

Dynamics of Shrinking Religious Freedom in Post-*Reformasi* Indonesia

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Abstract

Much of the studies on religious freedom in Indonesia have established a striking disconnection between constitutional protections and the actual implementation of religious freedom, underlining the state's failure as a protector of human rights. Yet, the emphasis on human rights has overlooked why the levels of governmental restrictions are substantially increased in democratized Indonesia, creating a trend of shrinking religious freedom. Using the perspective of civic space, this study analyses the dynamics of such a trend and the involvement of the state as a primary determinant. To demonstrate how and in what way the state engages in creating shrinking religious freedom, this study uses a combination of literature reviews and inspection on past measurements on the religious freedom situation in Indonesia. This study argues that rather than ideological factors, the dynamics of shrinking religious freedom is more related to the unrelenting endeavors from state-actors and agencies to control religion for the purpose of political motives and consideration due to the changing political landscape in a democratized Indonesia.

Keywords: *Religious Freedom, Constitutional Protection, Shrinking Religious Freedom, Governmental Restrictions, Minority Religions*

I. INTRODUCTION

Since embarking on the transition to democracy in 1998, Indonesia has been hailed by many as an example to other countries in the region. Democratization has opened more space for civil and political liberties. However, the issue of religious freedom and beliefs remains contentious and constantly debated. Despite having stronger framework for the protection of religious freedom, discrimination against minority religions and beliefs often happens in everyday life. Not only has the state failed to uphold the basic norms of religious freedom,¹ the state has deliberately engaged in the violation of rights to religious freedom: either by enforcing discriminative policies,

1 Syamsul Arifin, *Attitudes to Human Rights and Freedom of Religion or Belief in Indonesia* (Yogyakarta: Penerbit Kanisius, 2010).

engaging in discriminative attitude against minority religion, or by failing to respond to various events that have led to acts of violence.²

From 2008 to date, NGOs and personal accounts have reported hundreds of cases of religious violence against minority religions, which showed similar patterns. *First*, it involved certain minority religious groups perceived as deviant/heretical sects of Islam, such as Ahmadiyya and Shia. *Second*, the perpetrators of violence involved not only non-state actors from religious institutions, mass organizations or the masses, but also state actors such as the government, police apparatus, or other government institutions. *Third*, types of violation are varied, ranging from discrimination based on religion or belief, accusations of blasphemous acts or heretical sects, prohibition or sealing off houses of worship, intimidation and persecution of certain religious groups or individuals, to the criminalization of individuals including religious group leaders. All these negative trends have shown that not only the space for religious freedom has shrunk, but in many respects, worsened and is backsliding at an alarming rate.

Against this backdrop, this study seeks to generate understanding on the nature, causes and dynamics of the problem from the perspective of a shrinking civic space. Generally understood as situation in which the space for citizens to enjoy fundamental freedoms is challenged and restricted by the government much of the literature asserts that restrictions of civic space (including religious freedom) in many countries are linked to an anti-democratic development globally that questions the universality of human rights, in part of the attempts by rulers to concentrate power and evade accountability to people,³ or in part the reflection of an emboldened anti-Western agenda.⁴ In the Indonesian case, it will be especially important to assess this trend since it is apparent that the consequences of the shrinking space continue to play out and they are likely to be profound.

In particular, this article addresses the problem of shrinking religious freedom due to the fact that this country has continued to suffer from religious discrimination and violence despite democratization occurring since 1998. Based on the measurement on governmental-restriction index (GRI) made by Pew Research Center,⁵ Indonesia is listed amongst countries with a very high level of government restrictions on religion. With GRI score that has consistently high since the baseline year of the study in 2007 until 2017, the country is ranked 4th among 25 most populous countries with high GRI in the world. As of 2017, GRI in Indonesia has scored 7.9/10, slightly decreased from 8.5/10 in 2016. However, the number is consistently higher since the baseline year of the study (6.2/10 in 2007).

2 *Demokrasi Selektif Terhadap Penegakan HAM: Laporan Kondisi HAM Indonesia, 2005*, by Imparsial (Jakarta: Imparsial, 2006).

3 *Analysis and Recommendations on the Promotion of Civic Space and Enabling Environment in EPRS External Action*, Policy Paper, by Concord, Policy Paper (2018).

4 Richard Youngs, *Civic Activism Unleashed: New Hope or False Dawn for Democracy?* (New York: Oxford University Press, 2019) at 5.

5 *A Closer Look at How Religious Restrictions Have Risen Around the World*, by Pew Research Centre (2019).

Many of the studies highlighted the rise of religious ideologies as primary determinant for shrinking religious freedom. Hamayotsu,⁶ for instance, argues that the deterioration of religious freedom in Indonesia is linked to the increased influence and ability of religious-conservative actors to dominate religious discourse and simultaneously influence government policies. While Hamayotsu's argument addresses the problem of Indonesian democracy nowadays, many studies have long argued that religious groups are actually the main actors behind religious politics and policy.⁷ Contrary to this approach, this article argues that the deterioration of religious freedom is linked to the political motives of the state actors and agencies in order to seek power and political legitimacy by using religious policies, even at the cost of discriminating against minority religions.

The findings in this article are primarily based on qualitative research combining desk research and examination on past measurements made by national and international NGOs. Some of the insights for the article have been gleaned from reviewing literature, previous research and reports. In particular, the use of desk based research helps to understand the mapping and pattern of shrinking religious freedoms in Indonesia. Meanwhile, the use of past measurements offers a window for viewing religious freedoms and restrictions in a global and national context.

II. RELIGIOUS FREEDOM IN THE PERSPECTIVE OF CIVIC SPACE

Religious freedom has been generally understood as a principle that supports the freedom to have or adopt a religion or belief, either individually or in community with others and “in public or private, to manifest his religion or belief in worship, observance, practice and teaching”.⁸ Preceded by the adoption of Universal Declaration of Human Rights (UDHR) in 1948 by 48 nations, this non-binding declaration was followed up in 1966⁹ by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which both cover much of the same ground but in more legally obligatory forms.¹⁰ Predominantly, the protection of religious freedom is explicitly set out in Article 18 of the ICCPR, which comprises the right to freedom the right to freedom of thought, conscience and religion; freedom to have or to adopt a religion or belief of his choice without coercion; freedom to manifest one's religion or beliefs; and respect for the liberty of parents or legal guardians to ensure the

6 Kikue Hamayotsu, “The Limits of Civil Society in Democratic Indonesia: Media Freedom and Religious Intolerance” (2013) 43:4 *Journal of Contemporary Asia* 658–677.

7 Saifuddin Anshari, *The Jakarta Charter of June 1945* (Selangor: Muslim Youth Movement of Malaysia (ABIM), 1979); see also B J Boland, *The Struggle of Islam in Modern Indonesia* (The Hague Netherlands: Martinus Nijhoff, 1982); Ahmad Syafii Maarif, *Islam dan Masalah Kenegaraan: Studi tentang Percaturan dalam Konstituante* (LP3ES, 1985); Bahtiar Effendy, *Islam and the State in Indonesia* (Ohio University Press, 2003); Faisal Ismail, *Islam and Pancasila: Indonesian politics, 1945-1995* (Jakarta: Badan Litbang Agama dan Diklat Keagamaan Departemen Agama RI, 2001).

8 United Nations, *Universal Declaration of Human Rights* (1948).

9 United Nations, *International Covenant of Civil and Political Rights* (1966).

10 Daniel Wehrenfennig, “The Human Right of Religious Freedom in International Law” (2006) 18 *Peace Review: A Journal of Social Justice* 403–410.

religious and moral education of their children in conformity with their own convictions.

Despite guaranteeing basic principles of religion freedom, the ICCPR document also recognizes that certain rights are subject to some limitations, although they are delineated specifically and interpreted narrowly.¹¹ In paragraph 3 of Article 18, the ICCPR explains that any restrictions placed on the manifestation of one's religion or beliefs can only be accepted if prescribed by law and considered as necessary to protect public safety, public order, public health, community morals, or the fundamental rights and freedoms of others. That said, the protection of the freedom to manifest one's religion can be limited by the government through certain means, including reservations, declarations of interpretation, derogation, deprivation (in cases of abuse) or special limitation clauses.¹²

In Indonesia's case, the protection and limitation of the religious freedom within the Indonesian legal framework cannot be separated from the development of democratization in the country. Following the amendments of 1945 Constitution that occurred from 1999 to 2002, new articles cover a wide range of human rights elements from almost all international instruments on human rights, including rights to religions or beliefs.¹³ The Constitution contains two chapters containing guarantees for freedom of religion, and states that this right may not be derogated from in any circumstance. As stated in the Article 28I of the Constitution, it mandates that each person has the right to be free from discriminatory behavior and has the right to protection from such treatment.¹⁴

Affirming the protection contained in the Constitution, some of policy products and its derivative also state the guarantee of religious freedom. For instance, Article 22 of Law No.39/1999 concerning Human Rights repeats the Constitutional guarantees on religious freedom. The Law No.39/1999 states that each person has the right to protection of human rights and basic freedoms without discrimination. Indonesia has also ratified the ICCPR which constitutes the normative core of the human right to freedom of religion or belief that become a set of minimum standards that must be protected by governments to every human being in Indonesia's jurisdiction, without exception.¹⁵ In addition, the Act No. 12/2005 about Ratification of Civil and Political Covenant, which one of its clauses containing the guarantee on freedom of religion/belief has become the foundation that

11 Elizabeth K Cassidy, "Restricting Rights? The Public Order and Public Morality Limitations on Free Speech and Religious Liberty in Un Human Rights Institutions" (2015) 13:1 *The Review of Faith & International Affairs* 5-12.

12 Manfred Nowak & Tanja Vospernik, "Permissible Restrictions on Freedom of Religion or Belief" in Tore Lindholm et al, eds, *Facilitating Freedom of Religion or Belief: A Deskbook* (Dordrecht: Springer Netherlands, 2004) 147.

13 Hurriyah, "The Shrinking Democratic Space in Indonesia: Implications for Political Party Assistance Providers" (2017) *The Netherland Institute for Multiparty Democracy (Research Paper)* Unpublished.

14 Arifin, *supra* note 1.

15 *Ibid.*

international law products have been being a part of Indonesian law which binding the state to guaranteeing and to fulfilling it.¹⁶

While the protection of religious freedom is clearly stated in the Constitutions and its derivatives, however, the notion of restrictions is also explicit. As stated in the Constitution, limitations may be put in place by law in order to satisfy just demands based upon considerations of morality, religious values, security, and public order in a democratic society. Article 28J of the Constitution (introduced by the second amendment) also sets out legal duties that in practice are being used to curb religious freedom, particularly of religious minorities. It states that in exercising their rights and liberties, each person has the duty to accept the limitations determined by law for the sole purposes of guaranteeing the recognition and respect of the rights and liberties of other people and of satisfying a democratic society's just demands based on considerations of morality, religious values, security, and public order.¹⁷ It specifically declares that “restrictions to religious freedom are prescribed by law with a view solely to guarantee the rights of freedom of others and to fulfill fair demands in accordance with moral considerations, religious values, security, public order, and in a democratic society”.

Article 70, article 73 and article 23 of the Human Rights Act No. 39/1999 also mentions similar restrictions of religious freedom, but additionally states that restrictions on religious freedom can also be limited with reasons and considerations of decency and in the interest of the nation. Provisions on restrictions on religious freedom can also be found in article 18 Paragraph (3) of Law Number 12 of 2005 concerning Ratification of the International Convention on Social and Political Rights (UU ICCPR), which emphasizes that “the freedom to exercise and determine one's religion or beliefs can only be limited by legal provisions, and is needed to protect the security, order, health, or morals of people, or the fundamental rights and freedoms of others”.

III. SHRINKING RELIGIOUS FREEDOM

Yet in practice, restrictions of religious freedom in Indonesia have often exceeded far beyond the provisions stipulated by the ICCPR. Defined as efforts to deny religious freedoms through the limiting of behaviors such as public religious speech, sermons by clergy, freedom to worship, and the operation of religious organizations,¹⁸ most literatures have also suggested a global trend in which governments impose various legal and political restrictions on religious freedom. Over the past decade, the Pew Research Center has reported a global increase in governmental restrictions on religion, notably between 2007 and 2017.

16 *FoRB Report 2014: From Stagnation to Pick the New Hopes*, by Halili (Jakarta: Setara Institute, 2015).

17 *In Religion's Name Abuses against Religious Minorities in Indonesia*, by Human Rights Watch (2013).

18 Dane Mataic, “Countries Mimicking Neighbors: The Spatial Diffusion of Governmental Restrictions on Religion” (2018) *57:2 Journal for the Scientific Study of Religion* 221-237.

Based on their study, there are two types of governmental restrictions that are most prevalent in five regions around the world: *first*, through laws and policies restricting religious freedom (such as requiring that religious groups register in order to operate) and *second*, through government favoritism of religious groups (through funding for religious education, property and clergy). While religious restrictions can also come in the form of societal regulations, however, most literatures have emphasized the consequence of governmental restrictions in creating a shrinking space for religious freedom.

Consequently, restrictions of religious freedom can be seen as one aspect of a broader negative trend of ‘shrinking civic space’. Civic space is often understood as a concept central to any open and democratic society and means that states have a duty to protect people while respecting and facilitating the fundamental rights to associate, assemble peacefully, and express views of opinion.¹⁹ Hence, core civic space rights include the rights to freedom of association, freedom of peaceful assembly and freedom of expression, in which religious freedom recognized among the three fundamental freedom enshrined in the Articles 22; 19(2); 21 of the ICCPR. In its conceptual framework, civic space is also closely related to the concept of civil society -the arena outside of the family, the state and the market where people associate to advance common interests.

According to Civicus, when civic space is open, citizens and civil society organizations are able to organize, participate and communicate without hindrance. In doing so, they are able to claim their rights and influence the political and social structures around them. This can only happen when a state holds by its duty to protect its citizens and respects and facilitates their fundamental rights to associate, assemble peacefully and freely express views and opinions. In contrast, a shrinking civic space refers to a situation in which the freedom of civil society and citizens to foster civic engagement and external support for democracy and human rights is challenged. Thus, the term shrinking civic space is also used to describe a dynamic relationship between state and civil society: in which the state engages in repressive methods to close the civic space; and civil society engage in political struggle to recreate and reclaim the civic space.²⁰

Similar to the cause of shrinking civic space which is related to attempts by rulers to concentrate power and evade accountability to people (Concord 2018), studies on religious freedom has highlighted the state as primary determinant of governmental restrictions. According to one study, one of the reasons behind the government restrictions on religion is due to the governments seeing themselves as guardians of certain religious claims. Thus, they impose restrictive measures against ‘unbelievers’ and ‘heretics’. It happens mostly in states that are affiliated with particular religion or religious ideology. Meanwhile, recent studies have found that increased governmental restrictions are linked to political motives or consideration as opposed to ideological

19 Civicus, “What is civic space?”, (2011), online: <<https://monitor.civicus.org/whatis-civicspace/>>.

20 *On Shrinking Space: A Framing Paper*, by Hannah Twomey (Amsterdam: Transnational Institute, 2017) at 3.

factors.²¹ These studies suggest governments often violate religious freedom by exercising excessive political control over religious community life in order to defend authoritarian political structures or party monopolies against possible challenges that may arise as a result of people meeting freely and communicating outside of tightly monitored official channels.

IV. TREND OF SHRINKING RELIGIOUS FREEDOM IN INDONESIA

The phenomenon of shrinking religious freedom in Indonesia cannot be separated from the trajectory of democratization since 1998. Although democratic political framework appears to be working well and gaining acceptance, nevertheless, the improvements achieved do not automatically improve the face of Indonesian democracy. Whilst there are important freedoms, the exercise of civil and political rights is poor, often malfunctioning, and usually difficult for ordinary people to make use of. Non and anti-democratic methods and avenues are often preferred as a way of promoting ideas and interests, solving conflicts, and reaching agreement with others on how to handle issues of mutual concern.²² In the context of religious freedom, such methods have also been prominent.

Contrary to the democratization that allowed an opening of civil and political liberties, the idea and practice of religious freedom remained contested. Not only the implementation of religious freedom is not always in line with the mandate of the Constitution, it has been restricted by laws, regulations, and policies from the government, which in further encouraged acts of intolerance or even religious violence. Various incidents and cases related to religious life during the last two decades have posed a gloomy portrait of religious freedom in Indonesia: increased governmental restrictions in national and sub-national regions, and striking connections between religious and political actors in shaping the presence of governmental restrictions.

Based on *assessment from* Pew Research Center, with governmental restrictions index (GRI) score that has consistently high since 2007 until 2017, Indonesia is ranked 4th among 25 most populous countries in the world with high GRI. As of 2017, GRI in Indonesia has scored 7.9/10, slightly decreased from 8,5/10 in 2016. However, the number is consistently higher since the baseline year of the study

21 Michael Buehler, *The Politics of Shari'a Law: Islamist Activists and the State in Democratizing Indonesia* (Cambridge: Cambridge University Press, 2016); Ismatu Ropi, *Religion and Regulation in Indonesia* (Singapore: Palgrave Macmillan, 2017); Noorhaidi Hasan, "Religious Diversity and Blasphemy Law: Understanding Growing Religious Conflict and Intolerance in Post-Suharto Indonesia" (2017) 55:1 Al-Jami'ah: Journal of Islamic Studies 105-126; Setara Institute, *Melawan Intoleransi di Tahun Politik (Kondisi Kebebasan Beragama/Berkeyakinan dan Pemajuan Toleransi di Indonesia Tahun 2018)* (2018) Pers Conference on March 31; Hurriyah, "Negara dan Penyusutan Ruang Kebebasan Beragama di Indonesia Pasca Reformasi" in Al Khanif & Wildana, eds, *Religious Minorities, Islam and the Law: International Human Rights and Islamic Law in Indonesia* (Routledge, 2020).

22 Olle Törnquist, "Popular development and democracy: case studies with rural dimensions in the Philippines, Indonesia, and Kerala" (2001) SUMS and UNRISD (Occasional Paper), online: </paper/Popular-development-and-democracy-%3A-case-studies-in-T%C3%B6rnquist/748955d316d3b1b20b1d9b27cbc0fa82ebcd0ffa>.

(6.2/10 in 2007), which put Indonesia listed amongst countries with very high level of government restrictions on religion (See Figure 1).

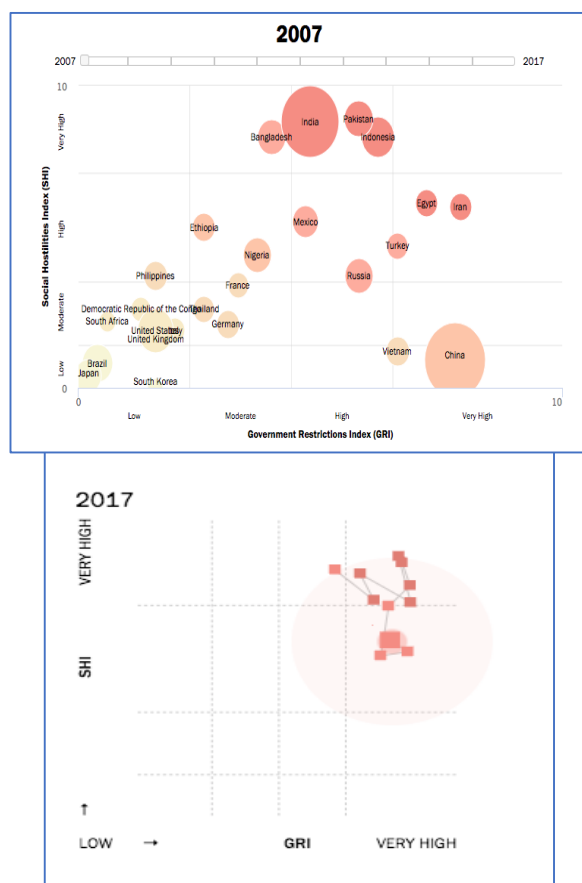


Figure 1. Government-Restriction Index in Indonesia (2007-2017)²³

In many respects, the state has taken measures limiting the practice of religious freedom through laws, regulations, and policies. Furthermore, the practice of governmental restrictions occurred not only at the national level but also at the sub-national level, following the implementation of political decentralization. At the national level, the practice of religious politics has manifested in the form of policies and regulations that intervene religious affairs and, in many respects, restricting the religious freedom. Take example on the implementation of the so-called blasphemy law. Debates have abounded on the extent to which the Law has transgressed the principles of religious freedom guaranteed by the 1945 Constitution.

By 2010, Indonesian government had imposed at least 156 statutes, regulations, decrees, and by-laws that restrict religious freedom, many of them justified by reference to article 28J (2). Among them are: The 1965 blasphemy law (enacted under President Sukarno); A joint ministerial decree regarding proselytizing of

²³ How global religious restrictions have changed over a decade, by Pew Research Center (2019).

religion signed by the ministers of religious affairs and home affairs (No. 1/1979), titled “Regulating Missionary and Foreign Aid to Religious Organizations”; Child Protection Act No. 23/2002, enacted under President Susilo Bambang Yudhoyono, which includes articles “to protect” the faith of a child even when adopted; A joint regulation issued by the ministers of religious affairs and home affairs (No. 8 and No. 9/2006), titled “Guidelines for Regional Heads and Deputies in Maintaining Religious Harmony, Empowering the Religious Harmony Forum, and Constructing Houses of Worship”; and A joint decree issued by the minister of religious affairs, the attorney general, and minister of home affairs (No. 3/2008) ordering the Ahmadiyya to stop spreading their teachings.²⁴

Among many regulations that restricts religious freedom, there are at least four policies that has impacted most minority religions. *First*, Joint Agreement of Three Ministers [Minister of Religion, Minister of Home Affairs, and Attorney General of RI] No. 3/2008 about the Indonesian Ahmadiyya Community (known as SKB 3 Menteri). *Second*, Law No. 1/PNPS/1965 on the prevention of the abuse or insulting of a religion (known as the Blasphemy Law). *Third*, Law No.23/2006 on the religious registration. *Fourth*, Joint Regulation of the Minister of Religion and Minister of Home Affairs No.8-9/2006 on the guidelines for implementing the responsibility of the local head executives to maintaining religious harmony, empowering religious harmony forums, and giving permits for religious land use (known as SKB 2 Menteri).

Meanwhile at the sub-national level, the implementation of decentralization has witnessed the emergence of Islamization in local laws and regulations, although the motives and methods vary from place to place. In Aceh, sharia (Islamic law) emerged as a new regime in Aceh, following a peace agreement between the national government and the leaders of Free Aceh movement (*Gerakan Aceh Merdeka, GAM*). Since then, the province of Aceh has been granted as special region and authority to formally implement sharia law and its institutional agencies. However, only in 2003 Aceh formally introduced sharia as the law of the land through the enactment of three bylaws (*Qanun*) banning the consumption of alcohol, gambling and khalwat (dating in secluded places). In 2009, the province enacted their first fully pledged *Qanun Jinayat*, which included adultery and homosexuality as crimes that could be sentenced to death by stoning.²⁵

In many regions, sharia bylaws are introduced by local governments since the implementation of decentralization, which allowed the local government to make rules and regulations in accordance with the needs and demands of the people in their region. The spread of sharia bylaws in the sub-national regions were substantially increased: from only four regulations in 1999 to 422 regulations in 2013, and to 433 regulations in 2018. Of these, 358 regulations were born in the form of “Regional Regulations” (*Peraturan Daerah, Perda*), i.e local regulations issued with mutual consent between the executive and regional legislatures) and 64 regulations were born in the form of non-Perda, which includes Regional Head Regulations

24 Human Rights Watch, *supra* note 17.

25 The Jakarta Post, “Political parties clash over sharia-based bylaws”, (2018), online: <<https://www.thejakartapost.com/news/2018/11/19/political-parties-clash-over-sharia-based-bylaws.html>>.

(Perbup/Perwali), Regional Head Instruction (*Instruksi Kepala Daerah*), or Regional Head Circular (*Surat Edaran Kepala Daerah*).

According to Muhtada, these bylaws are spread across 174 regencies and cities in 29 provinces in Indonesia. Of the 29 provinces, there are six provinces that can be considered as “regional sharia regulations” (*daerah perda syariah*) in Indonesia: West Java (86), West Sumatra (54), South Kalimantan (38), East Java (32), Aceh (25) and South Sulawesi (25). The six regional regional regulations on sharia produce about 62% of the total regional regulations on sharia throughout Indonesia.²⁶ The trend of shariatization also tends to increase from time to time. One media reported that in 2018, there were 443 sharia regulations implemented throughout the region. Yet, six of the most numerous are still West Java (103), West Sumatra (54), South Sulawesi (47), South Kalimantan (38), East Java (32), and Aceh (25). In total, this means that 67.7 percent or (300/443) sharia regulations are implemented in only six provinces, and 66 percent (289/443) are regencies.²⁷

V. IMPACTS ON RELIGIOUS FREEDOM

Many scholars agree that governmental regulation on religion is considered as restriction to religious freedom. Grim and Finke²⁸ even use the term of government regulation to describe “the restrictions placed on the practice, profession, or selection of religion by the official laws, policies, or administrative actions of the state. Likewise, most of governmental regulations on religion in Indonesia are also created to restrict the free exercise of religious freedom, especially for the minority religions and beliefs. Particular regulations such as Law No. 1/1965 (known as Blasphemy Law) and the Joint Regulation of the Minister of Religion and the Minister of the Interior No. 8 and No. 9 of 2006 concerning the Establishment of Houses of Worship (known as SKB 3 Menteri) has often restricted the rights of the minority groups to practice their religion or beliefs.

Specifically, the regulation of SKB 2 Menteri stipulates that the construction of houses of worship must meet several requirements, including list of names and identity cards of at least 90 people who use the synagogue by local officials; and local community support of at least 60 people authorized by the *lurah* (village head). The regulation also stipulates that applications for the construction of houses of worship must be submitted to the regents/mayors to obtain a construction permit. In cases where a congregation has met the signature requirements but has not yet received the recommendations from the mayor or regent, the regulation stipulates that the local government are to arrange a ‘temporary venue’ for religious worship. In addition, the decree also requires the local government to set up a religious harmony forum

26 Dani Muhtada, *Perda Syariah di Indonesia: Penyebaran, Problem dan Tantangannya* (Semarang, 2014) Scientific Oral Essay on Dies Natalis VII Law Faculty of Universitas Negeri Semarang.

27 Tirtoid, “Perda Syariah: Jualan Elite Politik, Dagangan Partai Sekuler”, (2018), online: <<https://tirto.id/perda-syariah-jualan-elite-politik-dagangan-partai-sekuler-dajm>>.

28 Brian J Grim & Roger Finke, “International Religion Indexes: Government Regulation, Government Favoritism, and Social Regulation of Religion” (2006) 2:1 *Interdisciplinary journal of research on religion*, online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4254791/>>.

(*Forum Kerukunan Umat Beragama, FKUB*) in each area, comprises of the composition of believers in the area.

However in practice, this regulation is often used by the local government to prohibit the land use for religious houses of minority groups. Furthermore, even though the requirements can be fulfilled, rejection of construction of the houses of worship can still be found. Such rejection can come from the Muslim community groups or from the local government. In many cases, this regulation is often used to justify mobs and attacks to houses of worship belonging to groups that form a minority in their area or persecutions against individuals or groups. Between 2007 to 2018, Setara Institute reported since the enactment of this regulation, hundreds of cases concerning the prohibition of the use or construction of the houses of worship, which occurred across the country and involved almost all religions and beliefs (See Figure 2).

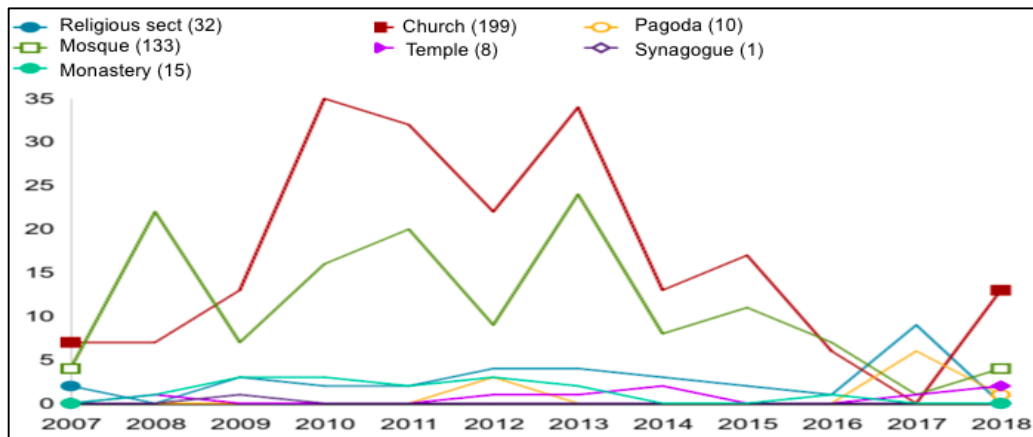


Figure 2. Religious Disturbance on Houses of Worship (2007-2018)²⁹

Just like the regulation of SKB 2 Menteri, the Blasphemy Law is also deemed responsible for the growing attacks against religious minorities on the basis of an accusation that their religious belief and practice amount to blasphemy or defamation of a religion³⁰, and the Law has in fact often used to repress smaller minorities.³¹ The explanation of the decree clarified that the religions “embraced by the people of Indonesia” encompass “Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism.” In the Indonesian Criminal Code, the provision of Blasphemy Law is stated in Article 156a, which states “any person who deliberately, in public, expresses feelings or commits an act: which principally has the character of being of hostility, hatred, or contempt against a religion adhered to in Indonesia; with the

29 Setara Institute

30 Hasan, *supra* note 20.

31 Religious Pluralism in Indonesia: Harmonious Traditions Face Challenges, Briefing Report, by EPRS, Briefing Report (2016).

purpose of preventing a person adhering to any religion based on the belief of the Almighty God shall be punished up to a maximum imprisonment of five years.”

Even though the criminal provision was introduced in 1965 based on presidential decree issued by President Sukarno, yet the use of this law has only grown tremendously since post-1998 democratization. Setara Institute reported that out of 97 blasphemy cases occurred between 1965 to 2017, 88 cases were reported during the period of *Reformasi*. The report noted that blasphemy laws were mainly used in defense of Islam (88 cases), and the remaining cases involved other religion (4 Christian; 3 Catholicism; and 2 Hinduism). Other reports suggest an even higher number: 125 cases between 2008 to 2014; and 23 cases between 2014 to 2018.³²

With regard to victims of religious disturbance, including blasphemy cases, various reports suggest that non-official religious minorities such as Shia and Ahmadiyya are disproportionately affected. Other recent targets of violence include several thousand followers of the now disbanded Gafatar sect (which combined elements of Islam, Christianity and Judaism), who became homeless after a mob set fire to their settlement in January 2016.³³ Among these three minority religions, Ahmadiyya is the only community experiencing severe governmental and societal restrictions. In 1980, the Indonesian Ulema Council (*Majelis Ulama Indonesia, MUI*) declared the Ahmadiyya to be heretical. In 2005, the MUI reissued the fatwa saying that the government was obliged to prohibit the spread of Ahmadiyya teaching, ban the organization, and close all of its buildings. Following this fatwa, the Indonesian Minister of Religious Affairs declared the banning of the Ahmadiyya, through the Agreement of Three Ministers [Minister of Religion, Minister of Home Affairs, and Attorney General of RI] No. 3/2008 about the Indonesian Ahmadiyya Community (known as *SKB 3 Menteri*).

One study notes that since the joint decree signed and declared by the Indonesian government, discrimination and persecution have been continuously on the rise against the Ahmadiyya. This joint decree has become a formidable instrument for governors, regents and mayors in making “anti-Ahmadiyya regulations”. In 2011, the Jemaah Ahmadiyya of Indonesia, the Indonesian national representative of the Ahmadiyya, reported that five provinces, including Banten, East Java, West Java, West Sumatra, and South Sulawesi, and 22 mayors and regents in Indonesia have signed regulations that prohibit the Ahmadiyya. These regulations are based on “the 2008 joint decree”. A climax in the attacks on the group happened on February 6, 2011. The Indonesian public and international community were shocked by the murder of Ahmadiyya members in Cikeusik, West Java. Three members of the Ahmadiyya were killed in the violent clash. The tragedy caught the attention of

32 Andreas Harsono, “The Human Cost of Indonesia’s Blasphemy Law”, (25 October 2018), online: Human Rights Watch <<https://www.hrw.org/news/2018/10/25/human-cost-indonesias-blasphemy-law>>.

33 *Religious Pluralism in Indonesia: Harmonious Traditions Face Challenges*, Briefing Report, by EPRS, Briefing Report (2016).

national and international communities. However, this was not the only outrage of 2011.³⁴

Statistically, events related to religious disturbance or violence against minority religions and beliefs in post-*Reformasi* Indonesia tend to high from time to time, although the number is slightly fluctuated. Between 2009 and 2018, there were approximately 2052 cases of religious violence involving state and non-state actors. Even though the involvement of both actors is akin, data from various NGOs show that the state has been a stronger predictor for religious violence: with 1142 cases involving state-actors and 910 cases involving non-state actors (See Figure 3).

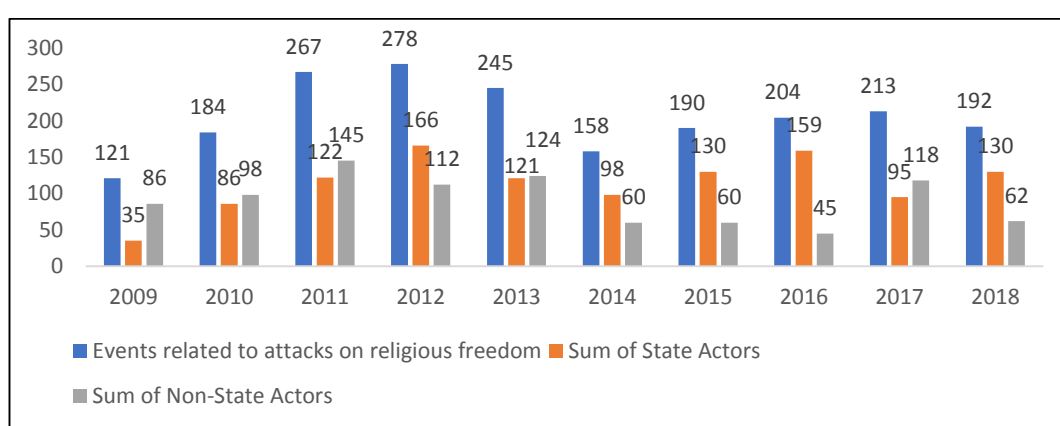


Figure 3. Attacks on Religious Freedom Involving State and Non-State Actors (2007-2017)³⁵

Against this backdrop, it can be said that not only the state has failed to protect religious freedom, the state is in fact often involved in the violation of religious freedom: either by failing to respond to various events that lead to acts of violence, or by directly engaging in the violation of religious freedom. Such violations have brought further consequences in which the state facilitates the violations of religious freedom by individuals, groups or even masses,³⁶ which takes various forms: ranging from discriminations, hostility and violence.

VI. STATE AS PREDICTOR OF SHRINKING RELIGIOUS FREEDOM

Examining the above trends, this article contends that the dynamics of shrinking religious freedom in post-1998 Indonesia is characterized by the state's role as the main predictor. In many cases concerning the prohibition of houses of worship, local governments played a major role in obstructing the rights for religious land use, usually by denying permits for the establishment of houses of worship. The case of the Taman Yasmin church in Bogor is an obvious example. Even though the

34 Max Regus, "A Pseudo-Secular Space, Religious Minority and Reasons for Exclusion: The Ahmadiyya Minority Group in Contemporary Indonesia" (2019) 13:1 Politics and Religion Journal 39-54 at 47.

35 Author's Own Compilation.

36 Arifin, *supra* note 1.

Supreme Court decision granted permission to open up the church, yet the city mayor of Bogor simply denied the decision of the Court and refused to give permits. Another example that shows how local governments and legislatures played a role in violating religious freedom can be seen in the implementation of religious-based laws such as Qanun in Aceh and sharia-based laws in various provinces and regencies throughout the country creating an Islamization of laws and regulations at both the national and local levels.³⁷

Other state institutions that are often deemed responsible for the shrinking space of religious freedom (and the increasing religious violence) in Indonesia are government officials including the police, the court, and state-initiated agencies like Bakorpakem (*Badan Koordinasi Pengawas Aliran Kepercayaan*) and FKUB (Forum Kerukunan Umat Beragama). With regards to the police apparatus, the unwillingness of Indonesian authorities to forcefully intervene to prevent violence against religious minorities or prosecute those responsible, as Human Rights Watch argues, can make the government responsible for continuing abuses. Yet in some areas of Indonesia, the intimidation and threats against religious communities by Islamist groups have persisted over time, with little effort from government officials to curtail such violations.

In addition, police at times have sided with Islamist militants at the expense of the rights of religious minorities, ostensibly to avoid violence. In a situation where an act of incitement or physical attack towards religious minority occurred, instead of investigating and prosecuting those responsible, police have sometimes tried to convince the religious minority targeted by the attack to leave the area or close their houses of worship in the interests of public order. For instance, an Ahmadiyya imam in Sukadana, Campaka district, Cianjur, told Human Rights Watch that the police urged him to leave Sukadana because his presence would upset Muslims and might lead to violence. According to Human Rights Watch, the reasons for police failure to protect religious minorities from physical attacks vary from case to case. In some instances, police actively collude with the attackers for religious, economic, or political reasons; in other instances, they lack clear instructions from above or feel outnumbered by militants. In all cases, the poor police response reflects institutional failure to uphold the law and hold perpetrators of violent crimes to account. Some police officers were even involved in openly petitioning the ban of the Shia faith in Madura Island, an obvious break of the Indonesian police regulations, but they were never questioned.³⁸

The role of other state institutions like the Constitutional Court and the judicial court is also worth mentioning. In particular, the decisions made by the Constitutional Court to refuse the judicial review against the blasphemy laws that are responsible for encouraging the acts of discriminations and attacks towards groups or individuals who are accused of being heretics or conducting blasphemy against religion. Even after three attempts to demand a constitutional review asking for the annulment of the law, the Constitutional Court decided to uphold the blasphemy law, asserting that the law

37 Zainal Abidin Bagir, "The Politics and Law of Religious Governance" (2018) Routledge (Routledge Handbook of Contemporary Indonesia) 284–295 at 284.

38 Human Rights Watch, *supra* note 17.

does not violate the Constitution and that the country would be even more chaotic without a law that defined blasphemy.³⁹

The considerations and reasonings of the Constitutional Court were never changed since the first attempt to the last one in 2018. When the human right activists and CSOs filed a demand for a judicial review of the blasphemy law in 2008 and argued that the law has become one of the factors behind continued religious intolerance in the country and is in conflict with the Indonesian Constitution in terms of both formal and material aspects, the Constitutional Court insisted that the legal norms of the Law were not in conflict with the Constitution for they are aimed at protecting existing religious communities, especially the freedom of the mainstream religious communities to believe and practice their respective religions. When in 2012 a group of lawyers and association of the Shia group filed a demand for the second judicial review on the law on behalf of those claiming to be victims of the Law, arguing that the criminalization of the offence of blasphemy is unconstitutional and questioning the rights and authority of the State to determine true teachings of the religion, the Constitutional Court responded it by asserting that every religion has its principal teachings generally accepted by followers of the religion,⁴⁰ and decided to once again refuse the plea.

VII. CAUSES OF GOVERNMENTAL RESTRICTIONS

While there are a number of explanations behind the shrinking religious freedom in post-*Reformasi* Indonesia, the first problem lies within the legal system of Indonesia itself. Although the Constitution and its derivatives have guaranteed the religious, restrictions have always been incorporated in all provisions of religious freedom in the Indonesian legal framework, resulting in the weaknesses of the legal framework for the protection of religious freedom. As one study suggests, this is partly because of the failure of *Reformasi* to touch upon the fundamental issue of reforming the state's management of religious diversity in Indonesia. As a result, the position of religion *vis-a-vis* democracy remained problematic, because religion is at the intersection of a struggle between state, society and political forces, which led to individuals, groups and political forces compete to represent the right to define boundaries in support of their organized claims and delegitimize those of others.⁴¹

From the view of human rights scholars and advocates, the incorporation of state's restriction in all provisions of religious freedom has caused the limits and ambiguity of religious freedom protection in Indonesia. Furthermore, there were critics regarding un-uniform mention of restrictions and inaccurate translation used by the government regarding the term of public safety, which is falsely interpreted as public security than public safety.⁴² Such interpretation will allow the state to use a securitization policy towards minority religious groups, and even a security approach

39 The Jakarta Post, *supra* note 24.

40 Hasan, *supra* note 20.

41 *Ibid.*

42 Zainal Abidin Bagir, *Membatasi Tanpa Melanggar: Hak Kebebasan Beragama atau Berkeyakinan* (Yogyakarta: Center for Religious and Cross-cultural Studies, 2019).

in dealing with situations regarding the practice of religious freedom. Considering the severity of the restrictions, it is not surprising that this condition ultimately creates the ambiguity of the Indonesian legal framework in protecting the rights of religious freedom. The incorporation of the religion in laws and provisions that restrict religious freedom has been and continues to be invoked to demand that religious minorities cater to the demands of the religious majority. Not only these regulations have challenged the religious freedom in Indonesia, it has also caused a shrinking space for religious freedom.

Whilst the space for religious freedom was never large under the Suharto's authoritarian regime, the idea of creating more space for religious freedom as part of the political reform was always challenged. Arguably, this happened partly because of the unclear relations between state and religion in Indonesia. In fact, one of the most debated issues during the discussion of the first amendment of the 1945 Constitution was the position of the religion in the newly democratic political system of Indonesia. The debate had placed the Islamist and nationalist parties in a diametral position reflecting its ideological inclination: the Islamist parties encouraged Islam to be the foundation of the state and promoted greater importance of religion in the social and political life; whilst nationalist parties insisted on maintaining the status-quo conditions. Even though the result of the amendment reflected the success of the nationalist parties endeavors to promote and integrate the mainstream religion into the legal and political system have not ceased to this day. As a result, post-1998 *Reformasi* witnessed the resurgence of religious politics promoted by state actors, institutions and agencies. Since then, religion continues to shape not only the national politics but also the politics at the sub-national level.

Whilst religious motivation is partly responsible in explaining the behavior of state actors, this article asserts that political motives are more evident in explaining the causes behind increased governmental restriction in post-1998 Indonesia. As seen in the evidences of the trend of state restrictions and religious-based policies, the behavior of state actors in regulating and restricting religious freedom are mainly driven by political consideration and motives, whether to appeal to Muslim electorates during local elections or introduce populist policies to maintain political supports and legitimacy from their electorates,⁴³ or simply want to maintain public order.

In policing religion, state actors are also weighing more upon political interests. Examples are the way the state has purposely translated a term of public safety to public security as provision for restricting religious freedom. Other examples are the use of considerations of public decency and the interests of the nation as limitation clauses. Given the fact that Indonesian societies are formed by various ethnicities and cultures as well as religions and beliefs, it is almost impossible to reach consensus and common understanding of what is perceived as public decency and national interests. Conversely, the possibility of having multi-interpretations or even misinterpretations concerning the clauses is huge, which can lead to the violations of the religious freedom.

43 Hurriyah, *supra* note 21 at 136-162.

In the case of sharia laws, this article sees that not only the narrative of sharia is susceptible to multi-interpretation, its introduction in many regions is reflective of political motives of state actors. As one study argues, the fluidity of the Sharia concept lends itself well to such political manipulation; despite the attempt to legislate aspects of Sharia, the meaning of “Sharia” remains unclear. Given state control, the definition of “Sharia” and of “Islam” inevitably becomes primarily a question of political expediency rather than a genuine spiritual endeavor,⁴⁴ allowing the politization of the religion by the state and political actors, either by them alone or in alliance with other religious actors, such as Islamist groups and traditional religious leaders.

In Aceh, *sharia* laws were introduced by the central government as a means to resolve prolonged conflicts demanding separation and independence. Even though *shariatization* was never part of the demands from the separatist groups or even local parties, in the post-conflict period it is effectively used by the local governments and parties as weapons to gain support from the local ulamas and their supporters and followers, to monopolise claims of religious truth and thus control religious affairs, and more importantly, to maintain their political legitimacy, and to cover up their poor performance in managing local governance.⁴⁵

In other regions, the introduction of sharia bylaws were even promoted by secular parties with the support of Islamist groups. Studies from Buehler on the rise of sharia bylaws in Indonesian districts shows two interesting facts.⁴⁶ *First*, the implementation of sharia bylaws is mostly promoted by politicians affiliated with two dominant secular parties: PDI Perjuangan and Golkar. In the DPRD in all provinces, the keenest to adopt sharia regulations were the Golkar Faction and the PDIP Faction – except in Aceh Province. *Second*, the sharia bylaws indicate the rise of machine politics and the broader change in the patterns of power accumulation and political corruption in post-New Order Indonesia. His findings show that in many regions, the implementation of sharia bylaws allows regents to open up new revenue streams which then be used to consolidate political power. Hence, Buehler’s study confirms that politicians’ support for sharia bylaws was more the result of political considerations than ideological or religious ones.

In this regard, this study also supports the finding of previous studies highlighting the factor of electoral considerations, in which democratization of politics in many parts of the Muslim world has caused elected governments face growing pressure to

44 Asma T Uddin, “Religious Freedom Implications of Sharia Implementation in Aceh, Indonesia” (2010) 7:3 University of Saint Thomas Law Journal, online: <<https://papers.ssrn.com/abstract=1885776>>.

45 Syahrul Hidayat & Hurriyah, “Indonesian Local Politics: Sharia Factors and Elite Formation in Post-Conflict Aceh” in *The Challenges of Social Sciences in a Changing World* Proceeding Book (Yogyakarta: Jusuf Kalla School of Government, 2016).

46 Michael Buehler, “The Rise of Shari’a by-Laws in Indonesian Districts: An Indication for Changing Patterns of Power Accumulation and Political Corruption” (2008) 16 South East Asia Research 255-285; Michael Buehler, “Subnational Islamization through Secular Parties: Comparing ‘Shari’a’ Politics in Two Indonesian Provinces” (2013) 46:1 Comparative Politics 63-82; Buehler, *supra* note 21.

expand or preserve Islamic law.⁴⁷ In Indonesia, a 2015 survey conducted by the Center for the Study of Islam and Society (PPIM) found that political interests were primarily responsible for the implementation of sharia bylaws, with most of the bylaws that the study reviewed in Jakarta, Banten and West Java, being passed during local election campaign periods.⁴⁸ Consequently, the democratization of politics has been accompanied by the spread of Islamic law.⁴⁹

In the atmosphere of *Reformasi* brought about by Suharto's departure, sharia appeared to be a significant issue providing the medium through which collective actors associated with different movements within a cycle assign their aspirations and interests. The mounting demand for the application of the sharia bylaws also constitutes an inevitable consequence of inappropriate management of religious diversity by the state. The interest of the state to maintain its legitimacy by politicizing religious symbols has thus made religion function as a means of social control.⁵⁰ All in all, this trend confirms that the shrinking space for religious freedom is linked to the unrelenting endeavors from the government and politicians to regulate religious practices and beliefs in order to seek or maintain power and pursue its own interests.

VIII. CONCLUSION

Based on the findings of this study, *first and foremost*, the dynamics of religious freedom in post-1998 Indonesia has put the State under the spotlight as the driver behind the shrinking religious freedom in Indonesia. Whilst rising attacks against religious minority groups were largely carried out by hardline groups and masses, the existence of legal and political restrictions from the state has proven significant in facilitating discrimination and encouraging acts of violence against religious minority groups. In this context, the presence of governmental restrictions become the strongest predictor for religious discrimination and violence against minority religions and beliefs.

Secondly, there are similar patterns and dynamics of governmental restrictions in Indonesia's post-*Reformasi*: (1) they are done through discriminative laws, policies, regulations, the judiciary, or other actions taken by government officials or agents; (2) they are promoted either by religious or secular parties but in accordance with social cooperation; (3) they often single out minority groups affiliated with non-official religions, which includes local customary beliefs (*kelompok kepercayaan*) or perceived deviant or heretical sects, such as Ahmadiyya and Shia. *Fourth*, there is a diversity in the implementation of governmental restrictions as a consequence of democratization in national and sub-national region; and (4) while the origins of governmental restrictions must be a government, yet non-state actors like religious

47 Brandon Kendhammer, "The Sharia Controversy in Northern Nigeria and the Politics of Islamic Law in New and Uncertain Democracies" (2013) 45:3 *Comparative Politics* 291-311 at 291.

48 The Jakarta Post, *supra* note 24.

49 Michael Buehler & Dani Muhtada, "Democratization and the diffusion of shari'a law: Comparative insights from Indonesia" (2016) 24:2 *South East Asia Research* 261-282.

50 Hasan, *supra* note 21.

subgroups or institutions are equally responsible for promoting governmental restrictions for the purpose of maintaining a religious monopoly.

Even though restrictions of religious freedom have been connected with the idea of incorporation of the religion within the state's legal and political system, this article suggest that the Indonesian case shows that it is more linked to political factors rather than ideological influence. As shown in this article, the emergence of state-restrictions against religious minorities and the trend of shariatization of the local laws in many regions, have provided evidence in which secular parties emerged promoters and champion for religious policies in Indonesia. The findings also show that the trend of political alliance between secular parties and Islamist groups behind the promotion of shariatization were mainly drive by political motives in order to appeal to Muslim electorates during local elections or maintaining political legitimacy and public order, at the cost of discriminating religious minorities.

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