented.¹⁹⁹

One reason that Islamic organizations eventually sufficiently agreed with this law might be that the Suharto regime also gave in to some of the Muslim community's demands.²⁰⁰ For example, he allowed the foundation of the Majelis Ulama Indonesia (MUI), which was a council that, for example, issued fatwas that were seen as sanctioned by the Suharto regime.²⁰¹ The government also gave in to some demands in areas that were seen as non-strategic areas of national life, like marriage, gambling and pornography.²⁰² Another example of giving in to these demands is the Anti-Ahmadiyah decree. The government actually did not have a problem with the Ahmadiyah, as their ideology stipulates to always be obedient to the government under which you live, which of course was something Suharto very much agreed with. Yet since the Muslim community was very much against the Ahmadiyah, the regime decided to support such a decree in the end.

¹⁹⁶ Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 464.

¹⁹⁷ Ropi, "Religion and Regulation in Indonesia," 145. / Suryadinata, "Indonesian Nation-state," 46.

¹⁹⁸ Ropi, "Religion and Regulation in Indonesia," 140 + 166-167. / Bruinessen, "Governance of Islam," § 47.

¹⁹⁹ Weatherbee, "The Pancasila State," 134-135 + 137-138. / Ropi, "Religion and Regulation in Indonesia," 167. / Suryadinata, "Indonesian Nation-state," 46.

²⁰⁰ Ropi, "Religion and Regulation in Indonesia," 162 + 167 + 169.

²⁰¹ Bruinessen, "Governance of Islam," § 20. / Menchik, "Islam and Democracy," 81. / Sezgin and Künkler, "Regulation of "Religion" and the "Religious"," 466-469. / Ropi, "Religion and Regulation in Indonesia," 173.

²⁰² Weatherbee, "The Pancasila State," 138.

However, the decree was made in such a way that it was hard to enforce, which signifies that the Suharto regime did not really stand behind such a decree and only supported it to keep the Muslim community sufficiently satisfied and supportive of its policies.²⁰³

So, Suharto's policy was one of suppression and cooperation. His reason for acting like this was that he, like many regimes on Indonesian soil both during and after colonization, was scared of the potential of Political Islam.²⁰⁴ Therefore, as we saw above, he suppressed the Muslims in order not to let them get too powerful, while also giving in to their demands to some extent in order to keep them sufficiently satisfied within Indonesian society. In other words,

*"Suharto's rapprochement with the Muslim community was part of a new political strategy to subordinate the Muslim community under his control. Therefore, his gestures to the Muslim community were not a sincere response to its needs and interests but rather were politically motivated. It was about maintaining the political status quo accordingly."*²⁰⁵

In this way, he meant to ensure the implementation of his socio-economic plans for Indonesia.²⁰⁶ Summarized in one sentence: "The regime came to consider any Islamic political activism as a threat to their programme of modernization."²⁰⁷

From the end of the 1980's until the end of his regime in 1998, however, Suharto's policy became one of cooperation more than of suppression. The main reason for this shift is the following:

*"The change began, in fact, a decade earlier when, due to the end of the Cold War, Suharto could no longer count on the unconditional support of the United States and sought to broaden his domestic support by accommodating former Islamist critics and allowing Islam a greater visibility in the public sphere."*²⁰⁸

This change in policy was visible in two main ways. The first was a more political way, which entailed that Suharto allowed more members of the Muslim community to obtain strategic positions within the government and the military.²⁰⁹ The second way was more of a symbolic one, which entailed Suharto acting more as a Muslim, by going on a hajj for example, which, in turn, made Islam more visible at the highest level of governance.²¹⁰

²⁰³ Ropi, "Religion and Regulation in Indonesia," 175-176.

²⁰⁴ Bruinessen, "Governance of Islam," §§ 7 + 18.

²⁰⁵ Ropi, "Religion and Regulation in Indonesia," 185.

²⁰⁶ Ropi, "Religion and Regulation in Indonesia," 127 + 129-130 + 140 + 145 + 167 + 169 + 185.

²⁰⁷ Ropi, "Religion and Regulation in Indonesia," 130.

²⁰⁸ Bruinessen, "Governance of Islam," § 60.

²⁰⁹ Ropi, "Religion and Regulation in Indonesia," 185. / Bruinessen, "Governance of Islam," § 60.

²¹⁰ Ropi, "Religion and Regulation in Indonesia," 185 + 199. / Bruinessen, "Governance of Islam," § 37.

So, we have seen that the relation between the Indonesian government and the Muslim community has indeed been one of suppression and cooperation. Both the acts of suppression and the acts of cooperation can be said to have been out of fear for the potential power of Political Islam and how it could use this to undermine the power of Indonesian regimes. In the previous part of this section, we concluded that the maintenance of the dominance of the regime and the implementation of its policies could be seen as one of Indonesia's reasons to limit the right to FoRB. The current part of this chapter strengthened the position of this reason on the list of reasons that could be seen as Indonesia's reason for limiting the right to FoRB.

The question we wanted to answer in this section was 'Which political developments can be seen as key factors in explaining why Freedom of Religion or Belief in Indonesia came to be how it is now?' We have seen now that the main developments are the following: a strong desire for national unity, religious harmony, public order, and the empowerment of the regime. We will now move on to the second section to see how these key developments can help in explaining the differences between the international and the Indonesian view on the right to FoRB.

Understanding the Present While Looking at the Past

In this section, the main goal is to use the knowledge obtained so far to explain the current legal situation in Indonesia regarding religion and the right to FoRB. To this end, our guiding question will be: How can these developments explain the differences between the Indonesian and the international view on Freedom of Religion or Belief?

In the second chapter, the international view was identified as follows:

1. The right to FoRB defined as the 'freedom of thought, conscience and religion'.
2. The possibility to choose every religion as your own and the parental right to choose your children's religion, without any coercion.
3. The possibility to change to another religion.
4. The possibility to manifest your religion, individually or in community and in both private and public places, through teaching, practice, worship and/or observance.
5. The possibility of limiting the right to FoRB to protect public safety, order, health, morals or the fundamental rights and freedoms of others.

Throughout the third chapter and the first section of the current chapter, we already pointed to how the way Indonesian regimes govern religion and the right to FoRB could be seen as a deviation from this international view. In this section, we will take all information

we obtained so far together in order to make a final conclusion on the differences and similarities between the international view and the Indonesian view on religion and the right to FoRB.

When comparing these two views, the main difference between the universal view and the Indonesian one is, as already suspected in the third chapter, that the Indonesian form of FoRB is a limited one, while the form of FoRB according to the international one is not. Put differently, the international view does not stipulate which religions are deserving of FoRB while the Indonesian view clearly does by applying FoRB only to six religions that are seen as official religions in Indonesia. This main difference leads to the first four points of the universal view to remain intact to a certain extent. On the one hand, the content of most of these first four elements remains quite similar. On the other hand, these four elements only apply to the six official religions of Indonesia.

With regard to the second element, on conversion to another religion, the content changes a bit more than with regard to the other three. In the international view, we see that when it comes to conversion to another religion, there cannot be any coercion. However, in the Indonesian view, this phrase on non-coercion can be seen as having disappeared for two reasons. First, in the first section of this chapter, we discussed that one of the main tasks of MORA is to make sure that each citizen of Indonesia belongs to one of the six official religions. Second, in this section we also saw that the Blasphemy Law provides MORA with the authority to fuse a non-official religious group with one that is official, effectively making the non-official religious group disappear. These two things could be said to come down to some form of coercion.

One element that did really change a lot when comparing the two views is the fifth element. This one is about determining what kind of reasons are seen as justified when it comes to limitations of FoRB. At the end of the third chapter, we concluded that at that point we did not have enough information to determine the content of the fifth element of the Indonesian view. Fortunately, based on the developments discussed in the first section of this chapter, we now know these reasons: creating and maintaining national unity, religious harmony, public order, and the continuing empowerment of the regime.

These differences between the international view and the Indonesian view of course did not just fall from the sky. This is also a core aspect of this thesis, that there are always reasons for why a government has a certain view on and application of FoRB. Understanding these reasons helps one understand the differences between the international view and another view, in this case the Indonesian one. In the conclusion of the thesis, we will come back to why such understanding is very important.

Based on the sources we used in the third chapter of this thesis and the fourth chapter so far, we can conclude on the reasons why these differences exist. It seems that

Indonesian regimes see the limitation of FoRB as a way to achieve things that are really important to them: national unity, religious harmony, public order, and the dominance of the regime and the implementation of its policies. Throughout the discussion of the political developments, we saw that the regime is balancing FoRB and the achievement of these things. This can be illustrated by a main observation made in the third chapter of this thesis. In this chapter, we saw that the content of the articles on FoRB in the 1945 Constitution of the Republic of Indonesia actually does not differ a lot from the international view on FoRB. The reason the Indonesian view on FoRB came to be different from the international view, in terms of limits in definition and application, lies in the laws and regulations on religion and FoRB that were made and implemented after 1945. Examples of such laws and regulations, as we have seen, are the Blasphemy Law, the non-proselytization law and of course the hierarchy of religions that came to be institutionalized through the requirements and regulations of MORA.

When looking at the developments surrounding the quest for national unity, we see that the goal of achieving national unity stood at the basis of both the 1945 Constitution and the laws and regulations on FoRB that came after it. The goals of religious harmony and public order are of course closely related to the one of national unity, as living harmoniously and orderly together in a state can be seen as contributing very much to national unity. As we discussed previously, there was quite some discussion between the Islamists and the Nationalists at the time of writing the 1945 Constitution. The Islamists wanted to make Indonesia into an Islamic State after independence. The Nationalists, on the other hand, wanted to make Indonesia a religiously inclusive state, fearing that not recognizing religions other than Islam would make the Christian islands in Eastern-Indonesia break away from the state. In the end, the Nationalist view became the one on which the Constitution was based, which explains the text on religion and FoRB in the Constitution.

The same goal of national unity can also be seen as a reason for the laws and regulations that seem to limit the text of the Constitution. It might be that the Indonesian regimes came to understand that having so many different religions in the country might make the country fall apart in the end, as people would become too different. Allowing only six religions as official ones might seem a solution for this problem. It seems that 'balance' must be seen as the key word here, as a balance has been struck between having FoRB and the achievement of national unity and the related goals of religious harmony, and public order. We can see this balance at work in that several religions are allowed in Indonesia, but not all religions. In other words, national unity is created and maintained by not allowing for too much FoRB while also offering just enough space for certain religious communities. So, the will to achieve national unity, and these related goals we mentioned

above, seems to be a useful explanatory factor when looking for reasons to explain Indonesian policy on religion and FoRB.

Another explanatory factor, based on the developments we discussed, seems to be the position of (Political) Islam. In the first section of this chapter, we saw that the loss of the Jakarta Charter was compensated for by founding MORA and by making MORA cater to the interests of the Muslim community. Later, MORA was also used to control Islam and to make sure that its potential power would not start overshadowing the power of the regime. We read that several regimes, even the ones before 1945, feared the potential power of Political Islam within Indonesia and therefore have always sought to suppress them. On the other hand, knowing that the Muslim community constitutes a majority in Indonesia, regimes could also not just ignore their needs and therefore gave them just enough to compensate for what they took from this community. Important things that were given to the Muslim community were the MUI, the non-proselytization law, as conversion is seen as being against Islam, and the hierarchy of religions, which is based on the first Pancasila Principle and the requirements for being seen as a religion by the government, which have been based on Islamic ideas by MORA. This can all be seen as compensation for the things that were taken, like the fusion of several Islamic political parties into one and the acceptance of the Pancasila as the main ideology of all Islamic organizations. In other words, the handling of (Political) Islam can also be seen as an explanatory factor for the existence of certain policies related to religion and FoRB. As we concluded in several places in the first section of this chapter, Indonesia's policies on religion and the right to FoRB can be seen as a way to maintain the power of the regime and its ability of implement policies.

So, based on the above, the answer to the sub-question belonging to this section (How can these developments explain the differences between the Indonesian and the international view on Freedom of Religion or Belief?) is as follows. From the analysis of the three political developments, it follows that these differences are caused by a difference in goals that are the basis of the two views. It seems that the goal of the international view is to give everyone the right to FoRB, as none of the documents we analysed in the second chapter provide a list of specific religions deserving of this right. The Indonesian view, however, does just that. It specifies those religions deserving of FoRB based on certain policy goals: the creation and maintenance of national unity, and the related goals of religious harmony and public order, and the continuing empowerment of the Indonesian leadership. So, as already suspected at the beginning of this section, these differences indeed did not fall from the sky. They exist due to a difference in policy goals. We will take this outcome of the case study with us to the conclusion of this thesis, in which we will

answer the main research question. Based on all of the above, we can now summarize the Indonesian view on religion and FoRB as follows:

1. The right to FoRB defined as the freedom of religion for the six officially allowed religions: Islam, Protestantism, Catholicism, Buddhism, Hinduism and Confucianism.
2. The possibility to choose every official religion as your own and the parental right to choose your children's religion from one of these official religions.
3. The possibility to change to one of the official religions.
4. The possibility to manifest one of the official religions, individually or in community and in both private and public places, through teaching, practice, worship and/or observance.
5. The possibility of limiting the right to FoRB to create and maintain national unity, religious harmony, public order, and the continuing empowerment of the regime.

Conclusion

The first sentence of this thesis was a quote from which we concluded that the (individual) freedoms might not fit into the political traditions of the Indonesian society. Based on this observation, this thesis set as a goal to develop a locally grounded analytical framework and method as a way to solve disagreements on human rights standards and move forward on improving human rights records around the world.

This thesis aimed to achieve this goal by focusing on one human right, the right to FoRB, in order to be able to develop a method that could be applied to other human rights as well. To this end, four main tasks were performed in four chapters. In the first chapter, we immersed ourselves in the academic debate on the universality of the right to FoRB. Focusing on this debate enabled us to learn more about why the right to FoRB should be defined and implemented in a more locally grounded way. In the second chapter, we identified the international view by performing a content analysis of several international human rights documents. The third and the fourth chapter together formed the case study on the right to FoRB in Indonesia. In the third chapter, we focused on finding out what the current legal situation regarding the right to FoRB is and we made a tentative conclusion on the similarities and differences between the international and the Indonesian view on the right to FoRB. The fourth chapter focused on providing explanations for these differences by analysing three political developments from Indonesian history: the desire for national unity, the bureaucratic quest for (religious) harmony and public order, and the ever-evolving relationship between the regime and the Muslim community in Indonesia.

The completion of these four tasks has now brought us to a point at which we can answer the main research-question that we introduced at the beginning of this thesis: What are the points of convergence and divergence between the international and the Indonesian understanding of the right to Freedom of Religion or Belief and how can a focus on historical political developments in Indonesia contribute to locally embedding the right to Freedom of Religion or Belief and all human rights?

Let us first answer the first part of this question on the points of convergence and divergence between the international and the Indonesian view. Based on the tentative conclusion on similarities and differences between the two views in the third chapter and the final one in the fourth chapter, we can now conclude on the main points of convergence and divergence between them. Both the international and the Indonesian view offer largely similar rights to religious individuals and communities. However, there are also three points of divergence that make the Indonesian and international view differ from each other.

The first is a difference in scope in terms of the application of the right to FoRB. The Indonesian view only offers the right to FoRB to individuals and communities belonging to the six official religions in Indonesia, whereas the international view does not limit its scope in such a way. Another point of divergence is related to coercion. The international view

clearly states that there may not be any coercion when it comes to choosing your religion. In Indonesia, however, one of MORA's tasks is to make each citizen belong to one of the official religions. Moreover, MORA has the power to fuse non-official religious communities with official ones under the Blasphemy Law. Both of these powers can come down to coercing people to choose a certain religion. A final point of divergence is related to the fifth element of the two views on limits to the application of the right to FoRB as laid out in the first four elements of both views. The limits of the international view are protecting public safety, order, health, morals or the fundamental rights and freedoms of others. During the fourth chapter, we saw that the limits of the Indonesian view are creating and maintaining national unity, religious harmony, public order, and the continuing empowerment of the Indonesian regimes.

The second part of the main research-question was: How can a focus on historical political developments in Indonesia contribute to locally embedding the right to Freedom of Religion or Belief and all human rights? In the fourth chapter, we saw how this can happen. We discussed three political developments from Indonesian history and from this analysis we could conclude why these three points of divergence between the international and Indonesian view exist.

We concluded that behind these differences is another layer of difference. This second layer relates to the goals behind the policy. Based on that the international view does not mention any specific religions to be deserving of the right to FoRB, we concluded that the main goal behind the international view on FoRB is to provide as many people as possible with the freedoms mentioned in this view. Based on the analysis of the political developments within Indonesia, we conclude that the goals behind the Indonesian view on FoRB are quite different and do not mainly have to do with allowing people to have their freedoms.

Based on the analysis, there seem to be two main goals behind this view. The first is the creation and maintenance of national unity, related to which are the goals of creating and maintaining religious harmony and public order. The second is the empowerment of the regime in order to make sure its policies are implemented. The first goal is achieved by only allowing Indonesian citizens to belong to a particular set of religions and to make sure that there are no tensions between and within these official religious communities. The second goal is achieved by controlling religious communities, specifically the Muslim community due to the regimes fearing the potential power of Political Islam. These two goals are both mainly achieved through the laws on religion that we discussed during the case study, which are all devised and implemented by MORA.

So, behind the points of divergence between the international and the Indonesian view lies a divergence in goals. We were able to conclude this by analysing political developments from Indonesian history and this conclusion can contribute to locally

embedding the right to Freedom of Religion or Belief and all human rights as follows. A difference in goals when using a certain type of policy can lead to tensions between standards and with regard to what these standards should be. As we mentioned in the introduction, the existence of such tensions can prevent us from moving forward with the improvement of human rights standards around the world. After all, if we cannot agree on general standards, then there are no standards upon which to base such improvements and measure whether improvement has actually happened. Understanding the goals and interests behind the policies of a state can help in creating understanding on why a state has certain policies when it comes to human rights, even if you do not agree with these policies. In turn, this can lead to partnerships on the improvement of human rights records from a position of understanding. From such partnerships, true agreement on general human rights standards can come. In this way, there can be general human rights standards that take into account the specific goals and interests of the parties applying them.

So, a focus on political developments in a state's history can create a sense of understanding that can be used to see how human rights could be more locally embedded. In this thesis, we applied this to the right to FoRB. However, each state has a political history, and this approach could thus be stretched to other states. Moreover, it could also be stretched to creating understanding on other human rights. This approach will ensure that we still have general human rights standards, but that in the negotiation about what these standards are, specific interests and goals are taken into account. This can make these general standards more locally embedded in the end.

In order to make the approach introduced in this thesis into an approach that can be widely used in an effective way, more research should be done. It is necessary to start doing more case-studies, like the one that has been done in this thesis, with regard to other states. We can of course not assume we can use the same explanatory factors we found in relation to Indonesia with regard to other states that also have a view on religion and FoRB that differs from the international view to a certain extent. As Jeremy Menchik said in his book on tolerance and intolerance in Indonesia, it can become problematic when indicators are "exported to countries with different social and political traditions."²¹¹ Of course, such problems should be avoided. Therefore, it is necessary to perform more case-studies like the one performed in this thesis while staying very aware of the fact that the outcomes can be quite different. Doing other case studies in the same way that we did the case study on Indonesia allows us to further develop, refine and finetune the framework and method we developed in this thesis.

This thesis has shown an extended example of how a focus on political developments in a state's past can contribute to locally embedding the right to FoRB. Now

²¹¹ Menchik, "Islam and Democracy," 29.

that we are at the end, I hope that the method and framework developed in this thesis can prove to be a good starting point for more research on how to locally embed human rights through the creation of partnerships from a point of mutual understanding.

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