Analisa: Journal of Social Science and Religion 8(1) July 2023
https://doi.org/10.18784/analisa.v8i1.1829

OPEN ACCESS

# Ahmadiyya Congregation in The Shadow of Religious Politics

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**Article History**

*Received*
January 19, 2023

*Revised*
July 08, 2023

*Accepted*
July 16, 2023

*Published*
July 31, 2023

**Abstract**

*The right to freedom of religion is a fundamental right. For Indonesian people, religion is not only seen as a ritual but also as a part of the social relations between society members and the state. However, the sacred value of religion in social relations is degraded through normative recognition in the form of official religious politics. The policy does not actually engender order and justice. On the contrary, official religious political policies and restrictions on religious freedom raise widespread discriminatory practices that affect religious minority groups, such as the Indonesian Ahmadiyya Community. The purpose of this study is to examine the tension between the law and the right to freedom of religion or belief in cases of discrimination against the Ahmadiyya Community of Indonesia from the point of view of the legal theory of legal disorder. The research methods used are socio-legal with a statutory approach, a conceptual approach, and a critical legal study approach using legal disorder theory. This research emphasizes that the Ahmadiyya, as a sect in Islam, has the right to freedom of religion within the Forum Internum. In practice, the official religious politics subordinated the rights of religious freedom under the control of religious majoritarianism. However, empirical facts show that the multireligious social context of Indonesian society places the situation in a state of irregularity. Through the disorder of law theory, Sampford opens the horizons of the legal paradigm, showing that seeing and answering various irregularities cannot be done through the lens of order.*

***Keywords:*** *Ahmadiyya Community; Right to Freedom of Religion or Belief; Discrimination; the Disorder of Law Theory*

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## INTRODUCTION

The right to freedom of religion or belief (FoRB) is a fundamental right that animates all the basics of national and state life, as contained in the First Principle of Pancasila. As a philosophy and outlook on life, the position of religion in Pancasila is like a speck of light on the highest peak that shines on all layers of other precepts to the bottom. This can be interpreted to mean that the right of the FoRB is a lamp that animates aspects of humanity, binds unity, strengthens democracy, and creates social justice (Nisa and Dewi 2021).

The position of religion in Pancasila describes the spiritual atmosphere of Indonesian society, which places religion not only as a matter of ritual but as part of the social relations between society and the state. Dahlan said that the relationship

between religion and the state in Indonesia is symbiotic or dynamic-dialectical. The placement of religion in Pancasila and constitutional norms serves only to put religion and the state in a position of mutual support. As a result, the design of religion is not a formal entity integrated into the construction of the state, but rather the spirit that livens up all state activities (Dahlan 2014).

As outlined above, normatively, the right of FoRB is mentioned in Article 28E of the 1945 NRI Constitution, which states that "Everyone is free to embrace religion and worship according to his religion." In addition, Article 29 paragraph (2) of the 1945 NRI Constitution states that "The State guarantees the freedom of each resident to embrace his own religion and to worship according to his religion and beliefs" (Shaleh and Wisnaeni 2019). The two constitutional norms do not provide religious restrictions that can be embraced by the Indonesian. These norms also emphasize the FoRB's rights as fundamental rights that cannot be limited in any way (non-derogable rights) (Yuliansyah and Effendi 2021).

However, the flexibility of understanding or interpretation of a religion could lead to intolerance and discrimination towards different understandings or interpretations. At a higher level, the state interprets religion within narrow limits, and even the state takes control of religious understanding. The emergence of Law No. 1 (PNPS) of 1965 concerning the prevention of abuse and/or blasphemy (the Blasphemy Law) marked the beginning of the tension. The law not only reinforces state control over religion, but also, the state formally narrows religious identity into terms of "official religion" or "religious politics" (Maarif 2017). Such normative realities place the relationship of religion and the state no longer symbiotic but subordinative.

According to Maarif, religious politics carried out by the state are a form of domination by adherents of majority religions in order to create control over all religious adherents in the form of identity control and political control (Maarif 2017). Such normative practices do not actually give rise to order and justice as the purpose of the law is used. On the contrary, Blasphemy Law creates widespread discrimination that affects religious minority groups. One such vulnerable group is the Indonesian Ahmadiyya Community (JAI).

Discrimination against JAI often occurs in various regions of Indonesia. In Lombok, discrimination against JAI extended into prolonged religious conflicts that began from 1998 to 2006 (Anam and Qodir 2011). In South Tangerang, there was a ban on the establishment of houses of worship and a ban on carrying out worship (Simamora, Hamid and Hikmawan 2019). In Kendal, there was a destruction of JAI's Al-Kautsar Mosque by the Muslim community, which considered JAI as a heretical religion (Wijayana and Sardini 2019). In Tasikmalaya, the local government banned religious practices for JAI because they were seen as heretical and not included in the official religion (Zuldin 2013). Lastly, in 2021, there was the destruction of JAI's Miftahul Huda Mosque in Sintang Regency (Lestari 2022).

All cases of discrimination against JAI have similar and repeated reasons, namely that JAI is a heretical religion and is not included in the official religion recognized by the state. This has come in long story. Burhani reveals genealogically that the doctrine of *al-wala' wa-l-bara'* (loyalty and disavowal) is the ideology of the Salafists, which continues to be discussed and implemented in the public sphere to indoctrinate a justification that heresy must be resisted and, if necessary, as a holy war that must be done (Burhani 2021). From this, the state has a very important role in giving rise to widespread religious conflicts. The existence of the Blasphemy Law is a juridical basis for the emergence of various discriminatory policies against JAI. Some of the policies derived from the Blasphemy Law include SKB 3 Ministerial Decree No. 3 of 2008 concerning warnings to JAI, MUI Fatwas. In 1980 and 2005, various Constitutional Court decisions affected JAI's right to freedom of religion. In 1980 and 2005, various

Constitutional Court decisions affected JAI's right to religious freedom, and various policies at the local government level.

Laws that are made to create order create a paradoxical reality. Charles Sampford called the condition chaos. The condition of irregularity occurs because social relations arise and are built from power relations. The relationship is built asymmetrically or unbalanced so that the strong group will dominate the weak group. In the end, the subjectivity of the winning party will influence the birth of a policy that discriminates against other vulnerable groups (Sampford 1989).

Indeed, this practice has an impact on the fulfilment of FoRB rights in Indonesia. With the discriminatory policies above, the fulfilment of FoRB rights becomes very exclusive, thus closing the door to minority religious groups. In fact, juridically, the position of FoRB rights in Pancasila and the constitution is universal. Even the universality of FoRB rights is contained in the UN Declaration of Human Rights and the Covenant on Civil and Political Rights. It regulates the rights of the FoRB from the perspective of the forum internum in Article 18 paragraph 2 of the Covenant on Civil and Political Rights. Meanwhile, Article 18 paragraph 3 of the Covenant on Civil and Political Rights regulates the FoRB's rights from the standpoint of a forum externum.

The universality of FoRB rights does not recognize the spaces of identity created by the state. Religious political policies degrade the universality of FoRB rights owned by every human being and every religious group. The tension between policies that discriminate against JAI and the rights of JAI FoRB must be addressed at once. Therefore, the perspective of the FoRB needs to be continuously strengthened both in conflict resolution and in dialogues about law and religion.

Based on this, this research is aimed at emphasizing the position of FoRB rights that can also be owned by all religious groups regardless of religious identity, including JAI. This research departs from the attack on the Miftahul Huda Mosque that belongs to JAI in Sintang Regency on September 3rd, 2021, which was carried out by intolerant actors. The attack was caused by a series of connected events, and each of these sequences is a *conditio sine qua non*. The background to this incident began with a lecture given by a religious leader, from which the lecture developed into an effort to mobilize the community to act against JAI. The community then formed the Muslim Alliance Group and demanded that the local government stop JAI activities. From here came the regional government circular and joint decree with Islamic organizations declaring JAI to be heresy. The culmination of this event was the demolition of the mosque by the group.

From the above case, this study describes the position of JAI in the context of FoRB and the tension between law and FoRB from the perspective of the theory of the Disorder of Law. The assumption to be strengthened is that JAI's interpretation and belief in its teachings are part of the forum internum, which is part of FoRB, so that the state is obliged to respect, protect, and fulfill JAI's right to freedom of religion. The result of this research is to build a dialectic between law and FoRB.

## LITERATURE REVIEW

To reinforce this research, some previous studies need to be analyzed. First, Sofanudin's research on the handling of JAI cases in Indonesia. Sofanudin's research focuses on various handlings by the government of JAI's existence in Indonesia (Sofanudin 2012). Sofanudin revealed that the dialogue process has been conducted by the government and various religious organizations. The dialogue process often fails and ends with efforts to urge JAI to return to Islamic teachings. The purpose of dialogue is not to bridge harmony and uplifting to building tolerance and diversity. Furthermore, dialogue serves as a form of ideological coercion and belief in JAI in order to be willing to follow the wishes of Islamic

mass organizations and the majority Muslim community. It is clear from this that dialogue is not designed to be egalitarian, but rather to provide the government with rationale for enacting policies that discriminate against JAI if the process fails.

Second, Imannsyah's research on state protection of JAI in Indonesia. Imannsyah's research focuses on the legal efforts that JAI can take against various discriminatory policies, for example, by filing a lawsuit with the state administrative court (Imannsyah 2011). I see that Imannsyah's research did not describe the form of state protection of JAI as a form of duty bearer for the respect, protection, and fulfillment of FoRB rights for JAI. Nonetheless, Imannsyah's research recommends the importance of legal awareness for JAI to be able to fight for their FoRB rights through litigation. JAI needs to fight every policy with maximum legal remedies through the administrative courts. Another effective way is to give a material test of each policy to the Supreme Court. JAI also needs to build institutional relations with Komnas HAM and various civil society organizations to strengthen JAI's position before the state.

Third, Khoiron's research on the state dominance over the JAI in Indonesia. Khoiron explained that state dominance was not able to eliminate the JAI group in Indonesia. On the contrary, the JAI group was able to adapt to various conditions, even though it was overshadowed by various challenges that often arose (Khoiron 2018). I agree with the findings of the research conducted by Khoiron. However, the adaptations made by JAI have not been able to resolve the roots of the conflict, namely, policies that discriminate against official religious politics, majority religious hegemony wrapped in religious formalism, and intolerance that is constantly exhaled. Adaptation puts the JAI in an asymmetrical position that must be subject to official religious dominance. This hegemonial power strengthens people's perspectives on religious formalism, so ideologically, politically, socially, and culturally, JAI's position will remain alienated.

Fourth, Pertiwi's research on policies that discriminate against JAI in Indonesia. Pertiwi focuses on the attention on all policies published both on the scale of the central government, as well as in numerous local governments (Pertiwi 2021). Pertiwi's research revealed that official religious politics has greatly contributed to the emergence of various coercive policies. Various policies were developed not to protect, but rather to strengthen the position of regional leaders as religious leaders and to stand firm against religions deemed heretical. On the other hand, JAI is becoming increasingly alienated, and these policies themselves have become a tool of legitimacy for intolerant groups to execute persecution.

Fifth, Regus' research on challenging the fragility of human rights in Indonesia (Regus 2022). Based on Regus' view, the fragility of the implementation of international human rights norms in Indonesia can be seen in the internalization problems, for example, the problem of translating phrases, the problem of interpreting international human rights norms, and the weak enforcement of human rights in Indonesia. This problem has an impact on the vulnerability of religious minority groups, for example, JAI. Regus introduced an acculturation approach to address this vulnerability. The concept of acculturation is interpreted as a fusion of an understanding of international human rights norms with Indonesian socio-cultural construction. Through acculturation, Regus sees the potential to strengthen FoRB rights for religious minority groups.

Sixth, Irawan et al.'s research on political and religious discrimination against Ahmadiyya (Irawan, Samad, Nur et al. 2022). The focus of the study targets the Indonesian Ahmadiyya Movement as a resistance movement both politically and religiously. Politically, the Indonesian Ahmadiyya Movement fights for the right to freedom of religion as a normative basis for international

**Table 1.** Article 18 of the Covenant on Civil and Political Rights

| Article | Norm Load | Forum Internum/ Eksternum |
|---|---|---|
| Article 18 paragraph (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." | Primary norm |
| Article 18 paragraph (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." | Forum Internum |
| Article 18 paragraph (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." | Forum Externum |

Source: Legal Material Data

human rights that must be respected, protected, and fulfilled by the state. Religiously, the Indonesian Ahmadiyya Movement builds discourse on the right to freedom of religion in various religious forums while at the same time strengthening their position as part of Islamic teachings that must be respected by the majority.

In other research on how the state and Islamic organizations discriminate against JAI, Irawan examines the discourses produced by the majority group that position the JAI as heretical teaching, a destroyer of faith, a destroyer of public order, and a destroyer of religious harmony. The production of discriminatory discourse contributes to the indoctrination of the wider community to coerce and repress all forms of JAI activity. The Blasphemy Law is often used as a tool to ensnare JAI as a sect that tarnishes the sanctity of Islamic teachings (Irawan and Adnan 2021).

## CONCEPTUAL FRAMEWORK

### Freedom of Religion or Belief

The FoRB right is a fundamental right protected and guaranteed by the constitution. Article 28E of the 1945 NRI Constitution is a constitutional norm that provides recognition to citizens of the FoRB rights inherent in individual and collective rights. Meanwhile, Article 29 paragraph (2) of the 1945 NRI Constitution states that it is the constitutional responsibility of the state to respect, protect, and fulfill the FoRB rights of every citizen (Situmorang 2019).

Based on Article 18 of the Covenant on Civil and Political Rights as ratified into Law No. 12 of 2005 concerning ratification of the *International Covenant on Civil and Political Rights* which regulates the rights of the FoRB can be seen in the Table 1.

Based on Article 18 paragraph (2) above, the state cannot limit the dimension of the forum internum as an area of spirituality, or a condition of spirituality, or a belief in conscience (inner beliefs). This dimension is freedom in choosing and practicing religious beliefs, including freedom in conversion as part of the journey of spirituality. In this dimension, conflicts often occur when an individual's choices must deal with the beliefs of the

majority of a religious group. The term “infidel” or “apostate” is often attached to those who choose to make a conversion. In addition to conversion, conflicts also often occur if the chosen religion or belief is not an officially recognized religion. This is where the impact of religious political policies creates an atmosphere of religious conflict. Therefore, the state must be present in carrying out its role as a duty bearer, namely the obligation to respect, protect, and fulfill everyone's FoRB rights (Ahmad 2016).

On the contrary, in the forum externum dimension, as described in Article 18 paragraph (3) above, religious manifestations can be limited on the condition that they are regulated in law, fulfilling the principles of necessity, the principle of non-discriminatory and the principle of proportionality and if the restriction is necessary only to protect public order (Bagir, Asfinawati, Suhadi et al. 2019). On this dimension, manifestations in the form of worship practices can be limited by the state as long as they meet the above principles. According to Nowak and Vospernik, the restrictions do not reduce the nature of non-derogable rights. This is because manifestation forms are practices that can reach public spaces, so they are closely related to social relations (Nowak and Vospernik 2004). If the practice of worship can interfere with public safety, public health, public morale, and public order, then the practice of worship in public spaces can be limited (Rahmanto 2016). One example of such restrictions is the restriction of worship practices during the COVID-19 pandemic (Tobroni 2020).

**The Disorder of Law Theory**

The disorder of law theory, also called "chaos theory," is a legal theory proposed by Charles Sampford as part of critical legal theory. As a result of the rise of the modern legal state, the chaos theory arose as a critique of deeply rooted legal positivism. Legal positivism becomes a paradigm that creates a duality between legal norms and morality. This paradigm departs from the thought of Hans Kelsen, who considers the construction of legal norms to have its own authority and be separate from aspects of morals and justice (Giyono 2020). Legal norms are created by the state as part of a legal system that has the aim of creating order. Therefore, this paradigm is often also referred to as the systemic legal paradigm (Absori and Achmadi 2017).

The systemic legal paradigm influenced by the teachings of legal positivism prioritizes legal formality as the main mechanism for creating order. Although justice is separated from legal formality, justice remains one of the goals of the legal system, even though the end result is procedural justice. According to Hermanto, procedural justice is justice created through formal legal mechanisms that are influenced by the political background of their formation. Therefore, procedural justice is not pure but rather designed by the configuration of power. This makes the position of justice a mere myth (Hermanto 2016).

It can be said that in the paradigm of legal positivism, justice cannot be pinned on juridical territory given that the concept of justice is in metajuridical territory. Meanwhile, the legal position constructed as a rational entity certainly rejects that very theological and philosophical justice. Such assumptions depart from the early ideas of Thomas Hobbes, which he wrote about in his work entitled *Leviathan*. Thomas Hobbes can be said to be the first founder of the idea of legal positivism. Legal positivism is influenced by the pattern of exact science because its methods are considered capable of producing definite findings or truths that can be applied with certainty. Through his study of geometry, Hobbes then married science with history, resulting in his very influential political idea, namely the social contract. The influence of rationalism on science that metaphysical things brought into his political notions (Ward 2021b). According to Hobbes, the social contract is built to support the stability of power. However, the law is constructed; in fact, it is merely a political instrument to strengthen power. For Hobbes, the real justice of the social contract is

an order from the ruling political institution, while the real injustice is when someone goes against that order (Hobbes 1996).

The construction of legal positivism has always been inherent in the talk of power. However, positivism is constructed as a glorification of legal sovereignty, and indeed, the great themes of legal positivism cannot be separated from the pursuit of legal sovereignty. Ian Ward, in his various works on legal positivism, has historically exposed the romanticism between law and power, ranging from the influence of Thomas Hobbes throughout Europe, the influence of Holmes' realism in America to the era of Michel Foucault, which echoed in the direction of postmodernism.

One of the major influences on the above philosophers' thinking is how legal positivism was constructed to create the effectiveness of the workings of law, institutional functionalism, and political stability of power rather than creating a democratic state. For Carl Schmitt, a democratic state is an illusion because creating a country that accommodates all diversity is impossible. Schmitt's perspective wants to emphasize that creating equality for diversity is impossible because it is fundamental to human nature, especially when the majority group is oppressing other groups. Therefore, forcing the state to create democracy will only end in the collapse of the state (Ward 2021a).

The teachings of legal positivism are still deeply rooted in the legal system to this day in numerous parts of the world, including in Indonesia. The legal curriculum from colonial times to the present day still maintains this heritage. Legal education has succeeded in producing legal scholars, jurists, and law enforcement officials who maintain the sacredness of legal positivism. Don't be surprised if, in Indonesia, there are thousands of laws and regulations produced to meet the needs of legal functionalism.

One thing that can be underlined in Schmitt's view above is that majoritarianism played a role in conjuring the law according to its version or making the law a tool of truth propaganda carried by the majoritarian group. In the context of religious life, anti-mainstream views and freedoms that are considered contrary to the majority religious belief system are views that must be opposed so that the state has the authority to order or prohibit these views.

The majority group tends to reject differences that arise outside of the majority group's beliefs, so that authority is ultimately built on a formalist and exclusive majoritarianism perspective. In the context of Indonesian's, religion has a big role in the development of national law. The theological framework became the foundation of the birth of the Indonesian state and played a role in strengthening religious authority in the process of legal formality (Elkhairati 2019).

Syahbudi described this dialectic in two frameworks of legal functionalism, namely, the exclusive or inclusive character of the law. Syahbudi based his views on the reality of Indonesian Muslims' preferences on the political aspect and the establishment of houses of worship. From the survey results, Most of Muslims want public services, and the establishment of houses of worship must accommodate the majority of Muslims. Meanwhile, on the political aspect, the most of Muslims object to being led by non-muslims. From this reality, Syahbudi then analyzed its influence on political and religious dialectics. As a result, political behavior that embraces religion as its crutch will make religion a tool of political communication, so that religious politics will be popular and seek to accommodate religious formalism. The political character is the one who plays a role in giving rise to exclusive laws because of the push of the political agenda to accommodate the interests of the majority of a religion. If that condition is reversed, religious substantialism becomes a foothold in political behavior, then the government will seek to produce ijtihads that can accommodate developing contextual issues. As a result, encouraging subtansialism will result in a more inclusive legal character

(Syahbudi 2021a).

Indeed, the exclusive character above is also rooted in the paradigm of legal positivism. As a form of celebration of the power of majoritarianism, this exclusive pattern gave rise to a variety of authoritative religious policies. As a result, the exclusive complexion ignored to the various contexts of the diverse realities of society. Religious formalism would be so adamantly opposed to differences beyond literal texts that policies born of the exclusive womb would almost certainly result in alienation and rejection of defferent religious traditions and groups (Bakar 2010).

This attitude gave rise to the state's repression of minority religious groups. The state succeeded in accommodating the interests of the majority religion and the official religion to effort to create political balance. State accommodation is limited to accommodating the interests of the majority religious group. In addition, the state also gives authority to these groups to suppress minority groups. The political narrative built here is to create public order (Uddin 2015). According to the author, public order in question is an anomaly or paradox created by legal positivism that the public order in question is public order according to the version of the majority group. Therefore, the teaching of legal positivism about public order creates social fragmentation as well as a form of alienation for minority groups.

From such delineation, doubts arise about the validity of legal positivism. Can the ideal of order be achieved through the approach of legal positivism, or does the normative order reflect its paradoxical shadow, namely the state of chaos? From these various delineations, Sampford broke the paradigm of legal positivism that legal certainty presented unwittingly gives rise to the opposite shadow, namely the condition of legal uncertainty (Turmudi, Wardiono, Harun et al. 2021).

The state of opposition between the majority group and the minority group is a form of power relationship. The formalization of laws formed by the power of the majority produces a conflict between the law created (*law in book*) and the existing social facts (*law in action*). Such opposition gives rise to social friction and fragmentation, referred to as asymmetric conditions (Syarifudin and Febriani 2015). Asymmetric conditions cause the implementation of the law to be very fluid (*legal melee*) due to differences in interpretation, differences in interests, and other normative conflicts. Looking at these conditions, Sampford emphasizes that the legal world can no longer be seen as a mechanism of certainty or order, but also gives rise to the reality of irregularity (Sampford 1989).

The alternative reality built above gives the author a firm foothold to build legal arguments against the social facts that occur in JAI groups. The author's basic assumption is that policies restricting JAI's religious freedom rights in Indonesia are a form of asymmetric conditions, so it is necessary to investigate these policies further from the standpoint of the Disorder of Law Theory.

## RESEARCH METHOD

The method of legal research used is a socio-legal method. This method elaborates on approaches in legal science (legal norms and legal principles) and approaches in social sciences (interdisciplinary approach) (Irianto 2012). This method is used to explain legal issues more broadly using social analysis. For example, in the context of this research, the policies governing JAI need to be explained critically regarding their meaning and implications for the JAI group. This research uses a statutory approach, a conceptual approach, and a critical legal study approach using legal disorder theory (Banakar and Travers 2005). The data source used is secondary data with primary legal materials in the form of policies related to JAI (especially the basis for the emergence of the Sintang Regent's Circular Letter regarding the Prohibition of JAI Activities) and Constitutional Court decisions, as well as secondary legal materials derived from various

previous studies. The data is then analyzed qualitatively-descriptively, evaluatively, and prescriptively (Muhaimin 2020).

## RESULT AND DISCUSSION

### Legal Problems of Policy Towards JAI

In the institutional context, JAI has been registered as a legal entity by the Ministry of Justice since March 31, 1953. This is confirmed by the Letter of the Central Jakarta District Court, Number 0628/Ket/1978, dated June 19, 1978, which recognizes the institution of JAI as a legal entity. Therefore, legally, JAI is an established religious institution and, surely has the FoRB rights, especially in the dimension of forum internum (Sidik 2007).

In the context of the issue of FoRB restrictions, based on the case of the attack on the Miftahul Huda JAI Mosque in Sintang Regency that happened in 2021, several meetings were held between JAI and the local government, Islamic mass organizations, and the provincial government. The narratives that are always evolving are about the existence of SKB 3 Ministers No. 3 of 2008 concerning Warnings to JAI (SKB JAI).

That the local government has the authority to limit JAI activities as referred to in the decree. In addition, the Blasphemy Law also serves as a reference that JAI is not part of Islam, so its activities mislead and interfere with the morals of the local community. The meeting concluded that JAI activities need to be restricted and JAI should return to Islamic teachings.

After going through a long process of dialogue and advocacy against JAI, in February 2023, in the end, the Regent of Sintang issued Circular Letter Number 180/0838/Kesbangpol/2023 dated February 5, 2023, concerning the Ahmadiyya Sect (SE JAI Sintang). The content of the circular is to reinforce JAI's status as a cult and prohibit it from being part of JAI. The circular letter was made and agreed upon by elements of local religious leaders, Islamic boarding schools, regional leadership coordination forums, and local village heads. The emergence of the circular needs to be studied in its juridical aspects. Here it needs to be tested whether the SKB JAI and the Blasphemy Law have normative validity or are coercive (Table 2).

Pertiwi explained that the formal legal problem in SKB JAI is that it does not meet the

**Table 2.** Normative Basis of JAI Restrictions

| Policy | Normative Basis |
|---|---|
| The Blasphemy Law | Article 1 affirms the prohibition on everyone in interpret a religion in Indonesia as a form of interpretation that deviates from religious teachings. |
| SKB JAI | SKB JAI affirmed a strong warning to JAI not to spread its religious teachings. The normative implication is that the state restricts the right of religious manifestation of the JAI. |
| Constitutional Court Decision No. 56/PUU-XV/2017 | In its legal considerations, the Constitutional Court held that the legislative ratio of the Blasphemy Law was to maintain public order. Therefore, the regulation is appropriate to strengthen the religious freedom rights of Muslim communities. |
| Constitutional Court Decision No. 140/PUU-VII/2009 | In its legal considerations, the Constitutional Court held that the Blasphemy Law does not conflict with the Constitution. However, the Constitutional Court realized that the problem that occurred was not a normative problem, but a problem of implementing the law. |
| 2005 MUI Fatwa and 1980 MUI Fatwa on Ahmadiyya Sect | Both fatwas consistently refer to Ahmadiyya as heretical and recommend the government to ban, freeze, and outlaw JAI religious manifestations. |

Source: Legal Material Data

norms of the statutory hierarchy, so the arrangements overlap. Legally, SKB JAI has no legal force as a legal product. As a result, SKB JAI cannot be used as a legal basis for local governments in determining restriction orders for JAI (Pertiwi 2021). From this, it can be seen that the validity of the SKB JAI normatively has no legal force and is not binding as a norm.

Meanwhile, according to Fitriah and Utami, it is explained that SKB JAI is not included in the category of laws and regulations as stipulated in Law No. 11 of 2012 concerning the Establishment of Laws and Regulations as updated through Law No. 15 of 2019 concerning Amendments to Law No. 11 of 2012 concerning the Establishment of Laws and Regulations. The position of SKB JAI in the theory of legislation belongs to the category of policy regulations (*beleidsregel*) based on the principle of *freies ermessen*, or discretion (Fitriah and Utami 2022).

From the two views above, I agree that the position of the JAI SKB does not have strong normative validity considering that these regulations are stipulated based on discretionary authority. If it is connected with the limitation of FoRB rights as stated in Article 18 of the Covenant on Civil and Political Rights, then the limitation based on JAI beliefs cannot be carried out by the state. Likewise, if the restriction is aimed at JAI religious activities, then normatively the restriction can only be made at the level of the law. From this, it can be seen that SKB JAI greatly contributed to the practice of structural discrimination, so that it appears that the state is completely biased from a human rights perspective.

In addition to SKB JAI, another formal legal problem is the existence of Law No. 1/PNPS/1965 (The Blasphemy Law), which prohibits different interpretations of religions that are politically recognized by the state. Sopyan revealed that the legislative ratio of the emergence of the Blasphemy Law as a form of government response to the emergence of sects that are considered contrary to recognized religious teachings and have an impact on segregation and division, so that these schools are considered as triggers for the emergence of horizontal conflicts (Sopyan 2015).

In line with Sopyan, Regus emphasized that the Blasphemy of Religion regulations indicated the failure of the state to internalize international human rights norms, which led to the alienation of religious minorities (Regus 2022). From this, it can be seen that there is a gap between legal positivism as a paradigm of state policy and the reality of religious minorities, who are increasingly marginalized.

This is the source of structural problems that come to the fore as well as the trigger for the emergence of cultural problems (Hamimah 2018). In Shafi'ie's view, the regulation degrades the rights of the FoRB and places the position of the FoRB's rights in the authoritative circles of official religions. The essence of universal FoRB rights is degraded into particulate FoRB rights. To maintain the purification of official religious teachings, various religious institutions were born that have authoritative decisions against their religious groups, one of which is the Indonesian Ulema Council (Syafi'ie 2011).

The official religious politics placed the FoRB's rights under the control of religious majoritarianism. Any person who believes in religious differences outside the official religion will be considered heretical and can be eradicated. Because this legal paradigm is a form of majoritarianism, the FORB's rights are actually under majoritarian control (Rosyid 2011).

The MUI fatwas of 1980 and 2005 are examples of the practice of religious majoritarianism in authoritative state institutional structures. In the case that occurred in Sintang District, the MUI Fatwas were used as the basis for the intolerant group to take coercive action against JAI. Within the context of the forum internum, the MUI Fatwas labeled JAI as a heretical teaching, prompting Islamic organizations in West Kalimantan to urge JAI to return to true Islamic teachings. It is crucial to emphasize that when it comes to interpreting religious beliefs, including the defense of their Islamic beliefs (JAI), neither

the state nor civil society are justified in dictating and coercing individuals to change their beliefs. This is the central point of the forum internum, where beliefs reside in the hearts and minds of individuals. Even if these views are not mainstream, then it should not be compelled to conform to the majority's beliefs.

In Hanna's view, religious majoritarianism has always had full control over determining restrictions on the FORB rights of minority religious groups on the basis of public order. Restrictions are made so that they do not interfere with the position of the official religious status quo (Hanna 2015). In Indonesia, majoritarians use the Blasphemy Law, the MUI Fatwas (1980 and 2005) and various policies against JAI to oppress, discriminate, and restrict JAI in the name of religion (Jufri 2016).

Another form of coercion is the Constitutional Court Decision that strengthens the Blasphemy Law through Decision Number 56/PUU-XV/2017, which states that religious understanding (including JAI) must not make different interpretations of scripture. According to the Constitutional Court, the *ratio legis* of the Blasphemy Law is to maintain public order for religious believers (Yunazwardi and Nabila 2021).

The Constitutional Court's decision in the institutional paradigm actually shows a bias from the perspective of FoRB rights and tends to be closed to efforts to interpret the Constitution from the perspective of the FoRB. Even in its deliberations, the Constitutional Court eliminated the norms of the Covenant on Civil and Political Rights in consideration of the purification of religious values that must be maintained in order for stability and public order to be maintained. Grull and Wilson explain this condition as a tension between universal human rights secularism vis a vis religious cultural relativism (Grüll and Wilson 2018).

In Rawls' view, such tensions can be avoided when religious communities are able to shed their religious robes when they enter the political space as well as the public sphere. Rawls did realize that religion, as a metaphysical reason or comprehensive doctrine, is difficult to escape from people's lives. Nonetheless, unequivocally when entering the political space and the public sphere, Rawls asks each individual to use his or her public reasoning. Public reason serves as an effective communication tool to connect the plurality that certainly exists. The views or communications that are built with public reason will be easily impregnated and accepted by citizenship pluralism or public pluralism (Seidman and Alexander 2008).

Unlike Rawls, Habermas wants to shift the particularization of religion to enter the public sphere universally. Although at first Habermas refused religion entry into the public sphere because of its irrational metaphysical nature. In its development, Habermas realized that religion is a universal perspective (*weltanschauung*) that influences various decisions and dynamics in the public sphere. With the emergence of various collective decisions. Habermas realized that religion and science created constructive coexistence. In the context of a post-secular society, religion is no longer exclusive but rather plays an inclusive role in the deliberative democratic process (Menoh 2015).

To bridge this, spaces of encounter must always be created to bring together a variety of differences. With the presence of a space of encounter, differences can be managed and found linkpoints. In this case, Bielefeldt and Wiener call the encounter space present to find a common language (*lingua franca*), namely, a collective interest capable of binding differences to a single point of universal commonality (Bielefeldt and Wiener 2021). To achieve this, an equal dialogue process is needed, and each party must remove the barriers of its identity.

In the Indonesian context, the culture of dialogue is a sublimation of the doctrine of diversity. According to Syahbudi, the Pancasila democracy is defined by its openness to equal dialogue, which ensures that differences are always connected and perspectives are always

open (Syahbudi 2021b). The culture of dialogue is in accordance with the pattern of the legal system in Indonesia. In Menal's view, the legal system in Asia (including Indonesia) has a different pattern from the legal system in the West, which is influenced by legal positivism. The legal system in Indonesia is very plural, so the application of law to religious freedom also depends on how legal pluralism works, such as moral law, customs, and religion (Suteki 2015).

If drawn into the ideological realm, the culture of dialogue is a manifestation of Pancasila values. Sekar Anggun and Sumber Nurul mentioned the legal paradigm of Pancasila into four important rules. First, the law must protect the entire nation so that Pancasila rejects tries at disintegration and discriminatory behavior. Second, that the law must be able to create social justice so that Pancasila rejects asymmetric conditions so that weak and minority groups have the same rights and equality as strong and majority groups. Third, the law must be able to build democracy in a fair and equal manner so that Pancasila is able to guarantee every variety of differences so that they have the same role in the public sphere. Fourth, the law must not apply discriminatorily on the basis of religion or primordiality, so that Pancasila must guarantee the rights of the FoRB for everyone and religious groups (Pinilih and Hikmah 2018). From these four rules, Pancasila is the basis for the implementation of legal pluralism in Indonesia.

According to Muhammad Nizar and Fifiana, legal pluralism in Indonesia is well suited to be a legal policy to strengthen FoRB rights as well as a legal umbrella for the resolution of FoRB conflicts (*pluralism justice system*). If there is a FoRB conflict, then the effort that should be made is religious dialogue facilitated by the Religious Harmony Forum (FKUB) through an equal dialogue process. Furthermore, peace efforts must provide justice for both religious groups through a restorative justice process (Kherid and Wisnaeni 2018).

In the context of the emergence of SE JAI Sintang, the role of FKUB failed in creating an equal and harmonious dialogue. The FKUB is stuck in the normative scheme of official religious politics. The FKUB underlies its authority by stating that dialogue is intended for the benefit of Muslims who feel hurt by the presence of JAI, which is considered heretical. In addition to the FKUB, Muslim religious leaders and scholars are also stuck on exclusive narratives that oppose sects that are considered heretical, so that various dialogues with JAI are asymmetrical and coercive. As a result, the power of structural majoritarianism (an institutionally entrenched view of exclusivism) has stripped the FoRB of its rights and alienated JAI's existence. So it is time for the JAI group to use constitutional resistance before the Constitutional Court in the form of a constitutional complaint to fight for the establishment of the JAI group's FoRB rights in Indonesia (Plaituka 2016).

**Policy Towards JAI In the Perspective of Legal Disorder**

As stated above, the systemic legal paradigm is aimed at creating regularity or order. The legal system is designed to create an orderly world of stability, public order, uniformity, communion, and unity. It is this systemic goal that gives the state the authority to create harsh and frightening legal norms (Raharjo 2006). The interpretation of regularity or order belongs only to the holders of authority, and of course, those who succeed in winning it are the majority. A relational imbalance or asymmetric relationship between policymakers and society is formed as a result of this. Policymakers will develop policies based on majoritarian views. Meanwhile, minorities are often overlooked, therefore, they are alienated in these social relations. This condition is referred to as power relation (Utomo 2018).

What appears to be regularity turns out to hold systemic flaws or rifts. The majority group will have full control over the interpretation of the truth and will pressure the minority group to submit to that

interpretation. Official religious politics is used by the majority group in relations between forces to regulate and limit the space for movement of minority groups so that they remain orderly and do not undermine the existing order, or so-called regularity conditions. Nonetheless, it is the asymmetric relationship that creates the irregularity condition because the order in question is not systemically connected but rather the result of a power struggle between unequal and disparate groups.

For example, in the policy of showing houses of worship, there is a norm that requires the religious group to get the approval of 60 local people. The ratio legis of the norm was created to bridge religious people's harmony in the form of social support from the local community, particularly from different religions. In practice, the norm actually creates an unbalanced bargaining position. People can resist the establishment of houses of worship because it can disrupt the stability of local religious groups (Azhari 2014). This policy actually creates a condition of irregularity, namely discrimination, and on a certain scale can rise to the level of persecution, as in the case of the JAI Mosque attack in Sintang Regency.

Truly, the social construction of Indonesian society is a diverse, multicultural, and multireligious society. The systemic legal paradigm is not capable of reaching out to all existing differences because its construction is built within a logical-rational framework. Law is instead trapped in a definitive mathematical way of working that ignores the diversity of variables in the social structure of society. The logic of law is trapped in the logic of the syllogism determined by the policymaker, hence, it is highly centripetal and deterministic.

Sampford described the above conditions of irregularity as a fluid social construction (*social melee*). If the law were likened to a machine, the law would not be able to read the distraction because the systemic and orderly nature of the machine would fail to read the distraction, which is non-systemic. From here, it can be seen that legal failures contribute to various social problems that occur, especially in diverse societies (Sampford 1989). Through the theory of *legal disorder*, Sampford opens the horizons of the legal paradigm, showing that seeing and answering various irregularities cannot be done through the lens of order. In order to reach everything (*legal melee*), reading irregularities must also be done by law (Wardiono 2012).

To create a *legal melee*, capriciousness needs to be taken in a positive direction. In the context of multireligious religious life, the law must be designed to provide freedom to all religious believers so that the law guarantees natural social relations. The law need not get caught up in official religious politics and policies that only accommodate the interests of the majority religious group. Highly coercive restrictions should be replaced with a dialogue-based policy model, so that the character of the law is not repressive but accommodating. With such construction, the law not only moves in a centripetal direction but also moves in a centrifugal direction.

A *melee legal* approach will seek to place the law in the midst of a situation fraught with conflict or tension. Nevertheless, the law does not reduce conflict situations through repressive avenues but rather ensures that connectedness is built on the basis of harmonious dialogue (*restorative justice*). Restorative justice becomes a middle way to build equality, harmonious social interaction, and strong tolerance. Through this approach, the law will create a strange power by transitioning from a state of irregularity to a state of order (Syarifudin and Febriani 2015). In the end, the law is able to build happiness on top of existing differences so that it succeeds in guaranteeing and fulfilling the FoRB rights of every religious community.

## CONCLUSION

This article has presents three important points regarding JAI's position in the context of

FoRB rights. First, JAI, as a sect in Islam, has the freedom to believe in its religious perspective or understanding, even though this is different from the mainstream view. This freedom is the forum internum area protected by international human rights norms. The state must respect, protect, and fulfill the rights of the JAI FoRB, including believing in its teachings as a form of implementation of international human rights norms. Second, acts of coercion against JAI occurred through structural discrimination born of discriminatory policies and a majoritarian perspective on the sanctity of Islamic teachings. Both the Blasphemy Law, the JAI SKB, and the MUI Fatwa are often used as a basis for the state and Islamic organizations to restrict and force JAI to return to the sanctity of Islamic teachings. Third, the state's stuttering in implementing JAI's FoRB rights is due to the paradigm of legal positivism, which prioritizes legal formalism as a source of majoritarianism. This paradigm conceptualizes legal justice as procedural justice designed by the political configuration of power. For example, the recognition of official religious politics is intended so that the lives of religious communities can run in an orderly and harmonious manner. However, these policies create an antinomy from order to disorder. What happens then is a relational inequality or asymmetrical relationship between the recognized majority and those who are excluded. This formal legal problem can be read as a form of the inability of legal positivism to force religious people into a form of regularity, whereas legal positivism is trapped in conditions of irregularity.

Charles Sampford opened the horizons of the legal paradigm to be able to departed from the rigidity of legal positivism, seeing that disorder can't use order mechanism. Disorder is a fluid social condition (social melee), which in the process needs to be pulled in a positive direction (legal melee). How should the law work in this capacity? If using Sampford's approach, then the law must be addressed in the midst of situations full of tension and conflict, requiring an accommodative mechanism to be implemented, not a repressive mechanism. The law must be able to open itself to guarantee FoRB rights to all adherents of religion without the need to get caught up in official religious politics. Very coercive restrictions should be replaced with a dialogue-based policy model (restorative justice). Restorative justice becomes a middle way to build equality, harmonious social interaction, and strong tolerance. It is in this context that the law will create a pulling force from conditions of disorder to conditions of order.

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