



## Development of Constitutional Court Jurisprudence on Freedom of Religion and the Constitutionality of Legislative Norms

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### ABSTRACT

The development of Constitutional Court jurisprudence on freedom of religion holds strategic significance within Indonesian constitutional law, as it directly concerns the protection of constitutional rights and the limits of legislative authority in restricting such rights. Judicial review dynamics, particularly in cases concerning the Law on the Prevention of Blasphemy, Article 156a of the Criminal Code, and the Population Administration Law, reveal an ongoing tension between the constitutional guarantee of religious freedom and considerations of public order. This study aims to analyze the evolution of the Constitutional Court's doctrinal interpretation of freedom of religion and to assess the consistency of its standards in reviewing the constitutionality of legislative norms over time. The research employs a normative juridical method with a doctrinal approach, utilizing statute, case, conceptual, and historical approaches. Data were collected through library research examining constitutional provisions, statutory regulations, and relevant Constitutional Court decisions, and were analyzed qualitatively using the framework of the proportionality doctrine and comparative constitutional analysis. The findings indicate a gradual shift from a deferential stance toward the legislature to a more robust protection of constitutional rights, particularly in recognizing the rights of adherents of indigenous beliefs, although in certain cases the Court continues to uphold limitations grounded in public order and morality.

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## **INTRODUCTION**

The development of the Constitutional Court's jurisprudence on religious freedom occupies a strategic position in the dynamics of Indonesian constitutional law, especially in the context of increasing tensions between the guarantee of human rights and public order-based regulations. Globally, the issue of religious freedom is experiencing new complexity due to increasing identity polarization, anti-extremism regulations, and the strengthening of the state's role in regulating religious expression (Temperman, 2020). International academic reports show that restrictions on religious freedom are often justified on the grounds of public safety and morality, thus giving rise to a debate about the proportionality of such restrictions (Evans, 2021). In the Indonesian context, the testing of the Prevention of Blasphemy Law, Article 156a of the Criminal Code, and the Population Administration Law reflect a similar tension between constitutional protections and the legitimacy of legislative restrictions. This phenomenon shows the urgency to systematically examine how the Constitutional Court shapes the doctrine of religious freedom in the practice of testing laws.

In the international literature, the debate on judicial review in religious freedom cases is largely focused on the application of the proportionality test and the balancing approach as a standard for testing constitutionality (Barak, 2020). A study by Kumm (2021) emphasizes that constitutional courts play a central role in maintaining a balance between fundamental rights and the public interest through structured and rational analysis. However, these studies are generally based on the European or North American legal system, so they have not fully explained the dynamics in a country with pluralistic constitutional characteristics such as Indonesia. In the Asian context, approaches to religious freedom are often influenced by the values of collectivity and social stability (Neo, 2022). Therefore, it is important to analyze how the Indonesian Constitutional Court positions itself on the spectrum between the protection of rights and deference to lawmakers.

Previous studies in Indonesia have tended to discuss the Constitutional Court's decisions in a partial and descriptive manner without tracing the development of the doctrine longitudinally. Research by Butt (2020) highlights the Constitutional Court's deferential tendencies in politically sensitive cases, while Lindsey and Crouch (2021) emphasize the influence of social context on constitutional argumentation. However, there have not been many studies that comprehensively examine the evolution of the standard for testing the constitutionality of legislative norms in matters of religious freedom within the framework of the proportionality doctrine. This gap creates a significant research gap, especially in understanding the methodological consistency of the Constitutional Court in interpreting Article 28E, Article 28I, Article 29, and Article 28J of the 1945 Constitution of the Republic of Indonesia. Thus, a more systematic and theory-based analysis is needed to identify the pattern of the development of jurisprudence.

In addition, global studies on constitutional adjudication show that constitutional courts are increasingly playing a normative role in shaping

domestic human rights standards (Dixon & Landau, 2022). The strengthening of this role is often accompanied by a shift from judicial restraint to judicial engagement in fundamental rights cases. In Indonesia, a similar shift can be observed in rulings related to the recognition of believers, which mark a progressive step in the protection of constitutional rights. However, the consistency of this approach in other cases is still an academic debate. Therefore, an analysis of the development of jurisprudence becomes relevant to assess whether the Constitutional Court has established a coherent standard in testing the constitutionality of legislative norms.

Based on the background and gaps in the research, this study aims to analyze in depth the development of the doctrine of the Constitutional Court in interpreting religious freedom and evaluate the consistency of the application of constitutionality testing standards to legal norms. This study also aims to identify whether the Constitutional Court uses an explicit or implicit proportionality approach in balancing its rights and limitations. Longitudinal analysis of a number of relevant decisions was carried out to reveal the evolutionary pattern of constitutional argumentation. Thus, this research is not only descriptive, but also evaluative and critical.

Theoretically, this research contributes to the development of constitutional law studies by enriching understanding of the dynamics of constitutional interpretation in a legal system based on pluralistic values. The findings of the study are expected to expand the discourse on the application of proportionality doctrine outside the Western context, as well as provide a comparative perspective on the practice of law testing in Indonesia. In addition, this study strengthens the study of the role of the Constitutional Court as the guardian of the constitution in protecting minority rights in the midst of social and political pressure. This contribution is relevant to global trends that emphasize the importance of methodological consistency in constitutional adjudication (Stone Sweet & Mathews, 2021).

Practically, the results of this study are expected to provide a normative reference for lawmakers in formulating regulations that are in line with the constitutional standards of religious freedom. For the Constitutional Court, this research can be an academic reflection on the consistency of the argument and the application of the doctrine of restriction of rights. In addition, this research is also useful for academics and legal practitioners in understanding the pattern of jurisprudence development comprehensively and systematically. With a theory-based approach and longitudinal analysis, this study seeks to bridge the gap between normative studies and law testing practices in Indonesia.

## LITERATURE REVIEW

### *Religious Freedom in Constitutional Theory and the Indonesian Context*

Freedom of religion is a constitutional right that is universally recognized in various human rights instruments and guaranteed in the constitutions of democratic countries. In modern constitutional theory, religious freedom includes internal dimensions that are absolute and cannot be reduced under any circumstances, as well as external dimensions that can be limited on the condition that they meet the principle of proportionality (Bielefeldt, 2020). Restrictions on

external dimensions must meet the elements of legality, legitimate goals, and proportionate needs in a democratic society. Ferrari and Pastorelli (2021) explain that plural states often face tensions between the protection of individual rights and the need to maintain social order. In the Indonesian context, freedom of religion is guaranteed through Article 28E, Article 28I, and Article 29 of the 1945 Constitution of the Republic of Indonesia. Asshiddiqie (2015) emphasized that the character of Indonesia's constitution as a state of law based on the values of the One Godhead influences the interpretation of religious freedom in constitutional practice. Therefore, the study of religious freedom in the Indonesian context requires an approach that considers normative and sociological dimensions simultaneously.

### ***Judicial Review and the Role of the Constitutional Court***

Judicial review is a constitutional mechanism that aims to maintain the supremacy of the constitution and ensure that legislation products do not contradict the basic norms of the state. In contemporary literature, judicial review is understood as an instrument that is not only corrective, but also constructive in shaping constitutional doctrine through precedent (Roznai, 2021). Landau and Dixon (2020) state that constitutional courts in various developing countries play a significant role in expanding the protection of minority rights through progressive interpretations of the constitution. In Indonesia, the Constitutional Court has the authority to test laws against the 1945 Constitution of the Republic of Indonesia, including in cases related to freedom of religion. Butt (2020) identifies a variety of approaches to the Constitutional Court, ranging from a deferential attitude towards lawmakers to a protective approach to constitutional rights. Isra (2020) emphasized the importance of methodological consistency in the legal considerations of the Constitutional Court as an indicator of the quality of jurisprudence. Therefore, the analysis of the development of judicial review in the case of religious freedom is crucial to assess the direction and consistency of constitutional interpretation in Indonesia.

### ***Proportionality Doctrine and Restrictions on Constitutional Rights***

The proportionality doctrine has developed as the dominant paradigm in global constitutional adjudication, particularly in fundamental rights matters. Alexy (2020) explained that the principle of proportionality provides a rational structure to balance the conflict between individual rights and public interests. Rivers (2022) added that the proportionality test increases transparency and accountability in judicial argumentation. In the case of freedom of religion, this principle is an important instrument to ensure that restrictions based on public order or morality do not eliminate the essence of the right. In Indonesia, the application of the principle of proportionality has not always been explicitly formulated in every decision of the Constitutional Court. Crouch (2021) noted that in some cases, the Court emphasized more on social stability considerations than systematic phased analysis. This condition shows the need for an academic evaluation of the extent to which the proportionality doctrine is internalized in the practice of judicial review of the Constitutional Court.

### ***Constitutional Pluralism and Challenges in Southeast Asia***

Constitutional pluralism in the Southeast Asian region presents unique dynamics in the protection of religious freedom. Chng (2021) shows that courts in Asia tend to adopt a more cautious approach in cases that have the potential to trigger social or religious conflicts. Harding (2022) explains that constitutional pluralism in the region is influenced by colonial history, ethnic diversity, and complex social structures. Indonesia as a country with the largest Muslim population in the world has a different constitutional configuration from the Western liberal model. Lindsey and Crouch (2021) highlight that religion-based regulations in Indonesia are often influenced by socio-political pressures that have an impact on the construction of constitutional arguments. Therefore, the jurisprudence analysis of the Constitutional Court in the case of religious freedom must consider the context of this pluralism in order to be able to understand the balance between the protection of individual rights and the collective interest.

### ***Research Gap and Research Position***

Although various studies have discussed religious freedom and judicial review, studies that map the development of the Constitutional Court's doctrine longitudinally are still relatively limited. Bellamy (2023) emphasizes the importance of precedent evolutionary analysis to assess the consistency and direction of changes in constitutional interpretation. At the national level, research on blasphemy cases and confessions of believers is generally partial and has not examined their relationship in the framework of proportionality doctrine comprehensively. Asshiddiqie (2017) stated that the dynamics of Indonesian constitutional jurisprudence show evolutionary tendencies that need to be systematically examined. Thus, this research fills an academic gap through a structured analysis of the development of the Constitutional Court's jurisprudence in the case of religious freedom and the testing of the constitutionality of legislative norms. The contribution of this research lies in the integration of modern constitutional theory, the principle of proportionality, and the Indonesian national context in one comprehensive and comparative analysis framework.

## **METHODOLOGY**

### ***Types, Approaches, and Research Design***

This study uses a qualitative approach with a type of normative legal research and a jurisprudential doctrinal approach. The research design is in the form of a longitudinal study of doctrinal development to trace the changes, consistency, and argumentation patterns of the Constitutional Court from time to time in the issue of freedom of religion or belief and testing the constitutionality of legislative norms. This model was chosen because the object of study is in the form of authoritative legal texts so that the analysis is directed at the reasoning structure, the rules of decision, and the basis for justification as is common in qualitative legal analysis (Mitchell, 2022). To deepen the assessment of the quality of rights restrictions, the study also uses the doctrine of

proportionality as a framework for evaluating the arguments for rights restriction in decisions.

### ***Research Objects and Legal Materials Analyzed***

The objects of research include constitutional norms as a touchstone, norms of laws and regulations that are tested or related, and decisions of the Constitutional Court that form the jurisprudence of freedom of religion or belief. The constitutional norms analyzed include Article 28E, Article 28I, Article 29, and Article 28J of the 1945 Constitution of the Republic of Indonesia to the extent referred to in the decision and are relevant to the structure of the restriction of rights. The legislative norms that are the focus of the study include the Presidential Decree Number 1 of PNPS of 1965 concerning the Prevention of Abuse and/or Blasphemy which was declared as a law through Law Number 5 of 1969, Article 156a of the Criminal Code, and Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013. The core decisions that are used as the anchor of analysis are the Constitutional Court Decision Number 140 PUU VII 2009 and the Constitutional Court Decision Number 97 PUU XIV 2016.

### ***Population, Unit Analysis, and Sampling Techniques***

The research population includes all decisions of the Constitutional Court related to freedom of religion or belief and/or testing of legal norms that have an impact on religious expression. The research focuses on decisions that contain the issue of restricting rights on the basis of public order, morality, security, or protection of the rights of others. The sampling technique used is purposive sampling because not all decisions are directly relevant to the normative focus of the research. Inclusion criteria include decisions that test laws that assess the constitutionality of norms related to religion or belief, decisions that contain standards for restricting rights, and decisions that show the development of arguments from time to time. The unit of analysis includes ratio decidendi, rules or test tests, the reasons for the restriction used, and different opinions where available as the practice of codifying decisions in jurisprudence studies (Carrubba et al., 2024).

### ***Data Collection Techniques and Research Instruments***

Data was collected through literature studies and legal documentation. Primary data sources include the text of the 1945 Constitution of the Republic of Indonesia, related laws and regulations, and the official text of the Constitutional Court's decision. Secondary data sources include the latest scientific literature on judicial review, constitutional interpretation, and proportionality doctrine. The research instrument is in the form of a data extraction sheet or coding sheet so that the reading of the verdict is carried out consistently. The coding sheet contains the identity of the case, the norms tested, the constitutional articles used as a touchstone, the issue of rights and limitations, the structure of the proportionality test, and the implications of the decision rules. This coding pattern follows the principles of qualitative text analysis that emphasizes traceability and category consistency (Wodak & Meyer, 2023).

### ***Validity and Reliability***

Validity and reliability are carried out in the form of analytical reliability, not statistical tests. Validity is maintained through triangulation of sources that compare judgments, regulations, and academic literature. Trail audits are also used through coding decision records and analytical memos to ensure interpretation trails can be traced. The consistency of the application of categories is tested by applying the same operational definition to different decisions. Reliability is strengthened by storing the encoding results so that the process can be re-audited and replicated especially when using auxiliary software (Dalkin et al., 2021).

### ***Research Procedure***

The research began by establishing the limits of the concept of freedom of religion or belief as well as restrictions on rights according to the framework of the 1945 Constitution and the practice of testing laws. The next stage is the collection of core decisions Number 140 of PUU VII 2009 and Number 97 of PUU XIV 2016 from official sources, then continued with the search for other decisions that meet the inclusion criteria. The next stage is the preparation of a norm matrix to map the constitutional articles referred to and the legal norms that are tested along with the issue of limitations. After that, legal considerations were coded using a coding sheet and the preparation of an analytical memo to capture shifts in test standards and degrees of deference to legislators. The final stage is the synthesis of findings into a narrative of doctrinal development that explains the pattern of change and consistency of jurisprudence.

### ***Data Analysis Techniques and Supporting Tools***

The analysis was carried out through qualitative content analysis and doctrinal analysis of the decision. The main results of the analysis were in the form of mapping the development of standards, testing the constitutionality of legislative norms in cases of freedom of religion or belief and evaluating the structure of restricting rights using the doctrine of proportionality (Steiner et al., 2022). For document management, coding, and category tracking, research can use NVivo or ATLAS.ti as a work tool. The use of software is positioned to improve process transparency and traceability, rather than replace the researcher's legal reasoning (Dalkin et al., 2021).

## **RESEARCH RESULT**

### ***The Constitutionality of Restrictions on Religious Freedom in the Constitutional Court Decision Number 140 PUU VII 2009***

The Constitutional Court Decision Number 140/PUU-VII/2009 affirms that the regulation on the prevention of abuse and/or blasphemy is still considered constitutional in the framework of conflict control and the protection of public order. The court dismissed the application for testing in its entirety until the norm tested remained in effect and binding. In this jurisprudential construction, freedom of religion is understood as a guaranteed constitutional right, but it can be restricted as long as it meets the constitutional basis of the restriction of rights. The test is carried out by placing freedom of religion and

belief in relation to the state's obligation to maintain public order and values that live in society. This pattern shows the Court's tendency to be cautious in cases that are socially sensitive and have the potential to cause friction between groups.

The findings were obtained through the reading of the official document of the decision and the mapping of the benchmark norms in the 1945 Constitution of the Republic of Indonesia. Article 28E paragraph 1 guarantees the freedom to embrace religion and worship according to one's religion, while Article 28E paragraph 2 guarantees the freedom to believe in one's beliefs according to conscience. Article 29 paragraph 1 states that the state is based on the One God and Article 29 paragraph 2 states that the state guarantees the freedom of each citizen to embrace his or her own religion and to worship according to his religion and belief. The restriction of rights is linked to Article 28J paragraph 2 which states that in exercising his rights and freedoms, everyone is obliged to submit to the restrictions established by law to ensure the recognition and respect for the rights and freedoms of others and to meet fair demands in accordance with moral considerations, religious values, security, and public order in a democratic society. With the statute approach, the provisions of the constitution are read together with norms that are tested to assess whether the restrictions move within the corridors allowed by the constitution.

The object of the norm that became the center of the test was the Presidential Decree Number 1/PNPS of 1965 concerning the Prevention of Abuse and/or Blasphemy which was declared as a law through Law Number 5 of 1969 concerning the Statement of Various Presidential Decrees and Presidential Regulations as Law. Normatively, Presidential Decree No. 1/PNPS of 1965 contains a prohibition on religious interpretations or activities that deviate from the main religious teachings adopted in Indonesia and provides a mechanism for administrative action in the form of orders and warnings as well as the possibility of dissolution of certain organizations or schools. The determination is also related to criminal norms because Article 4 of the Presidential Decree Number 1/PNPS of 1965 adds Article 156a to the Criminal Code. Article 156a of the Criminal Code criminalizes acts that are essentially hostile, abusive, or blasphemous against a religion practiced in Indonesia as well as acts that aim to prevent people from adhering to any religion that is linked to the One Godhead. The structure of this norm shows that restrictions on religious freedom in the regime are designed as a combination of administrative and criminal instruments.

In a doctrinal reading, this ruling reflects a relatively strong degree of deference to lawmakers and governments in choosing restrictive instruments to prevent religious-based conflicts. The Court places itself as the guardian of constitutional boundaries without replacing legislative policies with judicial preferences as long as the restrictions have a legal basis and are linked to a legitimate purpose. Therefore, the discussion of constitutionality is more prominent on the general justification of the need to maintain public order and religious values than on the details of gradual tests such as suitability, necessity, and strict weighing. However, this position also affirms that constitutional scrutiny remains relevant at the level of application and enforcement so that

norms are not used to judge thoughts or beliefs alone. Thus, the main finding of this theme is the strengthening of restrictions based on public order and public morality which is considered compatible with Article 28J paragraph 2 of the 1945 Constitution in case 140/PUU-VII/2009.

***Shift to Strengthening Rights in Constitutional Court Decision Number 97 PUU XIV 2016 concerning Population Administration***

The Constitutional Court Decision Number 97/PUU-XIV/2016 shows a decisive shift towards strengthening the protection of constitutional rights, especially for adherents of belief in God Almighty. The Court granted the application in its entirety and considered that the restriction of the meaning of religion in the population document had discriminatory consequences that hindered the fulfillment of citizens' rights. This ruling places population administration as part of state services that must run equally for every population. The main focus is not on the regulation of religious expression in the public sphere, but on the recognition of the law and the protection of citizens' civil status before the state. Thus, freedom of religion and belief is translated into a guarantee of equal access to identity documents which is a prerequisite for enjoying other rights.

This finding was born from the case approach to the amar and legal considerations of the decision and the statute approach to the norms tested. The norm tested is Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration. The Court considered that the word religion in Article 61 paragraph 1 and Article 64 paragraph 1 of the law is contrary to the 1945 Constitution and does not have the force of conditionally binding law as long as it does not include belief. The Court also stated that Article 61 paragraph 2 and Article 64 paragraph 5 are contrary to the 1945 Constitution and have no binding legal force. In consideration, the Court emphasized that the inclusion of population data elements about religion for believers is carried out by registering the person concerned as a believer without detailing the beliefs held in the family card or electronic identity card. This series shows a more active standard of correction than the 140 decision because the Court not only assesses, but also shapes the constitutional meaning of norms through conditional decisions.

Constitutional attribution is carried out by affirming the position of Article 28E paragraph 1 and Article 28E paragraph 2 of the 1945 Constitution which conceptually separates religion and belief, then linked to Article 29 paragraph 2 which guarantees the freedom to worship according to religion and belief. In the context of restrictions, the Court does not place this issue as a legitimate restriction for public order, but as an administrative arrangement that actually creates an unequal restriction of access to rights. With a conceptual approach, the Court distinguishes between a forum of beliefs and administrative recognition that must be neutral and non-discriminatory. With a historical approach, the Court traced the establishment of rights norms in the 1945 Constitution to show that the terms religion and belief cannot be used to negate the recognition of believers. Therefore, this decision marks the strengthening of the protection of

constitutional rights through direct correction of the design of population administration norms.

In the framework of the proportionality doctrine assessment used by the research, the structure of the Court's argument in this case is easier to read as an implicit proportionality test. The orderly purpose of population administration is still recognized as a legitimate goal, but the way of listing a religion that excludes believers is seen as inappropriate for achieving the goal of equal service. In terms of needs, the Court directed a lighter option while still allowing data collection through the label of believers without removing columns or stigmatizing. In terms of balance, the Court prioritizes the protection of constitutional rights and the dignity of citizens over administrative conveniences built on exceptions. Therefore, the findings of this theme show the strengthening of the Court's role as a more protective guardian of the constitution, especially when the norms of the law result in unjustifiable different treatment.

### ***Standards for Restriction of Rights and Court Deflection Patterns between Public Order and Protection of Rights***

Longitudinal mapping of the core rulings shows an evolutionary pattern consistent with the summary of the research findings, namely a gradual shift from a more deferential attitude in cases of public order-based restrictions to a more protective attitude towards constitutional rights on the issue of recognition of belief. In Decision 140/PUU-VII/2009, the Court maintained the norm of restriction by emphasizing the importance of public order and religious values in society. In Decision 97/PUU-XIV/2016, the Court actually corrected the norms that created administrative exclusion and restored equal protection. These two points show that the doctrine of religious freedom in Indonesia does not move in one direction absolutely, but adapts according to the character of the problem being tested. The pattern shows a spectrum between justifying restrictions for social stability and strengthening rights for non-discrimination and equal recognition.

Methodologically, these findings were compiled through the coding of ratio decidendi, test rules, and the formulation of rights restrictions in decisions using uniform data extraction sheets. In each decision, the research maps the articles of the reference test, the type of norms tested, and the reasons for their justification. The statute approach is used to assess whether the restrictions sourced from the law are within the space of Article 28J paragraph 2 of the 1945 Constitution. The case approach is used to track the consistency of testing standards and changes in the degree of differentiation of legislators. The conceptual approach is used to assess whether the Court uses the concept of limitation of rights that is in line with the principle of proportionality. The historical approach is used to understand the direction of the formation of constitutional norms related to religion and beliefs so that the reading of the decision is inseparable from the context of the birth of rights articles.

In the analysis, the restriction of rights that are considered legitimate is related to the parameters of Article 28J paragraph 2, namely the restriction must be determined by law, aims to ensure recognition and respect for the rights of others, and meet fair demands based on moral considerations, religious values,

security, and public order. Decision 140 shows the use of these parameters, especially in the aspect of legitimate goals in the form of public order and the protection of religious life from conflict. Ruling 97 shows the use of the same parameters in a different form, namely rejecting restrictions that are intangible restrictions on expression, but have an impact on access to state services that should be equal. Thus, the standard of limitation in the Court's jurisprudence appears not to be solely pro restriction or pro-freedom, but rather to depend on whether the norm creates a constitutional harm that can be justified by a legitimate purpose and proportionate means. In the framework of the research, this is the main indicator of the shift from policy deference to strengthening rights through sharper corrections.

Constitutional comparisons are used in a limited way at the level of principle, rather than copying the judgments of other countries, to assess whether the Court's pattern of argument is moving toward a more transparent practice of modern testing in weighing rights and limitations. In case 97, the Court's consideration structure is closer to a measurable justification because it distinguishes between the purpose of administrative order and discriminatory impact, and then offers a more minimally intrusive design through the record as a believer. In case 140, the justification structure is more general because it focuses on the need to maintain public order and potential conflicts, so that the space for a detailed proportionality evaluation is relatively narrower. These findings do not state one ruling is right and the other is wrong, but it does show the changing nature of the test following the type of constitutional risk. Therefore, the results of the research on this theme confirm that the Court's jurisprudence forms an evolutionary pattern that can be mapped and assessed for consistency through the framework of proportionality and longitudinal reading.

### ***Integration of Norm Sources and Doctrinal Outputs Binding on Legislators and State Administration***

The results of the study show that the Court's doctrinal output operates through two different forms, namely the enforcement of existing restrictive norms and the formation of new constitutional meanings through conditional rulings. In Decision 140/PUU-VII/2009, the main output is the affirmation of the applicability of the restrictive instrument through Presidential Decree Number 1/PNPS of 1965 which has been declared as law through Law Number 5 of 1969, including in relation to Article 156a of the Criminal Code. In Decision 97/PUU-XIV/2016, the main output is the correction of the design of population administration norms with two consequences at once, namely the expansion of the meaning of religion to include belief in Article 61 paragraph 1 and Article 64 paragraph 1, as well as the elimination of the binding power of Article 61 paragraph 2 and Article 64 paragraph 5. The output does not stop at the declaration, but binds the administrative executor to make equivalent recordings in family cards and electronic identity cards. Thus, the doctrine of freedom of religion and belief appears not only as an abstract principle, but as an operational guideline that has a direct impact on state governance.

This finding was compiled through the linking of three layers of primary legal materials, namely the constitution, the law that was tested, and the decision of the Constitutional Court. The constitution analyzed includes Article 28E paragraph 1, Article 28E paragraph 2, Article 28I, Article 29 paragraph 1, Article 29 paragraph 2, and Article 28J paragraph 2 of the 1945 Constitution of the Republic of Indonesia in accordance with the references that appear in the decision and its relevance to the structure of restricting rights. The laws tested and related include the Presidential Decree Number 1/PNPS of 1965 which was declared as a law through Law Number 5 of 1969, Article 156a of the Criminal Code, and Law Number 23 of 2006 concerning Population Administration as amended by Law Number 24 of 2013. The core decisions that are the anchor of the analysis are Decision Number 140/PUU-VII/2009 and Decision Number 97/PUU-XIV/2016. It is entirely read through a doctrinal-jurisprudential design with a focus on the rules of the decision, not just the chronology of the case.

In the discussion, the integration of norm sources shows that the Court uses a combination of constitutional interpretation and the structuring of norm consequences to achieve a balance between the protection of rights and the legitimacy of restrictions. In the realm of restrictions, the Court recognizes the role of legislators and the executive in providing instruments for the prevention of religious conflicts, as long as the restrictions are supported by law and can be linked to the purposes permitted by Article 28J paragraph 2. In the realm of administrative recognition, the Court tightens control because population administration is the entrance to other rights so that norms that exclude trust are considered inconsistent with constitutional guarantees. Thus, the shift does not mean that the Court abandons public order, but rather rearranges its weight points so that constitutional rights are not sacrificed by discriminatory norm designs. In the framework of the research, this is a form of strengthening the protection of rights without eliminating the legal restriction space according to the constitution.

Finally, the results of the study show that the development of the Constitutional Court's jurisprudence on the issue of freedom of religion and belief has produced two complementary normative messages. First, the restriction of rights can be justified if it is stipulated by law and directed to legitimate purposes such as security and public order as formulated in Article 28J paragraph 2 of the 1945 Constitution. Second, the state is obliged to ensure equal recognition of religion and belief, including in population administration services, so that there should be no norm design that marginalizes believers from the identity column that is the basis of public services. The doctrinal consequence is that legislators are required to formulate more measurable restrictive norms, while administrative apparatus is obliged to implement conditional decisions and nullify norms as decided by the Court. With this evolutionary pattern, the Court's jurisprudence enriches the doctrine of religious freedom in the Indonesian constitutional system while affirming its role as a guardian of the constitution in balancing the protection of rights and the legitimacy of legislative restrictions.

## DISCUSSION

The development of the Constitutional Court's jurisprudence in religious freedom cases shows a pattern that is not uniform, but moves along the spectrum between deference to lawmakers and the strengthening of the protection of constitutional rights. From the perspective of human rights theory, religious freedom is understood to have the dimension of an internal forum that is absolute and an externum forum that can be strictly restricted based on laws and legitimate purposes. Bielefeldt (2020) asserts that restrictions on external manifestations of belief must meet measurable standards of rationality and proportionality, not just abstract reasons regarding public order. In the Indonesian context, a reading of Article 28E paragraph (1) and paragraph (2), Article 29 paragraph (2), and Article 28J paragraph (2) of the 1945 Constitution shows that the constitution does open up space of limitation, but with limiting conditions. Asshiddiqie (2015) emphasized that the character of the Indonesian legal state based on the One Godhead demands a balance between the protection of individual rights and social stability. The findings of this study are in line with this framework because it shows how the Court interprets the constitutional limits of restrictions in a contextual way.

In Decision No. 140/PUU-VII/2009, the Court upheld the validity of Presidential Decree No. 1/PNPS of 1965 which was declared as law through Law No. 5 of 1969, as well as its relationship with Article 156a of the Criminal Code. This attitude reflects a form of judicial restraint in cases that are considered socially sensitive and have the potential to cause conflict. Landau and Dixon (2020) explain that constitutional courts in many developing countries often show differentiation when the norms being tested are related to political and social stability. Butt (2020) also noted that the Indonesian Constitutional Court in a number of cases tends to be cautious when dealing with regulations that touch on religious issues. Thus, the findings of this study do not contradict previous research, but rather strengthen the analysis that differential patterns appear in issues that have a strong public order dimension. However, this study expands the discourse by showing that such differentiation is not absolute and can change in different contexts.

On the other hand, in Decision No. 97/PUU-XIV/2016 concerning Law No. 23 of 2006 concerning Population Administration as amended by Law No. 24 of 2013, the Court took a more protective position on the rights of believers. The Court stated that Article 61 paragraph (2) and Article 64 paragraph (5) are contrary to the 1945 Constitution and interpreted Article 61 paragraph (1) and Article 64 paragraph (1) to include believers. This approach shows the strengthening of the principle of non-discrimination and equality of citizens before the law. Safa'at (2022) assesses that the Court plays an important role in reorganizing the relationship between the state and religion through the testing of laws. At the international level, Roznai (2021) emphasized that modern constitutional courts play a role not only in invalidating norms, but also in shaping new constitutional meanings through progressive interpretation. The findings of this study are in line with this framework because it shows the Court as a normative actor who is active in expanding the scope of rights protection.

From the point of view of the proportionality doctrine, this study finds that the Court has not always used an explicit and gradual test structure, but its arguments can be read within the framework of legitimate objectives, suitability, and balance. Alexy (2020) explains that proportionality provides a rational structure in the conflict between rights and public interests. In the case of population administration, restrictions are considered unbalanced because they have an impact on reducing access to citizens' rights without adequate justification. Meanwhile, in the blasphemy case, the Court emphasizes more on the purpose of public order as the basis for justification. Stone (2020) reminds that the application of proportionality can differ between jurisdictions depending on the social context and constitutional tradition. Thus, the difference in results between cases in this study can be explained as a variation in the level of test intensity, rather than a completely contradictory inconsistency.

Factors that influence these differences include the sensitivity of the issue, the potential for social conflict, and the position of the norms tested in the legal system. Crouch (2021) shows that socio-political pressures often affect the way courts frame religious issues in Indonesia. On the other hand, administrative recognition of believers is not directly related to the potential for horizontal conflicts, so the space for the Court to strengthen rights is more open. This research supports the view that social context is an important variable in the intensity of constitutional testing. However, this study also highlights the need for methodological consistency so that the parameters of restricting rights do not change depending on the type of case. Within the framework of the development of constitutional law, these findings enrich the understanding of how the doctrine of religious freedom is formed through the interaction between constitutional norms, laws, and court decisions.

The limitation of this research lies in its document-based nature so that it does not analyze the internal dynamics of the judge's deliberations or litigation factors that are not reflected in the text of the decision. In addition, a focus on key decisions can pose the risk of generalizations that need to be tested through the expansion of the corpus of cases. For further research, a comparative analysis with constitutional courts in other pluralistic countries is suggested to test the consistency of the application of proportionality in religious issues. Follow-up research can also develop quantitative indicators of test intensity to reinforce qualitative findings. Overall, the results of this study contribute to the development of judicial review theory in Indonesia by showing that the Constitutional Court builds the doctrine of religious freedom in an evolutionary, contextual, and still within the constitutional framework regulated by the 1945 Constitution.

## **CONCLUSIONS AND RECOMMENDATIONS**

This study concludes that the jurisprudence of the Constitutional Court on freedom of religion in Indonesia demonstrates an evolutionary and context-sensitive trajectory. Through a longitudinal doctrinal analysis of constitutional provisions and key decisions, particularly Decision Number 140/PUU-VII/2009 and Decision Number 97/PUU-XIV/2016, it is evident that the Court has

gradually shifted from a predominantly deferential posture toward the legislature to a more assertive protection of constitutional rights, especially in relation to adherents of indigenous beliefs. Nevertheless, the Court continues to uphold certain legislative limitations grounded in public order and morality, reflecting a balancing approach anchored in Article 28J of the 1945 Constitution. The implementation of these findings suggests that legislators should formulate religiously sensitive regulations with clearer constitutional justification and structured proportionality reasoning, while the Constitutional Court is encouraged to articulate a more explicit and consistent proportionality framework to enhance doctrinal coherence and legal certainty in future judicial review cases.

### **ADVANCED RESEARCH**

This research is limited by its normative and document-based design, which relies exclusively on constitutional texts, statutory regulations, and published Constitutional Court decisions without incorporating empirical data on judicial deliberation processes or the sociopolitical impact of the rulings. Future research may expand the analytical scope by conducting comparative studies with other constitutional courts in pluralistic societies to evaluate the consistency of proportionality reasoning in religious freedom cases. Empirical socio-legal research examining the implementation of Constitutional Court decisions at the administrative and societal levels would also provide deeper insight into the practical effectiveness of constitutional protection. Furthermore, the development of measurable indicators for assessing degrees of judicial deference and rights protection could strengthen the analytical precision of subsequent doctrinal studies.

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