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Constitutional Court Dysfunction as a Guardian of Constitutional Rights of Religious Minorities in Indonesia

Manotar Tampubolon[a]

Abstract

Right to freedom of religion and belief guaranteed by the constitution in the positive legal order, in practice, does not necessarily guarantee freedom. The Constitution of the Republic of Indonesia provides a guarantee of religious freedom for every citizen under Article 28 E of the 1945 Constitution. The Constitutional Court, which is required to protect, maintain, and ensure religious freedom for religious minorities, is deemed to fail guarding the right of religious minorities, because in addition to providing a restrictive ruling on a judicial review of the rule of law which is contrary to the basic law, it also fails to interpret legal products under the laws as part of the constitution. The Constitutional Court dysfunction as a guardian of the constitutional rights of religious minorities occurs because of the vacuum of law (*recht vacuum*), a narrow interpretation of the constitution by the constitutional judges. The urgency that needs to be addressed is to provide the Constitutional Court with a more extensive authority, which is not limited only to review legal products under laws, but also includes production of Law on Freedom of Religion and Belief for protection in the application of Article 28 E of the 1945 Constitution.

Keywords

Constitutional Court, right to freedom of religion, guardian of human rights, discriminatory rules, interpretation of constitution

According to the Annual Report of the International Commission on Religious Freedom as issued by the U.S. Commission on International Religious Freedom for 2013, Indonesia is in the second tier of religious freedom. The commission in its report states:

> Indonesia is a stable and robust democracy with political institutions able to advance and protect human rights. In recent years, however, the country's traditions of religious tolerance and pluralism have been strained by ongoing sectarian tensions, societal violence, and the arrest of individuals considered religiously "deviant". While the government has addressed past sectarian violence and effectively curtailed terrorist networks, religious minorities continue to experience intimidation, discrimination, and violence. The Indonesian Government, including the local police, provincial officials, and the courts, often tolerates activities of extremist groups, fails to enforce national laws protecting religious minorities, and issues lenient sentences to individuals arrested for engaging in violence. In addition, national laws and provincial decrees have led to serious abuses of the freedom of thought, conscience, and religion or belief, including destruction or forced closure of religious venues and imprisonment of individuals accused of blasphemy or "deviant" religious teachings.

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One significant issue found from the commission's report is that the Indonesian Government (the state) often tolerates activities of extremist groups and fails to enforce the national laws protecting religious minorities. The government is also considered to fail in providing assurance and fulfillment of the constitutional rights of religious minorities and often takes no action (tolerates) in cases of discrimination against religious minorities (Zeya 2013).

The 1945 Constitution clearly provides protection of the right to worship and believe for the citizens as outlined in Article 28 E:

> (1) Everyone shall be free to embrace their religions and to worship according to their religions, to choose education and teachings, occupation, nationality, and residence within the state territory and leave the same, and return thereto;
>
> (2) Everyone shall be entitled to freedom to be convinced of their belief, express their opinions and attitudes, according to their conscience.

As the fulfillment of the constitutional rights or to protect, ensure, and realize the guarantee of the constitutional rights set out in some constitutional articles, a strong institute that maintains the supremacy of the constitution positioning the constitution in the highest authority is required. As a result, the protection of human rights in Indonesian constitution is critical because it is one of the state's obligations (Kurnia 2014). The most concrete way to ensure the protection of human rights is to limit the state's authority in the constitution through courts (Brand 2005).

Review of laws and constitution by the Constitutional Court is one of the best mechanisms to guarantee the protection of religious rights of religious minorities. The constitutional rights would be meaningless in the absence of an enforcement mechanism. Therefore, the idea of establishment of the Constitutional Court under Article 24 C of the 1945 Constitution was embodied as a protector and guardian of the constitution. One of the most important institutions in the protection of human rights is court. The Constitutional Court bears an obligation to uphold the basic rights and freedoms in the constitution. Kelsen suggests about the rule validity that the enforceability of constitutional rules in respect of the legislation can be effectively guaranteed only when an organization other than the legislature is tasked to review whether or not a legal product is constitutional, and to invalidate the enforceability if, according to the organization, the legislature's legal product is unconstitutional.

From the Kelsen's description above, there are at least two important things implied about the existence of the Constitutional Court: the Constitutional Court's authority as the only reviewer of law validity. The Constitutional Court has the right to cancel laws that are contrary to the basic law (Constitutionality of Law) and the Constitutional Court's authority to protect and fulfill the guarantee of constitutional rights, being the freedom of religion and belief of religious minorities.

RELIGIOUS FREEDOM AS THE STATE'S CONSTITUTIONAL OBLIGATION

According to the Stanford Encyclopedia of Philosophy, "Human rights are international norms that help to protect all people everywhere from severe political, legal, and social abuses" (Nickel 2013). These rights also include the basic rights and freedoms to which all humans are entitled, often held to include the right to life and liberty, freedom of thought and expression, and equality before the law. From both definitions of the rights, there are two transcendental points, which are rights owned by a person just because he is a human being and inseparable from his own existence as a human being. Separating human rights from the owner does not only deny the existence of human as a God's creation, but also a denial of his existence as a citizen whose liberty is guaranteed by the basic law.

Normatively, the state has affirmed its commitment to freedom under Article 28 Paragraph E Sub-paragraphs 1 and 2 of the 1945 Constitution. Law No. 39 of 1999 on Human Rights and Law No. 12 of 2005 concerning Ratification of the International Convention on Civil and Political Rights also expressly state that religious freedom as a fundamental right of every human being. The state also guarantees the freedom for every citizen to embrace a religion, and others are not allowed to force their will in any way whatsoever, especially through violence and radicalism.

Other provisions providing elucidation of the right to freedom of religion or belief are set forth in the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. This declaration describes the principles of non-discrimination, equality before the law, and the right to freedom of thought, conscience, religion, and belief. All countries are required to prevent and eliminate discrimination based on religion or belief, take all actions to produce or invalidate legislation to prohibit any discrimination and take all appropriate measures to combat intolerance based on religion or belief.

The right to freedom of religion and belief in the 1945 Constitution Article 28E explicitly guarantees the right to freedom of religion for all citizens. When comprehensively analyzed, two significant points are implied in this article: The first is the right to worship freely, privately, or publicly, religious practices that are not contrary to public order and morals, and the second is that the state is obliged to provide protection to the followers of religious sects in practicing worship. Protection in practicing worship, as guaranteed in the constitution, is fully submitted as the "obligation" of the state through its organizations, (especially the Constitutional Court) in terms of fulfillment of the constitutional rights and the responsibilities are also left entirely to the state. Hence, when this guarantee is not enforceable in terms of fulfillment, the responsibility will be demanded and the state is the only party responsible for such failure (negative obligation). Conversely, when adverse actions are suffered by religious minorities or intolerance among different religions occurs, the state is also the party to blame as the constitutional obligation submitted to the state is not performed (positive obligation). From both obligations, the moral responsibility to secure the embodiment of human rights should fall on national institutions that are fully responsible for the fulfillment of individual rights and able to carry out their obligations as effectively as possible.

While the obligations are imposed to and held responsible from the state, the state itself is often a predator of religious freedom, particularly against religious minorities. Pieris (2007) claims that the government as the executive mandate of the people uses the mandate as a tool to legitimize itself and utilizes it as an instrument of oppression. People are obliged to submit to the government only when the government protects their basic rights, which are morally higher than the government's interests. Clack and Hug (1998: 4) suggest that a government is legitimate to the extent that the government systematically protects and promotes the utilization of human rights by the people.

Asshiddigie (2005) addresses that a country that does not guarantee the rights of its citizens cannot be said to be a true state of law. On the contrary, according to Hobbes, a state can actually guarantee the right to freedom of religion because it has an absolute power to impose. It is not only able to require, but even effectively force, leaders and religious followers that are fanatic and reluctant to comply with the rules of peaceful coexistence (Engel 2011). The state's role is vital to the fulfillment of freedom of its citizens. The state guarantees the basic rights for all and ensures the existence of a neutral public space, in which different religious communities can coexist and have dialogues when problems arise

(Boyle and Sheen 1997).

According to Human Rights Watch (HRW) (2013) report, the state institutions in Indonesia, in addition to be a protector of human rights, it also serves as a violator of human rights of religious minorities. It states that:

> Indonesian Government institutions have also played a role in the violation of the rights and freedoms of the country's religious minorities. Those institutions, which include the Ministry of Religious Affairs, the Coordinating Board for Monitoring Mystical Beliefs in Society (*Badan Koordinasi Pengawas Aliran Kepercayaan Masyarakat, Bakor Pakem*) under the Attorney General's Office, and the semi-official Indonesian Ulama Council, have eroded religious freedom by issuing decrees and fatwas (religious rulings) against members of religious minorities and using their position of authority to press for the prosecution of blasphemers.

Furthermore, Donnelly (1982) claims that violations of individual human rights are not limited to violations of the law of the victims, but are also failure in providing their rights and do lawfully appropriate things to provide these rights. It means that violations of the right of freedom are not only in the form of a ban to practice worship, but are also failure of the government to provide a sense of security to different religious followers to practice their religions, including the stipulation of discriminatory policies and politicization of religion for particular interests, all of which are violations of the state's positive obligations.

On the other hand, the state's role, which should protect the embodiment of the right of religious freedom for religious minorities is weak, and it often takes no action to maintain the harmony of religions and beliefs. In terms of the goal that law is a tool to rule, it is contrary to the ideas of *Pancasila* (Indonesian State Ideology) that is built on legal certainty, social usability, justice for the sake of national interest, human dignity, recognition, respect and protection of human rights, and the principle of unity in diversity (Sidharta 2013).

Violations of the right to religious freedom of religious minorities are increasing as the government's inaction in the event of violations of constitutional rights. According to the data released by the Wahid Institute, violations of religious freedom of religious minorities increased significantly from 2009 to 2012 with exception for the year 2013, by both state actors and non-state actors (Nengerlina 2012). Actions taken by the state as violators of religious freedom of religious minorities consist of two types: direct actions taken in violation of rights of minority groups, such as issuance of laws that discriminates/disadvantages minority faiths, being the actors in the destruction of houses of worship by reason of holding no building permit (*Izin Mendirikan Bangunan*), or state's omission with regard to violators of religious freedom. State's omission is often found in police officers in respect of non-state actors, and they even tend to support discrimination and anarchy committed by the actors. Even in the chaotic circumstances, the state did not use its coercive instruments to prevent intolerance and discrimination against followers of religious minorities. Therefore, it is not an exaggeration that the state is called as the "mind-setter" in some anarchic actions suffered by religious minorities.

From Table 1, it is obvious that the crimes against the rights of religious minorities by the state actors increased significantly each year except in 2013. The state actors in this case consisted of legislative, executive, and judicial officials, such as police officers, prosecutors, judges, government officials, including regents, mayors, and municipal polices, who also played a role in the violations of rights to religious freedom of minorities. These might include direct actions, such as omission (no defense for minorities) making violations of freedom of religion and belief persist.

The lawgiver (legislature) with discriminative legal products is more suitable to be categorized as a

Table 1. Violations of Religious Freedom in Current Five Years Committed by State Actors and Non-State Actors (2009-2013)

Year	State actor	Non-state actor	Total
2013	106	139	245
2012	166	197	363
2011	122	195	317
2010	87	153	240
2009	40	113	153

Note: Source: The Wahid Institute (2013).

reincarnation of Hobbes with his *Pactum Subjectiones*. The state seems to receive the full mandate of the people to give the state an absolute authority (Friedmann 1990). The authority is sometimes misused for political interests to maintain power.

In addition to deprivation of rights and freedoms of individuals by the state as a result of absolutism, it is also regarded as a deliberate politicization by the authorities/the state for the purposes of securing their interests. The government often tolerates the intolerance of majority against minority; whenever the state cracks down on the actors, the vote rights of the majority, as the ruling government's assets, are likely to have a mass exodus to other candidates. Hollenbach suggests that religious beliefs and traditions may have an indirect influence on legal policies and state (Hosen 2005). Religious values are not used as a source of state ethics, ideology is interpreted unilaterally, and state authority is misused to maintain power (Arinanto 2008). State politicizes religion: State's alignment to majority groups is not without any purpose, but for the sake of power continuity at the end (Intan 2005).

FAILURE OF THE CONSTITUTIONAL COURT AS A PROTECTOR OF HUMAN RIGHTS

The reasons of failure by the Constitutional Court in the fulfillment of the right to freedom of religion and belief can be viewed from at least three points: first, the way of thinking of constitutional judges who are mostly positivistic, seeing laws contextually; second, the vacuum of law (recht vacuum) on freedom of religion and belief guarantee to religious minorities with the ability to provide assurance and fulfillment of rights of minorities as guaranteed under the 1945 Constitution; and third, the inability of the Constitutional Court's judges in interpreting the constitution itself, thus providing restrictive rulings on religious freedom of religious minorities (judicial review of Law No. 1/PNPS/1965).

Positivism of Constitutional Justice

Constitutional Judges' way of legal thinking will greatly influence the judgment of a case. Legalistic, positivist thinking in handling lawsuits will bring judges into the legal thinking paradigm of so-called legal analysis in accordance with applicable regulations. The point of truth is the contents/articles of legislation alone. The law, which in the actual form is infinite, is reduced to a certain extent by judges to be applied to judge events occurred. The resulting rulings will purely meet the formalistic aspects, and the justice created is justice by legislation.

Legalistic, positivist constitutional judges are one reason for the failure of the Constitutional Court in providing constructive justice to religious minorities. Judges think rigidly, rely everything on written laws,

and override unwritten laws. Judges decide cases textually with regard to legal issues faced by emphasizing written laws as the main source, while judges' tasks are not only to resolve lawsuits, but also to resolve social cases through breakthroughs and interpretations of constitution and laws in favor of constructive justice.

The basic principle of positivism is that state's legal order is not applicable because of having a basis in social life, soul of nation, and natural laws, but it is the positive form of an authorized institution. Furthermore, it is viewing law from the juridical form regardless of the "soul". In other words, law serving as law only exists because of its formal form. Rules are always understood by the parameter of positive law only and even the positive law tends to be glorified to do assessments of problems under the legislation hierarchy mechanism. The *Unsprungnorm* view by Kelsen, stating that supreme law is formal, written law, law is a command of the law giver (Austin), "Law is a command and relationship of law and moral is unnecessary" (Hart), "Law is a rule issued by the authority" (Nawiasky) (Prasetyo and Barkatullah 2012: 201), tends to influence constitutional judges' thinking in deciding judicial review of law in respect of freedom of religion and belief with full of restrictions.

In association with the theory of Austin and Nawiasky, which essentially states that law is a command of law giver, it affects Indonesian judges' thinking. Law, according to Austin, is the supreme ruler, which, *de facto*, is adhered to all members of the community, while law itself is not subject to anyone (Rasydi and Putera 2003). For example, the power that creates commands, such as the Joint Ministerial Regulation (*Peraturan Bersama Menteri*), results in a shift in the principles and concepts of State of Law into State of Regulation that puts laws produced by the government as a measure of truth. The Joint Ministerial Regulation is used for self-legitimization by the government in the context of repression of right to religious freedom of minorities. In such a law, every unfair government action is justified by the stipulation of law through the use of authority attribution, positioning law as a justification instrument with the positivistic character; hence, justice is only seen from the legislation point of view in deciding cases.

State and law arise from human life because of the desire of individuals to obtain order. However, this concept is not applicable in the positivism doctrine. With the absolute law as a consequence of the analytical positivism doctrine, the meaning of law produced by humans is a command and an absolute rule made by rulers with the obligation for each individual to comply with. The obligation to comply with formal rule forcefully is based on fear of legal sanction, not on respect to the rule itself. The people are required to comply with it wholeheartedly, which may very easily raise a possible establishment of an authoritarian ruler regime of a state following the doctrine. Law is taken into a formal, mechanistic context regardless of conscience, making it easy for law enforcement conduct actions that are merely to meet formal requirements, despite in contrary to the public sense of justice. In fact, justice is not obtained, but it is rather a normative legal certainty. The positivist view eventually leads to the legist doctrine, under which judges are viewed as merely the mouthpiece of the law.

In the case of Judicial Review of Law No. 1/PNPS/1965, in addition to the ruling decided based on the legal positivist thinking, constitutional judges are also considered incapable of interpreting the meaning of the right to religious freedom as a right that should not be interfered with anyone, including the government/state. Judges, in their consideration, have entered the restricted arena, which is one's forum internum. Taylor (2005) suggests that forum internum is a private area of one's internal rights, which cannot be interfered with by state in any case whatsoever. This reflects that the right to freedom of religion in its

various forms may not be restricted by rules because such right is abstract. It is because religion and belief adhered to a person directly relate to the creator (God). The rights in forum internum include rights to interpret beliefs and faiths to the extent not contrary to the basic law.

Restrictions to authority of constitutional judges not to enter one's forum internum are tangible evidence of state's recognition and guarantee of freedom of religion and belief. This recognition takes the form of a guarantee of religious freedom as set out in several articles of the 1945 Constitution and the Constitutional Court plays as the tool. This is important not only to limit the power of the state so as not to break through or suppress the right to religious freedom of citizens, especially minorities, but also reciprocally provides assurance to the people as the holder of constitutional rights and to claim their legitimate rights. In a state of law that is democratic and based on the constitution, the inclusion of human rights, including the right to freedom of religion and belief in the constitution, is vital and must be protected and fulfilled by the state. The constitution is the supreme law and any regulations there under must not be contrary to the constitution.

Actually, the positivism also recognizes law outside the laws, provided, however, that the law is confirmed by laws. In addition, the legal positivists essentially do not distinguish between existing or applicable (positive) laws and laws that should exist, containing ideal norms. However, the positivists assume that these laws must be separated in different areas.

Vacuum of Law (Recht Vacuum)

The constitution can only be enforced and rights of minorities under the constitution can be realized when the Constitutional Court is authorized to review whether or not a legal product is constitutional. In other words, the Constitutional Court is entitled to exercise its authority to review the validity of laws to the constitution when the laws already exist. In fact, legislation on religious freedom does not exist (vacuum) to date in Indonesia. Thus, cases that may arise in the society regarding deprivation of right to religious freedom of religious minorities may not be referred to the Constitutional Court for material review (this should not happen because judges should form and not find the law). Therefore, the Constitutional Court's authority, which is often called as "constitutional review", or an authority to review the constitution, as the development of a modern democratic state based on the "rule of law", particularly the protection of human rights, in this case, the protection of religious minorities is also impossible to enforce because the law does not exist. This is in contrast with the main tasks of the Constitutional Court, according to Asshiddigie (2005), including to ensure the proper functioning of relationship among legislative, executive, and judicial agencies and to maintain the absence of power domination and/or abuse of authority by either authorized institution and to protect individual citizens from abuse of power by any state agencies that are detrimental to their fundamental rights guaranteed under the constitution.

The consequence of vacuum of law (recht vacuum) is legal uncertainty (*rechtsonzekerheid*) or legislation uncertainty, which will further result in legal chaos (*rechtsverwarring*), in the sense that to the extent of no clear and regulated rules, it means unallowable. This causes chaos of what rules should be used or applied to review religious freedom of religious minorities in the absence of certainty of which law is applied to regulate things or circumstances that occur to them.

Bill on Freedom of Religion and Belief for religious minorities is required to fill the vacuum of law or rechts vacuum, despite the concept or term of religious freedom found at different levels from the constitution to laws. The vacuum of law has led to discrimination to the existence of religious minorities

in the exercise of their constitutional rights. Some other considerations of why the Bill on Freedom of Religion and Belief is necessary are because the existence of religious minorities under the constitution and legislation does not correspond to social reality: the marginalization of religious minorities in national political policies; and the restrictions of constitutional rights through national (the Joint Ministerial Regulation) and local (bylaws/PERDA) legislation policies.

Establishment of Law on Freedom of Religion and Belief creates judicial signs that national legislation policies concerning the protection of right of worship and belief can be done equitably. Furthermore, codifying laws or regulations with regard to the right to freedom of religion and belief of religious minorities will prevent the emasculation of the right, while empowering their constitutional rights as set out in the 1945 Constitution. The vacuum of law can be mitigated by way of legal finding (*rechtsvinding*), which is the effort of a judge in the event of an incomplete or unclear law, or by way of initiative by the law giver, in which case the House of Representatives [*Dewan Perwakilan Rakyat* (DPR)] and the government (the president). The National Legislation Program (*Program Legislasi Nasiona—Prolegnas*) is a legislation program mechanism and an effort to address the vacuum of law.

Having such law, according to its function for the protection of human rights, and the protector of constitutional citizen rights, the Constitutional Court is a place for victims of constitutional rights deprivation to complain and/or review the validity of laws and legal products as state and non-state tools to deprive the right of worship and belief of religious minorities. Violated and deprived constitutional rights of religious minorities should be brought to the Constitutional Court as it is contrary to Article 28 E of the 1945 Constitution. Normatively, the state has affirmed its commitment to freedom under Article 28 Paragraph E Sub-paragraphs 1 and 2 of the 1945 Constitution. Law No. 39 of 1999 on Human Rights and Law No. 12 of 2005 concerning Ratification of the International Convention on Civil and Political Rights also expressly state that religious freedom as a fundamental right of every human being. The state also guarantees the freedom for every citizen to embrace a religion, and others are not allowed to force their will in any way whatsoever, especially through violence and radicalism.

Guarantee of the right to worship and belief given by the state through the 1945 Constitution to religious minorities becomes a dilemma that cannot be resolved by the Constitutional Court to date. Religious minorities whose rights to worship and belief are deprived by state and non-state actors who find it difficult to defend their rights, because in addition to the Constitutional Court not serving as a place to complain (Constitutional complaint), it is also not entitled to review "legal products" under laws widely used by local governments to emasculate the right of worship and belief of religious minorities. The Constitutional Court, which should protect the constitutional rights of religious minorities, in the absence of right to review legal products under laws that prejudice religious minorities in defending their rights, once again fails to guard rights of religious minorities as a result of the vacuum of law.

Inability of the Constitutional Court in Interpreting the Constitution

Interpretation of law is one factor that is highly important to make law dynamic, able to keep up with the times. Interpretation of law by constitutional judges, as one of law enforcement officials, should be based on consideration of the principles of positive law application, which is done for the purposes of applying law as a function of service or supervision to public activities, and maintaining law as a result of violation of a rule of law as practiced by the state and society. In this case, the interpretation of law is the job

of constitutional judges to essentially be able to decide cases of judicial review of laws in order to provide considerations leading to equitable decisions.

In deciding cases of judicial review of laws, the Constitutional Court, due to its function in the protection of human rights, including the protection of right to religious freedom of religious minorities within the framework of the rule of law, requires judges with the ability to explore, comply with, and understand the values of living law within the society. Judges should create resolutions as desired by the justice seekers based on the law they establish or find. Furthermore, in adjusting legislation with judicial review cases submitted, judges cannot always solve them by exposing the facts under the rules through interpretation, but they must further be able to find and establish the law by themselves through legal construction by way of analogy, *Rechtsverfijning* and *Argumentum a contrario*.

The most extreme point on definition of the constitution is simply interpreted as Constitution alone, thus arising an assumption that rules or legal products other than the constitution is not part of the constitution, is an erroneous view.

Meanwhile, there are many legal products under laws in the form of bylaws (PERDA) issued by local governments that are highly detrimental to the right to freedom of worship of religious minorities. Due to the erroneous view that the Constitutional Court is entitled to review laws against the constitution only, the intended legal products escape from judicial review because the materials/contents could not be petitioned for judicial review to the Constitutional Court.

According to Kelsen, constitution in the material sense consists of rules that govern the establishment of general norms, particularly the establishment of legislation. From the Kelsen's description emphasizing rules governing the establishment of norms, it is understandable that all rules, both written and unwritten, are constitution. Schmitt (2008) also points out that constitution is not only the constitution, but is capable of covering all ideas listed one by one as the constitution as mentioned in the constitution in the relative sense (able to guarantee legal certainty). Therefore, the constitution is actually not only rules written in the constitution, but it includes rules and norms acceptable to regulate people's lives and a commitment to liberty under the law.

CONCLUSIONS

The Constitutional Court has very heavy authorities, one of which is for the protection of human rights. However, when observed from the performance of the Constitutional Court in the said protection, it can be concluded that the Constitutional Court has not given a lot of hopes for victims of human rights violations, particularly violations of right to worship and belief of religious minorities. On one side, many violations of freedom of worship and belief are caused by constitutional judges' positivist thinking, making them unable to provide restrictive decisions to religious minorities.

The vacuum of law in the form of legislation/laws governing Freedom of Religion and Belief also has led to discrimination to the existence of religious minorities in the exercise of their constitutional rights. The inability of constitutional judges in interpreting the constitution also results in increased discrimination to religious minorities because discriminatory rules, which hierarchically are under the laws and contrary to the basic law, cannot be reviewed by the Constitutional Court in the absence of authority for it. This condition causes the Constitutional Court, which serves as a human rights protector, to fail in protecting victims of violations of the right to worship and belief, which are mostly suffered by religious minorities.

The Constitutional Court should be given a broader authority, including an authority to review discriminatory rules that hierarchically are under the

laws, since rules that discriminate religious minorities are mostly issued by local governments in the form of Sharia Local Laws (PERDA Syariah).

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