

TREATING RELIGIOUS MINORITY (UN)JUSTLY:

Problems and Challenges of Regulating Freedom of Religion in Indonesia [1]

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Abstract—*On paper, Indonesia adopts a neutral policy towards religion. It is widely upheld that Indonesia is neither secular nor religious (theocratic) country. The idea of freedom of religion is also explicitly guaranteed by its constitution, UUD 1945. This country further acknowledges and ratifies the International Covenant on Civil and Political Rights (ICCPR) that guarantees the freedom of religion.*

The ideal formulation of freedom of religion, however, does not stand on a firm ground. The violent attacks on minority groups and sects—especially on Ahmadis—become a real case in point where the issue of freedom of religion is really at stake in this country. In response to Ahmadis existence, the government released the 2008 joint Ministerial degree that ironically restricts the idea of freedom of religion.

The government's policy towards the Ahmadis is responded differently by governors in provincial level. Some governors translate it as an entry point of banning the Ahmadis religious activities. This is the case with West and East Java provinces where the governors in both provinces have released a governor's instruction to outlaw all kinds of Ahmadis religious activities and propagations. The governor of Yogyakarta, however, stands consistently by suggesting the non-interventionist policies towards the Ahmadis.

This paper seeks to analyse the complex issue of freedom of religion in Indonesia with special reference to the state's policies towards the Ahmadi community. It attempts at answering the extent to which the idea of freedom of religion is exercised in the public sphere. The preliminary assumption developed throughout the paper is that political "cohabitation" between the majority interests and those of the governing formal leaders as a result of democratization process can risk the freedom of religion among different religious communities and thus jeopardize the non-interventionist policy of the state towards religion.

Keywords—*Neutral Policy; Religious Minority; Freedom; Indonesia;*

I. INTRODUCTION

The idea of freedom of religion in Indonesia is a highly contested concept. For some, freedom should be interpreted as an unconditional freedom, regardless the local condition might be. This idea is commonly supported by the advocates of liberalism. For some others, comprising the bulk majority, however, argue that the idea of freedom should be placed in an

Indonesian context. This is to indicate that there is no absolute freedom; the freedom of individual is restricted by the freedom of others. This understanding is to suggest that the country may adopt the idea of freedom of religion which is essentially different from the West. This is a kind of essentialism, i.e. typically Indonesian concept of freedom of religion, which in turn creates a complicated issue in the post New Order Indonesia.

The issue of idea of freedom is also hard to deal with not because of the absence of constitution that regulates this issue. The difficulty, rather, is located at the legal complication of the existing constitution which shows paradoxical tendency between conceptual and operational level. Indonesia has undoubtedly implemented hierarchical level of constitution that regulates freedom of religion. Outside the constitution, the country has a long tradition of tolerance and pluralism where religious co-existence and harmony among different religious groups has been exceptional. The issue of freedom of religion is difficult to handle due to the fact it can be easily twisted into a highly political issue where many intervening variables and interests are involved than can further complicate the issue. The idea of freedom of religion, in other words, is not merely a matter of constitution, but also a matter of political and economy as well.

At the constitutional structure, Indonesia adopts a rather weird policy on freedom of religion. On paper, the State regulates a non-interventionist policy towards religion. Its ideological foundation, Pancasila [lit. five pillars], serves as a source of inspiration to the making of such a policy. The first pillar confirms that the country is based on the Oneness of God (Ketuhanan Yang Maha Esa). This pillar suggests that Indonesia is neither secular nor religious (some, however, would say ambiguous); it is a religious based state. The idea of freedom of religion has also been placed in a supreme position. The hierarchy of the country's constitution spells out the freedom of religion. In reality, however, the issue of freedom of religion which is legally guaranteed by the Constitution is at stake. A series of violation against minority groups in the past decade represents the threat to the implementation of freedom of religion. The problems have a complex genealogical root.

This paper tries to discuss the problem of regulating freedom of religion in Indonesia and challenges it may face in the future. It will be broken down into several points as

follows: how the State regulates the freedom of religion, how conflicting viewpoints might occur in the regulation of freedom of religion, how violent acts against freedom of religion can take place, and, more importantly, how those problems are addressed properly.

II. NON-INTERVENTIONIST POLICY TOWARDS RELIGION

Viewed from the State Constitution (UUD 1945), Indonesia adopts a non-interventionist policy towards religion. The article 29, verse (2) of the Constitution says that: "the State guarantees the freedom of each citizen to believe his/her own religion and to observe according to his/her religion and belief." The meaning and implication of the above verse cannot be multi-vocal. It comprises only single monolithic interpretation that the idea of freedom of religion is a part of civic rights that the State must guarantee for every citizen. This means that the country, constitutionally speaking, does not favor any particular religion to be adopted or to be treated in the State structure of legal policy. Indonesia has acknowledged only six formal religions to be embraced by the people; Islam, Catholicism, Protestantism, Buddhism, Hinduism, and Confucianism. This indicates that the State must treat all formal religions indifferently.

Beside UUD 1945, another instrument which regulates the guarantee of freedom of religion/belief is the International Covenant on Civil and Political Rights (1966), particularly Article 18, which comprises: (1) freedom to adopt a religion or belief of his/her choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching; (2) no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice; (3) freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others; (4) the State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

In 2005, Indonesia has ratified the international covenant by the Law No. 12/2005 on the Ratification of International Covenant on Civil and Political Rights. The covenant is supposed to be legally binding for every citizen and Indonesia has the obligation to integrate it into national legislations and to provide a periodic report to the UN Human Rights Commission.

Another human rights instrument regulating the freedom of religion/belief is the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, as initiated in the Resolution of UN General Assembly No. 36/55 on November 25, 1981. The declaration regulates the guarantee of freedom of religion/belief further than the International Covenant on Civil and Political Rights; nevertheless, as it is merely a declaration, it is non-binding to State Parties. Although it is not legally binding, the declaration shows the wide consensus of the international community. In

that regards, it still has the moral power in the practices of international relations in general. As a member state of the United Nations, Indonesia should not disregard the declaration in fulfilling its obligation to fulfill the human rights of its citizens.

Article 6 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, among others, the following freedoms:

(a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;

(b) To establish and maintain appropriate charitable or humanitarian institutions;

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

(d) To write, issue and disseminate relevant publications in these areas;

(e) To teach a religion or belief in places suitable for these purposes;

(f) To solicit and receive voluntary financial and other contributions from individuals and institutions;

(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; [2]

Indonesia has another instrument that regulates the freedom of religion through Law No. 39/1999 about human rights. The article 22 of the Law verses (1) asserts that "Everyone is free to embrace his/her religion and to observe according to his/her own belief; and (2) the State guarantees the freedom of religion according to his/her belief.

III. THE AMBIGUITY OF CONSTITUTION

The beautiful formulation of the constitution above, however, does not necessarily guarantee that the freedom of religion can be upheld consistently at practical level. Violence or vandalism perpetrated by individuals or particular religious groups over the others on religious causes still occurs here and there. This is so because the country's constitution about freedom of religion does not stand on a firm ground. It is quite often that the constitution at the higher level does not go hand in hand with other regulations at the lower level. The state frequently shows paradoxical and dualistic policies of freedom of religion that annihilate the freedom of religion in practice. On the one hand the legal system guarantees freedom of religion; the lower regulation or laws often go against it. On the one hand the state asserts to safeguard freedom of religion

and arrest perpetrators of religious vandalism and violent acts; on the other hand those acts are condoned.

The following is the cases where the upper constitution sometimes is not fully supported by the lower regulations. In addition to the article 29 verse (1) that “the State is based on the Oneness of God”, the imperfection of the State policy towards religion can be seen from the formulation on the limits of constitutional rights for every citizen as stated in the article 28 J (2), that says: “In conducting rights and freedom, every individual must be subject to the restriction by the law for the purpose to guarantee the validity and respect over the rights of others and to meet a just basis that is in agreement with moral consideration, religious values, security, and public order in a democratic society.”

The formulation that restrict the constitutional rights of every citizen in the statement “...in agreement with moral consideration, religious values,...” has paved the way for domination of particular religious interpretation of the mainstream over the others that can lead to tension between the majority and the minority groups in the society. The fulfillment of such rights will mean nothing if they are confronted with the consideration that those rights go against religious values. The question would be: which and whose values? The attribution of particular religious values as the main consideration of the legitimacy to guarantee those rights can complicate the firm definition of rights through the contests over interpretation of religious values that cannot be objectified.

The freedom of religion that has been guaranteed by the Law No. 39/1999 article 22 has been restricted by other two articles of the same Law; the article (70) which states: “In implementing rights and freedom, everyone is subject to the limitation decided by the Constitution with the purpose of guaranteeing the acknowledgement and respect of rights and freedom of others and to meet a just basis that is in agreement with moral consideration, security and public order in a democratic society”. The article (73) of the same Law says that “Rights and freedom regulated in this Law can merely be restricted by and on the basis of constitution, for the purpose of guaranteeing admission and respect of human rights and freedom of others, ethics, public order and national interest.”

The blasphemy law No. 1/PNPS/1965 is another source for the abuse of freedom of religion in Indonesia [3]. In the decree released by the Supreme Court of Constitution No. 140/PUU-VII/2009, MK argues that that the blasphemy law, despite drafted during an emergency situation in 1965, is still considered relevant, and is in accordance with UUD 1945 especially in relation to human rights and freedom of religion/belief. MK is convinced, if the law is outlawed there will be anarchy and chaotic situation due to the absence of the law. The blasphemy law has actually nothing to do with the idea of freedom of religion, but has something to do with the issue of religious contempt.

Another regulation is the judicial review UU No. 44 year 2008 about Pornography and Porn-action. This regulation has nothing to do with issues of religion or freedom of religion/belief. But this regulation was resisted by the activists of freedom of religion with the argument that this law can

threaten and even ruin the ideal blue-print of religious harmony and freedom of religion by not siding with one particular religious value such as Islam as the majority. Again, MK argues on particular moral basis that this law was made for the purpose of maintaining and safeguarding religion-derived moral values, giving as clear moral framework as possible abided by every citizen and giving the sanctions to those who go against those laws. From the argument proposed by MK, it is clear that how religious interpretation of majority plays a key role in deciding which and whose values to be regulated in the public sphere.

The third regulation is the Law No 16/2004 about General Attorney (Kejaksaan Agung) of the Republic of Indonesia and Articles 1-9 Law No. 4/PNPS/1963 about the Protection of Published Materials (Pengamanan Barang-barang Cetak) the content of which is considered to be able to destabilize the public good. This regulation has also nothing to do with the issue of religion or freedom of religion. In practice, however, this regulation proves to have circumscribed religious expression with regard to theological issues of particular religion expressed in published materials.

In effect, in December 2009, for instance, the General Attorney banned the distribution of five books with the argument that those books can threaten the stability of public good. Those books are: *Enam Jalan menuju Tuhan* (Six ways to God) by Darmawan MM and *Mengungkap Misteri Keberagamaan Agama* (Revealing the Mystery of the Religiosity of Religion) by Drs. H. Syahrudin Ahmad, and others. [4]

In response to Ahmadi existence, Majelis Ulama Indonesia (MUI) has released an edict in 2005 declaring that the Ahmadiyah as deviant. More recently, the government released the 2008 joint Ministerial decree—signed by the Ministry of Interior Affairs, the Ministry of Religious Affairs and General Attorney—that restricts all types of religious activities by the Ahmadi. This decree does not ban the existence of the Ahmadi, but all activities are banned because they are deemed as contempt to religious doctrines. Since that decree, the Ahmadi received unjust treatment from other members of religious group. Some violent acts and vandalism were even perpetrated by individuals in response to that decree. Directly or indirectly, the decree has stimulated other group of Muslims outside of the State to curb the activities of the Ahmadi.

The raid and violent attacks on the Ahmadi in Cikeusik Banten in the past February becomes the culmination of how the regulation of freedom of religion is really at stake where minority groups were often treated unequally and unjustly by the State. Even further, they often received intimidation and violent attacks from hard line fundamentalists. Up until now, the perpetrators who killed three of the Ahmadi were not brought to trial [5]. This fact is of course contradictory to the rhetoric stated time and again by Susilo Bambang Yudhoyono (SBY) in order to give security and protection for every citizen in the country. [6]

The Setara Institute’ 2010 Report on the condition of religious and faith freedom in Indonesia draws attention to the existence of widespread violations of religious freedoms in the

country. The Setara Report indicates that 216 violations against freedom of worship were reported throughout 2010 [7]. The perpetrators of freedom of religion vary from independent individuals to the State agencies which are classified as follows: society (70 acts), MUI (22 acts), FPI (Front Pembela Islam/Islamic Defender Front) (17 acts), Forum Ummat Islam (Muslim Community Forum) (11 acts), Gerakan Reformis Islam-GARIS (10 acts), Gerakan Anti Ahmadiyah-GERAM (5 acts), individuals (5 acts), and the rest is by various organizations (less than 5 acts) [8].

By and large, the crux of the problem faced by the country in terms of freedom of religion is interpretation: which and whose doctrines to represent the “true” Islam. Amidst the tendency of monopolizing the religious interpretation by the mainstream, the question of public morality is manifested in the form of regulations and constitutions at all levels that are bias in nature which can stimulate further intolerant and even violent attitudes of the mainstream towards the minority group. This is the phase where the guarantee of freedom of religion is in jeopardy and the State is speechless due to the fact that the State policies in religious matters are often paid off in return for political support from the majority [9]. Unless a fair and just regulation is found the State will not be able to function itself as a neutral agency for every citizen that gives due respect and protection for every citizen in the country.

IV. HOSTAGE OF POWER INTERESTS

One of the explanations why the State could not execute its non-interventionist policy towards religion is that the issue of freedom of religion has been a hostage of power interests. The post-New Order era of electoral democracy has paved the way for the possibility of interest exchanges in return for political support. Nevertheless, the implementation of interventionist policy towards religion has resulted in the curtailing of freedom of religion. In this case, the Setara Institute has aptly argued that

“2008 was the year to venture on the creation of image and gaining of support from public for the coming General Election 2009. No wonder, the siding act of politicians, State executors, and society organizations, at national as well as local level, has relied heavily on how great the image will be polished and how huge the support will be gained. As an area of contestation, everyone will choose issues that have minimum risks of disadvantage; and, on the other hand, will exploit issues which are able to create advantages.” [10]

The joint Ministerial decree on the ban of Ahmadiyah, for instance, was responded differently in several regions. The Jogjakarta province has so far kept its neutral position since religion is regarded as a private matter and the government must protect every citizen to believe in any religion/belief. East Java, West Java, South Sumatra, Tangerang provinces, however, have gone further by issuing the governor’s decree to ban all activities of the Ahmadis [11]. Such a local response of the government to the existence of Ahmadiyah at

provincial and district level is not surprising, since the government policies will be based on the voice of the local Muslim leaders who mostly aspire for the ban of the Ahmadis. Such policies were carried out in return for political support from the Muslim elites.

In a newly founded democratic regime, the State’s or local government’s policies will have to be based on ballot boxes [12]. This means that those policies should reflect the aspiration of the majority. In an Indonesian context, this means that the policy making process must take into account the dominant voices of the (Muslim) leaders. In light of democracy, with particular reference to that of procedural democracy, all policies must take the capitalization of votes into account. This is in line with the well-known formula in electoral democracy that the majority rules. This is the real picture of the country’s democracy, at least during the past decade, where the popular votes become the major yardstick for the making of government’s policies in terms of freedom of religion.

The common understanding about freedom of religion in Indonesia is that someone’s freedom is restricted by others’ freedom. This implies that there is no absolute freedom. In consequence, the issue of freedom of religion as mandated by the Constitution is restricted by other regulation at the lower level, either in the form of law or provincial/regional bylaws. This indicates that the idea of freedom of religion in Indonesia works only at normative level. In reality, however, there are so many obstacles for any new religious movement or minority group to express their religious identity and observance. Building a new church or religious congregation is one of the examples where religious minority in this country has experienced some difficulty [13].

In the argument of safeguarding the freedom of religion, the State is often unable to manage itself to be a neutral agency among different religious groups due to the fact that it might side with one particular interest. That is why it is no wonder that the State is quite often hesitant of imposing law enforcement on to the people. This hesitation is sometimes motivated benefit calculation that might risk the losing of political support. This behavior, therefore, represents the practice of procedural democracy which —ironically—risk (the core values of) substantial democracy. Under those circumstances, it is difficult to deny the fact that the issue of freedom of religion only works at the level of political gimmick, while practically speaking the country is facing serious problems and challenges.

V. CONCLUSION

It is clear from the explanation above that even though the Constitution mandates the non-interventionist policy toward religion, in practice, however, is not the case. The non-interventionist characteristic of the State is hardly workable in Indonesia due mainly to two reasons: (1) the basic nature of Islam as the majority religion which tends to encourage the indivisibility of religion and the publics, and this will affect the next; (2) the tendency of the people in the government at all levels which are filled with particular ideological

affiliation/favoritism that can affect the decision-making process.

This paper does not tend to give any comprehensive solution to the problems and challenges of freedom of religion in Indonesia. It is far too complex, indeed. Nevertheless, the condition of freedom of religion in this country can be made better by proposing a new blue-print as to how religion should be regulated in public sphere without necessarily devastating the real situation of the country. This means that the implementation of freedom of religion must take into account all the uniqueness and exceptionality of the country. By this I mean that Indonesia might take an exceptional route to freedom of religion which is not exactly the same as the majority of the countries of the West might take. Whereas most of the countries of the West take secularism as the normative basis of the freedom of religion, Indonesia might have non-secularism route to freedom of religion.

In this context, it is worth noting that Guy Haarscher has proposed what he coins as the “lowest common denominator policy” [14]. He believes that, in order for someone to be able to adopt a proper socio-political behavior in public sphere and does not violate the existing regulation he/she must not “shock” others theologically. Chief among this behavior is respecting other religious and beliefs which are different from his/hers and do not say anything related to the differences in those values that might stimulate a heated debate and annoy the others. Progressively, the debate will be dominated by an attitude of prudence. The rest is that let the law speaks by itself!

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