

# An Argument against Registration of Religions

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## I. INTRODUCTION

I have been invited to this conference to speak on the topic of “Democracy and Freedom of Religion in Indonesia: An Insight from an Outsider.” As this is my first visit to Indonesia, I am very much an outsider and this paper is written in the spirit of gratitude and humility for the opportunity to discuss my research. I am excited for the chance to learn more about the relationship between law and religion in Indonesia, and to take back with me some valuable insights that I can apply in the future.

In my initial survey of the relationship between religion and the government in Indonesia, I was struck by the fact that there was an “official list” of religions in the country. The number is often given as six (Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism),<sup>1</sup> but this number is subject to contraction<sup>2</sup> and expansion<sup>3</sup> as the government deems necessary. Official recognition brings substantial benefits to followers (such as in obtaining building permits for places of worship, marriage licenses, and cemetery allotments), while individuals affiliated with unregistered religions face severe burdens in life unless they publicly identify with one of the limited number of official religions.<sup>4</sup> Indeed, some scholars argue that adherence to one of the state-recognised religions is or was essentially an obligation of citizenship.<sup>5</sup> However, I am far from an expert on the subject and unfamiliar with the day-to-day realities of adherents to unrecognised religions.

Indonesia is only one of many countries in the world that require religions to register with, and receive approval from, the government. For example, several Eastern bloc countries, including Hungary, Austria, and Russia, passed legislation since the fall of Communism to

require the registration of religious groups.<sup>6</sup> Indeed, if a worldwide tally were completed, it would likely be an eye-opening exercise for most people living in western liberal democracies. My perspective, as an outsider to this conference, is of someone who has lived in the United States, Canada, and Australia; three countries where no one’s religion is listed on government identification cards, conversion and apostasy are unregulated, religious groups need register with the government only for very specific purposes (like charitable tax exemptions), and the free-for-all between majority/minority and established/new religious groups is seen as a desirable feature of the “free market in faith.”

I would like to suggest that, from the perspective of freedom of religion and human rights, the official registration and recognition of religious groups is inevitably problematic in democratic societies. Several arguments against the practice follow, but many share a common theme: scepticism of government power. When bureaucrats and politicians gain authority over religion, they are likely to exercise their power in ways that are clumsy, narrow-minded, and for their own political purposes. This inevitable misuse of power then distorts the independence of religious groups and the freedoms of individual religious believers.

## II. ARGUMENT

### A. DEFINITION AND EVOLUTION

One obvious reason that the registration of religious groups is problematic is that “religion” is one of the most complex, mutable, and contested aspects of communal and individual identity that societies must grapple with. Despite an enormous literature on the subject, merely defining the term “religion” itself has vexed legal scholars<sup>7</sup>

<sup>1</sup> See, e.g., Melissa Crouch, ‘Regulating Places of Worship in Indonesia: Upholding Freedom of Religion for Religious Minorities?’ [2007] *Singapore Journal of Legal Studies* 96, 99.

<sup>2</sup> For example, Confucianism was removed from the list at one point, but later re-recognised decades later. See Yuksel Sezgin & Mirjam Kunkler, ‘Regulation of “Religion” and the “Religious”: The Politics of Judicialization and Bureaucratization in India and Indonesia’ 56 *Comparative Studies in Society and History* 448, 465 n.14 (2014).

<sup>3</sup> For example, Baha’i has been added to the list according to one source. See Amanah Nurish, ‘Welcoming Baha’i: New official religion in Indonesia’ *The Jakarta Post* (8 August 2014).

<sup>4</sup> See Sezgin & Kunkler, above n.2, at 463; Nurish, above n. 3.

<sup>5</sup> See Sezgin & Kunkler, above n. 2, at 463.

<sup>6</sup> See, e.g., Asim Jusic, ‘Constitutional Changes and the Incremental Reductions of Collective Religious Freedom in Hungary’ 10 *Vienna Journal on International Constitutional Law* 199 (2016); Christopher J. Miner, ‘Losing My Religion: Austria’s New Religion Law in Light of International and European Standards of Religious Freedom’ 1998 *Brigham Young University Law Review* 607; June M. Kelly, ‘Searching for Spiritual Security: The Tangled Relationship of the Russian Orthodox Church, the Russian State and Religious Freedom’ (2018) 25 *University of Miami International and Comparative Law Review* 263.

<sup>7</sup> See, e.g., *Adelaide Company of Jehovah’s Witnesses v. Commonwealth*, (1943) 67 C.L.R. 116, 123 (per Latham, CJ) (“It would be difficult, if not impossible, to devise a definition of

and anthropologists alike.<sup>8</sup> The crux of the problem is that neutral, principled reasons for defining some belief systems as “religious” and others as “secular” have never been articulated in a wholly satisfactory manner. Our views on what count as “religious” involve an element of subjectivity, and subjectivity opens the doorway to unconscious bias and short-sighted results. In some circumstances, such as a freedom of religion claim, courts and administrative tribunals may have no choice but to try to determine whether an individual’s beliefs are “religious” in nature. But the task is a fraught one that wise decision-makers avoid whenever possible and, when unavoidable, handle with the utmost delicacy.

But if defining a belief system as a “religion” is difficult and dangerous, government intervention in circumscribing the boundaries of *particular religions* is even worse. We can think of obvious historical examples such as the Inquisition and Reformation in Europe and the unfathomable bloodshed caused by attempts to decide whether Catholicism or Protestantism were the one true expression of Christianity. Modern examples abound as well, such as controversy in Russia about whether Jehovah’s Witnesses are Christian, in India as to whether adherents to Vedanta should also be considered adherents to Hinduism, and here in Indonesia, about whether followers of the Ahmadiyah movement are Muslim. These controversies and clashes—which sometimes result in suppression and violence—are not simply occasional unfortunate side effects of government involvement in the registration of religions. These problems are the predictable and inevitable outcomes of the entire concept. The incurable problem of definition is part and parcel of registration systems, and the problem is exacerbated when countries try to limit the number of “official religions” to a small handful.<sup>9</sup>

The deeper reason why official registration of religions is ultimately unsupportable is because both religion (as a concept) and religions (as groups of like-minded believers) are constantly changing. Traditional beliefs diverge, causing schism; old rivalries are set aside, leading to syncretism or unification; new beliefs emerge leading to what laypersons call “cults” (and sociologists of religion call “New Religious Movements”). All of this is happening in real time, but often in subtle undercurrents within and between religious groups in ways that are very

hard for outsiders to discern until something dramatic happens to make it visible. Trying to contain and corral religious diversity through official registration is like trying to ride a bucking stallion—it may seem to be working at first, but eventually results in a painful fall. In short, governments can do many things, but adroitly navigate the changing and ever-complex landscapes of religiosity in a globalised world is not one of them.

## B. DISTORTION AND EXCLUSION

In theory, government registration of “official” religious groups could be mere symbolism, with no tangible benefits for the favoured or tangible hindrances for the disfavoured. But as discussed in the opening, most countries with registration systems attach very real consequences to the categorization. Unregistered religions may or may not be “illegal” per se when it comes to assembling for worship, but they are likely to face numerous practical difficulties that registered religions do not. Similarly, an individual’s affiliation with a registered or unregistered religion may determine what rights or privileges are available. By attaching tangible consequences to registration, governments invariably impact the choices that groups and individuals make when it comes to religion.<sup>10</sup>

The effects of this distortion of religious choice and exclusion of some believers from benefits available to others is a violation of the principles of freedom of religion and equality. It leads to a reality where some individuals have to pretend to be a member of a particular faith in order to be treated fairly, and may even have to publicly profess creeds that strike deeply against their real (but hidden) conscientious beliefs. Likewise, a survey of countries with formal recognition schemes shows that it is generally wealthy, large, and long-established religious groups that receive government approval; in contrast, minority religious groups (especially new or controversial ones) are substantially disadvantaged. Registration thus becomes a sort of protective straitjacket to maintain the status quo; an attempt that will eventually fail, but carries with it pain and hardship in the process.

We should also not forget the distortion effects on those religious groups that *are* registered. If religious groups can be de-registered (as history shows), then the state holds tremendous power over them. Registered religious groups are less likely to express discontent with government policy, encourage members to vote for a change in government, or cooperate with disfavoured religious, social, or political minority groups. To the degree that registration allows for government to co-opt the voice of religious groups, a true disservice is done to the vital role that faiths play as separate loci for moral authority and civic engagement.

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religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world.”); M. Elisabeth Bergeron, Note, *‘New Age’ or New Testament?: Toward a More Faithful Interpretation of ‘Religion’*, 65 St. John’s L. Rev. 365, 366 (1991) (“The formulation of a workable definition particularly confronts the judiciary with an unyielding conundrum”).

<sup>8</sup> See, e.g., Morton Klass, *Ordered Universes: Approaches to the Anthropology of Religion* (Boulder: Westview Press, 1995) 8 (discussing enormous disagreement on what counts as “religion”).

<sup>9</sup> For example, Russia’s 1997 religious affiliation law only allowed “traditional confessions” (the Russian Orthodox Church, Judaism, Buddhism, and Islam) to create religiously-affiliated schools, leading schools affiliated with other religious groups “subject to government restrictions and harassment.” See Perry L. Glanzer & Konstanti Petrenko, ‘Religion and Education in Post-Communist Russia: Russia’s Evolving Church-State Relations’ (2007) 49 *Journal of Church & State* 53, 67-68..

<sup>10</sup> An example given in the literature on Indonesia in particular is of a Confucian couple who were not allowed to marry in 1995 (during the period of time between the de-registration and re-registration of Confucianism) unless they registered with one of the recognised faiths. See Sezgin & Kunkler, above n. 2, at 448-449.

### III. CONCLUSION

Proponents of registration articulate various rationales: some say it is a mere acknowledgement of formative and traditional faiths in a country,<sup>11</sup> others as a way to contain “dangerous cults” and “extremists”.<sup>12</sup> To the degree these proponents are sincere, they have overlooked the severe consequences of registration on the right to freedom of religion for groups and individuals. Registration is not necessary—many democratic countries do just fine without it—and carries with it the problems of definition, evolution, distortion, and exclusion discussed above. At its core, registration is about control: government control of religious believers. It’s a form of control prone to abuse for partisan and short-sighted political reasons, a form of control likely to lead to ethnic or sectarian conflict, and a form of control that undermines the independence of religious groups and the legitimate faith choices of individuals. Constitutional democracies with entrenched guarantees of religious freedom should find registration schemes repugnant to this fundamental right.

The position expressed in this paper is consistent with the classical liberal concern over the maintenance of religion and state in separate spheres. However, as an outsider, it’s also important for me to acknowledge the limitations of this worldview, and to be open to the felt needs of societies with unique histories and needs. Thank you again for the opportunity to discuss these important issues, and I look forward to the opportunity to learn from the question and discussion that follows.

### IV. REFERENCES

- [1] Melissa Crouch, ‘Regulating Places of Worship in Indonesia: Upholding Freedom of Religion for Religious Minorities?’ [2007] *Singapore Journal of Legal Studies* 96, 99.
- [2] Yuksel Sezgin & Mirjam Kunkler, ‘Regulation of “Religion” and the “Religious”’: The Politics of Judicialization and Bureaucratization in India and Indonesia” 56 *Comparative Studies in Society and History* 448, 465 n.14 (2014).
- [3] Amanah Nurish, ‘Welcoming Baha’i: New official religion in Indonesia’ *The Jakarta Post* (8 August 2014).
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- [5] Christopher J. Miner, ‘Losing My Religion: Austria’s New Religion Law in Light of International and European Standards of Religious Freedom’ 1998 *Brigham Young University Law Review* 607
- [6] June M. Kelly, ‘Searching for Spiritual Security: The Tangled Relationship of the Russian Orthodox Church, the Russian State and Religious Freedom’ (2018) 25 *University of Miami International and Comparative Law Review* 263.
- [7] *Adelaide Company of Jehovah’s Witnesses v. Commonwealth*, (1943) 67 C.L.R. 116, 123 (per Latham, CJ) (“It would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world.”)
- [8] M. Elisabeth Bergeron, Note, ‘New Age’ or New Testament?: *Toward a More Faithful Interpretation of ‘Religion’*, 65 *St. John’s L. Rev.* 365, 366 (1991) (“The formulation of a workable definition particularly confronts the judiciary with an unyielding conundrum”).
- [9] Morton Klass, *Ordered Universes: Approaches to the Anthropology of Religion* (Boulder: Westview Press, 1995) 8 (discussing enormous disagreement on what counts as “religion”).
- [10] Perry L. Glanzer & Konstanti Petrenko, ‘Religion and Education in Post-Communist Russia: Russia’s Evolving Church-State Relations’ (2007) 49 *Journal of Church & State* 53, 67-68.

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<sup>11</sup> This is the rationale given in Russia. See Glanzer & Petrenko, above n. 9, at 54.

<sup>12</sup> This is the rationale given in Austria. See Miner, above n. 6, at 620.