Unfulfilled Guarantees: Impacts of Law and Regulations Concerning Inter-Religious Relations on Religious Freedom in Indonesia

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Abstract

The condition of interfaith relations in Indonesia faces many challenges as intolerance increasingly occurs in various regions. The action can be seen from various violations of freedom of religion and belief, the prohibition of establishing houses of worship, and violence against minorities. One of the causes of these problems relates to the law and several regulations in interfaith relations in Indonesia. This article tries to look at the regulations and legal aspects of interfaith relations and their impact on the conditions of diversity in Indonesia. Using an empirical-legal approach, this article explores legal materials and phenomena related to the interfaith relation in Indonesia. This article reveals that the Constitution has been firmly guaranteeing and protecting all citizens from expressing their beliefs. Nevertheless, several cases show a contrary of the law objectives on interfaith relations in Indonesia. Moreover, in some particular cases, the state seemed to be absent in the locus of incident and favor of freedom violation victims instead.

Keywords: Regulation, Law, Inter-Religious relations in Indonesia

Introduction

Indonesian society is a mosaic, which is divided into many categories: religious beliefs, cultural character, ethnic identity, traditional patterns, language tastes and expressions, historical heritage, class choices, political affiliation, character display, and various other categories. It must be immediately realized here that the diversity of Indonesian society is a collection of identities that each stands alone.

These diverse and distinct identities emerge naturally, but on the other hand, can create distance. This distance can be widened and narrowed depending on the extent of interaction and communication between ethnic and interfaith. It can be further stretched to conflict and narrowed to give birth to mutual understanding and even harmonious cooperation. As from the birth of Budi Oetomo, the mosaic of ethnic, cultural, and religious diversity began to be spun in Indonesian ties. The bond was strengthened again when Indonesian youths swore by affirming one homeland, one nation, and one language. Unfortunately, after entering the era of spinning reforms, it now seems like they are being confronted with the strong demands and demands of group egoism, regionalism.[2]

Constitutionally, in the 1945 Constitution, it is stipulated that every citizen is free to embrace his religion and beliefs, including Article 28E paragraph 2, Article 29 paragraph 1, relating to the details of these articles will be explained in the discussion section. However, in the last ten years, clashes between groups with religious backgrounds, tribal fanaticism, and the emergence of radicalism, acts of terrorism have had an impact on the condition of Indonesia's diversity.

This article will answer the most basic questions: first, how statutory law aspects can overcome conflicts between religions. Second, the authors analyze the government

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[2] Achmad Syahid, *Peta Kerukunan Umat Beragama Di Indonesia.* (Jakarta: Puslitbang Kehidupan Beragama Depag RI, 2002). xxix-xxxi.

regulations on a case-by-case basis and their impact on diversity. By relying on literature studies based on annual reports of several Non-Governmental Organizations and Universities, then surveys, then literature with primary legal material by identifying and inventorying relevant laws and regulations.

This paper departs from library-based research (library research[3]), i.e., by reviewing several articles in the Law including article 28, Article 29 paragraph 2, Article 28 I, Law No. 39 on Human Rights and international documents, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (KIHSP). In addition to library data relating to human rights and freedom of belief, this article also contains data on events and cases of violations of religious freedom in Indonesia.

Reports and surveys on cases of violations of religious freedom and several conflicting events are processed both analytically and descriptively so that the results can be explained as comprehensively as possible for the readers. While the approach used is juridical-normative which focuses the study on various legal rules in interfaith relations, including analyzing cases of religious conflict.[4]

Besides, the data were obtained from two sources. Generally, in research, there are primary and secondary sources.[5] First, the primary source is articles relating to human rights and freedom to embrace beliefs and beliefs (the articles have been mentioned above). Second, secondary data in this article are research reports and surveys on human rights violations and religious freedom in Indonesia.

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[3] Lexi, J. Moleong, *Metode Penelitian Kualitatif.* (Bandung: Rosda Karya, 2000).

[4] Johny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*, (Surabaya: Bayumedia Publishing, 2005).

[5] Yuyun Wahyuni, *Metodologi Penelitian*, (Yogyakarta: Fitramaya, 2009).

Conditions of Diversity and Interfaith Relations in Indonesia

Demographic facts show that the distribution of the population and adherents of religion in Indonesia is uneven. Two large islands, namely Papua and Kalimantan, have vast areas but with a minimal population. On the narrower island of Java, the area is inhabited by a population more significant than the two islands. Inequality of distribution also applies to religious adherents, which occurs because of differences in the entry of these religions into the archipelago. For some people, inequality in the composition of the population and religious adherents in an area is considered normal and does not need to be debated. However, for some people, demographic inequality can be a complex issue that leads to conflict, especially using the majority-minority approach.

Has been mentioned above, in Indonesia, the composition of the population is not synchronous with the total area. For example, it will not be easy to find provinces outside Java, which has more than 10 million people. Two large islands, namely Papua and Kalimantan, are inhabited by a very minimal population. Thus, there are still many areas that human hands have not touched. On the other hand, Java Island, which is only around 1/3 of Kalimantan, is inhabited by around 70% of the total population of Indonesia. Likewise, North Sumatra, which is smaller than Kalimantan, is inhabited by a large population. It turns out that the province of North Sumatra currently has over 12 million people, and the third-largest city in Indonesia is Medan, with a population of over 2 million.[6]

In Indonesia, most of the population is Muslim, with a total percentage of around 87% after that, following

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[6] Ahmad Saifuddin Fedyani, *Agama Dalam Politik Keseragaman: Suatu Refleksi Kebijakan Keagamaan Orde Baru*, (Jakarta: Puslitbang Kementerian Agama RI, 2000), p. 10.

Christianity, Catholicism, Hinduism, and Buddhism.[7] Indicators of Islam followership are presented by all provinces in Sumatra, Java, Kalimantan, all of Sulawesi except North Sulawesi, West Nusa Tenggara and North Maluku. Christians are the majority in North Sulawesi, Papua, and Catholics in East Nusa Tenggara. Hinduism is the majority in Bali, while Buddhism does not have a majority among the provinces. Meanwhile, provinces with a relatively balanced population are found in Central Kalimantan and Maluku. However, if detailed in the regency group, the majority position will not always be permanent.

The majority is a category that refers to an amount that exceeds the others. The determination of the majority can be realized on a Mondial, national and local scale. For example, from a material perspective, Christians are far greater than those of other religions. However, when it is associated with the Middle East region, the majority category is dropped to adherents of Islam. If it is associated with China, then the majority population is adherents of Buddhism and Taoism, following Islam and Christianity.[8]

From the perspective of the composition of religious adherents, there is no official recognition of the power structure of a religion. Recognition of religion arises from society which manifests in two ways, namely normative and praxis. Normative religious appearances are religious teachings contained in the scriptures called revelations. However, this has not yet become a measure of the life and development of religion. Religion gets recognition from society when it has lived in the praxis of social life. That is when religion has a symbiotic relationship with culture.

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[7] See the data of Badan Pusat Statistik, Sensus Penduduk 2010 (Central Agency on Statistics, population census in 2010).

[8] Ridwan Lubis, *Cetak Biru Peran Agama: Merajut Kerukunan, Kesetaraan Gender, Dan Demokratisasi Dalam Masyarakat Multikultural*, (Jakarta: Badan Litbang Agama Depag, 2005), p. 51-53.

Positively, the symbiotic relationship will appear in the relationship of religion and culture that support each other. However, Indonesia is still built based on a national nation, so the principle of togetherness as fellow citizens is always a reference in every policy decision in Indonesia. On that basis, it is crucial that a harmonious relationship pattern between minority-majority communities be formulated, both in terms of ethnicity and religiosity, in the future. Our success in formulating this will significantly contribute to Indonesia's survival as a nation and Indonesia's development planning process.

It has already been mentioned about the diversity of languages and other ethnic groups; in addition to the ethnic issues mentioned above, other issues contribute to the pattern of life of religious communities in Indonesia, namely the religious dimension associated with such ethnicity. Religions in Indonesia: Islam, Catholicism, Protestantism, Hinduism, Buddhism, and Confucianism. Kong Hu Cu religion in the new order era was not officially recognized in Indonesia, while the new order government officially recognized the other five religions. During Gus Dur's reign, the terms official and unofficial religion were abolished. According to Gus Dur, who knows whether religion can be said to be a religion or not, it is not the state but is its adherents. (Kompas Daily, 2000)

Of the religions mentioned above, Islam is the most adherent. However, according to Geertz, Islam is divided into three groups, namely: *priyayi, abangan* (*Kejawen* or *agami jawi*), and *santri,* although the use of this category is widely criticized because of the sometimes boundary between the behavior of a *santri* and an abangan in Java in the 50s. Various kinds of *santri* behavior sometimes can be similar to the *abangan*.

Abangan is very close to pre-Islamic mystical beliefs (*kebatinan* or *kejawen*), then in the future, the term *santri* refers to devout Muslims, while abangan is usually used to

refer to those who do not practice all Islamic practices regularly.[9]

Indonesian Muslims are divided into abangan and *santri*, but they are also modern and traditional. Although the abangan and *santri* categories initially applied to Javanese, this category can now also be used to differentiate the Indonesian population as a whole: nominal Muslims and strong Muslims. People who live in coastal areas tend to be more Islamic, whereas those who live in rural areas tend to be more "indigenous." Besides the Muslims, many Javanese and Manado people are Catholics, Bataks and Ambonese are Protestants, and Balinese Hindus. Even though they are a minority, they are very influential in Indonesian society. This minority group represents some crucial positions in government.

Because Indonesia is a multi-religious country, Indonesia can be said to be a country prone to national disintegration. Many symptoms of national disintegration that occur lately involve religion as a contributing factor. However, the issue of religion is one of the issues that easily creates conflict. For example, the Ambon case, which broke out again, was often rumored as a dispute between two religious groups, even though this issue was not necessarily accurate.

Mapping Religious Conflict in Indonesia

First of all, it is essential to emphasize the history of violent conflict has colored the history of modern Indonesia after independence from 1945 to the late 1970s. Conflict, therefore, is not something entirely new in the history of modern Indonesia, both horizontal and vertical conflicts. The history of violent conflict in Indonesia can even be traced far back. For example, what was done by religious leaders and or political elites against the colonial government.[10]

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[9] Andree Feilard, *NU Vis-à-Vis Negara.* (Yogyakarta: LKiS, 1999), p. 5.

[10] Ahmad Syafii Ma`rif, *Situasi Dan Kekuatan Konflik Dalam Sejarah Indonesia Kontemporer*, (Jakarta: Harmoni, 2002), p. 14-24.

Conflict and violence or riots are not the same. Conflict does not have to be followed by violence or riots that cause considerable casualties, As happened in various regions. Conceptually conflict in the social sciences does not always have a negative connotation. According to Coser, conflict within certain limits is essential for forming groups and continuing group life. Conflict is part of the dynamics of a system and reintegration process that takes place in society. Without conflict, there will be no dynamics or change. In contrast, change is a necessity for a system that lives like a community.

However, destructive conflicts, which are excessive into riots and violence that can destroy the system itself, must be avoided. Moreover, violent conflicts that use religious symbols are hazardous. If a social conflict turns into a conflict between religious communities, the solution becomes complicated and complex.[11]

Because the conflicts that caused the riots spread almost all over Indonesia, accurate information about conflict cases and social riots are needed to be input in making policy for fostering harmony and anticipating the avoidance of similar cases from elsewhere.

Throughout 2010, there were at least 81 cases of intolerance. In terms of type, the most common cases were assault and destruction (24 cases); closure and rejection of houses of worship (24 cases); threats, demands, and intimidation (15 cases); obstruction of worship activities (6 cases); discrimination because of belief (4 cases); dissolution of activities in the name of religion (3 cases); and criminalization of religious understanding (3 cases); and eviction (2 cases).[12]

Of the 81 cases of intolerance, 63 cases (80%) were acts of attack, rejection of houses of worship, and

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[11] Mursyid Daulay, *Konflik Sosial Bernuansa Agama Di Indonesia*, (Jakarta: Puslitbang Kehidupan Beragama Depag RI, 2002), p. 12.

[12] Zuhairi Misrawi, *Laporan Toleransi Dan Intoleransi Tahun 2010: Ketika Negara Membiarkan Intoleransi.* (Jakarta: MMS Society, 2010), p. 4-5.

intimidation. It shows that vigilantism is a strong tendency in intolerance cases. Moreover, almost all cases of intolerance are related to religious matters. Even if it is not directly related to religious issues, such as the forced dissolution of a meeting or the dismantling of a statue, the action was realized or not realized by religious doctrine. This fact once again shows that the problem of religion is sensitive and requires extra careful handling. Unfortunately, this extra-cautious attitude is often trapped in the attitude of neglect towards acts of intolerance.

In terms of the area of intolerance, West Java ranks highest. It is far more than in other places which are relatively small in number, such as East Java (6 cases), DKI Jakarta and South Sulawesi 4 cases each, Riau, North Sumatra, and Central Java 3 cases each, West Nusa Tenggara one case and several other regions one case. Even from 81 cases of intolerance, more than half (49 cases or 61%) occurred in this region. Therefore West Java seems to need serious attention from both the government and mass organizations, and the community in general.

Of the 49 cases in West Java, most occurred in Bekasi, Bogor, Garut, and Kuningan. In Bekasi, all victims of cases of intolerance are Christians, in the form of obstruction of worship activities, sealing houses of worship, and attacks on HKBP worshipers. In Bogor, from 10 cases of intolerance, 7 of them involved Christian casualties, mainly related to church problems; and the rest is the Ahmadiyah case.

While in Garut and Kuningan, all victims were Ahmadiyah groups. What is heartbreaking from this is that the Ahmadiyya group has experienced ill-treatment from the government, mass organizations, and the community, especially in the last five years. As the party most responsible for maintaining the peace of the citizens, the police barely do anything to protect the Ahmadiyah community. As a result, this group has always been a victim of various acts of intolerance from year to year.

Characteristics of cases of intolerance can be seen at least four things, first, in the case itself. Although the cases are the same, for example, the destruction of places of worship that has repeatedly occurred, each case is different. This difference mainly concerns the triggers, the level of escalation, and the social influence that results.

Second, the place and time of the incident. The context of place and time is often its uniqueness that distinguishes one case of intolerance. Therefore, events in one place cannot always be handled in the same way as other cases.

Third, the parties involved in it give a different feel. Perpetrators of intolerance can be divided into state/government, mass organizations, and specific business entities or institutions. The difference between these three things merely shows that each case of intolerance cannot be approached in the same way. Even in reality, the three groups sometimes do not stand alone on the ground but collaborate with inner groups.

Fourth, the victims of intolerance themselves. Every case of intolerance must bear a victim. Whether we realize it or not, the victim is the party that must get the earliest attention in handling intolerance cases. Moreover, because of that, the victim's voice should be heard more than the voices of other parties.

Although cases of intolerance have distinctive characteristics, there is a common thread that can be drawn from every case of intolerance, namely the inability to dialogue coldly and gracefully. Efforts to resolve the problems that should have been pursued by dialogue could not be achieved because some groups had no room for compromise. That is why intolerance cases always use the path of good attack, physical attack (raids, destruction, arson), and psychological attacks (threats, intimidation, terror). Like it or not, intolerance, which was a joint problem between groups with different identities, turned into a public problem. Because of both physical and psychological attacks, both will involve the state as an orderly social guardian.

The publication of several annual reports on religion regularly issued by non-governmental organizations and the government lately is a positive development that we should appreciate. If we look at it, two extreme points are opposite of existing reports. On the one hand, there is an assessment that the quality of religious life in Indonesia has deteriorated, following various omissions of violations of religious freedom, so that it is already at the "red light" stage. On the other hand, there is an assessment of religious tolerance in Indonesia, which is still generally good, "normal," there are only a few individual cases, and that is not a "religious problem." This annual report presents three discussion chapters: (1) Religious public policy; (2) Blasphemy of religion, house problems, Religious and terrorism; Blasphemy's provocation' of peace.[13]

In this report, we note 7 cases. They are violent blasphemy (heresy) outside the *Ahmadiyah* case, including heresy allegations against the Millah Abraham Community in Aceh and Medan and the expulsion of the Shiite community in Sampang Madura. Meanwhile, carrying the Ahmadiyya community, the CRCS report listed 20 acts of violence against the *Ahmadiyya* community during January-August 2011. These acts of violence included raiding and destroying houses, demolition of mosques, burning books, beatings, attacking, killing, and dismantling the graves of *Ahmadiyah* followers.

Regarding Ahmadiyah, several provincial and district / city-level local governments have acted more and more violently against the Ahmadiyya community from the 2008 SKB. This report notes that at least 19 regulations were issued by governors, regents/mayors, or heads of offices at the regional government level related to Ahmadiyah during January-October 2011. The case of conflicts over houses of worship, especially the Taman Yasmin GKI, which continued to drag on to attract international attention, also

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[13] Zainal Abidin Bagir, et.al. Laporan Tahunan Kehidupan Beragama di Indonesia 2011, (Yogyakarta: CRCS UGM), p. 22.

shows the trend of local governments to act harder than the central government.

In general, there has been a weakening of the central government, both dealing with community groups and with local governments. While the center seems to leave the status quo, seeking security when dealing with controversial issues, regions are increasingly brave against the center. What does the 'regionalization' trend have concerning the hardening of religious issues with democracy and decentralization? Will this trend be more potent in 2012 and the following year? Regarding houses of worship, the CRCS report noted 36 cases consisting of 26 cases (72%) related to churches and 10 cases (28%) related to mosques. In most cases, 25 cases (70%) are inter-religious conflicts, and 11 cases (30%) are internal conflicts in a religious community. Based on location, West Java (West Java, Banten, Jakarta) is still a problem concentration point, namely 9 cases (25%), followed by Central Java (7 cases or 19%) and North Sumatra and Riau 4 cases (11%) respectively. The rest are scattered in East Kalimantan, Central Kalimantan, Central Sulawesi, South Sulawesi, Maluku, East Nusa Tenggara and Papua. Issues relating to places of worship include arson, bomb terror, closure, demolition, and throwing houses of worship.

Violence remains a central theme of the problem of relations between religious groups in Indonesia. Four significant violence incidents (three of which occurred almost simultaneously) claimed three fatalities and four seriously injured in Cikeusik, a series of violence in Temanggung and Pasuruan in February 2011. By the end of 2011, the potential for conflict in Sampang Madura had arisen since mid-2011 exploded into the burning of a Shiite Islamic boarding school, forcing 253 people to flee. Nearly every incident of violence, attacks on houses of worship, and many other cases of the security forces are always late in taking action. While the quantity and quality of police strength may indeed be the reason for that weakness,

It is also true that even if there is a tension here and there, it is a consequence of the extraordinary diversity in

Indonesia. Indeed, minority groups and religious sects in Indonesia and their houses/places of worship are generally safe. However, if we look at the rampant conflicts, violence, a small portion of religious communities find it difficult to express their diverse freedom, until the destruction of places of worship and the loss of lives in acts of violence in 2011, increasingly doubt that the situation of religious life in Indonesia is harmonious and growing forward.

When a handful of houses of worship experience problems and even are attacked, what is lost is not only a handful of houses of worship but a sense of security. Especially if the causes are varied and not always clear, likewise when a mosque in Cirebon or a church in Solo arrives a suicide bomber, for no apparent reason why the two houses of worship were chosen, or why is the Shi'a *pesantren* now under attack, lest another *pesantren* be destroyed.

This sometimes-random nature of violence removes security: after this, what and where else? In addition to the bad news, CRCS' annual report also shows some good examples. For example, how the community and officials can resolve conflicts about houses of worship in a place, progress in handling terrorism, the efforts of some politicians to fight the arbitrariness of regional officials in the case of houses of worship and accusations of blasphemy, strong ethos of religious organizations in the development of peace, and the growing desire to revive Pancasila as the glue of difference in Indonesia.[14]

In addition, this year, there were also positive efforts to guarantee religious rights and respect for religious differences in the community. These efforts are still relatively minimal but still must be appreciated as a positive development. The efforts referred to include: the Court against the perpetrators of Ahmadiyah violence in Cikeusik, the Court against the leadership of Front

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[14] Zainal Abidin Bagir, et.al, *Laporan Tahunan Kehidupan Beragama di Indonesia 2012*, (Yogyakarta: CRCS UGM, 2012), p. 31.

Pembela Islam in South Sulawesi, the Supreme Court's decree related to the Bogor Yasmin GKI case, the Ombudsman Recommendation for the Mayor of Bogor, the trial of suspected terrorism crimes such as Abu Bakar Baasyir, Cirebon bombers, Solo bombers, Serpong bombs, and book bombers. Positive developments in the political sphere are the withdrawal of PDIP support for the Mayor of Bogor, Diani Budiarto, who is considered to have violated the law and violated the religious freedom of the GKI Taman Yasmin Bogor congregation. In the social sphere, appreciation also needs to be given over the attitude of NU religious organizations, which is very clear in the case of Ahmadiyah violence in Cikeusik.

PBNU`s *Syuriah*[15] attitude of rejecting and condemning the perpetrators of violence represented the attitude of the majority of Indonesian Muslims to reject violence. NU's role in this matter must be directed at creating a new national consensus on the place of Islam in the life of the nation and state.[16]

Internationally, appreciation needs to be given to the serious attention of various international institutions regarding the situation of religious life in Indonesia. Appreciation should also be given for the continuous efforts made by various groups such as NGOs, educational institutions, media associations, mass organizations, and others to spread tolerance and respect differences. These efforts never stop despite various challenges and tests. Various international pressures in the form of letters, statements, and various political measures have greatly

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[15] PBNU`s Syuriah is the deliberative body of NU that makes the highest decisions in the NU management structure. In the context of the state, syuriah can be said to be a legislative council. The origin of the word Syuriah is taken from the word syawara, which means deliberation.

[16] Greg Barton, *Prisma Pemikiran Gus Dur*, (Yogyakarta: LKiS, 2000), p. 165.

influenced the improvement of guarantees of religious freedom in the country.[17]

Legal Aspects in Interreligious Relations in Indonesia

The development of religion in Indonesia is related to various other sectors of life, which is very complex. Through a very long historical process, it is sufficient reason to conclude that gradually, religion has become such a part of mastering the hearts of Indonesian people.[18]

However, the success of religion penetrates the roots of Indonesian people's lives; it does not mean that the old roots originating from local traditions and culture are entirely gone. Such conditions can also be observed in other parts of the earth. Religious struggles with local cultural values require continuous adjustments without losing the original idea itself. The confrontation of religion with historical reality will bring about new realities, not only due to the internal struggle of religion facing challenges that must be answered, but also its involvement in the historical process as an actor who helps determine the circumstances of the times.[19]

During the reign of the New Order-Reform, the religious discourse that developed in Indonesia did not have enough room to freely articulate differences between religions, and then the differences were dialogue in a friendly and mutual understanding atmosphere. What happened during the New-Reformation era was a powerful state hegemony, including religious discourse, so that interfaith relations were almost entirely pseudo-relations under the slogans of "interfaith harmony." The state hardly allows religious leaders to produce different discourses

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[17] Subhi Azhari M., Nurun Nisa, M Alamsyah Djafar, Badrus Samsul Fata. *Lampu Merah Kebebasan Beragama ; Laporan Kebebasan Beragama dan Toleransi Di Indonesia*, (Jakarta: The Wahid Insitute, 2011), p. 9.

[18] Drewes G.J.W, *Indonesia: Mistisisme Dan Aktivisme, Islam Kesatuan Dalam Keragaman*, (Jakarta: Yayasan Perkhidmatan, 1983), p. 327.

[19] Taufik, Abdulah, *Islam Di Indonesia*, (Jakarta: Tintamas, 1974), p. 3-8.

from those determined by the state to be practically subject to repressive power.[20] The Government's basis for banning a particular sect is the rather unsatisfactory one of the needs to preserve public order and tranquility and the need to prevent civil unrest endangering society. Stigmatizing of "unpopular faith" or "deviant" sects in Indonesia, does not only relate to the specific freedom of religion guaranteed by the Constitution, but also to the general political turn from authoritarian to democratic circumstance. [21]

The trials faced by the Indonesian people were truly insistent. Not to mention finished by overcoming the monetary crisis that struck especially the underprivileged, the situation that accompanied the succession of state leaders continued to be a concern. At the beginning of this year, the situation of Indonesia raised extreme concerns, especially over the matter of expressing freedom. Not surprisingly, many people are analogous to these conditions with the civil war in other countries—casualties from various parties. Critics also came from all parts of the country and other countries. This phenomenon shows the crisis of national integration, the fragile joints of the state-supported by various political, social, and primarily legal instruments are now being questioned for their validity. Harkristutti Harkrisnowo various pros and cons opinions have been raised through the mass media, but one thing is sure is that many parties have violated the law.[22]

Freedom of expression is part of fundamental human rights that everyone must respect and protect by the state. Freedom of expression, sometimes also called "freedom of speech," is one type of freedom that the Indonesian

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[20] Chusnul, Murtafiin, *Dekonstruksi Wacana Agama.* (Yogyakarta, 2008), p. 4.

[21] Alfitri, "Religious Liberty in Indonesia and the Rights of "Deviant" sects", *Asian Journal of Comparative Law*, Vol.3 Issue 1, 2008.

[22] Harkristutti Harkrisnowo, *Hukum Sebagai Panglima? Upaya Menuju Reformasi Bangsa*, dalam M. Deden Ridwan dan Asep Gunawan (ed.), *Demokratisasi Kekuasaan: Wacana Ekonomi dan Moral Dalam Membangun Indonesia Baru* (Cet. I, Jakarta : LSAF, Oktober 1999), p. 105.

Constitution recognizes. International documents' freedom of expression is also recognized, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (KIHSP). However, some countries limit this type of freedom, especially those related to so-called "hate speech," i.e., any conversation that can insult someone based on race, gender, sexual orientation, ethnicity, and religion. Freedom of expression is not only concerning freedom of speech.[23]

In Indonesia, religious freedom is generally guaranteed by the Constitution and various laws and regulations. In Article 28E of the 1945 Constitution, it is expressly stated that "Everyone is free to embrace religion and worship according to his religion" (paragraph 1) and that "Everyone has the right to freedom to believe in beliefs, express thoughts and attitudes following his conscience" (paragraph 2). This guarantee is further strengthened in Article 29, paragraph 2 of the 1945 Constitution, which states that "the State guarantees the independence of each population to embrace their respective religions and to worship according to their religion and beliefs."

Following the Constitution above, in Article 28I, the same Constitution states that freedom of religion and belief is part of "human rights which cannot be reduced under any circumstances" (paragraph 1). Therefore, this document stressed, "Everyone has the right to be free from discriminatory treatment on any basis and has the right to get protection against such discriminatory treatment" (paragraph 2). In 1999, this guarantee was reaffirmed by the issuance of Law No. 39 concerning Human Rights. Article 22, paragraphs 1 and 2 states, "Everyone is free to embrace their respective religions and to worship according to their religion and beliefs" and that "the State guarantees the freedom of everyone to embrace their respective

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[23] Murtafiin Muchtar, Tenriangke Adinda dan Koban Antonius Wiwan, *Menegakkan Hukum Dan Hak Warga Negara : Pers, Buku, Dan Film.* (Jakarta: Freedom Institute, 2010), p. 2.

religions and to worship according to their religion and beliefs."

In addition, there is also one international document that expressly defends freedom of religion and belief, one of which is the Universal Declaration on Human Rights (UN General Assembly Resolution 217 [III], 10 December 1948). Even though the document was declared, Indonesia was not officially a member of the United Nations; this declaration was later accepted and socialized by the Indonesian government.

Article 18 of the Declaration states: "Everyone has the right to freedom of thought, conscience, and religion, in this case including the freedom to change religions or beliefs, and the freedom to declare religion or beliefs in a way alone or together with others, and both at the place general or home. "

Another UN document relating to freedom of religion and belief in the declaration on the Elimination of all Forms of Non-Harmony and Discrimination based on Religion and Belief (UN General Assembly Resolution 36/55, 25 November 1981), which among others states: "No one may be subject to discrimination by the state, institutions, groups, people or any people for religious or religious reasons. "Indonesia is also bound by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the government has ratified and ratified through Law No. 29 of 1999, which among others states that "the right to freedom of thought, belief, and religion" must be respected and any discrimination in this context must be denied.[24]

The role of the 1945 Constitution as a unifier does not mean the Constitution eliminates or negates the differences of all Indonesian people. As a unifier, the 1945 Constitution must recognize, respect, and maintain the diversity of religions to create harmony between religious

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[24] Ihsan Ali Al Fauzi dan Saiful Mujani (Ed), *Gerakan Kebebasan Sipil : Studi dan Advokasi Kritis Atas Perda Syariah* (Cet. I, Jakarta: Freedom Institute, 2009), p. 26.

communities. In-State Indonesia, in this case, the government is the institution that is primarily obliged to guarantee freedom of belief and all its derivatives. One of these efforts is contained in several laws and regulations, including; Law number 8 of 1965 concerning blasphemy, then PBM[25] number 9 of 2006, and the minister of home affairs number 8 of 2006 concerning guidelines for regional heads in maintaining religious harmony.

Concerning the existence of PBM number 9 and the Minister of Home Affairs No. 8 of 2006, where the authority is given to the Governor, Article 5 explains in more detail the duties, principal, and functions of regional heads to implement the legal basis, namely: First, maintaining public order. Including facilitating the realization of religious harmony in the province. Second, coordinating the activities of agencies vertically in the area in maintaining religious harmony. Third, cultivate harmony. Fourth, fostering regents and mayors in implementing regional governance in public peace and order in religious life.

Concerning the articles in the PBM, there is no single provision that can use as a basis for reducing, obstructing, or prohibiting the right to religious freedom. In this PBM, the Governor is obligated to be a kind of facilitator, harmonizer, and mediator of interfaith dialogue.

Paying attention to the entire PBM subsection in the statutory system, PBM only regulates matters relating to the implementation of freedom of religion and belief to create religious harmony. This PMB cannot interpret and be used to reduce citizens' freedom of religion and belief. The higher legislative structure has recognized that freedom of religion and belief is a fundamental right that absolutely cannot be reduced for any reason.

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[25] PBM stands for joint ministerial regulation. in this case between the minister of religion and the minister of home affairs related to the establishment of houses of worship.

In Indonesia, religious freedom is generally guaranteed by the Constitution and various laws and regulations. Article 28E of the 1945 Constitution clearly states that "everyone is free to embrace his religion and worship according to his religion" (paragraph 1) and that "everyone has the right to have the freedom to choose their own beliefs, to express thoughts and attitudes according to his conscience" (paragraph 2). This guarantee is further supported by Article 29, paragraph 2 of the 1945 Constitution, which states that "The State guarantees the independence of each resident to embrace their religion and to worship according to their religion and beliefs."

In line with the Constitution above, in Article 28I, the same Constitution states that freedom of religion and belief is part of "human rights which cannot be reduced under any circumstances" (paragraph 1). Therefore, this document states, "Everyone has the right to be free from discriminatory treatment on any basis and has the right to get protection against such discriminatory treatment" (paragraph 2). Then, in 1999, this guarantee was reaffirmed by the issuance of Law no. 39 concerning Human Rights, which states that "everyone is free to embrace his religion and to worship according to his religion and belief" and that "the State guarantees the freedom of everyone to embrace their religion and to worship according to their religion and beliefs" (Article 22, paragraphs 1 and 2).

In addition, one international document firmly defends freedom of religion and belief, one of which is the Universal Declaration of Human Rights (UN General Assembly Resolution 217 [III], 10 December 1948). Even though the document was declared that Indonesia had not officially become a member of the United Nations, this declaration was later accepted and socialized by the Indonesian government.

Article 18 of the Declaration states: *"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in*

public or private, to manifest his religion or belief in teaching, practice, worship and observance." Another UN document related to freedom of religion and belief in the Declaration on the Elimination of all Forms of Disharmony and Discrimination based on Religion and Belief (UN General Assembly Resolution 36/55, 25 November 1981), which among other things, states: "No one shall be subjected to discrimination. by any state, institution, group, person or person for reasons of religion or belief." Indonesia is also bound by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the government has ratified and ratified through Law no. 29 of 1999, which among other things, states that "the right to freedom of thought, belief and religion" must be respected. Any discrimination in this context must be rejected.

Finally, the law has a function to carry out social engineering. The concept of law should be in line with the development of society. Religious harmony is one of the legal ideals for a country with a plurality of religions; the State has a role to be a liaison. The prolonged inter-religious conflict does not find a middle way due to weak law enforcement on the factors that break harmony, acts of anarchism in the name of religion, or the weak assertiveness of the government.

In the context of the relationship between religion and State, there will be two different perspectives: The first perspective applies the State as an arena of the inter-religious constellation; consequently, State policy is the final product of the State tug of war between religious and political institutions. They are fighting to use democratic methods in solving the problems that occur because democracy as a standardized system of competition and conflict requires reliable ways to manage it peacefully and constitutionally while maintaining certain boundaries of morality, order, and control.[26]

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[26] Azyumardi Azra, Reposisi Hubungan Agama dan Negara: Merajut Kerukunan Antar Umat, (Jakarta: Penerbit Kompas, 2002), p. vvi.

In the second perspective, the State as an actor that is entirely separate from plurality is developing a secular state format and constitutional democracy. The introduction of citizens into this context eliminates religious-based loyalty to loyalty that leads to a nation-state. Particular study has pointed out that Indonesia has a distinctive form of nationalism namely godly nationalism. This kind of nationalism creates different condition in religious affairs that differ from either secular or religious nationalism.[27] However, as long as some religions and other beliefs show their loyalty to state ideology and support legal ruling government, they cannot be considered as sub-ordinate citizen in Indonesia.[28]

Conclusion

The realization of religious harmony requires continuous processes and efforts without stopping. Therefore, maintaining it must involve all resources with support, namely policies through laws and regulations. The data in this article shows that there are many regulations and legal rules that protect freedom of religion and belief in Indonesia. However, these legal regulations and policies are contextually problematic in their application when dealing with conflict cases in the regions.

In the future, the challenges of religious life will be more severe. The plurality of society can increase clashes between religious adherents, plus the issue of interests with political and economic backgrounds will trigger conflicts. However, if government policies are implemented, a harmonious religious life will maintain the rule of law.

Conflict of Interest:

The authors declare that they have no conflict of interest.

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[27] Jeremy Menchik, "Productive Intolerance: Godly Nationalism in Indonesia", *Comparative Studies in Society and History*, Vol 56 issue 3, 591-621, 2014.

[28] Muzayyin Ahyar, "Ahmadiyah dalam Labirin Syariah dan Nasionalisme Ketuhaan di Indonesia", *Mazahib: Jurnal Pemikiran Hukum Islam*, Vol 14 issue 2, 2015.

BIBLIOGRAPHY

Ahyar, Muzayyin, "Ahmadiyah dalam Labirin Syariah dan Nasionalisme Ketuhaan di Indonesia", *Mazahib: Jurnal Pemikiran Hukum Islam*, Vol 14 issue 2, 2015.

Alfitri, "Religious Liberty in Indonesia and the Rights of "Deviant" sects", *Asian Journal of Comparative Law*, Vol.3 Issue 1, 2008.

Azhari M. Subhi, Nisa Nurun, M Djafar Alamsyah, Samsul Fata Badrus, *Lampu Merah Kebebasan Beragama; Laporan Kebebasan Beragama Dan Toleransi Di Indonesia.* Jakarta: The Wahid Insitute, 2011.

Azra, Azyumardi, *Reposisi Hubungan Agama dan Negara: Merajut Kerukunan Antar Umat*, Jakarta: Penerbit Kompas, 2002.

Bagir, Zainal Abidin, *Laporan Tahunan Kehidupan Beragama Di Indonesia.* Yogyakarta: CRCS UGM, 2012.

Barton, Greg, *Prisma Pemikiran Gus Dur.* Yogyakarta: LKiS, 2000.

Chusnul, Murtafiin, *Dekonstruksi Wacana Agama.* Yogyakarta. 2008.

Daulay, Mursyid, *Konflik Sosial Bernuansa Agama Di Indonesia.* Jakarta: Puslitbang Kehidupan Beragama Depag RI, 2002.

Drewes G.J.W, *Indonesia: Mistisisme Dan Aktivisme, Islam Kesatuan Dalam Keragaman.* Jakarta: Yayasan Perkhidmatan, 1983

Fauzi, Ihsan Ali and Mujani, Saiful, Al, *Gerakan Kebebasan Sipil : Studi Dan Advokasi Kritis Atas Perda Syariah.* Jakarta: Freedom Institute, 2009.

Feilard Andree, *NU Vis-à-Vis Negara.* Yogyakarta: LKiS, 1999.

Harian Kompas, *Tajuk Kompasiana.* 2000

Ibrahim, Johny, *Teori Dan Metodologi Penelitian Hukum Normatif.* Surabaya: Bayumedia Publishing, 2005

Lubis, Ridwan, *Cetak Biru Peran Agama: Merajut Kerukunan, Kesetaraan Gender, Dan Demokratisasi Dalam Masyarakat Multikultural.* Jakarta: Badan

Litbang Agama Depag, 2005.

Menchik, Jeremy, "Productive Intolerance: Godly Nationalism in Indonesia", *Comparative Studies in Society and History*, Vol 56 issue 3, 591-621, 2014.

Misrawi, Zuhairi, *Laporan Toleransi Dan Intoleransi Tahun 2010 : Ketika Negara Membiarkan Intoleransi*. Jakarta: MMS Society, 2010.

Moleong, Lexi J, *Metode Penelitian Kualitatif*. Bandung: Rosda Karya, 2000.

Murtafiin, Muchtar, Tenriangke Adinda dan Koban Antonius Wiwan, *Menegakkan Hukum Dan Hak Warga Negara : Pers, Buku, Dan Film*. Jakarta: Freedom Institute, 2010.

Saifuddin, Ahmad Fedyani, *Agama Dalam Politik Keseragaman: Suatu Refleksi Kebijakan Keagamaan Orde Baru*. Jakarta: Puslitbang Kementerian Agama RI, 2000.

Syafii Ma`rif, Ahmad, *Situasi Dan Kekuatan Konflik Dalam Sejarah Indonesia Kontemporer*. Jakarta: Harmoni, 2002.

Syahid, Achmad, *Peta Kerukunan Umat Beragama Di Indonesia*. Jakarta: Puslitbang Kehidupan Beragama Depag RI, 2002

Taufik, Abdulah, *Islam Di Indonesia*. Jakarta: Tintamas, 1974.

Wahyuni, Yuyun, *Metodologi Penelitian*. Yogyakarta: Fitramaya, 2009.