

## **How Illiberal is Indonesia's Democracy? A Comparative Perspective on Indonesia's State Enforcement of Religion**

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### **Abstract**

Recent appraisals of Indonesia's political regime identify a deterioration of democratic quality, captured by a plethora of concepts such as democratic backsliding, democratic decline, and democratic regression. This deterioration compels scholars to conclude that Indonesia, in its current state, is an illiberal democracy, effectively displacing earlier optimism that Indonesian democracy will eventually be consolidated. This article engages the emerging literature on democratic decline and the rise of illiberal democracy in Indonesia by identifying a key source of its illiberal features. It makes the case linking Indonesia's illiberal democracy with the involvement of the state in enforcing religion, as seen in the number of existing religious legislations. State enforcement of religion necessarily entails the curtailment of religious freedom, specifically freedom from religion, as the religiosity of Indonesian citizens is forced to shift from voluntary to compulsory. A liberal democracy, by definition, should not curtail individual liberty in general nor religious freedom in particular. This article then takes a comparative perspective on Indonesia by comparing the number of religious legislations in Indonesia with those of other democratic states, globally utilizing data from Religion and State (RAS) 3 and V-Dem dataset. The examination yields the observation that Indonesia has a far

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higher number of religious legislations than the average democracy globally. It indicates a significant level of involvement of the Indonesian state in enforcing religion. In that respect, Indonesia is unusually illiberal for a democracy. The article also emphasizes how religious legislations are mostly found in certain regions, and provides ethnographic evidence of how fasting as a religious norm is enforced during the month of Ramadan in South Kalimantan. This article concludes by reflecting on the uneven democratic quality at the subnational level. Decentralization and the uneven distribution of rights to subnational governments underlie the concentration of religious bylaws in only specific regions of the archipelago.

**Keywords:** Religion Enforcement, Religion and State, Indonesia's Illiberal Democracy

## Introduction

Recent assessment of the state of Indonesian democracy produces a rather somber tone. It is argued that in the last decade, democracy has been backsliding in Indonesia, shifting from a period of stagnation under then-president Susilo Bambang Yudhoyono (2004-2014) to regression under current president Joko 'Jokowi' Widodo (2014-present).<sup>2</sup> The rise of Islamic populism that is challenging Jokowi's administration has deepened political polarization in the nation, and largely in response to this, Jokowi's administration has taken a wide range of measures that disregard civil and political rights, especially those of its opponents.

Scholars highlight how the Jokowi administration has issued a law that enables the executive office to ban civil society organizations deemed in opposition to Indonesia's founding principles, Pancasila, without judicial review. We have also witnessed how civil society activists and political opponents are increasingly being silenced through utilization of the Electronic Information and Transaction Law (ITE Law), often under the pretense of fighting disinformation. In addition, the government regularly intervenes in the domestic dynamic of political parties to ensure their leadership's loyalty, while the party system itself has become non-competitive, with the bar for new parties to participate in elections as well as to nominate a presidential contender having been raised. These, and other, actions from the Jokowi administration have compelled scholars to coin novel terms such as 'executive illiberalism' and 'authoritarian innovations'.<sup>3</sup>

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<sup>2</sup> Power and Warburton 2020.

<sup>3</sup> Warburton 2020; Power 2018; Schafer 2019; Aspinall et al 2020; Warburton and Aspinall 2019; Mietzner 2020; Mietzner 2018.

While observers agree that free, fair, and competitive elections are still maintained in the polity, the new emerging consensus is that Indonesia has become an illiberal democracy.<sup>4</sup> Indonesia sustains its electoral competitiveness, and yet significant components of rights protection have been diminished. Actions from state actors do not reflect their alleged commitment to the protection of the civil and political rights of **Indonesia's** citizens. This new consensus replaces prior optimism that Indonesia is a liberal democracy on the track towards democratic consolidation.

That Indonesia is an illiberal democracy is not an entirely novel observation. Certain scholars have long argued that Indonesia's democratization has never been deepened to include the manifestation of liberal values such as rights protection and the rule of law.<sup>5</sup> What is rarely undertaken, however, is an attempt at either explaining the nature of Indonesia's illiberal democracy or examining **Indonesia's** illiberal democracy from a comparative perspective.<sup>6</sup>

This article proposes an institutional argument, linking Indonesia's low quality of democracy, or its illiberal nature, with its institutions of state-religion relations, as reflected in state policies on religion. It identifies a dimension of **Indonesia's** illiberality that is located at the heavy involvement of the state in enforcing religious norms and practices. Further, it demonstrates through an empirical analysis that, comparatively, Indonesia has the highest number of religious legislations relative to other democratic states. As imposition of religion on individuals automatically restricts religious freedom, specifically freedom *from* religion, religious liberty in Indonesia is thus unusually low for a democracy.

This argument is developed across several sections of this paper. The following section discusses how institutions of state-religion relations are linked to democracy and democratic quality. Next, the concept of religious enforcement by the state is unpacked and measured using instruments developed from Religion and State (RAS) 3 dataset. This empirical section also analyzes countries globally, with particular attention to the case of Indonesia. Descriptive statistics demonstrate that Indonesia has an unusually high number of religious legislations, indicating the heavy involvement of the state in enforcing religion. This is the source of **Indonesia's** illiberal nature. However, it is important to note that the illiberality is not evenly experienced across Indonesia; it is only in specific regions where

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<sup>4</sup> Warburton and Aspinall 2019; Diprose, McRae, Hadiz 2019.

<sup>5</sup> What transpires instead is predatory interest of old elites capturing new democratic frameworks. See Hadiz 2004, 2011. For a more recent statement see Diprose, McRae, Hadiz 2019.

<sup>6</sup> An important exception is David Bouchier's dissertation proposing an ideational argument to explain Indonesia's deficit of liberalism. See Bouchier 2019.

subnational governments have passed a high number of religious legislations. The concluding section re-emphasizes the findings of the paper regarding the unusually high involvement of the state in enforcing religion in Indonesia. It also reflects on the uneven distribution of rights and privileges to certain regions that result in liberty being unevenly experienced across the country.

### State-Religion Relations and Democracy

The literature on state-religion relations has grappled with the question of what kind of arrangement is most conducive to democracy. An important theoretical argument is that the separation of religion and state is necessary for a democratic regime.<sup>7</sup> This argument, however, has been criticised for the difficulty in defining secularism and separation accurately, as well as its ability to withstand empirical scrutiny, as there is no empirical separation of religion and state (SRAS) regarding how governments globally regulate or support religion. Similarly, religious values tend to influence state symbols and national imagination.<sup>8</sup>

Instead of imagining and seeking complete separation, scholars have diverted their attention to identifying the limits of the unavoidable engagement between political and religious authorities. In one important manner, this means the limits of accommodation given by the state toward religious authorities. A widely accepted argument maintains that religious authorities cannot be given the “constitutionally privileged prerogative that allow[s] them to mandate public policy to democratically elected governments”.<sup>9</sup> This limit is important since democratic elections are supposed to elect the highest political authority in the polity. Elections cease to be meaningful if, for instance, unelected authorities can veto or mandate policies without democratic contestation.<sup>10</sup>

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<sup>7</sup> The opt-cited cultural argument for separation of church and state as a necessary condition for democracy is Huntington 1991, 1993a, 1996. For discussion on the place of religion in the public sphere and how to achieve overlapping consensus see Rawls 1993; Habermas 2006.

<sup>8</sup> See Fox 2006, 2019.

<sup>9</sup> Stepan 2000: 39.

<sup>10</sup> All these arguments focus on what I would like to term democratic *modality*. Democratic modality defines whether a regime is a democracy or not. In its empirical operationalization democratic modality includes the existence of competitive, free and fair general election as well as the minimally necessary political rights (see Dahl 1971; Huntington 1991, 1993b). Democratic *quality*, in contrast, refers to the degree of liberalism that a certain polity has. It is important to emphasize that democracy and constitutional liberalism is not the same thing. A polity can be democratic and yet has very little guarantee of civil and political rights beyond the minimally necessary to uphold its democratic modality. An example germane to our discussion here is religious freedom. A polity can be democratic and yet having very minimal religious freedom. State policies on religion directly influence religious

State-religion relations in Indonesia, as institutionalized in its constitution, are largely secular in nature. By the institutionalization of state-religion relations, I refer to how state authorities and religious authorities are formally organized in the state's legal-constitutional arrangement. Following Kuru, there are several types of institutionalized state-religion relations, or state-religion regimes, based on the criteria of (i) whether legislatures and judiciaries are controlled by religious institutions, and (ii) whether there exists an official religion. A secular state fulfils neither of the criteria above.<sup>11</sup> Indonesia thus belongs to the secular camp, since no religious institutions control its legislature or judiciary. At the same time Indonesia has no single official established religion. Indonesia's secularity as such facilitates its entry into the democracy club.

At the level of state policies, however, Indonesia deviates from its secular constitutional arrangement. This is due to the high number of policies legislating religious norms. Consequently, despite its being secular constitutionally, the state becomes deeply enmeshed and involved in the business pertinent to the concerns of religious authorities. Indonesia's state-religion regime is no longer highly differentiated at the level of state policies on religion. Differentiation here refers to "the degree of mutual autonomy between religious bodies and state institutions in their foundational legal authority, that is, the extent of each entity's authority over the other basic prerogatives to hold offices, choose its officials, set its distinctive policies, carry out its activities, in short, to govern itself".<sup>12</sup> One indicator of low differentiation in this formulation is when the state promotes religious purposes through legislation and judicial power. This includes "passing laws on marriage, burial, dress, speech, and other matters".<sup>13</sup> As will be made clear in the empirical section below, Indonesia has passed a high number of laws on marriage, dress, speech, and other matters that are mainly oriented towards religious norms and practices. As such, these laws undercut personal liberty. This is the primary source of Indonesia's illiberal nature.

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freedom and thus mainly affect democratic quality. More detailed discussion on the empirical section below.

<sup>11</sup> Religious states are those states having both criteria while states with established religion has the second criteria. Anti-religious states have none, and also being hostile to religion. See Appendix A in Kuru 2009: 253.

<sup>12</sup> Philpott 2008: 506-7.

<sup>13</sup> Philpott 2008: 507.

### *Religious Coercion by the State*

Understanding why state involvement in enforcing religion is problematic for a democracy should start from understanding what religious coercion is. Religious coercion is understood here as “the application of, or threat of, force by the coercer to ensure the coerced person to engage in a particular religious practice, observance, ceremony, or ritual”.<sup>14</sup> It is a threat exerted upon individuals by *external entities* to force them to engage in religious practices or obey religious norms and rules. Religious coercion by the state therefore refers to the application of force, or threat of force, exerted by the state upon individuals to ensure compliance in religious matters. State enforcement of religion is found in the “situations where the government expressly applies sanctions to ensure conformity with religious goals”.<sup>15</sup> Specifically, the state may wield the threat of legal penalties, sanctions, or fines for individual offenders. State involvement in enforcing religion begins when governments legislate religious norms into state law.

Consider, for example, laws that make religious education mandatory. In 2014, there were 45 countries around the world where such a law was found; this indicates that their government engages in enforcing religious education, at least to a certain degree.<sup>16</sup> In the case of Indonesia, since the issuance of the law on national education in 1989, religious education is mandatory. Prior to 1989, students and their parents were able to opt out from religious education.<sup>17</sup> The effect of legislating this norm of studying religion is no less than coercion on the part of citizens who prefer to study religion privately without school intervention. There are also non-religious individuals who prefer to not receive religious instruction at all.

A contrasting educational policy is where individuals can opt out from participating in religious instruction. In the United States (US), for instance, it is not lawful for the state to force a person to attend religious instruction, even when it is argued that the instruction is for the said person’s own good. In the US case of *Kerr vs Farrey* (1996), the Seventh Circuit Court of Appeals held the state had “impermissibly coerced” James Kerr, an inmate at a Wisconsin state minimum-

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<sup>14</sup> Ahdar 2012: 216-7.

<sup>15</sup> Ahdar 2012: 215.

<sup>16</sup> See Religion and State (RAS) round 3 dataset. There are 4 different scores for this variable in RAS 3 dataset. The score of 0 when there is no law, score of 1 if some students can opt out, score 2 if this law only applies in public school, and score 3 if it applies universally regardless of school type.

<sup>17</sup> See the Law No. 4/1950 and Law No. 12/1954 wherein religious education was optional. In contrast, the Law No. 2/1989 makes religious education compulsory at all stages of education. The renewed law on education No. 20/2003 does not provide the option to opt out from receiving religious education in school.

security facility, to attend a religion-based narcotics rehabilitation program.<sup>18</sup> Kerr had previously been subject to penalties if he refused to enroll in the rehabilitation program. Here, the policy of *not enforcing* religion takes place.

State religious coercion is generally the result of accommodations to the religious politics of religious organizations. Take for example many states' prohibitive restrictions on abortion. In several Catholic majority countries, this form of religious legislation is an accommodation to the Catholic Church's religious agenda.<sup>19</sup> As of 2014, there were a staggering 118 countries where abortion was restricted.<sup>20</sup> The anti-abortion agenda thus is not restricted to the religious agenda of the Catholic Church, but rather an agenda of religious authority in general. In some rare cases, state religious coercion can also be the result of secular actors' political agendas. In Indonesia, subnational religious bylaws are the byproducts of secular-nationalist politicians trying to buttress their religious credentials in democratic elections.<sup>21</sup>

What is happening when religious coercion by the state takes place? It is important to pay attention to the most important shift: the locus of enforcement of religion switches from the individual to an external entity. Where previously the enforcement of religion was the responsibility of each religious believer—in other words, *voluntary*—religious legislation changes the enforcer to the state's legal apparatus and thus makes religion *compulsory*. The first step in understanding religious coercion by the state is to acknowledge this important shift in the locus of coercion.

Religious enforcement by the state thus encroaches on personal liberty, more specifically the right to religious freedom. It is a threat to religious freedom not in the more common sense of freedom *of* religion, or the freedom to practice religion without constraint; rather, it is a threat to freedom *from* religion, or the liberty to practice religion following one's own conscience instead of under threat of legal repercussions from external enforcers.

Religious freedom is an important aspect of civil liberty, a central principle associated with liberal democracy. The right to civil liberties set apart liberal, consolidated democracies from mere electoral democracies. The degree to which a democracy manages to guarantee liberal freedom for its citizens informs its democratic quality. As a high degree of state involvement in enforcing religion

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<sup>18</sup> Ahdar 2012: 221.

<sup>19</sup> Grzymala-Busse 2015.

<sup>20</sup> The United States as a case makes an interesting observation. At the federal level there is no prohibitive restriction, but there is at the state level.

<sup>21</sup> Buehler 2016.

negatively affects religious freedom, it thus also negatively affects the quality of a democracy. Put simply, democratic quality is inversely proportional to the degree of religious coercion by the state. The higher the intensity of state religious coercion, the more illiberal the polity.

While much state religious coercion encroaches on personal religious freedoms and civil liberties, some elements also affect the political rights fundamental for the functioning of institutions of electoral democracy. In other words, state religious coercion can affect democratic *modality* and not only democratic quality. Consider, for example, a law stating that government officials must meet certain religious requirements to hold office. In certain countries, the head of state has to be from the religious majority. Andorra and Lebanon require that their head of state is a Christian. Bhutan and Thailand require their head of state to be a Buddhist. Similarly, in 17 Muslim majority countries, such as Pakistan, Malaysia, Iran, and Saudi Arabia, the head of state has to be a Muslim.<sup>22</sup>

This religious requirement constrains the political participation of members of religious minorities. As a consequence, the minimum conditions of an electoral democracy—wherein citizens are free to compete in free and fair elections—are not met, as certain sections of society are excluded from the political arena. These citizens are deprived of the political rights fundamental for a working electoral democracy. Thus, it is not surprising that countries with religious requirements for holding office are generally democratic underachievers.<sup>23</sup>

As state involvement in enforcing religion affects civil liberties negatively—as well as curtailing political rights—we should expect that most democracies, save those illiberal ones, would not heavily engage in religion enforcement. The following empirical section measures state religion enforcement by using Religion and State (RAS) round 3 dataset. It also compares countries in the resulting Religion Enforcement Index (REI). Special attention is paid to the case of Indonesia.

### *Religion Enforcement Index*

Comparative literature on state religious policies has identified the varieties of state policies pertinent to religion, linking them to important concepts such as secularism and religious discrimination. Two important datasets are usually perused to probe the **types of state policies on religion**. The first is Grim & Finke's International Religion Index that identifies government regulations (GRI),

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<sup>22</sup> Theodorou 2014.

<sup>23</sup> Andorra, Lebanon, Thailand, Bhutan, and the 17 Muslim majority countries has score less than 0.5 in the polyarchy index of V-Dem dataset. The polyarchy score above 0.5 is one criterion to enter the electoral democracy club.



government favoritism toward religion (GFI), and social regulation of religion (SRI).<sup>24</sup> The second is Jonathan Fox's Religion and State dataset, which identifies 117 types of state policies on religion in 183 countries, globally captured in the years 1990, 2008, and 2014. Fox's dataset captures religious discrimination toward minority religions (36 variables), restrictions on majority religion (29 variables), and state support toward religion (52 variables).<sup>25</sup> Fox's dataset has the edge of being fine-grained and provides the possibility of creating composite variables from its individual ones.

For our purpose here to measure state involvement in religious enforcement, a number of individual variables from Fox's dataset are utilized. A subset of variables indicating state support toward religion in the RAS dataset is about religious legislation. These variables are distinctive from general state support. For example, the government can pass a law authorizing financial subsidies to offset the costs of its citizens conducting religious pilgrimage. This is a general support of the state toward its religious citizens, but not an example of state enforcement of religion. This is because citizens do not face threats when not undergoing pilgrimage. In contrast, a legislation restricting interfaith marriage is a form of state involvement in enforcing religion and not merely a form of support.

These variables of religious legislation, 26 altogether, have been utilized to measure freedom from religion.<sup>26</sup> This article, however, selects from these 26 variables and adds several additional legislations that govern individual behavior and disposition. As a result, there are 29 individual variables combined to construct a composite variable measuring state involvement in enforcing religion. A country can thus score anywhere from 0 (the minimum) to 29 (the maximum).<sup>27</sup> Individual country scores for these variables are gathered to create the Religion Enforcement Index (REI). Table 1.1 below provides summary statistics of REI.

**Table 2.1 Religion Enforcement Index (REI) Summary Statistics**

	Obs	Mean	Median	Std	Min	1 <sup>st</sup> Q	3 <sup>rd</sup> Q	Max
<b>Global (2014)</b>	168	4.32	2	5.61	0	1	4.25	27
<b>Democracies</b>	91	2.46	2	3.28	0	1	3	22
<b>Autocracies</b>	77	6.51	3	6.89	0	2	10	27

<sup>24</sup> Grim and Finke 2006.

<sup>25</sup> Religion and State round 3 (RAS3) dataset is publicly available at <https://www.thearda.com/data-archive?fid=RAS3>, last accessed December 14<sup>th</sup>, 2022.

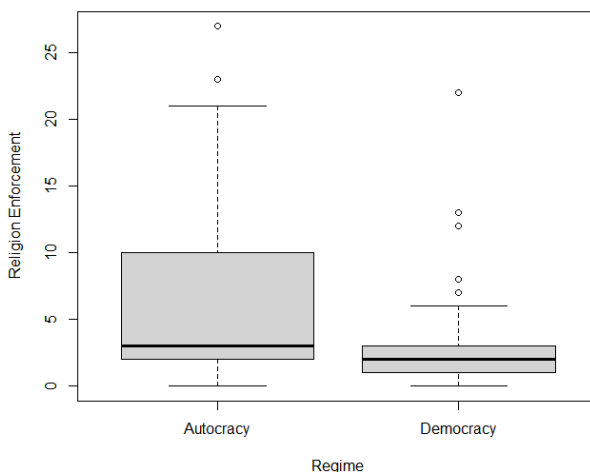
<sup>26</sup> Fox 2021.

<sup>27</sup> Appendix I of this article provides a list of these 29 variables.

Table 1.1 demonstrates that, globally in 2014, countries on average passed less than five pieces of religious legislation enforcing religion, as seen in the global mean of 4.32. Five pieces of legislation is 17.2% of the total possible religious legislations. The global median score of two means that half of the countries in the dataset, around 84 countries, have passed less than two pieces of religious legislation (6.8% of the total types of religious legislation). The global median of two, which is smaller than the mean, also suggests that there are several countries with a disproportionately high level of religious legislation, skewing the distribution. Generally speaking, however, states worldwide minimally engage in the enforcement of religion. Global religiosity is thus generally voluntary, rather than compulsory.

Democracies have smaller measures of central tendency than autocracies, as can be seen when comparing the distribution of scores between the two groups. The mean (2.46) and median (2) of democracies are substantially lower than the mean (6.51) and median (3) of autocracies. These figures imply that, in aggregate, democracies have fewer pieces of religious legislation. Additionally, democracies typically have lower individual country scores than autocracies. Figure 1.1 shows a boxplot of the two distributions. Democracies have a thinner boxplot than autocracies, indicating a narrower spread of low scores.

**Figure 2.1 Democracies vs Autocracies, Religion Enforcement Index 2014**

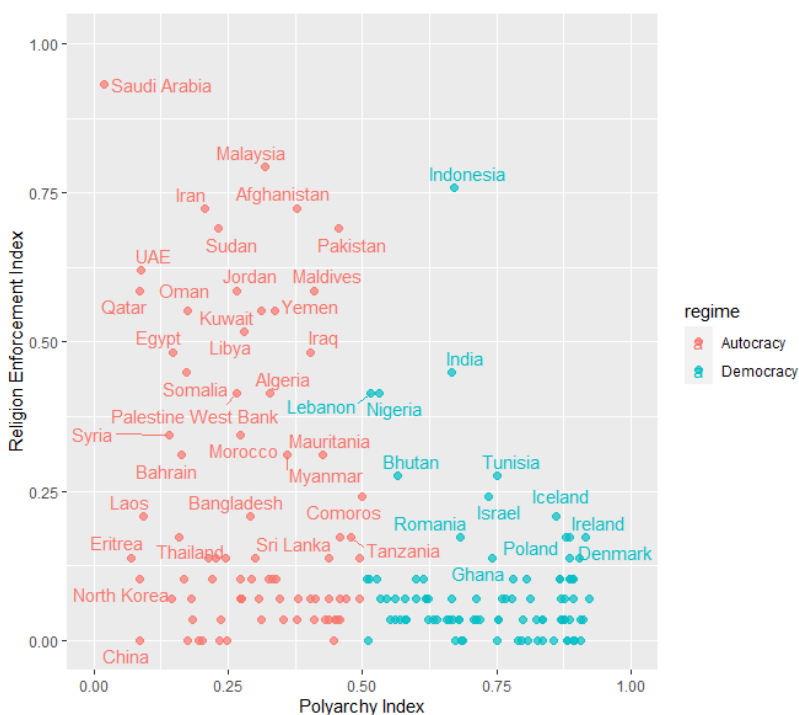


It is in this context of the minimal involvement of democracies in enforcing religion that Indonesia stands out. While the rest of the world’s democracies minimally enforce religion, Indonesia has 22 pieces of religious legislation (75.8% of the total possible religious legislation in the dataset), placing the country high in the charts, alongside religious non-democracies such as Iran, Saudi Arabia, Malaysia, and Pakistan. In fact, Indonesia’s score is the highest among democracies,

and more than two standard deviations above the mean score of democracies. Indonesia is thus an extreme, if not puzzling, outlier with regards to religious enforcement through legislation.

At the same time, Indonesia is a high-performing electoral democracy. After democratization began in 1999, Indonesia has never scored less than 0.5 in the polyarchy index of the V-Dem dataset. While a high score of electoral democracy seems negatively correlated with degrees of religion enforcement by the state, Indonesia's case suggests otherwise. Figure 1.2 demonstrates how Indonesia is alone at the upper right corner where polyarchy score and religion enforcement score are both high.<sup>28</sup> Democracies are mostly clustered in the lower right corner where the religious enforcement score is low. Indonesia's high score on the religion enforcement index puts it on a par with religious non-democracies such as Saudi Arabia, Pakistan, Iran, and Malaysia.

Figure 1.2 State Enforcement of Religion and Democracy in 2014



What does this figure say then about the quality of Indonesia's democracy? Since state enforcement of religion affects religious freedoms and civil liberties negatively, Indonesia's democracy is thus unusually illiberal. The Indonesian state

<sup>28</sup> The absolute number of pieces of religious legislation is converted into the percentage of the total possible number of pieces of religious legislation.

is deeply invested in regulating and policing its citizens' religiosity, almost behaving as if it is the secular arm of the religious authority. No other democracies come close to this intensity of religious enforcement. The following section zooms in to the case of Indonesia and discuss its notable aspects.

### Indonesia's Uneven Subnational Democratic Quality

When focusing on the case of Indonesia and comparing its state enforcement of religion with other countries, the most remarkable fact is not that Indonesia has certain religious legislation that other countries do not. In actuality, the majority of other countries also have this type of legislation. Taking a sample of religious legislation pertaining to marriage and sexuality, we can compare how Indonesia fares in comparison to other countries. Table 1.2 demonstrates that Indonesia has five out of six possible types of religious legislation pertaining to marriage and sexuality. As such, Indonesia is not unique, in the sense that these legislations also are passed in other countries. Premarital sex, for instance, is restricted in 18 other countries besides Indonesia, especially in non-democracies with a Muslim majority.

**Table 1.2 Religious Legislations Pertaining to Marriage and Sexuality**

No	Variable	IDN	Dem	Auto
1	Marriage and divorce can only occur under religious auspices	Yes	6/91 (6.6%)	24/77 (31.2%)
2	Restrictions on interfaith marriage	Yes	5/91 (5.5%)	23/77 (29.9%)
3	Restrictions on premarital sex	Yes	2/91 (2.2%)	15/77 (19.5)
4	Law which specifically makes it illegal to be homosexual or engage in homosexual sex	Yes	21/91 (23.1)	44/77 (57.1%)
5	Prohibitive restrictions on abortion	Yes	49/91 (53.8%)	57/77 (74%)
6	Restrictions on access to birth control	No	2/91 (2.2%)	3/77 (3.9%)

Only a few democracies, however, have religious legislation curtailing individual freedoms. For instance, restrictions on interfaith marriage are found in only five out of 91 democracies in the dataset (less than 6%). In contrast, similar restrictions are found in 23 out of 77 autocracies (almost 30%). The only restriction regarding marriage and sexuality that Indonesia does not implement is restriction on access to birth control. This restriction, however, is uncommon in both democracies and autocracies (2.2% and 3.9% respectively).

Rather, the most noticeable characteristic about Indonesia's religious laws is that they are not evenly spread across the country. The laws are mostly found at the subnational level, and are clustered within only a few regions. To use the example of laws restricting premarital sex, this law is found in Aceh Province, with Qanun Aceh No. 6/2014 on *Hukum Jinayat*. *Zina* or premarital sex is forbidden by *Hukum Jinayat* article no. 33 and is punishable by 100 lashes of the cane.<sup>29</sup> In contrast, there is no restriction on premarital sex at the national level.<sup>30</sup>

Similarly, consider the legislation that forbids homosexuality. Both *liwath* (sexual activity between men) and *musahaqah* (sexual activity between women) are prohibited in *Hukum Jinayat* articles 63 and 64, respectively, and are subject to a sentence of 100 lashes of the can. On a national level, however, homosexuality is not expressly forbidden by law. Granted, article No. 292 of the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana* or *KUHP*) exists. Article 292 is more about paedophilia, however, forbidding older men from sexually assaulting young boys or girls. It does not prohibits consensual activity between two male or female adults.

In addition to Aceh, there are several other regions where religious bylaws mushroomed between 1999 and 2009, despite no legal authorization from the central government.<sup>31</sup> These regions include West Java, South Kalimantan, West Sumatra, and South Sulawesi. For example, in Bulukumba, South Sulawesi, school girls are obliged to wear headscarves as a result of Regional Regulation (*Peraturan Daerah* or *Perda*) No. 5/2003, specifically in Article 6. In addition, school children are required to be able to read the Quran to a certain satisfactory level in order to pass their final exams (*Perda* No. 6/2003, Article 7). Such religious reading skills also vital for bureaucratic promotion. In Pangkajene Kepulauan District, also in South Sulawesi, every district bureaucrat is required to attend annual religious

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<sup>29</sup> See a copy of this Qanun Aceh at <https://dsi.acehprov.go.id/wp-content/uploads/2017/02/Qanun-Aceh-Nomor-6-Tahun-2014-Tentang-Hukum-Jinayat.pdf>, accessed December 6, 2022.

<sup>30</sup> Instead, there is restriction on extramarital affairs for married couples as found in the national criminal code KUHP, Article No. 284. The restriction, however, is not framed in religious term of *zina*, in contrast to the sharia inspired Qanun in Aceh. Premarital sex is prohibited by a new criminal code (KUHP), which was passed by the national parliament in 2022. Two contentious provisions in the new KUHP: first, sexual encounter between unmarried couple is subject to criminal offense, only if such sexual conduct is reported by husband, wife, or relatives of person who is involved in such act. reported by relatives. Second, the implementation of the new KUHP is on hold for three years. See an astute comment by Jaffrey and Warburton, 2022.

<sup>31</sup> See Buehler 2011.

training at a *pesantren* (religious boarding school), where they are obliged to stay for three days.<sup>32</sup>

Specifically, these regions pass 68.75% of all provincial level religious legislations and 91.67% of all district level religious legislations.<sup>33</sup> However, other subnational units in Indonesia are relatively free from heavy state involvement in enforcing religion. Indonesia's experience substantively differs from that of its geographically closest neighbour, Malaysia, where *sharia* is implemented throughout the country. Instead, Indonesia more closely resembles Nigeria's case, where *sharia* is implemented in only twelve states in Northern Nigeria.<sup>34</sup> In addition, following Buehler's argument, the uneven distribution of religious legislation in Indonesia has a historical explanation. Regions that heavily pass this kind of legislation are Islamic strongholds where traditions and religion hold sway in everyday life of the local population. Religious networks are strong in these places, and when politicians need to appeal to the population, they emphasize their religious credentials by sponsoring religious legislation.<sup>35</sup>

That these pieces of legislation exist on paper is one thing, but whether they are actually enforced is another matter entirely. It is important that we ascertain whether religious legislation is enforced on the ground as they can only compromise the quality of Indonesia's democracy if they are implemented. The following subsection discusses religious enforcement in South Kalimantan as an illustrative example.

### *Observing Religious Enforcement in South Kalimantan*

Examination shows that religious bylaws at the subnational level in Indonesia are far from phenomena that exist on paper only. State legal apparatus do, in fact, enforce these local ordinances. In Aceh, several public punishments have garnered national attention. For example, in October 2021, a teenage couple (aged 18 and 19) who were caught for their premarital sexual relationship (*zina*) were caned 100 times each. The event made national news since the female 'perpetrator' was left unconscious after caning.<sup>36</sup>

To test whether certain religious bylaws are indeed enforced, we need to be able to identify the time when the law is pertinent and applicable. Then, we can observe whether state legal apparatus implements measures to catch offenders.

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<sup>32</sup> Buehler 2008: 257-8.

<sup>33</sup> Buehler 2011.

<sup>34</sup> Tertsakian 2004.

<sup>35</sup> Buehler 2008, 2016.

<sup>36</sup> See the coverage at the news website Liputan 6, Rinaldo 2021.

The Ramadan bylaw passed in South Kalimantan provides us with such an opportunity, as its application is limited to the Islamic fasting month of Ramadan. Ramadan bylaws are a prominent feature of religious bylaws in the city of Banjarmasin and its neighbouring district of Banjar.

There are several prohibitions stipulated in the bylaws. First, it is prohibited for restaurants and street vendors to sell food between specific times in the morning and afternoon. Second, it is against the law for citizens to eat and drink in public during the day. Third, clubs, cafes, and nightlife businesses are forbidden to operate throughout the month of Ramadan. Fourth, it is prohibited for citizens to engage in any activity that makes loud noises that could annoy others during the observance of the pre-dawn Ramadan breakfast (*sahur*).

Exceptions for the first prohibition are given to street vendors who are selling food for the breaking of the fast (*buka puasa*), but only in the afternoon after 3pm. Vendors who violate this prohibition can be punished with a fine of a maximum IDR 50 million (US\$3,200) or a maximum of three months in jail. Citizens who violate the second and third prohibitions face a maximum fine of IDR 100,000 (US\$640) or 15 days in jail.<sup>37</sup> Observation of this Ramadan bylaw suggests that the local Public Order Agency (*Satuan Polisi Pamong Praja* or *Satpol PP*) indeed works to enforce the law. Satpol PP officers regularly patrol the city for restaurants and street vendors that are open. They have a specific term for those food establishments violating Ramadan bylaws: *warung sakadup*. *Warung* is a small-scale food vendor or restaurant, while the term *sakadup* refers to the front side of the restaurant that is closed by a piece of cloth which prevents outsiders seeing inside and witnessing people are eating. Instead, what is seen from outside are only the feet of the *warung's* patrons. In Banjar, these people were frequently caught by Satpol PP and the restaurant owners fined for opening during the day. The table 1.3 summarizes the number of violators and the measures taken in response in the district of Banjar from 2011 to 2013. Data are gathered from the Banjar Public Order Agency.

**Table 1.3 Enforcement of Ramadan Bylaws in Banjar, 2011-2013**

Year	Period of Policing	Violators		Enforcement	
		Individual	Vendor	Fine	Warning
2011	August	14	0	14	0
2012	July-August	15	2	11	6
2013	July-August	17	6	11	12

Source: Banjar Public Order Agency.

<sup>37</sup> All this information is from my fieldwork in Banjarmasin and Banjar in the Summer 2013.

The data from the Satpol PP office suggests that the intensity of their policing is rising, as the number of violators caught increases year upon year. More individuals than street vendors are caught by the **Agency's** officers. However, it is obvious as well that Satpol PP is not always strict in implementing fines, as the number of fine decreases and stagnates, while more warnings are distributed. Still, it is undisputable that the Ramadan bylaw is alive and well in Banjar.

For religious South Kalimantan citizens, this Ramadan bylaw is perhaps not a problem. It still, however, imposes a threat to religious minorities who have no other recourse in making a living. They have to work selling food or risk no income. This point is illustrated by an incident that occurred in 2022, when a controversial case arose after the owner of a restaurant protested the actions of Satpol PP officers trying to close his business.<sup>38</sup> The restaurant owner argued that he does not sell *halal* food, thus his business is arguably outside the scope of the bylaw's intention, since no Muslim would eat his food anyway. Satpol PP, on the other hand, argued that the Ramadan bylaws had been in effect for 15 years, so the restaurant owner should know better. Due to this controversy, there has been pressure on the mayor of Banjarmasin to revise the bylaw; however, no changes have been made at the time of writing.<sup>39</sup>

The **restaurant owner's** complaint about the Ramadan bylaw is symptomatic of the curtailment of civil liberties as a result of state enforcement of religion. In his case, the loss of civil liberty also brings with it the loss of income. He has to suffer a situation in which norms that he does not share dictate his individual disposition. In addition, his financial security is compromised. The Ramadan bylaw is thus a good example of how religious bylaws undercut individual freedoms. While supporters of religious bylaws might argue that the bylaws only apply to majority religious groups, more often than not religious minorities are also negatively affected, as the above case illustrates.

In fact, members of the Muslim majority citizens have also voiced their criticism of religious bylaws. In principle, **religious bylaws compromise citizen's** equality, as they create disparity between Muslims and non-Muslims and do not always benefit the majority religion. For example, the ordinance about religious reading skills only applies to Muslim students. It puts unnecessary burdens on Muslim students graduating to the next grade, as they have to go through the test

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<sup>38</sup> See a report at news website Detik Sulsel, Risanta 2022.

<sup>39</sup> See a broadcast by Kompas TV Banjarmasin on Youtube, Kompas TV 2022. See also the news from Banjarmasin's Regional Ministry of Information Office, Diskominfotik 2022.



of religious reading while non-Muslim students do not. In addition, the religious reading test is not part of the national curriculum.

It is therefore understandable if some vocal critics against religious bylaws in South Kalimantan come from within the Muslim community. Their criticism is that religious bylaws are a product of secular politicians in need to appear religious before the electorate. This explains the puzzle of why would the *already religious* citizens of Banjar and Banjarmasin need religious bylaws in the first place.<sup>40</sup> These religious bylaws were marketed as a panacea for social problems such as poverty and high crime rates,<sup>41</sup> but ultimately not only fail to address these issues but also add other problems on top of the existing ones, including the marginalization of religious minorities, the poor, and the unorthodox co-religionists.

To sum up, Ramadan bylaws in South Kalimantan are far from paper tigers. They are actively enforced and affect the livelihoods of the citizens of South Kalimantan. Some residents support the bylaws but there are also those who have reservations regarding the effect of religion enforcement on their personal liberty.

### **Conclusion: Reflecting on Indonesia's Subnational Democratic Quality**

The discussions in this article have maintained that state enforcement of religion negatively affects religious freedoms, especially freedom *from* religion. This is because enforcement by the state shifts the locus of coercion and enforcement from the individual to an external entity; in this case, the state. As such, religiosity is no longer voluntary but rather compulsory.

Given that the fundamental tenet of liberalism is individual freedom, high enforcement of religion by the state directly translates to a high degree of illiberalism and low religious liberty. An empirical analysis measuring the level of state enforcement of religion in democracies yields the observation that democracies indeed minimally enforce religion. Most democracies retain high degrees of liberalism when it comes to state-religion relations.

Indonesia is an important exception to the rule that democracies refrain from enforcing religion. Indonesia has the highest level of religious enforcement among democracies and is much closer to the enforcement level of religious countries than **to the secular, liberal democratic ones.** The notable feature of Indonesia's religious enforcement is that enforcement varies on location, with religious legislation

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<sup>40</sup> South Kalimantan is well-known for its religiosity, similar with other regions in Indonesia such as West Java and South Sulawesi.

<sup>41</sup> Interview with NM and HA, NGO activists, Banjarbaru, July 2013.

mostly found in government policies instead of constitutional provisions and is mostly passed at the subnational level instead of the national level.

The high level of state involvement in enforcing religion in Indonesia has been driven largely by the proliferation of subnational religious bylaws, concomitant with democratization since 1999. The decentralization of legal authority and the holding of general elections at the subnational level has created the opportunity for local elites to issue religious bylaws. One region in particular, Aceh, was bestowed the right to issue and implement *sharia* bylaws. Other *sharia*-influenced regions followed suit, despite not having the same privilege.

The case of Aceh's special privilege underlines the real problem of Indonesia's democratic quality, namely the uneven geographic distribution of rights and privileges.<sup>42</sup> Aceh and its *sharia* implementation constitutes a case where a region is given privilege to not following the general arrangement of other regions by the central government. As a special region, Aceh complicates the landscape of decentralization in Indonesia and affects how democracy is experienced in specific localities.

Following Gibson, it is important to pay analytical attention to the conflicts and interactions between national and subnational actors when examining democracy and democratization at the subnational level.<sup>43</sup> In the case of subnational religious bylaws, the vexing question is why did the Minister of Home Affairs not act swiftly to revoke religious bylaws in regions other than Aceh? What kind of political reality exists that accounts for the central government's hesitation in revoking unconstitutional moves from subnational governments? The immediate result of this neglect, as well as the initial political decision to grant Aceh the rights to implement religious bylaws, is the uneven experience of religious freedom across subnational units in the country.

Future research should look at the dynamic, paying attention to conflicts as well as cooperation between national and subnational actors in maintaining religious bylaws at the regional level. The fact that most religious bylaws have not been rescinded after more than a decade of implementation means that the power relations sustaining these policies have achieved an equilibrium. The Ramadan bylaw in South Kalimantan, for instance, has been sustained for more than 15 years. This equilibrium needs to be unpacked and accounted for.

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<sup>42</sup> Another important case is Yogyakarta, where no general election to elect governor exist as the governor is appointed for life and is hereditary.

<sup>43</sup> Gibson 2012.

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Appendix I  
Religion Enforcement Index 2014: Indonesia

No	Variable	Description	Score
1	Ix01	Marriage and divorce can only occur under religious auspices	1
2	Ix03	Restrictions on interfaith marriage	1
3	Ix04	Restriction on premarital sex	1
4	Ix05	Law which specifically makes it illegal to be homosexual or engage in homosexual sex	1
5	Ix06	Prohibitive restriction on abortion	1
6	Ix07	<i>Restrictions on access to birth control</i>	0
7	Ix08	Women may not go out in public unescorted	1
8	Ix09	Women are required to wear some form of religious dress or are subject to public modesty laws other than the common restrictions on public nudity	1
9	Ix12	<i>Dietary laws (restrictions on the production, import, selling, or consumption of specific foods)</i>	0
10	Ix13	Restrictions or prohibitions on the sale of alcoholic beverages	1
11	Ix15	Religious precepts used to define crimes or set punishment for crimes such as murder, theft, etc	1
12	Ix17	Required public dress or modestly laws for men other than common restrictions on public nudity	1
13	Ix18	<i>Restrictions on conversions away from the dominant religion</i>	0
14	Ix19	Significant restrictions on public music or dancing other than the usual zoning restrictions	1
15	Ix20	Mandatory closing of some/all businesses during religious holidays, the Sabbath or its equivalent	1
16	Ix22	Blasphemy laws, or any other restriction on speech about majority religion or religious figures	1
17	Ix23	Censorship of press or other publications on grounds of being anti-religious	1

18	lx24	Presence of a police force or other government agency which exists solely to enforce rel. laws	1
19	lx26	Presence of rel. courts with jurisdiction over matters of law other than family law and inheritance	1
20	lx31	Government collects taxes on behalf of religious organizations (religious taxes)	1
21	lx42	<i>Some or all government officials must meet certain religious requirements in order to hold office. (This excludes positions in religious ministries, head of state church, or the like)</i>	0
22	lx48	Religion listed on state identity cards or other government documents that most citizens must possess or fill out	1
23	lx50	<i>Burial is controlled by religious organization or clergy or otherwise subject to religious laws or oversight.</i>	0
24	lx51	Blasphemy laws protecting minority religions or religious figures	1
25	mx03	Forced observance of religious laws of another group	1
26	mx21	<i>Restrictions on conversion to minority religions</i>	0
27	mx22	<i>Forced renunciation of faith by recent converts to minority religions</i>	0
28	mx23	Forced conversions of people who were never members of the majority religion	1
29	mx29	Mandatory education in the majority religion	1