BALANCING RELIGIOUS TRADITIONS AND LEGAL NEUTRALITY: THE INDEPENDENCE OF INDONESIA'S CONSTITUTIONAL COURT

RIFQI RIDLO PHAHLEVY
Faculty of Law, Business and Social Science Universitas Muhammadiyah Sidoarjo
qq_levy@umsida.ac.id
ABSORI
Doctoral programme in law Universtas Muhammadiyah Surakarta
abs154@ums.ac.id
AIDUL FITRICIADA AZHARI
Faculty of Law Universitas Muhammadiyah Surakarta
Aidul.F.Azhari@ums.ac.id
KELIK WARDIONO
Faculty of Law Universitas Muhammadiyah Surakarta
liekums@gmail.com
NOOR FATIMAH MEDIAWATI
Faculty of Law, Business and Social Science Universitas Muhammadiyah Sidoarjo
fatimah@umsida.ac.id
SRI BUDI PURWANINGSIH
Faculty of Law, Business and Social Science Universitas Muhammadiyah Sidoarjo
sribudi@umsida.ac.id

Abstrak: This article examines the independence of the Indonesian Constitutional Court in relation to religious issues, particularly regarding religious freedom and marriage regulations. Utilizing a socio-legal approach, the article analyzes five judgments and assesses whether the Court accommodates the aspirations of the religious majority while still maintaining neutrality. Results show that the Court's legal decisions tend to accommodate societal aspirations, but this does not necessarily indicate a lack of neutrality. The article asserts that the independence and neutrality of the judiciary are crucial in a rule of law state, and the Court must balance societal aspirations with its role as a legal decision-making body. The Court's independence should be evaluated based on the methodological consistency of its legal decisions. Overall, the article highlights the importance of judicial independence and neutrality in a rule of law state, with implications for Indonesia's Constitutional Court and other similar legal systems.

***Keywords**: Judicial independence, constitutional court, freedom of religion*

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1. INTRODUCTION.

In the construction of Indonesia's rule of law, the Constitutional Court is the institution responsible for ensuring compliance with the state constitution, specifically the 1945 Constitution. As a judicial institution, the Constitutional Court serves as a law-forming organ, in addition to the Supreme Court,

which is responsible for upholding the constitution.[1] The Constitutional Court plays a vital role in maintaining and guarding the legal process, particularly in cases that intersect with religious issues and interests, given Indonesia's context as a country with ethnic and religious plurality.[2]

The national ideology that places Godhead as its primary basis shows the significance of religious teachings and religious life in the law formation process in Indonesia.[3] However, the existence of religious organizations poses challenges for the Constitutional Court in maintaining its independence in adjudicating religious cases. Religious organizations have a strong influence not only on community life but also on political, legal, and government affairs, given Indonesia's strong religious tradition.[4] Religious organizations' strong bargaining value and capacity can influence the Constitutional Court's decision, particularly in deciding religious cases. Occasionally, the Constitutional Court's decision may be influenced by public opinion or political pressure from certain groups. However, the basic principles of independence and impartiality must be upheld in carrying out the Constitutional Court's duties and functions as a law-forming organ.

In this context, the Constitutional Court must maintain its independence and neutrality in adjudicating religious cases, regardless of any party's pressure. This paper aims to discuss the Constitutional Court's independence in religious cases, particularly in Indonesia as a Muslim-majority country. This paper consists of three parts: the Constitutional Court's independence as a law-forming organ in Indonesia, its independence in practicing law related to religious issues, and the independence bias between accommodative and responsive.

By discussing these three parts, this paper aims to provide a better understanding of the challenges and efforts of the Constitutional Court in maintaining its independence in adjudicating religious cases in Indonesia.

2. METODE.

To address the legal issues raised, this paper employs a socio-legal approach,[5] combining legal and social sciences methodologies to examine the existence of the principle of independence of the Constitutional Court in testing laws related to religious issues. Two religious issues are presented in this paper, namely freedom of religion and marriage, to be examined. The paper begins by identifying the legal issues and proceeds to collect primary legal materials consisting of Constitutional Court decisions related to freedom of religion and marriage, as well as secondary legal materials such as scholarly articles and relevant references. From the process of collecting legal materials, five Constitutional Court decisions were identified as objects of study, namely decision No. 30/PUU-XII/2014, decision No. 140/PUU-VII/2009, decision No. 56/PUU-XV/2017, decision No. 68/PUU-XII/2014, and decision No. 56/PUU-XV/2017. The paper then analyzes the legal arguments constructed by the Constitutional Court in these five decisions, using a perspective of legislative theory and legal politics.

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[1] Pan Mohamad Faiz and M. Lutfi Chakim, *PERADILAN KONSTITUSI Perbandingan Sistem Kelembagaan Dan Kewenangan Konstitusional Di Asia*, 1st ed., vol. 1 (Depok: Raja Grafindo Persada, 2020), https://www.rajagrafindo.co.id/produk/peradilan-konstitusi-perbandingan-sistem-kelembagaan-dan-kewenangan-konstitusional-di-asia-pan-mohamad-faiz-dkk/. P. 109-110.

[2] Masdar Hilmy, "The Politics of Multicultural Citizenship: Problems, Challenges and Prospects of Civil Religion Institutionalization in Indonesia," *JICSA (Journal of Islamic Civilization in Southeast Asia)* 5, no. 1 (June 19, 2016): 1–13, https://doi.org/10.24252/jicsa.v5i1a1.

[3] Muhammad Fauzan, Tedi Sudrajat, and Sri Wahyu Handayan, "Constitutionalismin a Post-Colonialism State: Socio-Cultural and Historical Perspective of Indonesian Constitution Identity," *Revista de Estudos Constitucionais, Hermenêutica e Teoria Do Direito (RECHTD)* 11, no. 1 (2019): 23–43, https://doi.org/10.4013/rechtd.2019.111.02.

[4] Zuly Qodir and Bilveer Sight, "Contestation of Contemporary Islam: Conservative Islam versus Progressive Islam," *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin* 23, no. 2 (January 8, 2023), https://doi.org/10.14421/esensia.v23i2.4316.

[5] Sulistyowati Irianto, "Praktik Penelitian Hukum: Perspektif Sosiolegal," in *Metode Penelitian Hukum: Konstelasi & Refleksi*, ed. Shidarta and Sulistyowati Irianto (Jakarta: Yayasan Obor Indonesia, 2011).

3. DISCUSSION.

3.1. Independence of the Constitutional Court as a Law-Making Organ in Indonesia.

The Indonesian Constitution places the Constitutional Court as one of the holders of judicial power, in addition to the Supreme Court. This is stipulated in Article 24 Paragraph (2) and Article 24C of the 1945 Constitution.[6] The Constitutional Court's status as a holder of judicial power was established through the amendment process of Article 24 of the 1945 Constitution, which was aimed at enhancing the independence of judicial power to effectively uphold the system of checks and balances in the exercise of state power. The institutional separation between the Constitutional Court and the Supreme Court has made Indonesia one of the 78 countries in the world to adopt this system.[7]

As one of the holders of judicial power in Indonesia, the Constitutional Court is mandated to perform various duties and exercise several authorities, such as reviewing laws against the Constitution, deciding disputes over the authority of state institutions whose authority is granted by the Constitution, deciding the dissolution of political parties, deciding disputes over the results of general elections, and providing a decision on the House of Representatives' opinion regarding alleged violations by the President and/or Vice President according to the Constitution.[8]

The consequence of the Constitutional Court's duties and authorities is the right to interpret the constitution in deciding cases before it. The Constitutional Court's capacity to interpret the Constitution is what sets it apart, as constitutional interpretation is a crucial instrument of constitutional change.[9] Through interpretation, the Court can change the meaning and intent of a constitutional norm without altering its formulation. The Court's interpretations have indirectly altered the Constitution, impacting the content, meaning, and purpose of constitutional norms. Such changes in meaning and formulation have far-reaching implications for the rule of law.[10]

The Constitutional Court's authority in judging laws is not limited to assessing their constitutionality. Through its decisions, the Constitutional Court has also ventured into the domain of law formation, by altering or introducing new clauses to the norms tested in positive legislation.[11] Normatively, what the Constitutional Court has produced from its decisions exceeds the limits of authority granted by the law. According to the Constitution and Law No. 24/2003 on the Constitutional Court, the Court's authority in reproducing the law is restricted to decisions that are negative legislation.[12] Interestingly, the normative issues present in the Constitutional Court's decisions that contain positive legislation do not affect the validity or binding force of the decision as law in Indonesia. This is because of the final and binding nature of the Constitutional Court's decisions, which serves as the foundation for the legitimacy of the decision's enactment.

The significance of the Constitutional Court's rights and authority calls for a robust and responsible legal process. Therefore, the Court operates within the confines of procedural law and judicial

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[6] Radian Salman, "Konstitusi, Konstitusionalisme Dan Mahkamah Konstitusi," in *Bimbingan Teknis Hukum Acara Pengujian Undang-Undang Kerja Sama Fakultas Hukum Universitas Airlangga 15-16 September 2017* (Universitas Airlangga Surabaya, 2017), 1–23.

[7] Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme* (Jakarta: Konstitusi Pers, 2005). P. 127

[8] M. Ali Safa'at et al., *Hukum Acara Mahkamah Konstitusi (Edisi Revisi)*, 2nd ed., Revisi (Jakarta: Mahkamah Konstitusi, 2019). P.

[9] Kenneth C. Wheare, *Modern Constitutions* (Oxford University Press, 1996). P. 158-167.

[10] Stefanus Hendrianto, "219C11The Indonesian Constitutional Court and Informal Constitutional Change," in *Constitutional Democracy in Indonesia*, ed. Melissa Crouch (Oxford University Press, 2022), 0, https://doi.org/10.1093/oso/9780192870681.003.0011.

[11] *Referring to the Constitutional Court's decision, which has the characteristics of regulating like a legal product made by the legislative drafting body*. Martitah, "Progresifitas Hakim Konstitusi Dalam Membuat Putusan (Analisis Terhadap Keberadaan Putusan Mahkamah Konstitusi Yang Bersifat Positive Legislature)," *Masalah-Masalah Hukum* 41, no. 2 (2012): 315–25, https://doi.org/10.14710/mmh.41.2.2012.315-325.

[12] *Under the provisions of Articles 56, 57, 64, 70, 77, and 83 of Law No. 24/2003, the Constitutional Court can only make four types of decisions, namely: decisions that declare the president and/or vice president to be granted, rejected, unacceptable, and decisions that strengthen/justify the opinion of the DPR regarding constitutional violations*. Adena Fitri Puspita Sari and Purwono Sungkono Raharjo, "Mahkamah Konstitusi Sebagai Negative Legislator Dan Positive Legislator," *Souvereignty* 1, no. 4 (December 16, 2022): 681–91, https://doi.org/10.13057/souvereignty.v1i4.112.

principles inherent in the law. The principles of independence and impartiality enshrined in Article 24 of the 1945 Constitution are grounded in the concepts laid out in The Beijing Statement of Principles of the Independence of the Judiciary (1995) and The Bangalore Principles of Judicial Conduct (2001).[13] Drawing from these two forums, the concepts of independence and impartiality apply to both the institutional and personal dimensions of judges.[14]

3.2. Independence of the Constitutional Court in the practice of judicial review of laws.

a. Law Review on Religious Freedom Issues.

Freedom of religion is a sensitive issue that often leads to conflicts within civil society groups. This phenomenon reflects the dynamics of inter-religious relations in Indonesia, which are far from ideal. In reality, the problem does not always arise between people of different religions. Conflicts also frequently occur between individuals of the same faith and between religious individuals and adherents of alternative belief systems. Such conflicts often result in bullying and criminalization within the legal sphere, utilizing Law No. 1/PNPS of 1965 on the Prevention of Abuse and/or Blasphemy of Religion (Blasphemy Law) as a basis for legitimacy.[15] This social issue emerged during the reformation period, when democracy was widely embraced, and discourse on human rights protection became mainstream in the spirit of law enforcement. During the New Order era, such conflicts were suppressed due to the order approach employed by the government.

One of the critical issues in inter-religious relations after the reformation period is the rise of blasphemy cases. From 1998 to 2011, more than 100 people were prosecuted for blasphemy.[16] The existence of the blasphemy law has presented a dilemma in religious life. While the provisions should serve as an umbrella and guarantee for orderly and peaceful religious life, it is often viewed as legitimizing discrimination and intolerance in Indonesian society. In fact, some individuals argue that the existence of the law undermines the essence of freedom of religion and expression guaranteed by the Constitution.[17] They view religion as a personal interpretation of divinity and part of one's human rights, which must be protected.[18] However, the religious majority group sees the law as an essential tool to uphold religious teachings and maintain the religious behavior of the community to prevent abuse.[19]

The strengthening of human rights protection instruments through the amendment process of the 1945 Constitution has encouraged human rights activist groups to submit various law tests to the Constitutional Court. There are at least three main issues related to an orderly religious life, one of

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[13] Abdul Mukthie Fadjar, "Independensi Dan Imparsialitas Mahkamah Konstutisi: Perspektif Etis" (Essay, Pendidikan dan Pelatihan Penyelesaian Perselisihan Perkara Perselisihan Hasil Pemilihan Umum Legislatif 2014 Bagi Pengacara Konstitusi, Bogor, April 22, 2014).

[14] "*Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects*" the Judicial Integrity Group, "Commentary on the Bangalore Principles of Judicial Conduct" (Vienna: United Nations Office on Drugs and Crime, 2007), https://www.unodc.org/res/ji/import/international_standards/commentary_on_the_bangalore_principles_of_judicial_conduct/bangalore_principles_english.pdf.

[15] Petrus Riski, "Kehidupan Beragama Dan Berkeyakinan Di Indonesia Masih Jauh Dari Harapan," VOAIndonesia.com, 2020, https://www.voaindonesia.com/a/potret-kehidupan-beragama-dan-berkeyakinan-di-indonesia-masih-jauh-dari-harapan-/5598626.html.

[16] Melissa Crouch, "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law," *Asian Journal of Comparative Law* 7 (2012): 1–46, https://doi.org/10.1017/S2194607800000582.

[17] Cekli Setya Pratiwi, "The Permissible Scope of Legal Limitation on Freedom of Religion or Belief (FoRB) and Freedom of Expression (FoE) under International Human Rights Law (IHRL): The Study of Blasphemy Cases in Indonesia," *SSRN*, 2019, 1–53, http://dx.doi.org/10.2139/ssrn.3312715. P. 11-13.

[18] "*The state should not monopolise the definition andinterpretation of religious belief through its legal and political perspectives as the state-sponsoredreligious perspective is generally perceived by the government and people to criminalise non-mainstream religions".* Al Khanif, "Judicial Review on Blasphemy Law and the Future of Heterodox Religions in Indonesia" (Jember: Universitas Jember, n.d.), https://www.academia.edu/11503266/Judicial_Review_on_Blaphemy_Law_in_Indonesia.

[19] Akhmad Muamar, "Kebebasan Beragama Dan Problematikan HAM Universal," *Kalimah* 11, no. 1 (2012): 56–81, https://doi.org/10.21111/klm.v11i1.484. P. 73-79.

which is the issue of blasphemy in the blasphemy law. Since the establishment of the Constitutional Court, there have been at least two petitions to review the law, namely Petition No. 140/PUU-VII/2009 which was heard and decided in 2010, Petition No. 84/PUU-X/2012 which was decided on 19 September 2013, and Petition No. 56/PUU-XV/2017 which was heard and decided in 2017.[20] Both cases involved elements of religious organizations as parties. There was a division of attitudes among religious organizations that put them in a position to face each other. Islamic religious organizations were on the side of the Government and Parliament, while non-Islamic religious organizations were on the side of the petitioners.

In Case No. 140/PUU-VII/2009, the Applicant stated that the provisions of Article 1, Article 2 paragraphs (1) and (2), Article 2 paragraph (2), Article 3, Article 4 letter a of Law No. 1/PNPS 1965 were no longer in accordance with the constitution and the construction of post-amendment legislation of the 1945 Constitution of the Republic of Indonesia, and therefore needed to be cancelled. The Applicant sees procedural defects in the formation of the law, namely: first, the blasphemy law is contrary to the principle of the rule of law, considering that the formation process during the guided democracy was far from the style and value of democracy, and substantively represented the political interests of the authoritarian ruler.[21] Second, the blasphemy law was issued when the state was in a state of emergency, thus legitimising gratuitous restrictions on civil and political rights, on the grounds of state security. This gratuitous restriction is certainly contrary to the international covenant on civil and political rights.[22]

Substantially, there are several fundamental problems that are considered problematic from the regulation in the law, namely: first, diversity in religious teachings and practices is a common historical reality rooted in the tradition of every religion, so that the attempt to "control religious teachings" by the law is essentially a form of discrimination. Secondly, the restriction of religious interpretation that leads to the restriction of religious practice is a form of neglect of the freedom of religion protected by the constitution and international human rights norms.[23] Both views are built using a "western" anthropocentric human rights perspective. The concept of tolerance and religious reasoning used is also liberalist.[24]

The civil society coalition's request for testing was met with resistance from the Government, who mobilized official religious organizations to reject the request. Interestingly, the two largest Islamic organizations in Indonesia, Muhammadiyah and Nahdhotul Ulama, stood together with the government to refute the petitioner's arguments.[25] The Minister of Religious Affairs, speaking on behalf of the Government, provided a statement that substantially refuted the petitioner's arguments. The Government argued that the legal perception built by the petitioner was incorrect. For the Government, the Blasphemy Law is not intended to limit or curtail religious freedom, but rather to ensure order and harmony. The substance of the law also does not limit adherents to interpret the teachings of their religion, but rather it limits the public expression of private interpretations of religion.[26] Regarding the issue of the formation of laws during emergencies and in

[20] Pan Mohamad Faiz, "The Protection of Civil and Political Rights by the Constitutional Court of Indonesia," *Indonesia Law Review* 6, no. 2 (2016): 158–79, http://dx.doi.org/10.15742/ilrev.v6n2.230.

[21] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 140/PUU-VII/2009 Tentang Pengujian Undang-Undang Nomor 1/PNPS/Tahun 1965 Tentang Pencegahan Penyalahgunaan Dan/Atau Penodaan Agama," 140/PUU-VII/2009 PUU § (2010). P. 6-8.

[22] Mahkamah Konstitusi Republik Indonesia. *Ibid.* p. 9-11.

[23] "*If the State takes one interpretation of the main religious teachings of a particular group, then the State has given different treatment to other groups that have different religious teachings, contrary to the principle of equality before the law*." Mahkamah Konstitusi Republik Indonesia. ibid. p. 38.

[24] Khanif, "Judicial Review on Blasphemy Law and the Future of Heterodox Religions in Indonesia." *Op.Cit.*

[25] Tim Kemenag, "NU Dan Muhammadiyah Tolak Uji Materi UU Penodaan Agama," Kementerian Agama Republik Indonesia, 2010, https://kemenag.go.id/read/nu-dan-muhammadiyah-tolak-uji-materi-uu-penodaan-agama-zp8g. p. 5-8.

[26] Hwian Christianto, "The Significant Impact Of Law Number 1/PNPS/1965 For The Freedom Of Religion: An Analysis on Constitutional Court Decision Number 140/PUU-VII/2009," *Jurnal Yudisial* 6, no. 1 (2013): 1–16, http://dx.doi.org/10.29123/jy.v6i1.115.

an atmosphere of authoritarianism, the Government stated that there was nothing wrong with the process of the blasphemy law. The existence of the blasphemy law is considered to answer national problems that are still relevant today.[27]

The petitioner's argument, which used the differences in religious understanding and practice between Muhammadiyah and NU as an example, inspired the two Islamic organizations to provide testimony. PBNU, represented by KH Hasyim Muzadi, argued that the petitioner's attempt to fight for freedom of religion through the cancellation of the blasphemy law was misplaced. According to him, the problem of religious freedom has nothing to do with the blasphemy law. The existence of the law even becomes the foundation for building tolerance and religious harmony.[28] MUI, as a related party, reinforced the Government's argument that PNPS does not limit people to interpret and practice deviant religious teachings for themselves. With the ushul fiqh approach, MUI emphasized the importance of PNPS as an instrument to guarantee the protection of everyone's rights (maqoshid al-syari'ah).[29] MUI then stated that the religious analyses in the petitioner's argumentation were made haphazardly and far-fetched.[30]

Several religious organizations, including NU, expressed their opinions on the issue at hand, but their attitudes were divided. While all Islamic organizations denied and rejected the petition, minority religious groups such as the Indonesian Confucian Religious Council (Matakin) and Parisada Hindu Dharma, stated that the blasphemy law was still necessary for the protection of their teachings. The seven Constitutional Court Judges who rejected the petition represented the majority of religious communities in Indonesia, while the two dissenting judges demonstrated an accommodative character of the Constitutional Court's decision, which allows for differences in attitudes and views of each judge.

The Court's decision to reject the petition was based on the argument that Indonesia is a country founded on the value of divinity, and belief and religion are considered the domain of the forum internum in state life. The blasphemy law is philosophically aligned with the protection of freedom of religion from an Indonesian perspective, so it does not contradict the concept of the Indonesian state of law, which recognizes divinity as its philosophical foundation. For the Constitutional Court, Article 28J of the 1945 Constitution and Article 19(3) of the ICCPR serve as regulatory frameworks and limits for the implementation of freedom of religion.

Regarding the Petitioner's interpretation of religion as an internal domain with a personal dimension, the Court believes that religion cannot be separated from the social, cultural, and historical dimensions of religion and belief in society. In this case, the Court separates the concept of freedom of thought and belief as something that is personal and cannot be restricted (forum internum) from freedom of expression of opinion or belief as something that relates to other people or parties (forum externum), which can be restricted. The Court believes that the restriction in the blasphemy law is still within the acceptable limits because it only limits what can be conveyed from one's beliefs in public. Additionally, the Court emphasizes that the freedom to interpret religious teachings is not absolute, but must be based on the correct methodology and not deviate from the main teachings of the religion's holy book.[31]

The Constitutional Court has adopted a moderate stance on the issue of freedom of interpretation and belief within the context of religion. While acknowledging the inherent freedom of thought and

[27] Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 140/PUU-VII/2009 tentang Pengujian Undang-Undang Nomor 1/PNPS/Tahun 1965 tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama. p. 115-121.

[28] Mahkamah Konstitusi Republik Indonesia. ibid. p. 120-122.

[29] Tempo.co, "Majelis Ulama Nilai Uji Materi Undang-Undang Penodaan Agama Keliru," nasional.tempo.co, 2010, https://nasional.tempo.co/read/222560/majelis-ulama-nilai-uji-materi-undang-undang-penodaan-agama-keliru.

[30] Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 140/PUU-VII/2009 tentang Pengujian Undang-Undang Nomor 1/PNPS/Tahun 1965 tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama. Op.Cit. p. 142 dan 146.

[31] Mahkamah Konstitusi Republik Indonesia. Ibid. p. 276-277.

belief in every individual's mind, the Court has also contextualized this freedom to ensure that it does not offend the beliefs of others or deviate from the fundamental tenets of religious doctrine. In constructing its argument, the Court has employed a range of interpretive methods, including historical, sociological, and teleological approaches. However, critics of the Court's decision contend that it failed to fully appreciate the central issue of the petition and thus failed to provide a cogent response that is in line with the evolving international human rights framework. They maintain that many of the judges demonstrated a subjective inclination towards the religious figures who presented arguments before the Court.[32]

The allegation that the group supporting the petition is not fully justified, as the Court building its argumentation also considers and accommodates the views of the Petitioner. Point 3.56, which pertains to freedom to act (with a religious accentuation), demonstrates the Court's agreement with the Petitioner's expert MM Billah's view that freedom can be limited. However, the Court clarifies that it does not agree with the expert's position regarding the 1945 Constitution's status as "below" international treaties. This pattern of law demonstrated by the Court in constructing its legal argumentation reflects the accommodative and progressive nature of the Court's legal tradition. The Court's approach, which accommodates all interests, presents relevant information in a balanced manner, and respects the principle of audi et alteram partem, indicates that the Court's stance that the blasphemy law is not substantially contrary to the Constitution is not a legal failure, but rather a legal stance based on the Judges' constitutional understanding.[33]

The legal construction in this case represents the Court's constitutional position regarding the occupation and respect of human rights, which must be viewed in the context of Indonesia. In this case, the Constitutional Court positions religious and divine traditions that have historically shaped Indonesian Identity as the context for interpreting the position and respect for human rights.[34] Rejecting the Petitioner's argument does not indicate a failure in the Judges' thinking and judgement. The rejection is due to different perspectives on the issue at hand. Such perspectives cannot be separated from the scientific, ideological, socio-cultural aspirations, and life experiences that shape the identity and character of the Judges. Therefore, if asked about the influence of religious organizations in this case, their influence lies in their ability to present perspectives related to the legal construction of most judges. The Judges' agreement with the legal perspective and religious views of those who oppose the petition is a legal choice to present responsive law. This attitude cannot be categorized as a deviation from the principles of independence and impartiality of judges and judicial institutions.[35]

In contrast to the first testing episode that took place in a complex and tense social dynamic, the second and third episodes of the blasphemy law testing in 2012 and 2017, respectively, took place in a relatively cooler atmosphere. Although the context of confrontation between majority and minority religious organizations persists, the discursive intensity is not as significant. The media's war of opinion over Petition No. 84/PUU-X/2012 and Petition No. 56/PUU-XV/2017 was also not as strong as during the previous episode.[36] This can be attributed to the fewer and less diverse parties involved in the last two trials, which were filed by groups of individuals from the Ahmadiyah community. The

[32] Margiyono et al., *Bukan Jalan Tengah (Eksaminasi Publik Putusan Mahkamah Konstitusi Perihal Pengujian Undang-Undang Nomor 1 PNPS Tahun 1965 Tentang Penyalahgunaan Dan/Atau Penodaan Agama)* (The Indonesian Legal Resource Center, 2010), www.mitrahukum.org. p. 84-87.

[33] Mahkamah Konstitusi Republik Indonesia, Putusan Nomor 140/PUU-VII/2009 tentang Pengujian Undang-Undang Nomor 1/PNPS/Tahun 1965 tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama. p. 27-34.

[34] Margiyono et al., *Bukan Jalan Tengah (Eksaminasi Publik Putusan Mahkamah Konstitusi Perihal Pengujian Undang-Undang Nomor 1 PNPS Tahun 1965 Tentang Penyalahgunaan Dan/Atau Penodaan Agama)*. Op.Cit. p. 36-39..

[35] Doug Linder, "Theories of Constitutional Interpretation," UMKC School Of Law, 2021, http://law2.umkc.edu/faculty/projects/ftrials/conlaw/home.html.

[36] Even in Petition No. 84/PUU-X/2012, which requested the cancellation of Article 4 of the 1965 PNPS, no religious organisations were involved as related parties. See: Mahkamah Konstitusi Republik Indonesia, "Putusan Mahkamah Konstitusi Nomor 84/PUU-X/2012 Tentang Pencegahan Penyalahgunaan Dan/Atau Penodaan Agama," PUU § (2013).

difference between the two petitions is that Petition No. 84/PUU-X/2012 tests the provisions of Article 4, while Petition No. 56/PUU-XV/2017 tests the provisions of Article 1, Article 2, Article 3, and Article 4. The third petition is not considered nebis in idem, as the basis of the test and the reason for the petition differ from Petition No. 140/PUU-VII/2009. Although different, the arguments presented in the last two petitions are fundamentally the same as the legal and human rights perspectives presented in Petition No. 140/PUU-VII/2009

The Constitutional Court's legal tradition of using previous decisions as a basis for subsequent decisions is evident in its resolution of the last two cases. In its opinion, the Court stated that Petition No. 56/PUU-XV/2017 confirmed the relevance of the Mahmakamh's argumentation in the previous decision. This is related to the Petitioner's argument that there have been significant changes in both substance and essence.

Regarding the Petitioner's request for the Court to revise the Blasphemy Law through its decision, the Court's view is that the need for revision of the Blasphemy Law must be done through legislation. This indicates the Court's stance on the improvement of the blasphemy law that must be done responsively and democratically. The issue, which has a broad impact and concerns aspects of national ideology, must be addressed democratically by an institution that represents the sovereignty of the people. The posita and petitum of the Court in the case essentially serves as a rebuttal to those who doubted the independence and impartiality of the Court in forming previous decisions. With a changing composition of Judges, the Court may take a different stance in case No. 56/PUU-XV/2017 if the previous decision is deemed inappropriate.

b. Law Review of marriage Regulation Issues.

The Constitutional Court's examination of the constitutionality of marriage law involving religious organizations consists of at least two main themes, namely the age limit for marriage in Case No. 30-74/PUU-XII/2014, and the prohibition of interfaith marriage in Case No. 68/PUU-XII/2014. The position of religious organizations in the two cases differs slightly. In the first case, religious organizations were only involved in providing testimony. This is reasonable because the request to increase the marriage age threshold, in principle, does not implicate religious ideology or teachings. In the second case, religious organizations, specifically Muhammadiyah, MUI, and FPI, were present as related parties to reject the petition. In addition to the three Islamic organizations, several other religious organizations were present in the capacity to provide information.[37]

The involvement of religious organizations as witnesses in Case No. 30-74/PUU-XII/2014 was essentially at the request of the Court to provide input for the making of the petition and petitum. The request for information cannot be separated from the existence of Law No. 1 Year 1974, which was created as a form of accommodation and recognition of religious teachings. In their capacity as parties representing the interests of religious adherents, the views of religious organizations on the petition issue have legitimacy before the Constitutional Court. With the diversity of religious backgrounds, the views of religious organizations on the age limit of marriage are not uniformly held. However, the construction of the law has something in common, which is based on the interpretation of the main religious teachings.[38]

Two religious organizations from the Hindu and Christian communities submitted a pro-application view. Parisada Hindu Dharma stated that, according to their teachings, the age for marriage should be above 16 years old, so the provisions on the age limit of marriage need to be changed. The Indonesian Church Association and the Indonesian Bishops' Conference also stated that the age limit needs to be changed because it only accommodates biological maturity and does not take into account the purpose of marriage. For them, 16 years old is the age of a child, so allowing marriage at that age is the same as permitting the exploitation of children and violates the sanctity of the human body. Buddhist representatives argued that Buddhist law requires harmony between all

[37] Achmad Asrori, "Batas Usia Perkawinan Menurut Fukaha Dan Penerapannya Dalam Undang-Undang Perkawinan Di Dunia Islam," *Al-'Adalah* XII, no. 4 (2015): 807–26.

[38] Nurhadi, "Undang-Undang No. 1 Tahun 1974 Tentang Pernikahan (Perkawinan) Di Tinjau Dari Maqashid Syariah," *UIR Law Review* 2, no. 2 (2018): 414–29, https://doi.org/10.25299/uirlrev.2018.vol2(02).1841.

aspects of life, including the development of science. Determining the age limit for marriage should be based on scientific research in order to encourage the birth of a high-quality generation.[39]

The opposing view to the petition was put forward by religious organizations from the Muslim community. The Indonesian Ulema Council (Majelis Ulama Indonesia) stated that the provisions of marriage were the result of deliberation among scholars with reference to basic religious teachings. The age limit of 16 years for women is intended to bridge the gap between the age of adulthood (baligh) and the age of marriage, thus reducing potential harm. PP Muhammadiyah states that there is no standard provision regarding the age limit for marriage, as it is based on maturity, which has different provisions among scholars. The limits and requirements set out in the Marriage Law basically guarantee maturity in marriage. PB Nahdlotul Ulama states that the adult provisions in the Marriage Law do not conflict with Islamic teachings, as the determination of the age of 16 years for women refers to the opinion of Imam As-Shafi'i. The use of this opinion is considered in accordance with the interests of the Indonesian people at large.[40]

The Constitutional Court's decision to reject the substance of the Petitioner's petition was also based on the attitudes and views of religious organizations, which were used as the basis for the formation of the petition and the petitum of the Constitutional Court's decision. The Constitutional Court views the different views of religious organizations presented before the court as a representation of the diversity of religious teachings that must be respected and accommodated by the state. Therefore, the regulation related to the age limit of marriage in the Marriage Law is actually a form of open legal policy given to the state, which in the view of the Constitutional Court does not conflict with constitutional norms.[41] This attitude of the Court can be seen as a form of accommodation to religious teachings and the aspirations of Muslims, as changes to the marriage regulation must take into account the greatest benefits and mudhorot for the majority of religious people.

The Court's argumentation in this case mostly refers to the perspective of accommodating religious teachings. The scientific perspectives of health and psychology presented by the Petitioner and several related parties were not given much consideration. The Court reasoned that the scientific perspective presented by the Applicant and the experts was dynamic, depending on the times, so that in this case it could not be used as the main consideration. This shows the Court's responsive and accommodating legal style in placing dogma or religious teachings in a higher position than the results of scientific studies submitted by the Applicant. This legal attitude is reasonable if associated with the historicity of the legal construction that frames the existence of the Marriage Law in Indonesia. The context of using the corridor of interpretation of religious freedom in previous cases as a frame for this case can also be seen as a form of consistency in the Court's attitude towards the main position of religious teachings.

The Constitutional Court's decision was based on the dissenting opinion of Justice Maria Farida, which drew heavily on an interdisciplinary scientific perspective. In her dissent, Justice Maria appeared to endorse the scientific perspective underlying the Petitioner's argument.[42] These facts suggest that the Court's rejection of the petition was not due to the Petitioner's flawed or invalid arguments, but rather to a difference in perspective and legal paradigm between the Applicant and the panel of judges.

The Government and Parliament's responses to some of the Petitioner's arguments, such as those related to the diversity of age limits that violate the principle of legal certainty and the position of Article 7 Paragraph 1 as a form of open legal policy available to legislators, have a strong theoretical basis and are quite persuasive.[43]

In contrast to the first issue, the second issue in Case No. 68/PUU-XII/2014 concerning the prohibition of interfaith marriages involved massive participation from religious organizations. This is due to the

[39] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 30-74/PUU-XII/2014 Tentang Perkara Pengujian Undang-Undang Nomor 1 Tahun 1074 Tentang Perkawinan," PUU § (2014). P. 160-163, 189-191.
[40] Indonesia. *Ibid*. p. 170-189.
[41] Indonesia. *Ibid*. p. 230.
[42] Indonesia. *Ibid*. p. 234-240.
[43] Indonesia. *Ibid*. p. 299 and 231.

deep ideological aspects of the Petitioner's petition, which seeks to amend Article 2 Paragraph (1) of the Marriage Law by adding the sentence "*as long as the interpretation of their religious law and beliefs is left to each prospective bride and groom*" at the end of the norm. The Petitioner aims to establish the benchmark and interpretation of the validity of marriage on the religious teachings and beliefs of each bride and groom, potentially allowing marriages between individuals of different religions.[44] Despite the Petitioner's claim that this petition does not attack religious teachings, it is evident that the petition targets the main teachings of religions, especially Islam, whose holy books prohibit interfaith marriages.[45] This prompted PP Muhammadiyah, the Islamic Defence Front (FPI), and MUI to appear as related parties in order to reject the petition, which was considered ideologically contrary to the teachings of Islam.[46]

The Petitioner's argument in Case No. 68/PUU-XII/2014 is built on the principles of pluralism and human rights, which demand state recognition and protection of the diversity of religious views and interpretations of each citizen. The Petitioner argues that Article 2 Paragraph (1) grants the state legitimacy to impose religious interpretations on prospective bride and groom concerning the prohibition of interfaith marriage, even if they have different beliefs and views. The Petitioner contends that this condition contravenes Article 28I Paragraph (1) of the 1945 Constitution, which states that the right to religion is an inviolable right.[47] The Petitioner's assertion that the purpose of the petition is not to attack religious teachings but to maintain their dignity from potential misuse and smuggling of the law is not accurate. The philosophical basis underlying the Petitioner's assumptions is incompatible with the principles and philosophy underlying the teachings of marriage in religion.

In response to the Applicant's argument that Article 2 Paragraph (1) of the Marriage Law restricts religious freedom, the Islamic organizations FPI and PP Muhammadiyah contend that the Applicant's argument is logically flawed. They argue that the provision is the basis for fulfilling citizens' rights to marry and form a family, and it guarantees protection for individuals to practice their religion. Furthermore, legal smuggling is not a problem of the unconstitutionality of the provision.[48]

MUI adds to this argument, stating that the Petitioner's case is irrelevant to the context of the Marriage Law in Indonesia. The regulation of marriage must be seen in the context of the history of religious life and legal traditions in Indonesia. Historically, the provisions of Article 2 Paragraph (1) were born as a result of a joint agreement of religious communities in the process of forming the Marriage Law. The regulation in the Marriage Law is also seen as being in line with the construction of the state and the style of Indonesian law, which places divinity as the basis and foundation. Marriage, therefore, must be seen as a religious matter framed by religious law, as well as a civil matter.[49]

The Constitutional Court, in response to these arguments, emphasized that Indonesia is a state based on divinity and must respect the existence of religion in the life of its citizens, including marriage matters related to religious teachings. The restrictions in the Marriage Law must be seen as an instrument to ensure that citizens' rights are fulfilled fairly, in accordance with Article 28J of the 1945 Constitution. The Court rejected the Petitioner's argument regarding the restriction of religious rights in Article 2 Paragraph (1). It affirmed that the role of law in a state of law is to regulate citizens' behavior and that citizens must submit to existing arrangements. The Court also affirmed

[44] Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 68/PUU-XII/2014 Tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," PUU § (2015). P. 6.

[45] Johanna Marie Buisson, "Interfaith Marriage for Muslim Women: This Day Are Things Good and Pure Made Lawful Unto You.," *CrossCurrents* 66, no. 4 (2016): 430–49.

[46] Nurcahaya, Mawardi Dalimunthe, and Srimurhayati, "Perkawinan Beda Agama Dalam Perspektif Hukum Islam," *Jurnal Hukum Islam* 18, no. 2 (2018): 141–56, http://dx.doi.org/10.24014/hi.v18i2.4973.

[47] Indonesia, Putusan Nomor 68/PUU-XII/2014 tentang Pengujian Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan. P. 15-16.

[48] Indonesia. *Ibid*. p. 91-101.

[49] Indonesia. *Ibid*. p. 116-120.

that the state's role in marriage is not to interfere with citizens' beliefs and religious affairs but rather to legitimize the marriage process through registration.[50]

MK's legal views in Case No. 68/2014 demonstrate the consistent approach of MK when faced with issues related to religious teachings. The approach used by MK in this case is essentially the same as the approach used by MK in the three previous cases. MK places the core teachings of religion as a philosophical parameter to provide boundaries in interpreting religious freedom in Indonesia. MK's view emphasizes the responsive character of MK's legal system, as they place the core teachings of religion in the perspective of tradition and legal history in Indonesia.

Theoretically, MK's approach of nationalizing the concept of human rights is considered deviating from international human rights principles. However, from the perspective of constitutional guardianship, MK has a responsibility to ensure the continuity of Indonesian constitutionalism, which is built on the basis of belief in God and respect for Indonesia's religious traditions. MK's stance on the petitioner's issue also shows the petitioner's failure to build a sufficient legal argument, as none of the MK Judges chose a different view to support the petition. The different reasons given by Judge Maria Farida represent the shallow understanding of the petitioner regarding the meaning of religious freedom in the Indonesian context. Judge Maria stated explicitly that the petitioner's request related to the addition of the normative structure in Article 2 Paragraph (1) potentially exacerbates legal uncertainty that has existed for some time.[51]

Building on the above cases, MK's entire decision in cases related to religious issues ended in the "victory" of religious organizations. The support of the masses or the majority's representation appears to be a consideration for MK in forming its decision. This can be seen from the legal argument and the substance of the MK decision that accommodates the legal character and aspirations of Islamic organizations. MK's legal stance can be seen as a form of responsiveness to the law that is still within reasonable limits. This responsiveness is also evident in the legal argument and substance of MK's decision on issues not directly related to religious teachings. In the case of Migas and SDA, MK was proven to accommodate various perspectives of constitutionalism proposed by non-religious groups. In fact, in the Migas case, their views and testimony became the basis for judges in interpreting the concept of state ownership of Migas, which is in line with the philosophy of Indonesian statehood.

MK's accommodative stance towards the perspective of religious teachings in religious issues and its acceptance of environmentalism's perspective is part of MK's effort to gain strong legitimacy from the public. MK's legal choices in the above cases can also be seen as part of a normal process in the dialectic and struggle of legal thought among MK Judges who come from diverse backgrounds. Disparity in MK's decisions is formed by differences in legal stances between one case and another. The disparity that occurred in some of the cases above can be seen in the following Table 3.1.

Table 1: Handling religious vs. non-religious organization cases.

Decision	Petitioner	issue	Related Party	Posita	Petitum
Case No. 30/PUU-XII/2014 on the Examination of Law No. 1 Year 1974 on marriage	Yayasan Kesehatan Perempuan	Changes to the marriage age limit	MUI/NU PGI di pihak Pemohon	Consideration of the diversity of age perspectives in religious teachings in Indonesia; The law already provides sufficient protection for children by setting	Reject in its entirety Dissenting Opinion: Maria Faridah Indrati

[50] Indonesia. *Ibid*. p. 150-153.
[51] Indonesia. *Ibid*. p. 155-161.

				marriage requirements	
Number 140/PUU-VII/2009 on the Examination of Law Number 1/PNPS/Year 1965 Number 56/PUU-XV/2017	Inisiatif Masyarakat Partisipatif untuk Transisi Berkeadilan (IMPARSIAL); YLBHI; ELSAM.	Restraint and repression of religious freedom	Ormas Keagamaan Kontra permohonan: Parpol Islam; MUI; dan Forum Komunikasi antar umat beragama. Ormas pendukung permohonan: PGI, KWI, Himpunan Penghayat Kepercayaan (HPK), PHD, dan BKOK.	Religion is a tradition and part of the identity of the Indonesian legal state; The Law on Prevention of Blasphemy only limits the statement of thoughts and attitudes according to his conscience in public (forum externum) which deviates from the main teachings of the religion adopted in Indonesia; The state is obliged to guarantee the orderly religious life.	Declare to reject the petition of the Plaintiffs in its entirety Dissenting: - Harjono - Maria Farida Indrati
Number 68/PUU-XII/2014 on the Examination of Article 2 Paragraph (1) of Law No 1 Year 74	Individual (5 orang anggota masyarakat)	legal uncertainty and human rights violations due to the prohibition of interfaith marriage	Ormas Keagamaan kontra: Muhammadiyah, MUI, NU, dan FPI Ormas keagamaan pendukung: Ormas Non Islam	Respect for religious teachings and religious traditions; The constitutional problems raised are not due to the norms of the Law being tested.	Declare to reject the petition of the Plaintiffs in its entirety
Number 56/PUU-XV/2017 on the Examination of Law No 1/PNPS/ 1965	Individual	Freedom of religion and freedom of expression.	DDII – MUI	Reaffirming the arguments on which the previous judgement was based	Reject in its entirety

The disparity presented in Table 1 above not only clarifies the diverse legal attitudes adopted by the Constitutional Court on an issue, but also highlights the impact of religious organizations on the legal process at the Constitutional Court. Religious organizations have the ability to compile compelling arguments that persuade the Constitutional Court to consider them in the decision-making process.

Furthermore, by examining the cases above, it can be observed that the Court's acceptance of the arguments of religious organizations is largely influenced by their legal acumen and ability to choose relevant legal perspectives that align with the context of the case.

The success of religious organizations in a series of constitutional tests indicates their proficiency in identifying issues that align with their capacity and institutional identity. The success of these organizations in incorporating religious values and traditions into the Constitutional Court's decision-making process is determined by the relevance of these values to the case at hand. Additionally, the rejection of counter-arguments presented by religious organizations, despite being supported by robust scientific reasoning, may also be influenced by the institutional capacity and capability of the organizations involved in the case. The acceptance of arguments presented by Islamic organizations in several cases where they were pitted against non-Muslim organizations must also be analyzed within this context

3.3. Independence bias in religious issues: Between Accommodative and Responsive.

Upon reviewing the trial data above, the Constitutional Court's legal approach towards religious issues appears to be fairly consistent. The Court consistently employs similar perspectives and legal contexts when building decision arguments on religious issues. This accommodative approach towards religious teachings not only aims to obtain balanced input but also provides public legitimacy for the legal process in court. Such legitimacy is crucial as it serves as a foundation for internalizing values and "forcing" submission for each stakeholder to the resulting decision. This need for legitimacy is also evident in issues outside of religion.[52]

The Constitutional Court's tendency to rely on legal perspectives and argumentation from previous decisions, in addition to ensuring legal certainty, also serves to fulfill the final and binding character inherent in its decisions. The Court also frequently considers the constellation of public discourse and socio-historical context of a legal issue to underscore the contextuality of its decision argumentation.

The disparity in the level of success between religious organizations in the process of law formation in the Constitutional Court also highlights the difference in institutional influence and legal capacity of each religious organization. Institutional influence is determined by the credibility (quality) of the institution and the quantity of membership. Both factors are essential in building public legitimacy for the Court's decision. Accommodation based on institutional influence in the practice of testing above is not arbitrarily interpreted as a violation of the principle of independence and impartiality by the Constitutional Court. From the analysis of the arguments of the Constitutional Court and the parties, as well as the loading analysis in the previous discussion, some accommodation practices were carried out appropriately and carefully by considering aspects of relevance, accuracy of the footing, context, and values that built the argumentation. This is evident from the disparity in decisions on two different tests related to the marriage age limit case above.

The Constitutional Court's decision to accept the rejection argument by Islamic organizations in Decision Number 30/PUU-XII/2014 was based on scientific data submitted in the argumentation of Islamic organizations. The data was qualitatively comparable and deemed more relevant than the scientific data submitted in the argumentation of the Petitioner. Therefore, when the Constitutional Court took a different stance (granting) in Decision No. 22-PUUXV-2017-2017, the Court stated that the recognition of the value system that became the context for forming norms must be aligned with changes in the value system of the post-amendment constitution. In this case, the Court did not reject the arguments of Islamic organizations that were submitted in the previous review. However, the Court also did not use them because the argument was no longer relevant to the changing context of the issue.[53]

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[52] Joe Tomlinson, "Do We Need a Theory of Legitimate Expectations," *Legal Studies* 40, no. 2 (January 20, 2020): 286–300, https://doi.org/10.1017/lst.2019.29.

[53] Read points 3.10.5 and 3.11 of the Judge's legal reasoning on the subject matter in Mahkamah Konstitusi Republik Indonesia, "Putusan Nomor 22/PUU-XV/2017 Tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," PUU § (2018).

The Constitutional Court's pattern of accommodation is influenced by its procedural law principles, as well as its role as an institution tasked with providing solutions to citizens' constitutional problems. This choice of accommodation reflects the Court's commitment to popular sovereignty and its institutional role as the guardian of the constitution. In addition to ensuring a just law, the Court must present a law that benefits and prospers all Indonesian citizens. This choice is based on the objective purpose of the constitution and the traditions of the state that informed its formulation.[54] Critics who argue that the Constitutional Court fails to protect the rights of minorities overlook the fact that the Court's judgments are rooted in the traditions and ideals of the state, which should also be shared by minorities.[55] The Court's pattern of accommodation can be defended theoretically, particularly as it relates to its position as a judicial institution. A responsive legal system requires a participatory and equal legal procedure for all interested parties. This requires a democratic public space where civil society, government, and capital owners can interact and advocate for their aspirations and interests equally.[56]

The Constitutional Court can be seen as a political public space, where various interests and aspirations related to a legal issue are debated, and the Court's task is to build the best decision from the deliberation process carried out by the parties. The Court's ability to ensure the implementation of democratic legal procedures and the breadth of benefits that can be generated from its decisions should serve as the benchmark for its performance. The Court's commitment to the state's commitments, values, and principles in the constitution is the best attitude to adopt in the deliberation process in the political public sphere.[57]

Based on the analysis of the accommodation and disparity of decisions presented above, it can be concluded that the Constitutional Court has an accommodative approach in law review cases involving religious organizations. This approach is reflected in the Court's willingness to provide space for the parties to be involved in the legal process during the trial. The trial process of the nine cases analyzed demonstrates that the judges did not restrict the participation of the parties in presenting witnesses and experts to support their arguments. For instance, in the Water Resources Law case, the Constitutional Court accommodated the Government's request to present new witnesses and experts, which made the trial process dynamic and dialectical. This accommodative approach ensures the availability of diverse and adequate information for judges to build a comprehensive legal argument on the case.[58]

This accommodative approach is inherent in the construction and principles of the Constitutional Court's procedural law, particularly the principle of audi et alteram partem, which emphasizes the judges' obligation to listen to the aspirations and testimonies of the parties in a balanced manner. Although only the Applicant is involved in the process of hearing a PUU case, the Panel is obligated to hear the explanations and aspirations of the Government, Parliament, and other related and potentially affected parties. The application of the principle of audi et alteram partem, coupled with

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[54] Yance Arizona, Endra Wijaya, and Tanius Sebastian, *Pancasila Dalam Putusan Mahkamah Konstitusi: Kajian Terhadap Putusan Mahkamah Konstitusi Dalam Perkara Yang Berkaitan Dengan Perlindungan Hak Kelompok Marjinal*, 1st ed. (Epistema Institute dan Yayasan Tifa, 2014), http://epistema.or.id/download/Pancasila_dalam_Putusan_Mahkamah_Konstitusi.pdf.

[55] Margiyono et al., *Bukan Jalan Tengah (Eksaminasi Publik Putusan Mahkamah Konstitusi Perihal Pengujian Undang-Undang Nomor 1 PNPS Tahun 1965 Tentang Penyalahgunaan Dan/Atau Penodaan Agama)*. *Loc.Cit*.

[56] Philippe Nonet and Philip Selznick, *Hukum Responsif* (Bandung: Nusa Media, 2011).

[57] "*According to Habermas, the political public sphere is a place where people can discuss, debate, and make decisions on issues related to the public interest. This political public sphere functions as a place to accommodate differences in views and beliefs in society and enables the creation of a democratic social consensus.*" See: Luke Goode, *Jurgen Habermas: Democracy and the Public Sphere*, Modern European Thinkers (London: Pluto Press, 2005), https://doi.org/10.2307/j.ctt18fs4vv. P. 3-28.

[58] Sekretariat Jenderal Mahkamah Konstitusi, "Risalah Sidang Perkara Nomor 85/PUU-XI/2013 Perihal Pengujian Undang-Undang Nomor 7 Tahun 2004 Tentang Sumber Daya Air Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Acara Mendengarkan Keterangan Ahli/Saksi Pemerintah (VIII)" (Jakarta: Mahkamah Konstitusi Republik Indonesia, 2014).

the active attitude of judges in exploring information, provides a rich treasury of legal materials to build arguments. The comprehensive argumentation derived from this wealth of legal material underlies the birth of a quality decision that seeks to serve the public interest and welfare.[59]

Therefore, the Constitutional Court's accommodative approach in law review cases involving religious organizations reflects its commitment to providing a fair and balanced legal process and a just decision that upholds the Constitution's principles and the ideals and traditions of the state. This approach is grounded in the principles of procedural law that frame the Court's legal procedures and the Court's institutional role as the guardian of the Constitution. While some human rights activists criticize the Court for not adequately protecting the rights of minorities, this criticism may not be entirely accurate, given that the ideals and traditions of the Constitution and the state that form the basis and context for the Court's judgments should be agreed upon by minorities as well.[60]

The accommodative character observed in some of the decisions above can be classified as a responsive character within the framework of responsive law proposed by Selznick and Nonet. This character is not only evident from the Constitutional Court's willingness to provide space for participation and loading aspirations for religious organizations but also from its policy in selecting a legal approach that can harmonize the ideals of the constitution with public needs.[61] This character is demonstrated through the loading of religious organizations' aspirations and the use of legal approaches/perspectives in several cases above.

For instance, in Decision No. 85/PUU-XI/2013 on the Examination of the Natural Resources Law, the Court employed a doctrinal approach and an original public meaning approach in response to the aspirations and arguments of religious organizations. The Court's responsiveness to the legal stance in this case is evident in the incorporation of the religious organizations' perspective, which was done by guiding the ideals of the state and considering the national interest in natural resources. In the other three cases, the responsiveness can be seen in the flexibility of the approach used. The combination of various approaches was utilized to reconcile the aspirations of religious organizations with the context of tradition and constitutional ideals as a frame in interpreting the norm's intent. The use of this approach theoretically places the aspirations of the majority of the community and the public interest as the basis and framework for judges in building arguments and determining decisions.[62]

The aforementioned responsive character cannot be separated from the Constitutional Court's principles of procedural law, which is designed to provide a platform for balanced participation from all relevant parties. The principle of audi et alteram partem emphasizes the judges' obligation to listen to the aspirations and testimony of the parties in a balanced manner, and this principle is actively applied by the Court in all cases. Despite the fact that only the Applicant is involved in the PUU case hearing process, the Panel is obligated to hear the aspirations and explanations of the Government, Parliament, and other parties related and potentially affected. The Court's accommodating attitude has resulted in a dynamic trial process with a series of dialectics, ensuring the availability of adequate and diverse information for judges to compile comprehensive legal arguments.[63] The comprehensiveness of the argumentation derived from this wealth of legal material

[59] Safa'at et al., *Hukum Acara Mahkamah Konstitusi (Edisi Revisi)*. P. 22-23.

[60] Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang*, 2nd ed. (Konstitusi Pers, 2006). P. 204-205.

[61] Nonet and Selznick, *Hukum Responsif*. P. 84.

[62] John O. McGinnis and Michael B. Rappaport, "Unifying Original Intent and Original Public Meaning," *Northwestern University Law Review* 113, no. 6 (2019): 1371–1418. P. 1377 and 1379

[63] "*… The case before us must be considered in the light of our whole experience and not merely of what was said a hundred years ago… The authority must rather be conceived as flowing from the "whole experience" of nationhood. That experience legitimately claims our allegiance because weare necessarily included within it, and hence responsible both for what it has been and what it might become. What is authoritative is thus neither more nor less than our common commitment to the flourishing of the mutual enterprise of nation hood*". Robert C. Post, "Theories of Constitutional Interpretation," *Representations* 30, no. Special Issue: Law and the Order of Culture (1990): 13–41, https://doi.org/10.2307/2928445. P. 23-24.

is capable of underpinning the birth of quality decisions, which are made based on an in-depth evidentiary procedure with the public interest (welfare) as its goal.[64]

Through a legal framework such as this, social aspirations and pressures are placed as a source of knowledge and a gap for the Court to evaluate itself and the legal product being tested. From the nine cases above that have generated strong public enthusiasm, the judges in forming their decisions also appear to consider the publicity and positioning of religious organizations that are conducting the test. This is basically common when it comes to the purpose of law, which also takes into account the aspects of representation and the weight of the usefulness of a legal product. From the above nine cases, the Court's pattern of law is clearly evident in Case No. 17/PUU-VII/2009, in which one of the applicants is PGI. The Court appears to take into account the existence of MUI and several other Islamic organizations that represent the values and aspirations of the majority group in the scheme of argumentation and decision-making.[65]

This pattern can also be seen in several other cases that pit minority and majority groups, especially on issues that directly intersect with religious traditions. For example, in Case No. 30/PUU-XII/2014 on the Testing of Law No. 1 of 1974 concerning marriage, and Case No. 140/PUU-VII/2009 on the Testing of Law No. 1/PNPS/1965, the general picture of the Court's reasoning places tradition based on majority aspirations as the basis for its lawmaking. In the perspective of democracy, accommodating the aspirations and traditions of the majority in legal practice is common. Accommodating the voice of the majority in a court decision cannot be seen as a form of majority tyranny, considering that the Court opens up space for dialectics and diversity of attitudes as reflected in the differing views of the judges (dissenting opinions).

4. CONCLUSION

The principle of independence and impartiality of judicial power is crucial to the rule of law and is enshrined in various laws and regulations, including the Indonesian constitution. The Constitutional Court of Indonesia is subject to procedural law and codes of ethics for judges, which bind both the court and individual judges in their behavior both inside and outside the court. However, the implementation of these principles is not easy, especially when dealing with religious issues in a pluralistic society with high civil society dynamics. The court must balance the need to be impartial and independent with the need to accommodate the development of civilization and public aspirations and expectations.

The two religious issues presented in this paper illustrate the dilemma of the operation of the principles of independence and impartiality of judicial power. The court tends to accommodate the aspirations of the people and pay more attention to the legal perspectives of the majority religious communities. This tendency is particularly evident in cases that confront majority religious organizations with minorities. However, this does not necessarily indicate dependency or partiality on the part of the court. Instead, it can be seen as an attempt to build legitimacy for its decision, and the judge's choice of law can be understood as a representation of their legal paradigm. Ultimately, the most appropriate benchmark for assessing independence is the consistency of methodologically accountable law.

In conclusion, the independence and impartiality of judicial power is essential to the rule of law, and the Constitutional Court of Indonesia is subject to procedural law and codes of ethics for judges. While the court must balance the need to be impartial and independent with the need to accommodate the development of civilization and public aspirations and expectations, the court's tendency to side with the majority perspective cannot necessarily be seen as a form of dependency or partiality. Instead, it can be seen as an attempt to build legitimacy for its decision, and the most

[64] Aidul Fitriciada Azhari, *Tafsir Konstitusi, Pergulatan Mewujudkan Demokrasi Di Indonesia*, ed. Idi Subandy Ibrahim, 2nd ed. (Genta Publishing, 2017). P. 127-130.

[65] "*Constitutional construction by courts, in turn, is largely responsive to larger changes in political culture, public opinion, and the work of the political branches*". Jack M. Balkin, "Framework Originalism and the Living Constitution," *Faculty Scholarship Series* 103, no. 2 (2009): 549–614.

appropriate benchmark for assessing independence is the consistency of methodologically accountable law.

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