

Kirpan Sikh in Indonesian Legal Context: An Analysis of Religious Freedom Protection and The Dynamics of Criminal Law Reform

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Abstract

This research delves into the nuanced interplay between religious freedom and legal norms in Indonesia, with a specific focus on the Sikh practice of carrying the kirpan. This ceremonial dagger, integral to Sikh faith and identity, presents a unique challenge within Indonesia's diverse legal and socio-cultural landscape, marked by the country's commitment to Pancasila, which emphasizes religious freedom, unity in diversity, and social justice. By employing a normative juridical approach, this study scrutinizes the tension between the kirpan as a manifestation of religious expression and public safety concerns, utilizing comparative analysis to explore international perspectives and solutions. The investigation reveals a critical need for Indonesia to refine its legal and policy frameworks to more effectively accommodate religious practices like the kirpan. Drawing lessons from countries such as India, the UK, Canada, the US, and Sweden, the research advocates for inclusive legal reforms, enhanced public education, and robust intercultural dialogue. These strategies aim to reconcile the practice of carrying the kirpan with public safety imperatives, reflecting a deeper understanding and respect for religious diversity. The findings underscore the significance of integrating Indonesia's foundational principles of Pancasila into the contemporary discourse on religious freedom and minority rights. The study posits that respecting the kirpan within this ideological framework not only aligns with Indonesia's commitment to diversity and tolerance but also strengthens national unity and social harmony. This research contributes to the broader discourse on balancing religious expression and public safety in pluralistic societies, offering a comprehensive blueprint for policy and legal reforms that honor both religious freedom and collective well-being. It emphasizes the importance of dialogue, education, and legal inclusivity in fostering a society that upholds the dignity and rights of all individuals, irrespective of their religious practices.

Keywords: *Kirpan, Sikh, Freedom of Religion and Human Rights (FoRB), Criminal Law, Indonesia*

I. INTRODUCTION

Since the late 20th century, Indonesia has witnessed intense debate over the relationship between religious freedom and minority rights.¹ The country, which has extensive religious and ethnic diversity, has sought to navigate the challenges of accommodating religious freedom while also protecting minority groups. Conflicts between religious freedom and minority protection often occur between communities where the majority follow a particular religion and minorities who hold different beliefs.² This has sparked extensive political and academic debates about how Indonesia, a democratic state, should strike a balance between the freedom of religion that the constitution guarantees and the need to respect and protect the rights of minority groups.³ Pressure from conservative groups that frequently demand adherence to majority norms and beliefs, which can occasionally conflict with minority religious practices, makes this challenge more difficult.⁴ This debate reflects the battle between the values of pluralism and inclusiveness against tendencies of exclusiveness and homogeneity in Indonesian society. Achieving consensus for peaceful coexistence in Indonesia, particularly with regard to the relationship between religious freedom and minority rights, is a complex and multi-layered challenge. One of the main obstacles is the lack of objective and constructive dialogue that covers broader social issues. Rigid interpretations of dogma and customs, which may be at odds with the practices or beliefs of other groups, frequently exacerbate disputes and conflicts between majority and minority religious groups.⁵ In many cases, religious freedom, which should be a universal human right, is instead used as a tool to oppress other groups. Ironically, both sides in these conflicts often feel that they have absolute truth and the exclusive right to practice their faith.⁶ This problem is exacerbated by factors such as limited education on pluralism, tolerance, and human rights, as well as media and political influences that often exploit differences for their own ends.⁷ Social media, for example, is often a catalyst for spreading misinformation and stoking tensions. On the other hand, identity politics also plays an important role, with certain groups using religion as a tool to mobilize support and maintain power, often at the expense of

1 Robert W Hefner, “The Study of Religious Freedom in Indonesia” (2013) 11:2 Rev Faith Int Aff 18–27, online: <<https://doi.org/10.1080/15570274.2013.808038>>.

2 Jaelyn L Neo et al, “Religious Minorities in Asia: Between the Scylla of Minority Protection and Charybdis of Religious Freedom Rights?” (2021) 12:10 Relig 2021, Vol 12, Page 881 1–17, online: <<https://www.mdpi.com/2077-1444/12/10/881/htm>>.

3 Bani Syarif Maula, “Religious Freedom in Indonesia: Between Upholding Constitutional Provisions and Complying with Social Considerations” (2013) 7:2 J Indones Islam 383–403, online: <<http://juis.uinsby.ac.id/index.php/JIIs/article/view/134>>.

4 Mona M Abo-Zena, “Faith from the Fringes: Religious Minorities in School” (2011) 93:4 Phi Delta Kappan 15–19, online: <<https://doi.org/10.1177/0031721711109300404>>.

5 María Fernández de Casadevante, “Overcoming Cultural Barriers Resulting from Religious Diversity” (2023) 8:1 Church, Commun Cult 104–124, online: <<https://doi.org/10.1080/23753234.2023.2170898>>.

6 Andrew Koppelman, “How Could Religious Liberty be a Human Right?” (2018) 16:3 IntJ Const Law 985–1005, online: <<https://doi.org/10.1093/icon/moy071>>.

7 Winnifred Fallers Sullivan et al, *Politics of Religious Freedom* (University of Chicago Press, 2015).

minority groups.⁸ The lack of effective representation of minority groups in political and social decision-making processes is also a factor that hinders the achievement of consensus. Without a strong voice in national or local politics, minority groups often feel marginalized and unrepresented.⁹

Religious intolerance, as described by Hogemann and Tavares in 2021, is indeed a global phenomenon that has lasted throughout human history and is still very relevant in the modern era.¹⁰ It stems from the ineffective confrontation between different cultures and religious traditions, which, at its core, relates to the concept of interculturality, the interaction between different cultures. Conflict and intolerance often occur when there is an inability or unpreparedness to positively manage cultural and religious differences.¹¹ Communities or individuals may experience a sense of threat from beliefs and practices that are different from their own if they lack an understanding and appreciation of diversity.¹² This often leads to defensive attitudes that can lead to intolerance or even violence. In Indonesia, as in many other countries, violations of freedom of religion or belief do occur and can affect any religious group, majority, or minority, including Sikhs. Indonesia is an ethnically and religiously diverse country, but the challenge of respecting and protecting religious freedom remains a serious issue.¹³ Majority religious groups in some areas may feel more entitled or have more power to determine social and religious norms, which can sometimes lead to pressure or even discriminatory actions against minority groups.¹⁴ On the other hand, minority groups can also face difficulties in practicing their faith or traditions due to social pressure or the general public's lack of understanding of their beliefs. A clear example of this is the experience of the Sikh community in Indonesia. Although not as numerous as other major religions, they also face challenges in maintaining their practices and traditions. Problems can range from difficulties in finding places of worship and a lack of recognition of their religious holidays

8 Ari Ganjar Herdiansah & Luthfi Hamzah Husin, "Religious Identity Politics on Social Media in Indonesia: A Discursive Analysis on Islamic Civil Societies" (2018) 9:2 *J Stud Pemerintah* 187-222, online: <<https://jsp.umy.ac.id/index.php/jsp/article/view/107>>.

9 Steven Wheatley, "Deliberative Democracy and Minorities" (2003) 14:3 *Eur J Int Law* 507-527, online: <<https://doi.org/10.1093/ejil/14.3.507>>.

10 Edna Raquel Hogemann & Sergio Luis Tavares, "Religious Intolerance: the Maximum Denial of Alterity" (2021) 17:17 *Age Hum Rights J* 196-221.

11 Jason A Springs, "On Giving Religious Intolerance Its Due: Prospects for Transforming Conflict in a Post-secular Society*" (2012) 92:1 *J Relig* 1-30, online: <<https://www.journals.uchicago.edu/doi/10.1086/662203>>.

12 James Laurence, "Reconciling the Contact and Threat Hypotheses: Does Ethnic Diversity Strengthen or Weaken Community Inter-Ethnic Relations?" (2014) 37:8 *Ethn Racial Stud* 1328-1349, online: <<https://doi.org/10.1080/01419870.2013.788727>>.

13 Nicola Colbran, "Realities and Challenges in Realising Freedom of Religion or Belief in Indonesia" (2010) 14:5 *Int J Hum Rights* 678-704, online: <<https://doi.org/10.1080/13642980903155166>>.

14 Jonathan Fox, Roger Finke & Dane R Mataic, "The Causes of Societal Discrimination against Religious Minorities in Christian-Majority Countries" (2021) 12:8 *Religions* 1-24, online: <<https://www.mdpi.com/2077-1444/12/8/611/htm>>.

to challenges in implementing religious rules in daily life, such as the wearing of religious symbols in public places.¹⁵

Sikhism, indeed, is one of the youngest monotheistic religions among the major world religions. Guru Nanak Dev Ji founded Sikhism in the latter half of the 15th century in what is now India and Pakistan, and ten additional Sikh Gurus developed its teachings.¹⁶ The religion emphasizes principles such as belief in one God, equality of all human beings, social justice, and rejection of superstition and unwarranted rituals. With an estimated following of between 25 and 28 million, Sikhism ranks as the ninth-largest religion in the world.¹⁷ The majority of Sikh followers are in Punjab, India, where the religion originated, but there are also significant Sikh communities around the world, including in the United Kingdom, Canada, the United States, and Australia.¹⁸ In addition, Sikh communities can also be found in various other countries, including Indonesia, although the numbers may not be as large as in those countries. Sikhism emphasizes the importance of hard work, service to others, and a simple and honest life. Important symbols in Sikhism include the five *K's* (*Kesh*, *Kara*, *Kanga*, *Kaccha*, and *Kirpan*), which represent Sikh commitment and identity.¹⁹ The Sikh place of worship is known as *Gurdwara*, where religious ceremonies and social activities of the Sikh community take place. Sikhism is also known for its principles of equality and inclusivity. For example, the *langar*, or soup kitchen, at *Gurdwara* serves free food to anyone regardless of religion, race, or social status as a practice of equality and hospitality.²⁰

The existence of the Sikh religion in Indonesia predates Indonesia's independence. The Sikh community first arrived in Indonesia during the Dutch colonial period, mostly as part of the troops or workers brought by the colonial government.²¹ They mainly came from Punjab, a region now part of India and Pakistan. With the end of the colonial era and Indonesian independence in 1945, many members of the Sikh community chose to remain in Indonesia.²² They have integrated into the local community and contributed to various aspects of Indonesian social, economic, and cultural life. The Sikh community in Indonesia, though relatively small compared to other religious groups in the country, has maintained its practices and traditions. They have several *gurdwaras* (Sikh places of

15 Ridwan Arifin et al, "The Adversity on Establishing Places of Worship: Has Religious Freedom Failed in Indonesia?" (2021) 29:1 Leg J Ilm Huk 93-113.

16 Knut A Jacobsen, "Sikhism" (2017) 13:1-2 Sikh Form 139-142, online: <<https://doi.org/10.1080/17448727.2016.1245556>>.

17 Sunit Singh, "Sikhism: An introduction" (2012) 8:2 Sikh Form 253-255.

18 Roger Ballard, "Family Organisation Among the Sikhs in Britain" (1972) 2:1 J Ethn Migr Stud 12-24, online: <<https://doi.org/10.1080/1369183X.1972.9975168>>.

19 R Gatrad et al, "Sikh Birth Customs" (2005) 90:6 Arch Dis Child 560-563, online: <<https://adc.bmj.com/content/90/6/560>>.

20 Michel Desjardins & Ellen Desjardins, "Food that Builds Community: The Sikh Langar in Canada" (2009) 1:2 Cuizine J Can Food Cult 1-20, online: <<https://id.erudit.org/iderudit/037851ar>>.

21 D T Supadi, "The History of Transmigration in Indonesia." in *Majalah Demografi Indones* (1980) 20.

22 A K Dutt & S Devgun, "Diffusion of Sikhism and Recent Migration Patterns of Sikhs in India" (1977) 1:5 GeoJournal 81-90, online: <<https://doi.org/10.1007/BF00188889>>.

worship) spread across different parts of Indonesia and continue to carry out typical religious and social activities, such as *langars* (soup kitchens), that serve food to the community regardless of religious or ethnic background. Interactions between the Sikh community and other groups in Indonesia also reflect the dynamics of pluralism and tolerance that are part of Indonesia's diverse society. Despite facing the same challenges as other minority groups, the Sikh community in Indonesia is generally able to practice their beliefs and traditions with peace and respect.²³

The use of kirpan by Sikhs is an interesting example of the interaction between religious practice and the rule of law in Indonesia. The kirpan, which is one of the five obligatory symbols (*Kakars*) in the Sikh religion, is a small dagger that symbolizes the obligation to protect the truth and fight injustice. For Sikhs, the kirpan is not only a spiritual symbol but also an integral part of their identity and practice of their faith.²⁴ The Sikh community in Indonesia, however, faces legal difficulties with regard to the kirpan. Under Emergency Law Number 12 of 1951, which amended the "*Ordonnantie Tijdelijke Bijzondere Strafbepalingen*" (Stbl. 1948 Number 17), Article 2 paragraph (1) explicitly prohibits carrying sharp weapons in public places.²⁵ This creates a legal conflict for Sikhs who wish to follow their religious teachings by carrying a kirpan. This situation poses a dilemma for Sikhs in Indonesia. On the one hand, they want to be faithful to their religious tenets, while on the other hand, they must abide by the laws of the country where they live. Issues like this often require dialogue and negotiation between religious communities and the government to find solutions that respect religious freedom while complying with the rule of law. It also reflects the broader challenge in a multicultural and multi-religious society like Indonesia of balancing diverse beliefs with prevailing legal and social norms.

Indonesia's legal environment, which criminalizes the wearing of sharp weapons in public, including the kirpan, which is a religious symbol for Sikhs, does pose a significant dilemma. The kirpan, as one of the *Five Ks* (*Kakars*) in Sikhism, is not just a tool but an important element in Sikh religious identity and practice.²⁶ The wearing of the kirpan is prescribed in Sikh teachings as an integral part of a devotee's life, and not wearing it is considered a grave violation of religious teachings. The wearing of the kirpan by Sikhs is a direct expression of their faith and a reminder of their commitment to values such as

23 Azyumardi Azra, "Cultural Pluralism in Indonesia: Continuous Reinventing of Indonesian Islam in Local, National and Global" (2010) 10:November *Annu Conf Islam Stud* 4-13.

24 Swaran P Singh, "Caring for Sikh Patients Wearing a Kirpan (Traditional Small Sword): Cultural Sensitivity and Safety Issues" (2004) 8:3 *Cambridge Univ Press* 93-95, online: <<https://doi.org/10.1192/pb.28.3.93>>.

25 Agung Hartawan, "Tafsir Hukum Klausul 'Tanpa Hak' Dalam Pasal 2 Undang-Undang Darurat No. 12 Tahun 1951 Tentang Mengubah 'Ordonnantie Tijdelijke Bijzondere Strafbepalingen' (Stbl. 1948 Nomor 17) Dan Undang-Undang Republik Indonesia Dahulu Nomor 8 Tahun 1948" (2020) 3:1 *Yurispruden* 42-60.

26 Paul Stirling, "Comment on the Legal Situation in Indonesia" (1965) 8:1 *Comp Stud Soc Hist* 50-55, online: <<https://www.cambridge.org/core/product/48B6149D631F109716E76CEE485D6F6D>>.

justice, charity, morality, humility, and equality.²⁷ In this context, the kirpan is more than a physical object, it is a manifestation of deep and personal tenets of faith for each Sikh. In Indonesia, policies that categorize the kirpan as a sharp weapon and prohibit its use in public places create a conflict between state law and religious practice. This situation demands a sensitive and inclusive approach that recognizes and respects the importance of freedom of religion and belief. There is a need for dialogue between the Sikh community, policymakers, and society at large to find solutions that respect both aspects. This step is important to ensure that Sikhs can practice their religion without feeling threatened by criminalization while complying with public security and order in accordance with applicable laws. The Indonesian government, in accordance with the constitution and international norms on human rights, has the responsibility to guarantee freedom of religion and belief for all its citizens, including minority groups such as Sikhs. Freedom of religion and belief is one of the fundamental principles of democracy and human rights, which recognizes the right of every individual to embrace, practice, and express their beliefs without discrimination or oppression.²⁸ In the context of Indonesia, a country with rich religious and ethnic diversity, the maintenance and protection of freedom of religion are of paramount importance. This includes not only providing space for majority groups to practice their faith and traditions but also guaranteeing the rights of minority groups, including Sikhs, to practice their faith in a manner that is consistent with their religious traditions and teachings.²⁹

In the context of the issue of freedom of religion and belief in Indonesia, particularly in relation to the Sikh religious community and the use of kirpan, the normative juridical approach used in this research is very relevant.³⁰ Through the regulatory approach, this research can examine Emergency Law No. 12/1951 as well as other regulations related to the use of sharp weapons and freedom of religion to understand how the law is applied and its impact on the Sikh community. The conceptual approach helps in understanding the basic principles of religious freedom and human rights and how these principles should be applied in the context of religious pluralism in Indonesia. Meanwhile, the comparative approach allows this research to compare how similar issues are addressed in other countries, providing a broader perspective and potential solutions. The historical approach provides context on how the relationship between the state and religious minority groups, such as Sikhs, has evolved in Indonesia, while the futuristic approach assists in exploring possible policy or legal changes to better support freedom of religion

27 Hilmi Ardani Nasution, "Kirpan Sikh: Antara Hak Kebebasan Beragama dan Hukum Nasional Di Indonesia" (2021) 12:3 J HAM 449-464.

28 Nikolas K Gvosdev, "Constitutional Doublethink, Managed Pluralism and Freedom of Religion" (2001) 29:2 Relig State Soc 81-90, online: <<https://doi.org/10.1080/09637490120074774>>.

29 Alfitri, "Religious Liberty in Indonesia and the Rights of 'Deviant' Sects" (2008) 3:1 Asian J Comp Law (Asian Journal of Comparative Law) 1-10, online: <<https://doi.org/10.2202/1932-0205.1062>>.

30 Zico Junius Fernando et al, "The Freedom of Expression in Indonesia" (2022) 8:1 Cogent Soc Sci 1-11.

and belief.³¹ With the descriptive-prescriptive nature of the research, the results not only describe the current situation and challenges faced by the Sikh community in Indonesia but also provide policy recommendations and suggestions for the future.³² Content analysis of relevant legal and policy documents will be crucial in understanding the nuances of this issue and finding solutions that are in accordance with the principles of law, religious freedom, and human rights.³³

The central thesis of this exploration delves into the intricate dynamics between the Sikh practice of carrying the kirpan, a symbol deeply rooted in religious conviction, and the ensuing legal and socio-cultural challenges that arise within various national frameworks, with an acute focus on Indonesia. This discourse is particularly anchored in the inherent tension between the legal acknowledgment and protection of religious freedoms and the socio-cultural and legal apprehensions that may hinder the unobstructed expression of such religious practices. The primary problem encapsulated within this debate is the formidable task of striking a delicate balance between safeguarding public safety and upholding the inviolable human right to freedom of religion the right underscored by international human rights directives like General Comment No. 22 of the ICCPR and mirrored in the foundational tenets of Pancasila, the philosophical bedrock of Indonesia. Addressing this problem is crucial as it has broader implications for religious tolerance, the rights of religious minorities, and the crucial role of governments in balancing diverse religious expressions within a legal framework to maintain public order. It prompts vital inquiries into how states, including Indonesia, can navigate the complexities of accommodating religious symbols such as the kirpan within the dual concerns of security and societal cohesion and how these efforts reflect upon and impact the broader discourse on religious freedom and intercultural understanding. This exploration aims to unravel these complexities by (1) delineating the legal and socio-cultural contradictions that arise from the practice of carrying the kirpan, particularly within the Indonesian context, influenced by its unique ideological and legal landscape; (2) examining the significance of these challenges in the broader context of religious freedom and minority rights; and (3) proposing pathways to mitigate these tensions, drawing upon comparative analyzes with international practices and the underlying principles of human rights law. Through this structured inquiry, we aim to illuminate the nuanced interplay between legal frameworks, socio-cultural perceptions, and the lived realities of religious minorities, offering insights into the

31 Zico Junius Fernando et al, "Preventing Bribery in the Private Sector Through Legal Reform Based on Pancasila" (2022) 8:1 Cogent Soc Sci 1-14, online: <<https://doi.org/10.1080/23311886.2022.2138906>>.

32 Erdianto Effendi et al, "Trading in Influence (Indonesia): A Critical Study" (2023) 9:1 Cogent Soc Sci 1-13, online: <<https://doi.org/10.1080/23311886.2023.2231621>>.

33 Zico Junius Fernando et al, "Robot Lawyer in Indonesian Criminal Justice System: Problems and Challenges for Future Law Enforcement" (2023) 7:2 Lex Sci Law Rev 1-24, online: <<https://journal.unnes.ac.id/sju/index.php/lslr/article/view/69423>>.

universal quest for a more inclusive and tolerant world where the diversity of religious expression is not just tolerated but celebrated and protected.

II. SIKH KIRPAN IN THE PERSPECTIVE OF FORB AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

General Comment No. 22, relating to the International Covenant on Civil and Political Rights (ICCPR), provides an important insight into the protection of the rights to freedom of religion and belief.³⁴ This comment explicitly states that situations where a religion is recognized as the state religion, considered an official religion or tradition, or even if adherents of that religion constitute the majority of the population, should not result in a violation of the rights guaranteed by the Covenant. This includes the rights set out in Article 18 and Article 27 of the ICCPR. Article 18 of the ICCPR guarantees freedom of thought, conscience, and religion, including the freedom to profess a religion or belief of one's choice and the freedom to express that religion or belief, either individually or in community with others, in public or in private.³⁵ Article 27 emphasizes the rights of minorities to enjoy their own culture, profess and practice their religion, and use their own language.³⁶ General Comment No. 22 underlines that no religion or belief should receive preferential treatment that results in discrimination against adherents of another religion or belief. This means that governments should not restrict the rights to freedom of religion or belief of religious minorities or non-believers. This is particularly relevant in multicultural and multireligious contexts, where it is important to ensure that all groups, including minorities, can exercise their rights without discrimination. In practice, this requires ICCPR member states, including those with an official religion or religious majority, to respect and protect the rights of all individuals within their jurisdiction, regardless of their religious beliefs. This approach aims to encourage tolerance, respect for diversity, and interfaith harmony, affirming that the right to freedom of religion or belief is a universal human right and must be protected in all countries.³⁷

General Comment Number 22 of the International Covenant on Civil and Political Rights (ICCPR) has important implications for the practice of kirpan use by Sikhs. In this context, General Comment No. 22 emphasizes that the existence of a state religion, official religion, or a majority of the population adhering to a particular religion shall not

34 *General Comment No 22 on the Right to Freedom of Thought, Conscience and Religion* (Cambridge University Press, 2015).

35 Athanasios Yupsanis, *Article 27 of the ICCPR Revisited - The Right to Culture as a Normative Source for Minority/Indigenous Participatory Claims in the Case Law of the Human Rights Committee* (Brill Nijhoff, 2013).

36 Markku Suksi, "Personal Autonomy as Institutional Form - Focus on Europe Against the Background of Article 27 of the ICCPR" (2008) 15:2-3 *Int J Minor Gr Rights* 157-178, online: <https://brill.com/view/journals/ijgr/15/2-3/article-p157_2.xml>.

37 Heiner Bielefeldt, "Freedom of Religion or Belief-A Human Right under Pressure" (2012) 1:1 *Oxford J Law Relig* 15-35, online: <<https://doi.org/10.1093/ojlr/rwr018>>.

result in discrimination or restriction of the rights to freedom of religion or belief as guaranteed by Article 18 and Article 27 of the ICCPR. The use of the kirpan as part of Sikh religious practice is a clear example of the expression of freedom of religion and belief. In societies where Sikhs are a minority, it is important for governments and communities to ensure that the rights of Sikhs to wear the kirpan are respected and protected. General Comment No. 22 emphasizes that the right to observe this practice should not be unfairly restricted simply because Sikhs are not the majority or official religion in the country. Further, the non-discrimination aspect of the general comment is also relevant here. Governments and legal institutions must ensure that minority religious practices, such as the use of the kirpan, are not only accepted but also protected from discrimination.³⁸ This means that applicable policies and laws should be designed and implemented in a way that does not place undue burdens on religious minorities. Thus, in today's global and multicultural context, the understanding and application of the principles contained in General Comment No. 22 is crucial to protecting the rights of religious minorities, such as Sikhs, and to ensuring that their practices, such as the use of the kirpan, are recognized and respected as part of the expression of fundamental religious freedom. In the context of human rights, the principle of freedom of religion in Indonesia should provide freedom for every individual to exercise their spiritual relationship with the Creator, including the practice by Sikhs of carrying a kirpan. This relates to the concept of "forum internum" in human rights, which refers to the internal and personal dimension of belief, including the freedom to embrace one's religion or belief without interference.³⁹ This includes belief in local or ancestral religions, which also enjoy protection in the spiritual aspect of the individual. In the context of Sikhs' use of the kirpan, it is considered part of their personal religious expression, an aspect of the forum internum that should not be subject to restrictions by the state. The kirpan as a religious symbol is not just an accessory but an integral part of Sikh religious practice and identity, symbolizing values such as courage, justice, and protection of the weak. However, restrictions on freedom of religion can be applied in the context of the "forum externum," which relates to the manifestation of religion or belief in the public sphere.⁴⁰ This includes spreading religious teachings, establishing houses of worship, and other religious activities that take place outside the private sphere. Such restrictions, according to human rights principles, can only be made for specific reasons, such as maintaining public order, health, or public morals, and must be proportionate and non-discriminatory. In the context of the kirpan, this means that while the use of a kirpan is

38 Safiullah Arabzai, Fazal Hadi Fazli & Bashir Ahmad Mohammadi, "The Rights of Religious Minorities in International Legal Documents and Islamic Shariah" (2023) 2:3 *Am J Law Polit Sci* 24–31.

39 Mari Stenlund & Pamela Slotte, "Forum Internum Revisited: Considering the Absolute Core of Freedom of Belief and Opinion in Terms of Negative Liberty, Authenticity, and Capability" (2018) 19:4 *Hum Rights Rev* 425–446, online: <<https://link.springer.com/article/10.1007/s12142-018-0512-8>>.

40 Andrew Hambler, "A Private Matter? Evolving Approaches to the Freedom to Manifest Religious Convictions in the Workplace" (2008) 3:2 *Relig Hum Rights* 111–133, online: <https://brill.com/view/journals/rhrs/3/2/article-p111_1.xml>.

part of personal religious freedom, how it is displayed or used in public spaces may require consideration of public order and safety. However, any restrictions should be done in a way that respects and minimizes the impact on Sikhs' basic religious practices. This approach should seek to find a balance between the individual's right to religious freedom and the needs of society at large by promoting dialogue and a shared understanding of minority religious practices such as Sikhism.

The use of the kirpan by Sikhs, whether in private or public spaces, is a manifestation of their religious freedom and identity. This practice is protected under international human rights norms, particularly the International Covenant on Civil and Political Rights (ICCPR), which guarantees freedom of thought, conscience, and religion. However, when it comes to public spaces, the exercise of this right encounters a nuanced landscape of limitations and potential derogations aimed at balancing individual religious freedoms with public order, safety, and the rights of others. In private domains, the wearing of the kirpan is unrestricted, aligning with the principle of "*forum internum*," which protects the personal and internal dimensions of faith and belief. This aspect of religious freedom is absolute, insulating it from any form of state interference and recognizing the intimate and personal nature of religious belief and expression. Conversely, in public spaces, the "*forum externum*" aspect of religious freedom, which pertains to the outward expression of religious beliefs, including the wearing of the kirpan, may be subject to limitations. Such restrictions are acknowledged by international human rights law, including Article 18(3) of the ICCPR, which allows for the imposition of limitations on the freedom to manifest one's religion or beliefs solely as necessary to protect public safety, order, health, or the fundamental rights and freedoms of others.

III. KIRPAN IN SIKHISM: MORE THAN A WEAPON, A LEGACY OF FAITH

Sikhism views life as a spiritual journey centered on a personal relationship with God and a commitment to the community.⁴¹ At its core, Sikhism teaches that a good life is not only measured through rituals or faith alone but through a harmonious blend of action and spirituality. This is reflected in the principles of '*Kirat Karo*,' '*Naam Japo*,' and '*Vand Chakko*.' '*Kirat Karo*' means living in an honest and hardworking manner, '*Naam Japo*' emphasizes the importance of meditating and remembering God, and '*Vand Chakko*' calls for sharing with others. In Sikhism, daily activities such as working and interacting with the community are seen as an important part of spirituality rather than something separate. This reflects the view that human existence and the material world are not something to be rejected but rather a means to develop a deeper spiritual connection

41 Kala Singh, "The Sikh Spiritual Model of Counseling" (2008) 9:1 *Spiritual Heal Int* 32-43, online: <<https://onlinelibrary.wiley.com/doi/full/10.1002/shi.331>>.

with God.⁴² Sikhs believe that through good actions, such as honesty in work, compassion, and service to the community, one can develop spiritual qualities and draw closer to God. Sikhism teaches a balance between prayer and work, between spiritual self-development and social contribution. It is a very practical religion, emphasizing that the spiritual life is not separate from the world but should be integrated into all aspects of human life. The goal is to live in constant awareness of God's presence while contributing positively to the well-being and harmony of the community.⁴³

Sikhism, a religion founded in the 15th century in the Punjab region, which was then under the influence of Muslim colonization from Central Asia, is an example of how religion can thrive and adapt amidst complex political and cultural conditions.⁴⁴ Its founder, Guru Nanak Dev Ji, began a teaching that evolved through ten subsequent Sikh Gurus, combining deeply spiritual aspects with a commitment to social justice and equal rights.⁴⁵ According to data from the United States Commission on Religious Freedom in 2009, the number of Sikhs in Indonesia was estimated to be between 10,000 and 15,000. However, recent data suggests a higher figure of around 80,000 adherents.⁴⁶ This reflects the growth of the Sikh community in Indonesia, which, despite being a minority, has shown resilience and adaptability in a diverse environment. The Sikh religious presence in Indonesia is mainly concentrated in the city of Medan, North Sumatra, where there are eight *Gurdwaras*, and in Jakarta, which has two *Gurdwaras*. *Gurdwara*, as a place of worship and community center for Sikhs, functions not only as a place to perform religious ceremonies but also as a center of social and educational activities for the Sikh community. Within the *Gurdwara*, practices such as 'Langar', a soup kitchen that provides free food to anyone regardless of religious or ethnic background, are a tangible manifestation of the Sikh principles of equality and service to others.⁴⁷

In Indonesia, the Sikh community has contributed to various aspects of social, economic, and cultural life. Their interactions with various other religious and ethnic groups reflect the dynamics of pluralism and tolerance that are part of Indonesian society. However, as discussed earlier, they also face certain challenges, including in terms of

42 Charan Singh, "Ethics and Business: Evidence from Sikh Religion" (2013) 38:4 J Dharma 343-356, online: <<https://papers.ssrn.com/abstract=2366249>>.

43 William I Ozanne, "Religious Identity and Governmental Education Policies: the Case of the Sikh Community" (2010) 46:3 Comp Educ 339-358, online: <<https://doi.org/10.1080/03050068.2010.503742>>.

44 Sunit Singh, "Sikhism: An introduction" (2012) 8:2 Sikh Form 253-255, online: <<https://doi.org/10.1080/17448727.2012.720475>>.

45 Janet Baker, "Guru Nanak: 550th Birth Anniversary of Sikhism's Founder" (2019) 15:3-4 Sikh Form 495-515, online: <<https://doi.org/10.1080/17448727.2019.1685641>>.

46 Gurharpal Singh, "Gurdwaras and Community-Building Among British Sikhs" (2006) 15:2 Contemp South Asia 147-164, online: <<https://doi.org/10.1080/09584930600955267>>.

47 Barbara Bertolani, Sara Bonfanti & Paolo Boccagni, "At Home in the Gurdwara? Religious Space and the Resonance with Domesticity in a London Suburb" (2021) 51:3 Religion 423-442, online: <<https://doi.org/10.1080/0048721X.2021.1916787>>.

carrying out some of their religious practices, such as the use of the kirpan.⁴⁸ Prem Singh, one of the Sikh religious leaders in Indonesia, provided information that, to date, the Sikh population in Indonesia is around 50,000 people.⁴⁹ The Sikh community is spread across several regions, with major concentrations in cities such as Medan and Tangerang, as well as several other regions in Indonesia.⁵⁰ Although Sikhism is a stand-alone religion and very different from Hinduism, in the administrative context of Indonesia, the Sikh community falls under the auspices of the Parisada Hindu Dharma Indonesia (PHDI), which is a Hindu religious organization.⁵¹

During the time of Guru Nanak, the founder of the Sikh religion, Sikh teachings evolved as a response to the practices and doctrines prevalent in Hinduism and Islam at the time. Guru Nanak introduced principles that emphasized the essential unity of humanity, challenged the rigid caste system, and rejected polytheism.⁵² By merging the Hindu concept of *karma*, which emphasizes the importance of good deeds, with the concept of monotheism espoused in Islam, Guru Nanak created a unique and inclusive philosophical foundation for Sikhism. Guru Nanak rejected merely formalistic religious rituals, excessive asceticism, monasticism, and other formalisms.⁵³ Instead, he advocated for egalitarianism, including full equality between genders, a just social order, communal harmony, and the importance of charity or service to others. These teachings attracted many followers and formed the basis of what came to be known as the Sikh religion. The basic tenet of the Sikh religion is the belief in one God, called *Akaal Purakh*. This God is understood to be eternal and formless, and his essence is the source of power and love.⁵⁴ In Sikhism, everything that happens in the universe is seen as part of God's will (*Hukan*).⁵⁵ This concept encourages adherents to accept life and the events that occur with an attitude of acceptance and understanding that everything happens according to a higher will.

In Sikhism, the concept of humanity occupies a very important position and is considered the highest creation of God. God is believed to have granted humans free will, allowing them to make decisions and accept responsibility for their actions. Sikh

48 Zahro Ulfaturrohmatiririn et al, "Managing Plurality to Boost Harmony Among Religious Adherents in Indonesia" (2021) 21:2 *Apl J Apl Ilmu-ilmu Agama* 137-146, online: <<https://ejournal.uin-suka.ac.id/pusat/aplikasia/article/view/2550>>.

49 Nasution, *supra* note 27.

50 *Ibid*.

51 June McDaniel, "Agama Hindu Dharma Indonesia as a New Religious Movement: Hinduism Recreated in the Image of Islam" (2010) 14:1 *Nov Relig* 93-111, online: <nr/article/14/1/93/70401/Agama-Hindu-Dharma-Indonesia-as-a-New-Religious>.

52 G S Sahota, "Guru Nanak and Rational Civil Theology" (2011) 7:2 *Sikh Form* 131-143, online: <<https://doi.org/10.1080/17448727.2011.593296>>.

53 Nikky-Guninder Kaur Singh, "Guru Nanak's Sensuous Metaphysics" (2019) 15:1-2 *Sikh Form* 200-211, online: <<https://doi.org/10.1080/17448727.2019.1593300>>.

54 Ilamathy Janakiraman, "The Concept of God in Siddha Literature" (2021) 3:S-2 *Int Res J Tamil* 201-206.

55 Harold Coward, "Hindu Views of Nature and the Environment" (2003) *Nat Across Cult* 411-419, online: <https://link.springer.com/chapter/10.1007/978-94-017-0149-5_21>.

teachings emphasize the importance of restraining the five basic passions that can lead to moral and spiritual destruction if not controlled.⁵⁶ The five passions are *kaam* (lust), *krodh* (anger), *lobh* (greed), *moh* (excessive attachment to possessions or people), and *ahankar* (false pride).⁵⁷ To overcome these five passions, Sikhism teaches the importance of eight virtues. First, *gyaan* (wisdom), which is a deep understanding of life and spirituality. Second, *sat* (honest living), which emphasizes the importance of honesty in every aspect of life. Third, *nianon* (justice for all), which underscores the principles of equality and fairness. Fourth, *santokh* (fortitude and self-control), which encourages calmness and contentment in dealing with life. Fifth *djhiraj* (patience and tolerance), which teaches the importance of patience and tolerance in the face of adversity. Sixth, *himmat* (courage), which not only means physical courage but also the moral courage to do what is right. Seventh, namrata (humility), which teaches not to be arrogant or conceited. Finally, patience (contentment and freedom from fear), which encourages a contented and fearless attitude in the face of life.⁵⁸ Through this combination of controlling passions and cultivating virtues, Sikh teachings lead adherents to achieve a balanced and harmonious life, both spiritually and materially. This reflects the Sikh view of life as an opportunity to develop morally and spiritually by directing human free will to realize higher and nobler values.⁵⁹

The relationship between the Sikh religion and the Mughal Empire underwent significant changes from the era of tolerance under Emperor Akbar to the time of conflict under Jehangir and Aurangzeb. Emperor Akbar, renowned for his tolerant policies towards various religions, had a good relationship with Guru Nanak, the founder of Sikhism.⁶⁰ However, this dynamic changed under Jehangir, especially after many Muslims became interested in Sikhism. This conflict culminated in the execution of Guru Arjan Dev, the fifth Sikh guru, who was highly influential in the development of the Sikh religion. The execution of Guru Arjan Dev became an important turning point in the history of Sikhism. It triggered a change in the attitude of the Sikh community, from a focus on spirituality and peace to the need for the establishment of a military force.⁶¹ Guru Hargobind, the sixth guru, led this transformation. He was trained in *shashtravidya*, a martial art that later became an important part of the Sikh tradition. In this context, Guru Hargobind also introduced the idea of '*Sant Sipahi*' or 'holy warrior.' This concept combined spirituality and defensive duty, emphasizing that a Sikh should

56 Arunoday Saha, "Basic Human Nature in Indian Tradition and its Economic Consequences" (1992) 12:1-2 Int J Sociol Soc Policy 1-50.

57 P MS Hacker, *The Passions: A Study of Human Nature* (wiley, 2017).

58 Amarjodh Singh Landa, Bhajneek Kaur Grewal & Rajinder Singh, "Sikh Religion and Palliative Care" (2022) 12:2 BMJ Support Palliat Care 207-210, online: <<https://pubmed.ncbi.nlm.nih.gov/33139306/>>.

59 Singh, *supra* note 35.

60 J S Grewal, "The Mughal State and the Sikh Panth" in J S Grewal, ed, *Guru Gobind Singh Master White Hawk* (Oxford University Press, 2020) 35.

61 A Walter Dorn & Stephen Gucciardi, "The Sword and The Turban: Armed Force in Sikh Thought" (2011) 10:1 J Mil Ethics 52-70, online: <<https://doi.org/10.1080/15027570.2011.562026>>.

be spiritually prepared and also able to defend himself and others.⁶² The conflict between the Sikhs and the Mughal Empire continued and worsened under Aurangzeb. The execution of Guru Tegh Bahadur, the ninth guru, by Aurangzeb, marked a low point in this relationship, showing a high level of intolerance towards Sikhism. This prompted the Sikh community to adopt a more formal militarized approach as a form of self-protection.⁶³ The establishment of the *Khalsa* by Guru Gobind Singh, the tenth and final guru, was a crucial moment in the history of Sikhism. The *Khalsa*, meaning 'pure' or 'chosen,' is an order of Sikh warriors dedicated to defending the faith and values of Sikhism.⁶⁴ In this context, Guru Gobind Singh officially included the kirpan, a small dagger-shaped weapon, as one of the five obligatory symbols (*kakars*) for Sikhs. The kirpan became a symbol of the obligation for Sikhs to defend themselves and protect others from oppression, marking the integration of spirituality and the duty of defense in Sikhism.⁶⁵

IV. KIRPAN SIKHS AND LEGAL DYNAMICS: AN ANALYSIS OF EMERGENCY LAW NUMBER 12 OF 1951 AND LAW NUMBER 1 OF 2023

Emergency Law Number 12 of 1951 on Amending the "Ordonnantietijdelijke Bijzondere Strafbepalingen" (Stbl. 1948 Number 17) In Article 2 paragraphs (1) and (2) it is stated as follows:⁶⁶

- 1) Any person who without right imports into Indonesia, produces, receives, attempts to obtain, delivers or attempts to deliver, controls, carries, has in his possession, stores, transports, conceals, uses or removes from Indonesia any striking weapon, stabbing weapon or stabbing weapon (slag-, steek-, stootwapen), shall be punished by a maximum imprisonment of ten years;

62 Inderjit Nilu Kaur, "Musical Aesthetic in The Gurū Granth and Implications for The Performance Practice of Sikh Shabad Kīrtan*" (2011) 7:3 Sikh Form 297-312, online: <<https://doi.org/10.1080/17448727.2011.637359>>.

63 Christopher Shackle, "Sikh Militancy in the Seventeenth Century: Religious Violence in Mughal and Early Modern India. By Hardip Singh Syan . pp. 320. London and New York, I. B. Tauris, 2013." (2014) 24:2 J R Asiat Soc 346-347, online: <<https://www.cambridge.org/core/journals/journal-of-the-royal-asiatic-society/article/abs/sikh-militancy-in-the-seventeenth-century-religious-violence-in-mughal-and-early-modern-india-by-hardip-singh-syan-pp-320-london-and-new-york-i-b-tauris-2013/464936AEE163A0BBF22E33E52DAC7AF7>>.

64 J S Grewal, *Guru Gobind Singh (1666-1708): Master of the White Hawk* (Oxford University Press, 2020).

65 Swaran P Singh, "Caring for Sikh Patients Wearing a Kirpan (Traditional Small Sword): Cultural Sensitivity and Safety Issues" (2004) 28:3 Psychiatr Bull 93-95, online: <<https://www.cambridge.org/core/product/9824C975FB79E9AAD4A41EB9A58FFBBF>>.

66 Emergency Law Number 12 of 1951 on Amending the "Ordonnantietijdelijke Bijzondere Strafbepalingen" (Stbl. 1948 Number 17) In Article 2 paragraphs (1) and (2)

- 2) In the definition of a striking weapon, a stabbing weapon, or a piercing weapon in this article, there shall not be included items which are obviously intended to be used for agricultural purposes, or for household chores or for the purpose of performing legitimate work or which obviously have the purpose of being heirlooms or ancient or magical items (merkwaardigheid).

An analysis of Emergency Law No. 12/1951, particularly in the context of the kirpan as a bladed weapon in the Sikh religion, indicates a gray area in the law that may impact religious practice. Article 2(1) of the Act explicitly prohibits the possession and use of striking, stabbing, or piercing weapons in Indonesia, with the threat of significant imprisonment. However, paragraph (2) provides an exception for items that are intended for agricultural purposes, domestic work, lawful occupation, or that have a special purpose as heirlooms, antiquities, or items considered unique. In this context, the kirpan worn by Sikhs can enter a complex area. As part of Sikh religious practice and identity, the kirpan is not just a sharp weapon in the traditional sense. It is a profound and important religious symbol, symbolizing values such as justice, courage, and protection. However, according to the Act's definition, the kirpan can be categorized as a stabbing or piercing weapon, which poses a potential legal conflict for Sikhs residing in Indonesia. The question is whether the kirpan can be classified as a 'special purpose' item sufficient to meet the Act's exemption criteria, which requires a legal interpretation that is sensitive to the religious and cultural context. Given that the kirpan is an essential element of Sikh religious practice and is not intended as a weapon in everyday use, there is a strong argument that it should be excluded from the ban, similar to the way ancient or heirloom items are excluded.

In another perspective, an analysis of Indonesia's Emergency Law Number 12 of 1951, particularly in the context of regulating kirpan weapons used in Sikh religious practice, reveals a significant legal challenge. A look at Article 2(1) of this law explicitly prohibits the unauthorized possession, manufacture, and use of striking, stabbing, or piercing weapons, under penalty of severe imprisonment. However, what is interesting is the exception listed in subsection (2), which states that items intended for use in agriculture, domestic work, or as a legitimate occupation, as well as heirloom or ancient items, are not considered weapons in the context of this law. In the context of kirpan weapons used by Sikhs, there is room for diverse interpretations of the law. The kirpan, while technically a stabbing weapon, has a much broader and deeper function in Sikh religious practice. As a religious symbol representing values such as justice, courage, and protection of the weak, the kirpan is not a weapon in the traditional sense but rather a spiritual and cultural object. This raises the question of whether the kirpan can be included in the exemption category prescribed by the Emergency Law, given that it has a clear purpose as an integral part of religious practice, which could be interpreted as 'ancient' or having a 'special purpose' beyond the definition of a conventional weapon. This dilemma highlights the challenge of balancing the rule of law with respect for religious freedom and minority religious practices. A flexible interpretation of the law that is sensitive to the religious and cultural context is essential in cases such as this is

needed to ensure that the rights of Sikhs to practice their religion are not compromised, while also maintaining security and public order in accordance with the law. This approach requires constructive dialogue between the Sikh community, policymakers, and law enforcement to reach a just and inclusive solution.

Given this context, it is important to consider how the kirpan is treated in legal practice and application. The kirpan, as an important religious symbol in the Sikh religion, should be considered more than a mere physical object. A strict interpretation of laws prohibiting the possession of bladed weapons without considering the religious and cultural context may lead to conflicts between security policies and religious freedom. Legal consideration of the kirpan should take into account not only security aspects but also respect for religious practices. As a symbolic object and not a weapon in the traditional sense, the kirpan has a very different role from the objects generally regulated by the law. Therefore, there needs to be a balance between the need to comply with the law and the protection of the rights of Sikhs to practice their faith. Possible solutions could include a specific legal exemption for the kirpan as a religious object or a policy that allows its use under certain conditions that ensure public safety. This would recognize that the kirpan is an integral part of the Sikh religious identity and not a weapon intended for violent purposes. Such an approach will require dialogue and collaboration between the Sikh community, policymakers, law enforcement, and the wider public to create a better understanding and fair implementation of the law. This will help avoid misunderstanding and discrimination and ensure that the rights of Sikhs are respected while maintaining security and public order. An inclusive and sensitive approach to religious and cultural diversity is key in navigating complex issues like this in a pluralistic society.

In Law Number 1 of 2023 concerning the National Criminal Code, the regulation regarding sharp weapons is almost the same as that stipulated in Emergency Law Number 12 of 1951 concerning Amending "Ordonnantietijdelijke Bijzondere Strafbepalingen" (Stbl. 1948 Number 17) in Article 2 paragraphs (1) and (2), as written below in Article 307 paragraphs (1) and (2):⁶⁷

Article 307

- 1) Every person who, without right, imports into the territory of the Unitary State of the Republic of Indonesia, makes, receives, tries to obtain, delivers or tries to deliver, controls, carries, has in stock, possesses, stores, transports, conceals, uses, or removes from the territory of the Unitary State of the Republic of Indonesia weapons of beating, stabbing, or piercing shall be punished with a maximum imprisonment of 7 (seven) years;
- 2) The provisions as referred to in paragraph (1) shall be exempted for striking, stabbing, or piercing weapons that are obviously used for agriculture, for household

⁶⁷ Law Number 1 of 2023 concerning the National Criminal Code

chores, for the purpose of doing work legally, or that obviously have the purpose of being heirlooms or ancient items.

Article 307 (1) and (2) have similarities with Emergency Law Number 12 of 1951 concerning Amending "Ordonnantietijdelijke Bijzondere Strafbepalingen" (Stbl. 1948 Number 17) in Article 2 paragraphs (1) and (2). What distinguishes them is the legal threat, if in Emergency Law Number 12 of 1951 concerning Amending "Ordonnantietijdelijke Bijzondere Strafbepalingen" (Stbl. 1948 Number 17) in Article 2 paragraphs (1) and (2) the threat of punishment with a maximum imprisonment of ten years while in Law Number 1 of 2023 concerning the National Criminal Code in Article 307 paragraphs (1) and (2). (Stbl. 1948 Number 17) in Article 2 paragraphs (1) and (2), the punishment is punishable with a maximum imprisonment of ten years, while in Law Number 1 Year 2023 on the National Criminal Code in Article 307 paragraphs (1) and (2), the punishment is punishable with a maximum imprisonment of seven years. The reduction in punishment in the 2023 Criminal Code may reflect the development of legal understanding and sensitivity to the diversity of cultural and religious practices, but it remains insufficient to accommodate minority religious practices. The criminalization of wearing a kirpan, an important component of religious expression in Sikhism, exemplifies how general laws can disproportionately impact minority groups. This raises important questions about how the law should balance public safety and religious freedom. The tension between public safety and religious freedom, exemplified by the regulation of the Sikh kirpan, highlights a critical human rights dilemma. Governments, enshrined in international law and national security policies, have a responsibility to protect their citizens from harm, making public safety paramount. On the other hand, religious freedom is a fundamental human right, protected under instruments like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which assert the individual's right to practice and manifest their religion or beliefs. In the context of the Sikh kirpan, which is both a religious artifact and a bladed weapon, the challenge for legal systems is to navigate this delicate balance without disproportionately impacting minority religious practices. Comparative approaches from countries like India, the UK, Canada, and the US show varying degrees of accommodation and flexibility, emphasizing the importance of context, dialogue, and a nuanced understanding of religious practices. These examples suggest that prioritizing religious freedom within the bounds of ensuring public safety can foster a more inclusive, respectful, and cohesive society. Rather than viewing public safety and religious freedom as mutually exclusive, the goal should be to develop legal and policy frameworks that recognize the intrinsic value of both. This approach necessitates innovative legal interpretations, cultural sensitivity, and a commitment to protecting the diversity that enriches the global tapestry of human society. This nuanced approach, advocating for a balance between public safety and religious freedom, acknowledges the complexity of implementing universal human rights within diverse cultural contexts. By examining the legal adjustments made in different jurisdictions to accommodate the Sikh kirpan, it becomes evident that solutions require more than just legislative change; they

demand a deeper societal understanding and acceptance of religious diversity. For instance, specific exemptions in the UK and Canada, which permit Sikhs to carry kirpans under specific conditions, demonstrate the effectiveness of targeted legal provisions that uphold public safety standards while respecting religious practices. These adaptations showcase a dedication to inclusivity, demonstrating that laws, when crafted with sensitivity to cultural and religious nuances, can be both protective and permissive. Moreover, the dialogue between religious communities, legal experts, and policymakers is essential in crafting these accommodations. Such engagement ensures that the solutions are not only legally sound but also culturally and religiously respectful. This dialogue must be ongoing, reflecting the dynamic nature of both religious practices and societal norms. Additionally, education plays a pivotal role in fostering a society that values diversity and mutual respect. Awareness campaigns and educational programs can demystify religious practices like the kirpan, reducing the fear and misunderstanding that often surround unfamiliar traditions. Incorporating human rights theories into practice means recognizing the inherent dignity and freedom of every individual, including the right to practice one's religion openly and safely. It requires laws that are flexible enough to adapt to the changing landscape of society's values and beliefs while ensuring the collective safety of its members. The journey towards achieving this balance is ongoing and complex, demanding constant vigilance, empathy, and the willingness to adapt. As societies evolve, so too must their legal frameworks, always with the aim of upholding the fundamental principles of human dignity, freedom, and respect for diversity. This journey, though challenging, is essential for the creation of a world where diverse traditions and beliefs can coexist in harmony and mutual respect.

Addressing the legal challenges of the kirpan in Indonesia involves legal reform, education, and intercultural dialogue. First, legal reforms should revise Law No. 1 of 2023 on the National Criminal Code to protect the use of religious objects like the kirpan. Education campaigns are needed to foster public understanding and respect for religious practices. Intercultural dialogue should involve diverse community groups, law enforcement, and religious leaders to develop balanced policies. Safeguards, such as registration or certification for those carrying religious symbols, ensure public order and respect for religious expression. By integrating these measures, Indonesia can protect religious freedom while maintaining public safety.

V. HARMONY UNDER PANCASILA: UNDERSTANDING SIKH KIRPAN WITHIN THE INDONESIAN IDEOLOGICAL FRAMEWORK

It opens a window into the deep and important dialogue between Sikh religious practice and Indonesia's ideological principles embodied in Pancasila. As the philosophical and constitutional foundation of the country, Pancasila not only defines Indonesia's national identity but also sets the framework for how the country navigates and accommodates religious and cultural diversity.⁶⁸ In this context, the Sikh kirpan, an important symbol of faith and identity for millions of Sikhs around the world, including in Indonesia, offers a unique test case for the principles of tolerance and religious freedom espoused by Pancasila. The Sikh kirpan and its relation to Pancasila, Indonesia's foundational ideology, reveal how national principles can interact with religious practice.

The first precept of Pancasila, "Belief in One God," affirms Indonesia's commitment to religious freedom and diversity, recognizing the varied ways different faiths worship the divine. The Sikh kirpan, a symbol of justice, morality, and protection, exemplifies this principle, highlighting Indonesia's respect for religious plurality. This perspective enriches the national discourse on religious freedom, presenting Indonesia as a model of harmonious coexistence. The kirpan's inclusion within Indonesian society symbolizes a balance between religious expression and national unity. This principle also guides governance and justice, emphasizing respect for divine plurality. Overall, Indonesia's approach to the kirpan reflects its dedication to fostering an inclusive, diverse, and harmonious society.

The second principle of Pancasila, "Just and Civilized Humanity," commits Indonesia to upholding human dignity and religious freedom, recognizing the Sikh kirpan as a vital expression of faith and identity. This principle calls for an inclusive vision of justice that transcends legal interpretations, acknowledging the importance of diverse religious expressions. By aligning respect for the kirpan with this principle, Indonesia promotes a society that balances individual freedoms with collective harmony. This approach necessitates proactive policies and frameworks that honor cultural and religious diversity. Respecting the kirpan underlines Indonesia's broader commitment to cherishing diversity, promoting tolerance, and upholding individual dignity. Ultimately, Indonesia demonstrates that true justice and civilization embrace and protect diverse human expressions and identities.

The third principle of Pancasila, "Unity of Indonesia," fosters national unity within Indonesia's rich cultural and religious diversity, emphasizing pluralism while maintaining a cohesive national narrative. The acceptance of the Sikh kirpan exemplifies Indonesia's commitment to unity in diversity, showing that religious expressions can enrich rather than divide the national fabric. This principle highlights that true unity is achieved

68 Otto Gusti Madung & Winibaldus Stefanus Mere, "Constructing Modern Indonesia Based on Pancasila in Dialogue with the Political Concepts Underlying the Idea of Human Rights" (2021) 5:1 J Southeast Asian Hum Rights 1-24.

through the respectful coexistence of diverse beliefs, essential in a country as varied as Indonesia. By recognizing the kirpan, Indonesia showcases its unique approach to diversity as a foundation of unity, encouraging empathy and mutual respect. This principle guides policies and social practices to celebrate diversity, foster social harmony, and address potential conflicts through education and inclusive policymaking. Ultimately, it offers a compelling vision of unity and coexistence, demonstrating how diversity can strengthen national identity.

The fourth principle of Pancasila, "Democracy Led by Wisdom in Consultation and Representation," underscores Indonesia's commitment to a democratic process enriched by wisdom and inclusivity. It nurtures a social climate where intercultural and interfaith dialogue can thrive. The principle posits that democracy involves living together in diversity with respect and understanding. It supports a flexible, inclusive approach to governance, encouraging dialogue that allows all communities to voice their concerns and shape public policies. By involving Sikh representatives in discussions about the kirpan alongside lawmakers and religious leaders, Indonesia demonstrates a democratic model that values every voice. This inclusive approach respects minority religious freedoms and strengthens the nation's democratic fabric through representation and participatory decision-making.

The fifth principle of Pancasila, "Social Justice for All Indonesian People," emphasizes Indonesia's commitment to an equitable society that respects and protects everyone's rights, including religious freedoms like wearing the kirpan. This principle goes beyond tolerance, actively ensuring that all citizens can participate fully in societal life with dignity. Recognizing the kirpan as a significant religious symbol reflects this commitment, promoting policies that eliminate barriers to equality and foster inclusion. Social justice in Indonesia involves safeguarding religious expressions and taking affirmative actions to address inequalities. Educational initiatives promote understanding and respect for diverse practices, fostering mutual respect and coexistence. Implementing this principle requires vigilance and responsiveness to discrimination, ensuring justice is a lived reality. Respecting the kirpan exemplifies Indonesia's dedication to integrating diversity into its national identity. Pancasila's principles guide this inclusive approach, highlighting Indonesia's role as a model of tolerance and inclusivity. This dynamic commitment ensures Pancasila remains a living document, reflecting ongoing societal evolution and diversity.

VI. NAVIGATING DIVERSITY: SIKH KIRPAN IN THE SPOTLIGHT OF INTERNATIONAL POLICY

The kirpan is an important object in the Sikh religion, often seen as a symbol of justice and spirituality. In India, the law recognizes and defends the right to carry a kirpan as a component of religious freedom. Article 25 of the Indian Constitution, which focuses on freedom of religion, specifically recognizes the right of Sikhs to carry a kirpan as an essential part of their religious profession.⁶⁹ This is rooted in the notion that the kirpan is not just a weapon but also a symbol of courage and moral responsibility, reminding the wearer of their obligation to act for justice and protect the weak. In India, where Sikhism originated and has a significant number of adherents, this recognition is crucial in ensuring that Sikhs can practice their faith without fear of discrimination or lawlessness. The presentation of the kirpan, therefore, is a clear example of how India implements religious freedom within its constitutional framework, making room for religious practices that are unique and important to the Sikh community.⁷⁰

In the United Kingdom, the legal right of Sikhs to carry a kirpan is a clear acknowledgment of the importance of religious practices and the need to balance these with public safety and legal norms. The Criminal Justice Act 1988, specifically through Section 139, and the Offensive Weapons Act 1996 are pivotal in providing this balance, illustrating the UK's approach to integrating religious freedom with national security concerns. Section 139 of the Criminal Justice Act 1988 makes it an offense to carry a knife or bladed instrument in public without good reason, except for Sikhs, who are permitted to carry a kirpan as a manifestation of their faith. This exemption is further supported by the Offensive Weapons Act 1996, which recognizes the kirpan not as a weapon in the conventional sense but as a religious artifact. This legal accommodation reflects a broader commitment to religious tolerance and multiculturalism, allowing Sikhs to practice their faith openly and in accordance with their religious obligations. However, this approach is not without its challenges and complexities. For instance, the definition of a kirpan's acceptable size and the contexts in which it can be carried can sometimes lead to confusion among law enforcement and the public. There have been instances where Sikhs carrying kirpans have faced scrutiny or intervention by police, underscoring the need for continuous education and awareness among law enforcement agencies and the general public about Sikh practices. Comparatively, in Indonesia, the legal context concerning the carrying of religious symbols like the kirpan is less clear. Indonesia's legal framework, influenced by Pancasila, emphasizes religious freedom and tolerance, yet the implementation of laws that specifically address the carrying of religious artifacts in public spaces is not as developed as in the UK. The absence of specific legal protections for practices such as carrying the kirpan can lead to inconsistency in law enforcement and potential misunderstandings. Instances of Sikhs facing difficulties due

69 Singh, *supra* note 60.

70 William Hewat, "Sikhism | History, Doctrines, Practice, & Literature Britannica," (2023), online: *Britannica* <<https://www.britannica.com/topic/Sikhism>>.

to carrying their kirpans in public could highlight a gap in the legal and social recognition of religious practices, pointing towards the need for more explicit legal protections and guidelines. The difference in legal approaches between the UK and Indonesia underscores the importance of tailored legislation that both protects public safety and respects religious practices. In the UK, the explicit legal recognition of the kirpan through acts like the Criminal Justice Act 1988 and the Offensive Weapons Act 1996 sets a precedent for how countries can accommodate religious practices within their legal systems. For Indonesia, there is an opportunity to learn from such examples to enhance its legal framework in a way that more explicitly accommodates religious symbols like the kirpan, ensuring that law enforcement practices are consistent with the nation's principles of religious freedom and tolerance. Adopting a more explicit legal stance on the kirpan and similar religious practices would not only align with Indonesia's foundational ideals of Pancasila but also promote a deeper understanding and respect for religious diversity among its citizens and institutions. Drafting specific legislation or guidelines for law enforcement that acknowledge the religious significance of items like the kirpan, along with awareness and training programs, could ensure the fair understanding and application of these laws. By doing this, Indonesia could bolster its dedication to fostering a society that actively protects and respects diverse religious practices. This is in recognition of the kirpan's significance in the Sikh religion, where it is one of the five "Ks" (Kakar) that Khalsa Sikhs must wear to signify their devotion to and sense of identity as Sikhs. The UK, which has a significant Sikh population, thus demonstrated its commitment to religious freedom and respect for cultural diversity by integrating this exemption into its law.⁷¹ This allows Sikhs in the UK to adhere to their religious principles while still complying with local laws, demonstrating how the legal system can adapt to accommodate and respect a diversity of religious beliefs and practices.

In the United States, the legality of Sikhs wearing kirpans in public has been the subject of numerous court cases, with decisions varying depending on the specific jurisdiction and context. In general, US law has great respect for freedom of religion, as enshrined in the First Amendment of the Constitution.⁷² However, there are challenges in balancing this religious freedom with public safety concerns, especially in places like airports and security checkpoints. Courts in states such as New York and Ohio have issued decisions holding that banning the wearing of the kirpan in public places by Sikhs is unconstitutional, recognizing that the kirpan is an integral part of Sikh religious practice.⁷³ These decisions reflect recognition of the importance of religious freedom and the need to reconcile security policies with the rights of individuals to practice their faith. However, at airports and other security checkpoints, the kirpan often poses a challenge to security personnel. Security personnel have occasionally taken kirpans away, especially if they pose a threat to security. Security personnel are instructed to treat religious items

71 Gurharpal Singh, "British Multiculturalism and Sikhs" (2005) 1:2 Sikh Form 157-173, online: <<https://doi.org/10.1080/17448720500442584>>.

72 Singh, *supra* note 60.

73 *Ibid.*

such as the kirpan with respect, although they have the authority to confiscate them if deemed necessary for security. Overall, the situation in the United States demonstrates an ongoing effort to find the right balance between respecting religious freedom and maintaining public safety. This approach requires flexibility and sensitivity to individual contexts, as well as a deep understanding of the diversity of religious practices and security needs.

In Canada, the Supreme Court of Canada has recognized and upheld the right of Sikhs to carry the kirpan in public. In 2006, the Supreme Court issued a landmark decision related to the wearing of the kirpan in school settings.⁷⁴ This decision confirmed that the ban on kirpans in schools was contrary to the Canadian Charter of Rights and Freedoms. The Canadian Charter of Rights and Freedoms is part of the Canadian Constitution and protects various individual rights and freedoms, including freedom of religion.⁷⁵ In this case, the Supreme Court considered that the kirpan, as an important religious symbol for Sikhs, should be recognized as part of the religious practice protected by the Charter. The Supreme Court held that schools must provide reasonable accommodation to allow Sikh students to carry kirpans as long as this does not pose an unacceptable risk to the safety or well-being of others in the school. This decision marks an important step in the recognition and protection of religious freedom in Canada, demonstrating the country's commitment to the principles of tolerance and diversity. It also sets a precedent for other institutions in Canada to accommodate religious practices such as the wearing of a kirpan, provided there is no significant security risk. Canada thus illustrates how inclusive policies and a deep understanding of cultural and religious diversity can be integrated into the country's legal and social framework.

In Sweden, laws governing the carrying of weapons in public, including knives, tend to be stricter than in some other countries. Swedish law prohibits the carrying of weapons or knives in public, except in certain contexts, such as for hobby or professional purposes.⁷⁶ This means that the carrying of a knife by, for example, an angler or carpenter for a specific purpose is permitted under the law. In the context of the kirpan, which is an important part of the Sikh religion, the interpretation of the law in Sweden may be different.⁷⁷ The kirpan is often not only considered a weapon but also a religious symbol.⁷⁸ Therefore, in some cases, kirpan that are not sharp or blunt may be allowed as an exception, as they are considered harmless and more similar to pocket knives allowed by law. This reflects an attempt to strike a balance between compliance with general safety regulations and recognition of religious practices. It is important to note that

74 Juss, *supra* note 82.

75 Sarah V Wayland, "Religious Expression in Public Schools: Kirpans in Canada, Hijab in France" (1997) 20:3 *Ethn Racial Stud* 545-561, online: <<https://doi.org/10.1080/01419870.1997.9993974>>.

76 Lolomai Örnehult & Anders Eriksson, "Fatal Firearm Accidents in Sweden" (1987) 34:4 *Forensic Sci Int* 257-266, online: <<https://www.sciencedirect.com/science/article/pii/0379073887900399>>.

77 Eva Norström, "Community Interpreting in Sweden and its Significance to Guaranteeing Legal and Medical Security" (2010) *Sens public* 1-5, online: <<https://id.erudit.org/iderudit/1064050ar>>.

78 Nasution, *supra* note 27.

specific cases may be treated differently depending on local interpretations and special situations. As in many other countries, in Sweden, there is an ongoing discussion on how best to accommodate religious practices such as the carrying of the kirpan with the need to maintain public safety and order. This situation demonstrates the importance of dialogue and a deep understanding of religious and cultural diversity in society.

From a comparison of the policies of countries such as India, the United Kingdom, the United States, Canada, and Sweden regarding the wearing of the kirpan by Sikhs, Indonesia can learn valuable lessons in terms of accommodating religious and cultural diversity within the legal and social framework. First, the importance of recognizing and protecting religious freedom in national constitutions and laws, as practiced in India and Canada, is key to ensuring the right of every individual to practice his or her religion without fear of discrimination or violation of the law. Second, the need to strike a balance between respecting religious freedom and maintaining public security, as seen in cases in the United States and Sweden, shows that states need to be flexible and sensitive to specific contexts when implementing security rules. Third, Indonesia can learn from the UK's way of integrating exemptions into its laws to accommodate religious practices, demonstrating the importance of laws that are inclusive and adaptive to cultural diversity. This illustrates how policies and laws can be designed to respect and protect minority religious practices without compromising public order and security. Fourth, the Supreme Court of Canada's decision on the kirpan in schools provides an example of how educational institutions can be places to teach and practice tolerance and respect for religious and cultural diversity. In the context of Indonesia, which has a very rich religious and cultural diversity, this lesson is particularly relevant. Adopting an inclusive, adaptive, and respectful approach to religious freedom in law and public policy will help strengthen tolerance and social harmony. It will also demonstrate Indonesia's commitment to the principles of democracy and human rights, which are essential for the country's socio-economic stability and progress. Such an approach requires ongoing dialogue between different religious and cultural groups, as well as a deep understanding by the government and society of the country's diversity.

VII. CONCLUSION

The complicated relationship between the Sikh practice of carrying the kirpan and the legal and social problems that came up, as a result, is an interesting case study of religious freedom, minority rights, and the state's duty to accommodate different religions. This exploration, centered on the tension between ensuring public safety and upholding the right to religious expression, has underscored the complexity of navigating religious practices within diverse legal and cultural landscapes, particularly within the context of Indonesia. At the heart of this discussion is the recognition of the kirpan not merely as a religious artifact but as a profound symbol of faith, justice, and spiritual commitment within Sikhism. This acknowledgment is crucial to understanding the importance of religious practices and their integration into the fabric of society. The analysis reveals that

while international human rights instruments, such as General Comment No. 22 of the ICCPR, provide a framework for protecting religious freedoms, the practical application of these principles varies significantly across different national contexts. The case studies of India, the United Kingdom, the United States, Canada, and Sweden have illustrated diverse approaches to reconciling the practice of carrying the kirpan with concerns over public safety and social harmony. These examples provide Indonesia with valuable lessons, indicating that inclusive legal reforms, public education and awareness, and intercultural dialogue can achieve a balance. Such strategies not only address the immediate concerns related to the kirpan but also contribute to a broader ethos of tolerance, understanding, and respect for religious diversity. Indonesia, with its ideological foundation in Pancasila, is uniquely positioned to navigate these challenges. The principles of Pancasila, emphasizing religious freedom, just and civilized humanity, unity in diversity, democratic deliberation, and social justice, provide a robust framework for integrating religious and cultural diversity within the nation's legal and social fabric. By incorporating these principles into its approach to religious freedom, Indonesia can not only accommodate but also actively protect and respect practices such as carrying the kirpan. The discussion on the Sikh kirpan within the framework of legal and socio-cultural considerations illuminates the broader challenges and opportunities facing societies striving to uphold the principles of religious freedom and diversity. Countries can achieve a society that recognizes, respects, and protects all individuals, regardless of their religious practices, by fostering an environment of dialogue, education, and legal inclusivity. This endeavor, while complex, is essential for the advancement of human rights, social harmony, and the rich tapestry of global cultural and religious diversity.

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