

THE PROBLEM OF IMPLEMENTATION OF THE RIGHTS OF RELIGIOUS FREEDOM IN INDONESIA

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Abstrak

Salah satu masalah utama yang dihadapi oleh bangsa Indonesia di era globalisasi adalah konflik dan kekerasan berbasis agama, baik secara internal maupun antara kelompok yang berbeda agama. Konflik sosial berbasis agama berbasis konflik dan kekerasan sering terjadi di sejumlah daerah di Indonesia. Konflik antar-agama tidak pernah dianjurkan oleh agama di dunia. Tidak ada agama yang mendorong pengikutnya untuk menyebabkan konflik. Agama dapat menjadi kekuatan yang kuat yang mengubah orang menuju perdamaian, keadilan dan kesejahteraan bila dalam kehidupan beragama dikembangkan pluralisme. Pluralisme adalah kesediaan untuk mengenali perbedaan dan menerima keberagaman sebagai kekuatan alami dalam hidup untuk kemudian berkomitmen untuk membangun solidaritas dan kerjasama demi perdamaian dan harmoni. Pluralisme tidak berarti bahwa seseorang harus melepaskan identitas agama seseorang dan komitmen sendiri menafikan seseorang untuk memeluk agama, dan juga tidak berarti bahwa salah satu campuran sinkretisme ajaran agama yang berbeda. Inti dari pluralisme adalah komitmen yang kuat untuk membangun hubungan sinergis satu sama lain untuk memastikan kedamaian dan harmoni. Pluralisme mendesak untuk pemenuhan hak asasi manusia, termasuk kebebasan beragama dan berkeyakinan.

INTRODUCTION

Indonesia as the greatest archipelagic country is the fourth most populous country in the world with more than 240 million people and consists of more than 17.000 islands. Heterogeneity of population is indicated by the availability of more than 200 ethnic groups with more than 300 vernaculars. The official language is Bahasa Indonesia. Variation also occurs to culture, religion and belief. The religions, among others are Islam, Protestant, Catholic, Buddhism, Hinduism, Confucianism, Bahai, Sikhism, Tao and Jews, and also Indonesia



has more than 300 hundreds indigenous religions such as Sunda Wiwitan, Parmalim, Kaharingan, Tolotang.

It is important to note that Indonesian Muslim community epitomizes a case of exceptional uniqueness. In spite of being designated as the world's largest Muslim community, Indonesia is not an Islamic State. Such condition came up because the founding fathers and mothers of this republic -the majority of whom were Muslim- did not choose Islam as the foundation of the state. Rather, they chose *Pancasila* as state philosophical foundation and at the same time as the guideline in establishing the state's political power. Pancasila (Five Pillars) consist of; belief in One Supreme God; just and civilized humanity; Indonesian unity; people democracy led by wisdom through deliberation and representation; and social justice for all Indonesian people. These five principles are very compatible with the universal values of human rights. And also it is very conducive for upholding democracy and pluralism. Actually, Pancasila encompasses basic principles of all religions existing and flourishing in Indonesia. And what is more important, Pancasila reflects the idea of *bbinneka tunggal ika* means unity in diversity. This concept serves as the unifying glue of the highly diverse Indonesian nation, either in terms of race, color, language, religion, and faith.

In my opinion, the choice of *Pancasila* was very realistic. There are at least two supporting reasons. First, Indonesia is the home to people of great ethnic diversity, with their respective distinct culture and language, inhabiting thousands of islands in the Nusantara Archipelago, spreading from Sumatera in the western to Papua in the most eastern part. Secondly, since long time ago communities inhabiting the Nusantara Archipelago have been known as religious communities who are willing to accept the arrival of different religions originating from outside Nusantara, such as Christian, Islam, Buddhism, and Hinduism.

RELIGIOUS FREEDOM AFTER SOEHARTO ERA

The demise of Soeharto after more that three decades in power was followed by unprecedented political freedom, especially for Muslim groups who in the past had been severely restricted in the public sphere. As a result, Islamism flourished in as Muslims were now able to freely express and articulate their ideas in the public domain without fear of reprisals.

There were at least three important implications of the fall of the New Order



Regime and the freedoms that followed. First, the establishment of numerous Islamic political parties that adopted Islam as their foundational basis and replacing the *Pancasila*, Indonesia's state ideology. It should be noted that between May and October in 1998, 42 parties which could be classified as "Islamic" were established. Two parties, PPP (the United Development Party) and PBB (the Crescent Star Party) insisted that article 29 of the 1945 Constitution be amended to reinsert the famous 7 words. They believe these words would officially provide *shari'ah* with the constitutional status within the Indonesian national legal system. Unfortunately, the proposal to reintroduce the clause which would have required Indonesian Muslim to apply *shari'ah* has been unsuccessful on three separate occasions (the annual sessions of the People's Consultative Assembly in 200, 2001 and 2002). In the 2002 annual session, the Assembly decided not to amend Article 29 of the 1945 Constitution. However, Islamic Parties continue to advocate the formal application of *shari'ah*.

Secondly, the emergence of Muslim groups throughout the country which considered by many as radical in their actions or ideology (or both), such as the Lasykar Jihad, FPI, Hizbut Tahrir and MMI. FPI for example, has in the past carried out radical and violent attacks on discotheques, nightclubs, and other places of entertainment in the name of *amar ma'ruf wa naby munkar* (enjoining good and prohibiting evil), in order to eradicate all sorts of religiously prohibited practices such as gambling, the consumption of alcohol, and prostitution. In so doing, they see themselves as the torch-bearers in the application of *shari'ah* in Indonesia. They used to focus more on *da'wah*, but now appears to be more concerned with promoting political Islam, typically from the viewpoint of hardliners.

Thirdly, the growing demand for the formal implementation of *shari'ah* in some regions of Indonesia. Aceh was the first province to demand the application of *shari'ah*. Until July 2006 it has been noted that 56 heads of districts have expressed their willingness to apply *shari'ah* in their own areas. They assert that the answer to Indonesia's legal crisis is to return to the way of God that is a return to the application of *shari'ah*.

Reform Era following the downfall of Soeharto was marked with the inauguration of regional autonomy. Basically, its main aim has been to build democracy primarily characterized by whole community participation, including in it, woman group, in the pursuit of revitalizing long abandoned social welfare. Regional Autonomy is an embodiment of a policy which gives

every region power and authority within certain limit to manage and regulate at their own discretion their respective regions to be more independent and developed thereby making the members of the society more prosperous.

However, eleven years have elapsed since its official unveiling, instead of establishing more prosperous society Regional Autonomy has made the society, especially women, further alienated and marginalized, throwing them even away from the state of wellbeing. Since the enactment of Regional Autonomy up to the end of 2008, there had been 156 *Perda Shari'ah* in various forms coming into force: regional policies, canon laws, circulars, and decrees of the heads of region. These policies are explicitly grounded in the tenets of Islamic morality, thus deserving to be designated as *Perda Shari'ah*.

The main reason for implementing *Perda Shari'ah* throughout Indonesia is that *Shari'ah* is considered as the most just law since it was revealed by God. Secondly, the failure of secular system. The past experience with Indonesia's legal system has shown that it has brought nothing less than brutality, a lack of justice, and corruption. The hardliners said that the increase in crime in Indonesia is mainly due to the use of secular law and the only solution to this problem is the implementation of *Syari'ah* for it creates safety and establishes justice in society. All of this has left Muslim with a desire to see *Shari'ah* implemented in Indonesia. Last but not least, the failure of communism and capitalism in the world should pave the way for Islamic law to be introduced in Indonesia. And this is fair because Islam is the religion of majority group. So, they considered Islamic law is the solution of all the problem of Muslim society in Indonesia (Rasyid, 2000; Pribadi, 2001).

It is important to note that in backing the claims and the promotion of *Shari'ah* they sometimes refer to scientific researches and surveys. Topo Santoso (2000), for example, argues that the implementation of Islamic criminal law in Saudi Arabia minimized the frequency of crime. He refers to Freda Adler, the professor of criminology in the USA, who includes Saudi Arabia as one of the top ten countries with the lowest crime rates in the world. This statement is also shared by Sam Souryal who stated that during the past ten years, the crime rate in Saudi Arabia is lower than Muslim countries which do not apply Islamic law. This opinion is also referring to the International criminology census in 1986 stating that the crime rate of a day in Canada equals 12 years in Saudi Arabia (Hasbullah, 2001).

The question is that why the strong tendency to view the urgency of

implementing *Shari'ah* in terms of its positive impact on crime rather than its overall impact on public good. In this light it should be noted that according to Freedom House, Saudi Arabia is ranked amongst the worst countries in the world in terms of the protection of civil rights, illiteracy, and participation of women in the public sphere (Mujani, 2003). This reality should be answered by Islamists who always refer to Saudi Arabia as the ideal country when it comes to the implementation of *Shari'ah*.

THE RIGHTS OF RELIGIOUS FREEDOM

In the context of human rights, the right of religious freedom is the right owned by human being which cannot be limited and stalled the fulfillment. So, it is non-derogable rights. The freedom of religion and belief has the same degree with the freedom to express opinion.

In line with the implementation of the rights of religious freedom, Indonesia has some progress. The Law No. 39 on Human Rights provides that every individual is at liberty to follow his or her religion and to perform religious services in manners relevant to his or her religion. In addition, as part of the United Nations, Indonesia abides by several declarations issued by the UN by ratified conventions. One of the international documents which explicitly maintain the rights of religious freedom is the Universal Declaration on Human Rights (The Resolution of UN's General Assembly 217 [III], 10 December 1948). Article 18 of the Declaration states: every individual is entitled to have freedom for expressing thoughts, and having conscience and religion, in this case including the rights to conversion to other religion, either individually or jointly, and either publicly or privately.

Indonesia also abides by International Convention on the Eradication of Any Form of Racial Discrimination which has been ratified by the Indonesian Government which among others stipulates religious freedom must be respected and any kinds of discrimination related thereto must be condemned. Not the least important, the government of Indonesia also ratified and approved International Convention on Civil and Political Rights (National Law No. 12 of 2005 on Civil and Political Rights). Article 18 of this Convention points out that: (1) every individual has the rights for freedom of thoughts and the rights of religious freedom. (2) No one can be forced so as to disturb his or her freedom for accepting a certain religion of his or her own choice.

At regional level, Indonesia, which also abides by the Declaration concerning





Basic Duties of Society and Government in ASEAN's countries, which among others, stipulates that it is the obligation of every government in ASEAN to respect, exercise, organize, guarantee, maintain, and protect, from time to time, freedom and fundamental rights of the society and ensure that those rights and freedoms are put down into national laws. And not least important, as the largest Muslim country, Indonesia must certainly also respect the Memorandum of the Organization of Islamic Conference of 1978. One of the points in the said memorandum states every human being has the rights to think freely, to express opinions, to expose ideas, and to have religious freedom.

THE PROBLEM OF IMPLEMENTATION **The Ambiguity of Constitutional Insurance**

The constitutional amendments have not give effect on the effort of promoting, protecting, and fulfilling the rights of religious freedom in Indonesia. The amendment of Constitution 1945 which had been done four times has normatively provided constitutional assurance on the freedom of religion and belief in Indonesia. Even though it is still substantially paradoxical, the Indonesian constitution shall have given a space for the implementation of the freedom of religion and belief.

In addition, various national legislations which were created as the implementation of the ratification of vary international covenants and conventions on human rights shall formally be the foundation for the state in protecting, promoting and fulfilling human rights. Empowering of political institution has started and is being strengthened in order to ensure the normative assurances in the Indonesian constitution are able to be enforced. Democratization also has constitutional foundation as the democratic political system is adopted in ruling the state, as well as by the adaptation of decentralization policy in ruling the government.

However, a number of paradoxes of the Amendment of Constitution 1945 remained the same problem on the implementation of the right of religious freedom. The appreciation to pluralism and multicultural as well as the divergence of cultural orientation has not received enough space in the Indonesian constitution and laws. And also the threat to the freedom of religion and belief appeared in various regions with diverse perpetrators and threatened anyone considered as deviant by the "mainstream" group and or by the state authority. So, the freedom of religion and belief failed to receive an intact



acknowledgement by constitution because constitutional paradoxes are still preserved by political elites in this country.

Let me explain some examples of paradoxes. Article 28E of Constitution 1945 stated: (1) Every person is free to have or to adopt a religion and to pray according to the religion, to choose education and teaching, to choose citizenship, to choose a place to stay inside the state territorial and to leave it, and to return. (2) Every person has the right to the freedom of having faith in his/her belief; declare its mind and attitude, according to one's conscience. (3) Every person has the right to the freedom of having a union, gathering and giving opinion.

And then, Article 28E previously was not covered in Indonesian constitution. It is an article that was born from the Second Amendment of the Constitution 1945, August 2000, as a form of acceptance from the state for the universal principles of human rights. The normative meaning obtained in this article 28E is in accordance with the principle of human rights, which declare that every person has the right of the freedom of religion and belief, as stated in Article 18 of International Covenant on Civil Politics that has been ratified the Indonesian government by Law No. 13/2005. There is no certain religion and belief in Indonesia that receives special treatment under the Constitution; each one is considered equal. This article also confirms that there is no follower of any religion and belief who can conduct the act of defamation, criminalization, and discrimination against other religion and belief. Even the Article 28E implicitly gives space for those who have no religion, because if a state give religious freedom for its citizen, then in the contrary the state will also free those who have no religion.

However, Article 29 of Constitution 1945, as an article claimed as the normative umbrella for the freedom of religion and belief in Indonesia, during the amendment process was not touched at all. This article has a contradiction in its substance, in which the state put one God as the foundation of the state in the religious life. The clause inside Article 29 verse (1) stated, "The state is based on the one God". It means that actually the state still does not guarantee the freedom of its citizen to have religion and belief unless for the religion and belief which orientation is to one God. These clause in Indonesian constitution then becomes the reference that there is no place for the citizen who have no God. In addition, God in Indonesian context is one. This is the discourse which until now becomes the main trigger for state vis-à-vis religion



ambiguity. At the constitutional level, Indonesia is still facing a problem in providing the assurance to the right of religious freedom.

The ambiguity of constitutional insurance given by the state to the citizen to be free in having religion and belief, in turn had delivered several derivative laws, which are getting more restrictive in giving the guarantee for freedom. It is admitted that the law related to the religious was produced during the power of the New Order, when the citizens were placed as the enemy of the state, there was active involvement of the military in civil life, and in the grasp in a single authority named authoritarianism.

In fact, several laws or public policy until now are still valid and effectively being used by the state as the justification to do limitation, attest and give verdict of how deviant or dangerous a sect of religion is. Even without a due process of law, the judging by the state authority or by the citizen becomes the tendency that has not been changed until now.

The Problem of Some National Laws

It is very important to note here that a number of national laws and public policies that contradict the principle of human rights as follows: Law No. 1/PnPs/1965 about the Prevention, Misused, and/or Disgraced of Religion; Tap MPRS No. XXVII/MPRS/1966 about Religion, Education, and Culture. These two laws clearly stated that there are merely six official religions admitted in Indonesia, namely Islam, Protestant, Catholic, Buddhism, Hinduism, Confucianism. These two laws in juridical perspective have discriminated other religious group. Not only they are not able to develop the religious teaching, spreading the beliefs and enjoying public facility for the religious and belief interest are even judged as something that is against the law. The existence of the above Law and Tap MPR is a real form of state's denial to the acknowledgement to religious freedom for all Indonesian citizen.

The pledge of the state in the constitution to treat equally every religion and belief had been self-denied by continue maintaining the above laws. Tap MPRS, for instance, aside from substantially against the principle of equality for all religions and beliefs, formally actually can no longer be referred as the legal basis to organize the legal subject because in Law No. 10/2004 about the Conduct of Constitutional Regulation Formulation, the aforementioned Tap MPRS is no longer admitted as the constitution.

The acknowledgement of the six official religions as stated in the Tap MPRS in turn had pushed the state to conduct co-optation to various religious community organizations, as what happened in the New Order Era. Religious organization supported by the state are trusted as the holder of religious authority in Indonesia, which scope of work then includes interpretation on the religious teachings, finishing internal and external dispute of religion, etcetera.

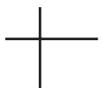
The acknowledgement of the six official religions also delivers side effects, which until now still happens. There are difficulties for inter-religious marriage, community access to their rights and citizenship administration, and some other discrimination because someone is not allowed to have a religion outside the other six above.

Meanwhile, Law No. 1/PnPs/1965, which contains the religious misused and disgracing clause and also then combined into an integral part of Criminal Code's articles, is no longer coherent with the constitutional principle. As it is known, these articles are the legal basis for the violation practices to the freedom of religion and belief conducted by the state authority.

Article 156 of this law stipulated that: Whomever stated the feeling of hostility, hatred, or insult against a or several group(s) of Indonesian citizen in public is threaten with prison punishment four years the longest or fine punishment four thousand five hundreds *rupiahs* the most. (Criminal Code 154 etc). Article 156a stated that: Punished with prison punishment for as long as five years to whomever purposely in public giving vent to or conducting deed: (a) which is basically has the characteristics of hostility, misuse or disgracing against certain religion followed in Indonesia; (b) with the aim so that people will not follow any religion, which based on the One God.

The above articles substantively are also against the constitution assurance to the freedom of religion and belief that exist inside the Constitution 1945. In the context of the above articles, the design and objective of the constitution are also irrelevant with the principles of legislation making. Law is supposed to protect the citizens, but in Law No. 1/PnPs/1965, the protected one is only the religion, not the citizen or follower.

Another policy of the Government that is also in contradiction with human rights principles and still being maintained is Tap MPR No.IV/MPR/1978, which was followed up later by the issuance of Decree of Minister of Religious Affairs No. 4 Year 1978 on Prohibition of indigenous religion (*Penghayat Kepercayaan*). In the operational level, all of those restrictions on various religious



sects and beliefs are done by a body formed by the General Attorney, named Coordinating Body of the Monitoring of Religion and Belief (Bakor Pakem: Badan Koordinasi Pengawas Agama dan Kepercayaan). This board was formed by the Decree of General Attorney No. Kep-108/JA/5/1984 about the Coordinating Body of the Monitoring of Religion and Belief, which elements involve the State Prosecutor, the Police Department, Department of Religious Affairs, the Military, according to the level of the governance from the central level to the regional level.

Bakor Pakem, formed in 1984, when the New Order politics is persistent in maintaining its power by controlling every societal movement in various sectors. Several intelligent instruments that monitor the society had been erased. Bakor Pakem is one of those left. The state's suspicion to its citizen developed by the New Order is still maintained until now. It is proved that this sort of religious and belief intelligent institution is still working effectively.

As written in that General Attorney's Letter, the military and the military paradigm are still striking in their roles in the membership and the work ethic of Bakor Pakem. Meanwhile, the amendment constitution and the democratization pledge rolled since 1998 had obliged the military not to interfere the civil society matters, including the religion and belief matters.

Restriction through the latest policy is the revise of the Joint Ministerial Decree, which was replaced by Joint regulation of Minister of religious Affairs and Minister of Home Affairs No. 8 and No. 9 Year 2006 on Guide to Implementation of the Duty of Governor or Vice Governor in Maintaining the Harmony of religious Society, Empowerment of Religious Society Forum and Building House for Worship.

The policy actually does not solve the problem of freedom of religion and belief at all. In reality, Forum on the Harmony of religious Society (FKUB: Forum Kerukunan Umat Beragama), which was set up to implements the joint regulation, became a tool of legitimating the limitation of building worship house and limitation to activities done by the followers of minority groups.

Joint Regulation and FKUB still adopted and based on the paradigm of majority and minority in terms of the quantity of followers. On the contrary, the paradigm which shall be developed is appreciation and acknowledgement of equality to every class and group of religion and belief.

The Problem of Regional Regulation (Peraturan Daerah)

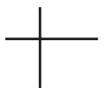
Besides the law at the national level, the threat to the religious freedom also comes from several regions that are actively producing discriminative regional regulations. From the documentation by the National Commission on Violence against Women (Komnas Perempuan) and Anti Discriminative Regional Regulations Coalition (*Koalisi Anti perda Diskriminasi*), there are at least 158 regional regulations that have the potential or obtain the discriminative effect to the women and other religious minority groups.

This regional policy substantively had violated the principle of diversity that has to be referred in making regulating legislation. Legislation shall be made by referring to the principles of, among others, respecting diversity, non-discrimination and free from violence; and giving the assurance and dignity of the law. At the same time, the state has also maintained vary regulations which contradict the principles of the freedom of religion and belief. Rather than adjusting them with ratified covenants and conventions, the state is strengthening restrictive regulations which limit the freedom.

State repression against different religious groups and beliefs happened in the form of arrest and detention, official banning by and based on state's authority, support and justification to the violations conducted by the society, court verdict, banning religious documents etcetera.

The option of the state to maintain fraudulent harmony which was built on various discriminative regulations becomes the foundation for state apparatus and groups in society in doing actions of judgment, prosecution, intolerance and discrimination to groups of religion and beliefs that are supposed to be different! To be considered to be defiant! The actions then are validated and are neglected by the state. Violence and violations of human right to adopt their religion and belief freely still became the face of Indonesia since 2002.

Regional regulations have begun to come up since the aspiration for regional autonomy which thereafter followed by the enactment of Law No. 22 of 1999, which was later amended and revised so as to become Law No. 32 of 2004 on Regional Administration. Although the Law has accentuated that the policy on religion is vested in the authority of Central Government (Article 7 of National Law No. 22 of 1994, or Article 70 of National Law No. 32 of 2004). The spirit and enthusiasm of regional autonomy has made each region feel to have authority to issue regulations based on the assumed aspiration of



the majority of the citizens in the region. Besides, the wave of reform has also given birth to a status of special autonomy to the Province of Aceh (National Law No. 44 of 1999, National Law No. 18 of 2001, and National Law No. 11 of 2006 on Aceh). This Aceh precedence has turned into a strong drive for the emergence of the claim that special regulations in accordance with Islamic Law be adopted for the regions. Generally, Regional regulations can be divided into fourth categories (Rumadi, 2006).

First, regulations relating to public morals in general. Although they concern public morals in general, regulations of this type have actually become the concern of all religions. These types of regulations are mainly represented by regulations on anti-prostitution and adultery, issued in almost all regions. Included in this type are the regulation of the segregation of classrooms for male and female students and also the regulation of the segregation of swimming pool for male and female.

Secondly, regulations which relating to fashion. This type of regulations concerns fashion and mode of clothes, such as the obligation to wear *jilbab* (head cover) and in public places. Regulations of this kind also obtain and prevail in many regions. Different from the first, regulations of this type is obviously typical Islam so that we can easily recognize or identify them as *Sharia* regulations.

Thirdly, regulations which concern religion-related competence such as the obligation to have a good command of reciting and writing the Qur'an, like the one which obtains in Indramayu, Bulukumba, and other regions. To a certain extent, the regulations on the obligation to attend school at Madrasah Diniyah Awwaliyah (Elementary Islamic School) can fall into the category of religion-related competence. Again, regulations of this type are typical Islam in that it is very obvious that the interest of Islam predominates the issuance of these regulations. The competence-related regulations are tied with various other activities. Quranic reading-writing competence becomes the pre-requisite for marriage, rank promotion for Civil Servants, even for securing public services. Meanwhile, the *Diniyah* school certificate has been set as the requirement for continuing study to higher level of education. Students of Elementary School wishing to continue their education at Junior Secondary School must show the certificate upon registration. And fourth, regulations which relating to *hudud* (passing punishment). Whipping as punishment prevailing in the regional regulations in Aceh and also obtaining in several regulations in Bulukumba belongs to this category.

Now, let's take great pain at investigating how these regional regulations undermine the religious freedom and civil freedom. First, these regulations do not adopt equal principles before the law to all citizens. From normative perspective, for example, those regulations are applicable only to certain religion. However, due to the fact that no any single region in Indonesia whose population is 100% Muslim (homogenous), such regulations obviously threaten civil freedom of non-Muslim residents. In addition, the difference in public law between a certain region and others has made the people inhabiting that region not treated equally before the law from those living in other regions in one state's territory.

Secondly, these regulations reduce religious freedom of citizens for choosing religious interpretation. The existing regulations clearly refer to only one school of thought (*mazhab*) in Islam. This means that other schools of thought that hold different points of view on a certain legal case are neglected. The regulation to wear *jilbab* for Muslim women is one example. In Islam, there are actually various distinct views on wearing *jilbab*. Meanwhile, the existing regulations make *jilbab* a must for all Muslim women. For example: every girl student of Junior Secondary Schools and Senior Secondary Schools, College girls students, and female employees are obliged to wear *jilbab*, while the general public is appealed to do the same (Regulation No. 22 of 2003, City of Pasaman, on Wearing Muslim Men and Women Apparels in the Regency of Solok). The regulation stated that: every male/female employee, male/female college student, male/female student and all people are obliged to wear Muslim Man and Muslim Woman outfits (Regulation of the City of Padang No. 3/2004 on the Prevention, Eradication, and Measures against Societal Diseases, Article 9 [4] and Regulations No.2/2003 the Regency of Sawahlunto, on The Wearing of Muslim outfits, Article 5).

Third, these regulations limit the freedom of any individual or groups to perform religious services according to their respective religion and faith. Imposing one way of religious service performance based on one referral schools of thought has also caused followers of other *mazhab* to be deprived of their freedom to perform their religious services in line with the *mazhab* they have adopted. Even in the case of opening food stalls during the days in the month of *Ramadhan* (the Fasting Month), for example, generally there is no common regulations in Islam which forbids such activity.

Fourth, these regulations are discriminatory in nature. It is evident, for example,



in the regulation issued by the Mayor of the City of Padang on the obligation imposed on students to perform *virid* (voiceless, intense repeated prayers) (Regulation No.451.422/Binsos-III/2005). Law on Human Rights No. 39 of 1999 defines acts of discrimination as every restriction, offensive insult, or alienation directly or indirectly founded on human discriminations on the basis of religion, race, ethnic, group, class, social status, economic status, gender, language, political conviction, which result in reduction, deviation, or abolition of recognition, implementation (execution) or adoption of human rights and fundamental freedom for life either individually or collectively in political, economic, socio-cultural fields or in other aspects of life.¹ The acts of discrimination are also found, for example, in regulations of Padang region on Prevention, Eradication, and Measures against Societal Diseases².

Fifth, these regulations reduce the rights freedom of parents to decide religious education of the children. Child education is parents' province of authority over their children, including matters related to religious education. Here is an example of such regulations: every student who is to finish his or her study is obliged to be able to recite and write the *Quranic* passages well and correctly (Regulations No. 6 of 2003, the District of Bulukumba).

Sixth, these regulations restrict the rights for obtaining education. Since the right for education is regulated and standardized nationally, the fulfillment of such right is the responsibility of the state by adopting national standard. The following is an example of what is disrupted by these regulations: every student wishing to continue his or her education to the next higher level of study, yet proved not to have a good command of reciting the *Quranic* passages well and correctly (Regulation No.6 of 2003, the District of Bulukumba, Article 7).

¹ The same thing is also accentuated in Regulations No.5 of 2004, Banjar Baru on the Prohibition to food stalls to run the business during the day in the month of Ramadhan.

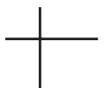
² Regulation No. 3 Year 2004 the city of Padang. Article 6 (1) reads: except in places already determined, every woman is forbidden from wearing outfits which may arouse a man's sexual desire who happens to see her in public places or in any other places which can be passed by the public." Meanwhile, in section (2) it is stipulated that "The outfits as mentioned in section (1) have the following characteristics: a). The clothes reveal parts of the body, beginning from the knees up to the chest, and b). The outfits are very tight or transparent so as to accentuate the indentation of the body."

HOW TO PRESERVE RELIGIOUS FREEDOM IN INDONESIA

In my opinion, there are at least four factors that must be maintained to preserve religious freedom in Indonesia. First, the cultural factor. A number of studies on Human Rights explain that the main obstacle in upholding the rights of religious freedom is cultural factors. Indonesian society still holds firm the values of intolerance which are not conducive for the enforcement of civil rights. To make it even worse, that culture seems to receive religious legitimacy. There is a need to reconstruct the Indonesian culture and to conserve a culture that upholds tolerance through education in the widest sense. It begins with education from within the family. Parents should earnestly instill in their children the merit of respecting others, including those from different ethnic, race and religious backgrounds. Respect and love for those who are different from us will be a social strength for children in their future social interactions. Then, there is formal education where religious education must give more focus on instilling universal humanitarian values, such as empathy, compassion, justice, courtesy, truth, honesty, loyalty, piety and solidarity. Religious education should be able to change human behavior into a more humanistic one.

Regarding education system in Indonesia, my criticism is that education, especially religious education in formal school is more focused on rituals and legal-formal aspects. Children are asked to memorize sacred texts, and perform rituals that are merely formal more instead of being asked to understand and contemplate in depth. As a result, the more religious instructions are given, the more we are estranged from humanitarian visions. Yet, I do belief that the final objective of every religion is to humanize human beings. For that reason, it is need to widespread dissemination of the culture of equality, starting from the home through a democratic child-rearing pattern, and in society through democratic learning methods in both formal and informal educational institutions.

The same applies to non-formal education in society such as through the *majelis taklim* (religious education) and religious broadcasts in the media. All of them leads to education through monologue and do not put emphasis on critical and rational thinking. In fact, it seems to represent more an indoctrination of religion that is hostile towards women and different groups. This is a condition found in all religions. Consequently, religious views that develop and are disseminated in society are not conducive towards the construction of democracy, pluralism and the fulfillment of human rights.



Secondly, the structural factor. There is a need to review a number of public policies and laws that are discriminative towards religious congregations, in particular, the minority groups. The ICRP, my organization has recorded more less 147 discriminative laws and public policies in regards to religion. As long as those laws are permitted to prevail, there is always a strong potential for violence in society. There needs to be efforts for reforms and also to create new laws that are more accommodative towards the principles of human rights, the principles democracy, tolerance and pluralism.

Among those public policies and laws is the PNPS Law of 1965 on defamation of religion. This Law contains a prohibition for interpretations that stray from mainstream interpretations. It is because of every different religious interpretations are always considered as defamation of religion. We know that in the history of religions, there is no single interpretation. For when we speak of religion, it always ends in diverse interpretations.

The problem is the government only recognizes one mainstream interpretation and rejects others. In the context of Islam, the mainstream interpretation is only from the institution of MUI (The Council of Indonesian *Ulema*). These days where the MUI is influenced by a group of those supporting intolerance, problems ensue. There are some of MUI's fatwas are not compatible with the principle of human rights, for example, the MUI *fatwa* on forbidding pluralism, secularism and liberalism; the MUI *fatwa* on the prohibition from conveying Christmas greetings; the MUI *fatwa* on viewing the Ahmadiyahs as a deviant sect. I believe that all these *fatwas* misperceptions of the Islamic *sharia*. Directly or indirectly, the MUI *fatwas* plays a significant role in the birth of religion-based violence.

The other policy is The Minister of Home Affairs Circular Letter of 1978, supported by the Law on the Citizenship of 2006 states only five religions that are acknowledged by the state, and the President's Circular Letter of 2005 included Confucianism as a recognized religion. So, until now, the government only recognizes the fulfillment of civil rights for the congregations of these six religions. Of course these three decrees are absolutely in contradiction to the 1945 Constitution that guarantees religious freedom for each citizen according to their belief.

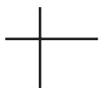
As a result, followers of religions other than the mentioned six religions are not permitted to publicly declare their religion in their Identity Cards, Marriage

Certificates and other official documents. So, in the social life the congregations of other religions like Baha'i, Sikhism, Tao, Jews they have to chose one of these six recognized religion in their identity cards. In general, the followers of the Baha'i declare themselves as Muslims in their Identity Cards, as is the case with the Jews community in Surabaya and Minahasa. I once accompanied a Baha'i woman to the village administration office to pick up her Identity Card. When she mentioned that her religion was Baha'i, the Head of the Village Administration Office was startled and said: sorry, the Baha'i did not exist in the administration forms. Then he said, just right down Islam, okay? I am surprised that in this country, one's religion can be changed by a government official.

The other policy is the Decree of the People's Consultative Assembly (MPR) of 1978 on Indigenous Religions. In ICRP's report there are more than 10 million followers of indigenous religions are divided into more than 200 sects. Their religions have existed long before the advent of Islam, Christianity, Hinduism, and Buddhism. Yet the Decree appeals for all followers of these indigenous religions to return to the core religions. They are perplexed as to the meaning of core religion. Have they not been in this region long before that?

In line with regional belief, my studies found around 4.000 followers of the Tolotang, indigenous religion in the District of Sidrap, the province of South Sulawesi who stated their religion as Hindu in their Identity Cards. In fact their religion has no relationship with Hinduism. But, in order to enjoy their civil rights (as stipulated in that policy), they chose Hinduism because it made life easier for them. When I went back to Jakarta, I asked the Directorate General of the Hinduism in The Ministry of Religious Affairs in Jakarta: why that community is recognized as Hindus yet they are not Hindus. It is very funny that he replied: "the important thing is that their number will increase the statistics of Hindus living in Indonesia and that means that the budget allocation for the development of Hinduism congregations becomes more significant." It is very interesting that to understand that in the end, religion becomes simply a matter of statistics and a matter of budgeting. That is a fact.

There is also Joint Decree of two Ministers (Minister of Religious Affairs and Minister of Home Affairs on establishing places of worship of 2006. It stipulates that the establishment of houses of worship must obtain the permission of 60 persons in the regional vicinity. This regulation is in practice





difficult to observe by the minority groups including Moslem groups in Minahasa and Papua.

The last policy that I considered discriminative against minority groups is Joint Decree of the Minister of Religious Affairs, Minister of Home Affairs and the Attorney General of 2008 on the Ahmadiyahs. One of the articles therein states a prohibition for Ahmadiyahs to spread their teachings to the public. This is very discriminative, for if the mainstream groups in Islam are allowed to do so, why not them? In my opinion, the constitution and a number of Human Rights regulations, allow the spread of religion providing that it does not employ violent means or manipulation of poverty and ignorance. For example, the efforts of distributing humanitarian aid in order that people convert to their religion. It is the state's duty to supervise justly and neutrally to prevent such deviations. Whoever abuses such rights shall be firmly punished.

Third, the theological factor. It is no doubt that every religion claims it is the true one. Therefore, there is a need to reinterpret and also to foster religious interpretations that more friendly towards other different groups. For example, I could claim that Islam is the best religion. However, that claim does not prevent me from communicating and cooperating and even marrying with other people of different faiths.

To solve this problem of claiming the truth we need to build pluralism, mutual respect and a strong commitment to foster peace. If I am permitted to claim that my religion is the true one, others may of course have the same right. Also, every religion has their own exclusive viewpoint that the truth is the monopoly of their religion. That is why reinterpretation of religious teachings is needed to minimize such an exclusive viewpoint.

Fourth, the political factor. The government must firmly and neutrally deal with the anarchic groups. The government must stand firmly on the State Ideology, Pancasila, and the Constitution. Law enforcers such as the police, judges and prosecutors must be strong and dignified. They should not bow down to groups who claim to represent a congregation or God. The democratic era since 1998 has been abused by certain groups who, during the Old Order period were not granted the right to publicly expose their ideas. Now, on the grounds of democracy, they take advantage of democracy by voicing their different ideas and beliefs, which are in fact contradictory to the aspirations of democracy. For them, democracy is only a matter of procedures,



not of essence. This is because their objective is to eventually build a system of theocracy, not democracy.

In addition, the decentralization process has given birth to euphoria at the regional government level, both in the districts as well as in the provinces. All the regions are trying to bring forth indigenous matters or regional wisdom. Strangely enough, it is by-laws on religion that are unconstitutional and discriminative against women and minority groups that have emerged. All of this is the disturbing of the efforts of interfaith dialogue and religious tolerance in Indonesia.

HOW TO BUILD INTER-FAITH APPROACH BASED ON PLURALISM

One of the major problems faced by Indonesian people with religion in this era of globalization is religion-based conflict and violence, both internally as well as between congregations of different religions. Certainly, in every conflict, women are the ones most vulnerable to become victims.

Why do conflicts happen? It is because people with religion no longer live in isolated blocks, but interacts with each other so it is very possible that frictions happen with the potential to cause conflict. The relationship between inter-religious groups is not always peaceful. Religion-based conflicts and violence frequently occur in a number of areas, including in Indonesia.

Nevertheless, we must hold on to the belief that inter-religious conflicts are never recommended by any religion in the world. No religion encourages its congregation to cause conflict. Religion-based conflict and violence usually occur as a result of growing politics of identity. In other words, it is the mobilization of religious identity for the political interest of certain parties. Ironically, religious provocation is often carried out by those who claim to speak in the name of religion.

I still believe in the hope that religion, as the spiritual governing media between an individual and God as well as among human beings in the social relationship, can become a transformative power. Religion can be a strong power that transform people towards peace, justice and welfare. And so, how do we turn religion into a media for peace? The answer is very clear: through dialogue among different religious communities. Through this dialogue, those who embrace different religions and faiths learn more about each other, and this will subsequently lead to a better understanding between them. Mutual





understanding ultimately leads them to seek common factors between the different religions to be then rendered as the foundation for living together in peace and harmony.

In order to achieve an effective dialogue that will be accepted by all parties in society, the parties in the dialogue must adopt a tolerant and pluralistic attitude. Tolerance is the ability to constrain oneself and one's emotions in order to minimize and eliminate potentials of conflict. Meanwhile, pluralism is much more than tolerance. Pluralism is the willingness to recognize differences and accept diversity as a natural force in life to subsequently be committed to build solidarity and cooperation for the sake of peace and harmony. Pluralism must be built upon a principle of love, caring, equality and the recognition of human dignity. Pluralism urges for the fulfillment of human rights, including women rights.

Pluralism is a process of active seeking of understanding across lines of difference. To sum it up, pluralism does not mean that one has to shed one's own religious identity and disclaim one's own commitment to the religion embraced, and it also it doesn't mean syncretism that one mixes teachings of different religions. The core of pluralism is the strong commitment to build a synergic relationship with each other in order to ensure peace and harmony.

When one is a pluralist, it does not mean that one does not recognize the existence of religious differences, because such differences are natural, intrinsic, and given and can't be avoided. But such religious differences can become the source for a healthy inter-religious relationship as a uniting force, and not as a divider that threatens certain religious identity and culture. Pluralism is built upon a foundation of inter-religious dialogue.

Pluralism can be achieved, at least through two activities. The first one is that intensive dialogue. The problem is the dialogue between people of different religions has been too frequently done but it is not effective. Why? Most dialogues end at the level of elites, which means only among prominent religious leaders at the national level. So, dialogue should not only be carried out among the elite, but should be done at the "grass root" level. It must involve all elements of society, namely youth, women, entrepreneurs, cultural and educator organizations. Moreover, the process should involve marginalized groups. And also, the topics of the dialogue should be based on religious universal values and humanist religious interpretations.



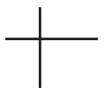
Secondly, participatory activities. This strategy must be carried out following dialogue. Through participatory activities, religious leaders and religious communities from different religions are able to experience living or working together. This can be realized in the form of, for instance, a jamboree, or in activities involving the provision of humanitarian aid or medical aid for victims of disasters. The experience of living or working together will open their minds and encourage them to eliminate all forms of prejudice and to eradicate all the tendency to stereo-type other groups.

CONCLUSION

To overcome the problem of implementation of Civil Rights, particularly the rights of religious freedom I propose three actions as follows. Firstly, the cultural reconstruction through education in its wide sense namely from education in family life to formal education in school then non formal education in society life. These efforts are absolutely very much needed because culture of peace, tolerant and inclusive cannot emerge naturally and spontaneously in our society, instead it must be sewed and arranged in such way through education system, particularly religious education system.

Secondly, the law reform. We need to amend and review of some important laws and public policies which are not conducive to the establishment of democracy, including peace and justice as well as the upholding of Human Rights principles. After that, it is important to push the state to fulfill its obligation in promoting, protecting and fulfilling the principles of human rights, especially the rights of religious freedom. The state is demanded to be neutral in taking action in the diversity of religion and belief. Nevertheless, the state shall intervene when the rights of a group of religion and belief are violated.

Thirdly, the reinterpretation of religious teachings. We need to promote humanist religious interpretations which are more conducive for the fulfillment civil rights in our social life. In this regard, it is very important to urge religious leaders to promote humanistic, inclusive religious interpretations. So that, there will no longer be any interpretations that are discriminative against women and minority groups. We have to promote religious interpretations that in line with principles of democracy and human rights. Interpretation of religion should be accommodative towards humanistic values. Religious leaders should return to their prophetic task which is to push for transformation of society in order to attain a civilized society.



BIBLIOGRAPHY

- Habibullah. 2001. *Hukum Islam dan Jaminan Rasa Aman*, Sabili, No. 18. Vol. X
28 Februari.
- Pribadi, Agung. 2000. *Syariat Islam: Mengapa Tidak?* Sabili No. 25, Vol. VIII, 6
Juni.
- Rasyid, Daud. 2000. *Shari'ah*”, Sabili No. 10, Vol. VIII, 1 November.
- Santoso, Topo. 2000. *Bersatu Mengakankan Syariat Islam*, Sabili, No. 1, Vol. IX, 4
Juli.