
From Protector to Violator:
Assessing the State's Role
in Protecting Freedom of Religion
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Abstract

Although the Indonesian government protects, maintains, and ensures freedom of religion for minority religions in the 1945 Constitution (Undang-Undang Dasar tahun, 1945), this freedom is not necessarily applicable in the practice of religious life. On one hand, the state has a duty as protector and guarantor of freedom, while on the other hand, it turns into one of the actors violationg the freedom of religious minorities. This article will discuss two fundamental issues that interfere freedom of religion in Indonesia in the democratic era. The first is that the state interferes with the freedom of minority religions and the second is that the state deprives minority religious groups of freedom of religion, either directly or by negligence. This

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article will also evaluate the basic concepts of human rights protection as non-discrimination and the equality principle as two of the most important pillars of human rights architecture, the Indonesian Constitution of 1945 as ground norm, and its derivative norms in some national procedures. In addition, this article also discusses a comprehensive state policy that discriminates against religious expression by minority religio groups.

Keywords: religious freedom, minority faith, violations, state actor.

Introduction

A. Problems and backgrounds

Escalation of intolerance, conflict, and some violence against religious freedom and the beliefs of minority religions has becomes an important issue in the democratic process in Indonesia today. The state is required to be responsible to maintain, fulfill, and promote diversity and difference, and should not enact discriminatory rules that ignore religious diversity. Though the state fully guarantees freedom of religion and belief in the Indonesian Constitution, that guarantee has lately become more questionable, especially after the occurrence of anarchism acts overriding minority religions. Freedom of religion reflects the complexity of the relationship between state and religion in Indonesia. In addition, the state as the highest political authority has been perpetrating discrimination against minority religions. As a result, frequent acts of intolerance in the form of violence in the name of religion are done by certain religious groups against religious minorities. In these situations, the state has failed to perform its obligation to provide protection for freedom of

religion, and is instead regarded as one of the actors violating the rights to freedom of minority religions.

Freedom of religion and belief is part of universal human rights or fundamental freedoms of each individual as stated in the Universal Declaration of Human Rights (UDHR). The right to freedom of religion is a non-derogable right even in emergency. Therefore, freedom of religion is a fundamental right of every individual and must be protected by the state. Religion and belief are the property of the individual and do not belong to the state. If someone is convicted for an interpretation of a religion, they are under the authority of the individual and will be accountable to the creator of religion and belief. Unfortunately, this does not apply in Indonesia where the state limits people's rights to manifest their faith.

This article discusses the problem of religious freedom and beliefs of minorities in Indonesia and explores the government of Indonesia's obligation to guarantee that all people in its territory have the same right to freedom of religion. The article will also propose a possible solution for the problem of the legal system that does not adequately protect religious minorities to practice their faith as has been guaranteed by the state.

The author uses the desk research method that uses documentary sources and written documents to analyse the problem of religious freedom of religious minorities in Indonesia.

This article asserts violations of religious freedom of minority religions in Indonesia in five parts. Part I elucidates religious minorities and their legal standing in Indonesia. Part II explores conditions of freedom of religion and belief of minority religions in Indonesia. Part III explains some of the violations of religious freedom and

belief conducted by both state and non-state actors. Part IV addresses challenges of the state in enforcing the right to freedom of religion and belief. Part V provides possible mechanisms for promoting freedom of faith in the conclusion and recommendations for future research.

I. Religious Minorities and Legal Standing in Indonesia

Based on Law No. 26 Year 2006 concerning Population Administration, Indonesia recognizes six religions, namely: Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. Religion has a close correlation with ethnicity since each ethnic group mostly practices different religions, for instance, the majority of the Javanese and Sundanese are Sunni Muslim, while the Batak are predominantly Christian (HRW, 2013).

According to the Communion of Churches in Indonesia (Persekutuan Gereja-Gereja di Indonesia), around 87 per cent of the population identify themselves as Muslim, 7 per cent as Christian, 2.91 per cent as Catholic, 1.69 per cent as Hindu, 0.72 per cent as Buddhist, and 0.05 per cent as Confucian (Siahaan, 2013).

The terms of Indonesian religious minorities are clearly stated under the Law No. 1/PNPS/1965, also known as the Blasphemy Law. The concept of religious minorities can be defined as different than Islam as identified in the Blasphemy Law with the following characteristics (Suaedy, Dja'far, Azhari & Rumadi, 2012):

1. Religions that have less followers than the major religion, which in this context is Islam;
2. Religions that are not officially recognised among the six religions are explicitly mentioned in this regulation;

3. Other belief systems that have different concepts than the major religion;
4. Which believe in the one and only God
5. In regards to Indigenous peoples, it refers to religions whose followers are cultural communities.

The right to freedom of religion or belief is expressly guaranteed by the Constitution of the Republic of Indonesia (*Undang-Undang Dasar, 1945*). Article 28E paragraph 1, 2, and 3 of the Constitution of 1945 explicitly stated that:

1. Everyone is free to believe in a religion and worship according to their religion, choosing education, occupation, nationality, and choosing to stay in the country and leave it, including the right to return.
2. Everyone has the right to freedom of belief to believe, both in mind attitude, in accordance with his conscience.
3. Everyone has the right to freedom of association, assembly, and expression.

Moreover, Article 29 paragraph (2) also provides that the state guarantees the freedom of every citizen to believe in their own religion and to worship according to their religion and beliefs. Meanwhile, Law No. 39/1999 on Human Rights, Article 22, paragraph 1, states that every person is free to worship according to their religion or belief.

The principle of freedom of religion and belief in the international human rights documents is explicitly mentioned in Article 18: Everyone has the right to freedom of thinking, believing, and

religion; this right includes freedom to change one's religion or belief, and freedom to practice one's religion or belief in teaching, worship, and obedience, either alone or jointly with others, in public or private spheres.

The right to freedom of religion is also expressed in more detail in the International Covenant on Civil and Political Rights. This convention has been ratified by Indonesian government through Law No.12 Year 2005, providing the right of everyone to freedom of thinking, believing, and religion and protection of these rights.

Furthermore, Article 22 of Law No. 39 Year 1999 on human rights also guarantees the right to freedom of religion or belief:

Article 22:

1. Everyone is free to believe their own religion and to worship according to their religion and belief.
2. The State guarantees the freedom of every person to believe in their religion and to worship according to their religion and belief.

In addition, Indonesia has also ratified the International Covenant on Civil and Political Rights (ICCPR) in 2006 and the Convention on Elimination of All Forms of Racial Discrimination (ICERD) in 1999. Both conventions also guarantee the right to freedom of religion and belief as well as the elimination of all forms of discrimination including discrimination on the basis of religion.

II. Freedom of religion and belief of religious minorities in Indonesia.

Implementation of the right to freedom of religion for minorities shall be guaranteed by the state without the fear of implementing it. However, the guarantee is only a slogan because the Government of the Republic of Indonesia under the Constitution of 1945 now faces a critical moment in which the government can not perform its constitutional obligation to guarantee the right to freedom of religion of minority groups as mandated by the constitution. The freedom of religion or belief of minority religions in Indonesia has been ignored and the state tends toward cruelty and deprivation of the basic rights of people.

There are frequent, some intentional, acts of violence and restrictions on freedom of religion practiced by one religion or sect against another religion or sect. Prohibition cases against religious sect considered heretical by the government, such as the Ahmadis and other religious sects, as well as the actions of a group of people who commit acts of violence and vandalism against places of worship are evidence of human right violations (see table 1 and 2). Other examples of violations of freedom of religion can be seen in laws and policies, as will be discussed in this article.

In the case of acts of omission, the state has failed to carry out the role of ensuring the implementation and fulfillment of the rights of freedom of religion for minority groups. The Indonesian government tolerates acts of intolerance and discrimination against minority religions, including allowing non-state actors such as the Islamic Defender Front (FPI) to act intolerantly towards minority religious groups. In such case the state does not perform its constitutional ob-

ligation for the protection, promotion, and enforcement, of the right to freedom of religion and minority religious belief. Ardelean (2013) argues, “the policy and practice of discrimination against religious and belief groups by the government can be presumed as a violation of freedom of worship. Thus the state actions are considered as highly immoral acts”.

The Indonesian state should rule without discrimination against minority religious groups. Niebuhr, as cited by Intan (2010), claims that in the rule-making of freedom of religion, the state should be guided by the regulative principles of freedom (liberty) and equality as fundamental elements because without these elements, the state may not give it justice. Indonesia, however, deliberately enacts legislation depriving and limiting the freedom of religion and belief of religious minorities. For example; the Joint Regulation of the Minister of Home Affairs No. 9 of 2006 and the Minister of Religion No. 8 Year 2006 on Guidelines for the Implementation Task Regional Head / Deputy Head In Maintenance of Religious Harmony and Construction of Houses of Worship or often referred to as the regulation Construction of Houses of Worship. These regulations define the restrictions-limiting the rights of certain religious groups to build houses of worship. Article 14 paragraph 2 letter A of Joint Regulations clearly states that the support of sixty people is required for the establishment of houses of worship. In reality, however, religious minorities find it difficult to meet the requirements specified by the rule because it is very difficult to obtain the consent of the community living around the place of worship. While it has been set forth in the Joint Rules, difficulties experienced by religious minorities occur due to the lack of good faith of local

governments in assisting religious minorities in order to obtain approval from communities living close to the house of worship. Intimidation and extortion happen in the permission process for the establishment of such houses of worship. Intimidation and extortion happen in the permission process for the establishment of such houses of worship, Rules that bind minority groups often lead to the emergence of mass pressure that leads to violence. This condition is very dangerous for freedom of religion because it tolerates forms of discrimination and abuses committed by majority religious groups and radical groups such as (Islamic Defender Front - FPI). No protection is provided by the state.

Enacting the Joint Regulation is contrary to the right to freedom of religion or belief for each individual, including determining a the new religion. Furthermore, the existence of such a rule is seen as an act of the state to justify intolerance and violent behavior committed by the state (Hasani, 2011). On the other hand, the existence of the joint decree is a form of intervention intentionally made by the state to reduce or inhibit the freedom of religion of religious minorities. This also can be seen as a rule deliberately created by the state no arbitrarily to interpret and practice religion or add a new religion to those already recognized by the state, because such an action would be punishable for violating article 156 a of *KUHP* (Indonesian Criminal Code). Thus, other forms of restriction by the state are, not just limited to internal freedom but also on the external freedom of the individual.

According to the United State Commission Report on International Freedom of religion (USCIRF) 2016, a report on the conditions and violations of freedom of religion for minority reli-

gions in Indonesia, “in some parts of the country, local governments commonly restrict or prevent religious practice pursuant to government policy, specifically the 2006 Joint Regulation on Houses of Worship, which requires permits for houses of worship”. The report, moreover states that in July 2015, a crowd of approximately 200 people threw rocks and set fire to a mosque in Tolikara, Papua, when local Muslims gathered to perform Idul Fitri prayers. The fire spread to several nearby shops and forced the evacuation of approximately 200 local residents. Jakarta Christian Communication Forum reported that attacks on churches increased from just 10 in 2010 to 75 in 2013. The reason for the occurrences of violations of freedom of religion in this period shows the weakness of the government's commitment to freedom of religion in Indonesia. According to Boyle & Sheen (1997), “Among some countries that restrict freedom of religion, Indonesia is one country that ignores the rules and discriminates against minority religions”. State institutions in Indonesia, in addition to acting to protect human rights, also serve as some of the usurpers of the right to freedom of minority religions (Tampubolon, 2013). The state often tolerates acts of intolerance against minority groups with the intent and purpose to perpetuate power (Arinanto, 2008). Religious values are no longer used as a source of state ethics, ideology is defined unilaterally, state authorities have used abuse to maintain power and/or the status quo. The involvement of some groups in society who want to manipulate religion to serve the groups' interests is considered very dangerous for the democratic process in Indonesia (Hariatmoko, 2014). The majority group is a valuable political asset for the survival of the ruling political groups. As Asroni (2006) states “in the absence of support of the majority religious group, a regime will fall easily”.

Refendi Djamin (2014) in his report on ASEAN Intergovernmental Human Rights Commission (AHRC) concluded that one of the problems of freedom of religion in Indonesia is that the crimes committed directly against freedom of religion are supported by discriminatory state regulations. Claims that violations of individual human rights are not only limited to the victims of violations of the law, but also include the failure of the state to act correctly according to the law for these rights. That is not to say that the state is only in violation of the right freedom of religion by not prohibiting worship, but also includes the government's violation of positive obligation to provide security for various religions to practice their religion, including discriminatory policies and religion politicization for special interests. Although the obligations imposed are the responsibility of the state, the state often becomes a predator of freedom of religion, particularly against minority religions. Pieris (2007) claims that the government as the executive mandate of the people use the mandate as a tool to legitimize themselves and exert pressure. Furthermore, the state politicizing religion and, state alignments against the majority group is not without purpose, but at the end is about the continuity of power (Intan, 2010).

III. Violation of freedom of minority religions in Indonesia

The violation of the right to freedom of religion in Indonesia is a very difficult problem to overcome because the state should act to protect but has instead changed to become one of the violators of the right to freedom of religion. Sukma (2005) addresses the nature and magnitude of the problem as becoming more complicated when

the state itself has become part of the problem rather than part of the solution. Various kinds of violations of freedom of religion from direct actions to indirect actions are undertaken by the state such as assessment of a false religion, to the imposition of beliefs. The state is entitled to assess whether a person whether has a false religion or not. False religion is punishable under article 156 of the Indonesian Criminal Code.

According to data released by the Wahid Institute, a leading NGO dealing with issues of human rights and freedom of religion, violations of freedom of religion against minority religions by both state and non-state actors increased significantly. During January to December 2014, the number of offenses or acts of intolerance found in Indonesia is still high with intolerance events towards minorities amounted to 245 cases, of which 106 events (43%) involve state actors and 139 events (57%) involve non-state actors (Hasani, 2014).

Direct actions commonly done by the state in violating the rights of minority groups include enacting discriminatory laws which disadvantage minority religions and, demolishing houses of worship on the pretext of not having building permit. On the other hand, negligence actions are often carried out by officers of the Indonesian Police (*Polisi Republik Indonesia*) against non-state actors who commit violent acts and intolerance towards minorities and police tend to support the anarchic actions undertaken by non-state actors. In chaotic situations, the state does not use coercive instruments to prevent acts of intolerance and discrimination experienced by minority religion groups. So, it may not be an overstatement to say that the state is referred to as a “mind setter” some anarchist actions that occur against minority religion. Deprivation of the right to religious

freedom and belief that is characterized by the radicalization of religious sentiment and hatred against religious minorities is undeniably a result derived from an ambiguous state policy (ELSAM, 2012). The government, with its apparatus of officials, continuously promotes and supports a number of regulations which violate the right to freedom of religion or belief (ELSAM, 2012).

Tabel 1 Violations by state actor in 2014

No	Kind of abuse or intolerance by state actors	Total
1	Inhibit access to /sealing a place of worship	28
2	Belief coercion	19
3	Prohibit/Stop Religious Activity	15
4	Criminalization on the basis of religion	14
5	Discrimination on the basis of religion	10
6	Omission	9
7	Prohibit allegedly heretical activities	8
8	Spreading hatred	2
9	Threaten and intimidate minority groups	1
	Total	106

Source: The Wahid Institute Report on Religious Freedom 2014

Tabel 2 Violations by non-state actors in 2014

No	Kind of violation or intolerance by non-state actors	Total
1	Physical attacks	27
2	Rejection, closing, and sealing churches	25
3	Prohibition and restriction of religious activities	16
4	Heretic	13
5	Spreading hatred	11
6	Intimidation	11
7	Belief coercion	9
8	Discrimination on the basis of religion	9
9	Rejection, sealing and closing JAI Mosque	7
10	Expression Restrictions on the basis of religion	5
11	Humiliate other groups/religions	4
12	Mosque rejection	2
	Total	139

Source: The Wahid Institute Repot on Religious Freedom 2014

The state also recognizes some institutions' existence and legitimacy in the state arena that are also legitimizing the intolerance and discriminative actions against adherents of certain religions and/ beliefs, such as the formation of BAKORPAKEM (Coordinating Body for Monitoring Mystical Beliefs in the Society) which consists of the Attorney General, Minister of the Internal Affairs, and police, One of the BAKORPAKEM'S decisions declared the following of Al-Islamiya Al-Qiyadah as a cult because his teachings are contrary

to the teachings of Islam. The Defense Team for Religious Faith and Freedom (TPKB) raised two cases of state intervention against the conviction of its citizens in 2007. The police arrested the leaders and followers of Al-Islamiya Al-Qiyadah with accusations of blasphemy as referred to in Article 156a of the Criminal Code on Blasphemy. The decision of the Supreme Court, dated 9 October 2007, to sentence Muhammad Abdul Rachman of the Eden Community to three years in prison. Muhammad Abdul Rachman, was previously acquitted by the Central Jakarta District Court Decision of 6 December 2006. The Supreme Court stated that it had been legally proven that Abdul Rachman was guilty of committing criminal acts of desecration against a religion practiced in Indonesia and of writing a public broadcast containing feelings of hostility and, hatred (Article 156a of the Penal Code and Article 157 of the Criminal Code). Punishing people based on his/her belief is a kind of human rights violation as clearly stated in the Indonesian Constitution 1945. It means that state does not have the authority to criminalize peoples' belief as it is clearly contradict to the principle of *forum internum* (freedom of being) and *forum externum* (freedom to manifest), both recognized as principles of religious freedom under the ICCPR.

IV. Challenges in enforcement of the right to freedom of religion

The difficult challenges faced in the enforcement of the right to religious freedom of minority religions are due to the weakness of the state's role in its function as a protector of the people's belief, which is also related to its malfunction in ensuring the freedom of

every individual. The state has failed to ensure freedom of religion for all citizens. In fact, it is set out clearly in the constitution that every citizen has the right to live a religion or belief. But the state does nothing when there are incidents of attacks on minority religions. The state often allow non-state actors to deprive the rights of minority religious groups as if such action is deemed valid. Even the state does not have any actions to face the discriminatory local regulations related to religious issues that breed in some areas, thereby increasing discrimination against minority religions. The state's role should protect the realization of the right of freedom of religion for minority religions but the state has become weak and is often not present to maintain the harmony of religion and belief. The law has become the tool of the rulers and is contrary to the state ideology (Pancasila) which values rule of the law, social expediency, justice for the sake of national interest, the recognition of human dignity, respect and protection of human rights, and the principle of unity in diversity (Sidharta, 2013).

Positivism is also one of the challenges in the enforcement of the rights of religious minorities. This way of thinking sees the law as not applying on the grounds that the law has no basis in social life or the life of the nation. Law is order, and there should be no relationship between legal and moral realms. This mindset tends to envelop the constitutional judges in making court decisions relating to freedom of religion. For example, the power to make orders such as the Minister Joint Regulation is questionable because such regulation is unrecognized by the Indonesian legal system. This Minister Regulation is presumably used by the government to legitimize itself to curb the freedom of minority religions.

In other cases, there is a contradiction between what is stated in the constitution in addressing discrimination against minority religions. The reason is most easily seen in the rule of law itself. The Constitution is equipped with various guarantees for the rights of every citizen, including the right to exercise religious beliefs. However, those who stand in the position of authority do not have the will to enforce the law and, state actors do not hesitate to betray the Constitution by frequently politicizing religion for personal or group interests. The most obvious example occurred when the Constitutional Court (MK) rejected the reconsideration of Law 1 PNPS 1965 on the Prevention of Abuse and Religion Defamation. The reason for the rejection was very political. The Court was surrounded for days with intimidation from radicals, then it felt compelled to reject the reconsideration merely on the grounds of the judges' "safety".

V. Conclusion

Indonesia has made efforts to guarantee the freedom of religion and protect the rights of minority religions. In addition to the clear intention of the constitution and other laws, the government also ratified the rules of international law, such as ICCPR, which protects minority religions. The Indonesian government, however, has reneged the rights of its citizens to freedom of religion as stipulated in the instruments of national and international law, namely Articles 28 and 29 of the 1945 Constitution, Article 18 of the Universal Declaration of Human Rights (UDHR), Article 18 of the International Covenant on Civil and Political Rights (ICCPR) through Act . No. 12 of 2005, Article 22, No. 39 Year 1999 on Human Rights. Thus the state has ignored the mandate of the Constitution and

international human rights law which mandated the state to perform its obligations to respect, protect, and fulfill the rights of its citizens.

State actions that intentionally fail to prevent acts of intolerance by intolerant groups and the establishment of discriminatory rules by the state, are kinds of state's involvement in the violations of religious freedom. The situation is even worse when it turns out the state not only does not provide protection, but also actively commits violations of the right of religious freedom of minority religious groups .

By looking at the phenomenon of deprivation of freedom of religion in Indonesia, the following recommendations are given to the state, namely: the state shall provide assurance and certainty of freedom of religion and belief to its citizens as mandated in the Constitution and international human rights law, not only in the form of rules , but also in practice. It shall take firm legal action against militia groups who commit acts of violence in the name of religion. The state shall revoke all laws and regulations that restrict freedom of religion and belief. In addition, majority religious groups should respect the differences of religion and belief in accordance with the principle of unity in diversity. Both majority and minority groups should avoid violence and promote dialogue if there is a difference of religious thought and belief.

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