

PORTRAIT OF FREEDOM OF RELIGION AND BELIEF IN A COUNTRY OF LAW

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Abstract

Indonesia as a constitutional state has provided sufficient space for the implementation of religion for the benefit of all citizens. Specifically regarding freedom of religion and/or belief, the constitution has also provided very broad guarantees. Therefore, everyone is free to embrace religion and worship according to their religion. In fact, everyone has the right to freedom of belief. Of course, including expressing thoughts and attitudes, according to his conscience. This research takes the subject of freedom of religion and belief in the rule of law. The purpose of the research is to find out that the rights and freedoms of religion or belief are free choices according to one's conscience, so they must be respected. There is no institution whatsoever that can impede, negate or impose religion. This research is an empirical research that uses a sociological juridical approach. The reality of conditions that exist in the regions, in the research conducted found various advances, there is understanding/awareness of citizens of the rights and obligations in carrying out religious worship in the Indonesian legal state. That is the progress of our constitution in regulating religious freedom issues in this republic.

Keywords: Citizens, Freedom of Religion, State of Law

INTRODUCTION

The perspective of a rule of law based on the constitution is a determining key in the dynamics and guarantees of freedom of religion in modern society, including Islamic society, where the state constitution provides guarantees for freedom of religion.

The Republic of Indonesia, which was proclaimed on August 17, 1945, is a nation state built on the basis of a modern constitution, namely the 1945 Constitution. It is in this context that guarantees for freedom of religion and belief are contained in several articles. Article 29 Paragraph 2 reads: "The state guarantees the freedom of every citizen to embrace their own religion and to worship according to their religion and belief."

On the other hand, it has been emphasized that Article 28 concerning human rights (HAM) is more certain to provide guarantees regarding this matter. In the further implementation of this Article, letter E Paragraphs 1 and 2 of the 1945 Constitution as a result of the amendments stated: 1) "Every person is free to embrace religion and worship according to their religion, choose education and teaching, choose a job, choose citizenship, choose a place to live in the jurisdiction of Indonesia and leave it, and has the right to return." ; 2) "Everyone has the right to freedom of belief, express thoughts and attitudes, according to his conscience".

While Article 28 I (1) states: (1) The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as an individual before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be reduced under any circumstances.

That is the logical consequence of religious life in a rule of law country, so that it explicitly guarantees freedom of religion and belief as

part of the basic rights of citizens. This is emphasized in Article 28 I (4) that: The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government as the regulator.

Therefore, in a constitutional state (rechtsstaat), this guarantee is also contained in various laws which are derivations of the Constitution. The ratification of the ICCPR (Covenant on Civil and Political Rights) through Law No. 12 of 2005 provides reinforcement for the articles mentioned above where it is emphasized that guarantees are on the shoulders of the state and/or the government. .

Examining the dynamics and various debates about Article 29, it is no exaggeration to say that the issue of freedom of religion is a complicated and complex issue. Not only in the formulation of regulations but also in implementation in the field (execution). History records that thousands of people became victims of religious violence throughout the period from the Old Order regime to the present, namely the Post-Reformation, both carried out by the state and civil society or civil society actors.

If we look closely at the pattern, there are at least three problem areas that arise in the complicated issue of religious freedom. First, the realm of the state with its various apparatus (government, police, military/army, courts, etc.), second is the realm of law. Related to the issue of freedom of religion, legal

issues that arise include religious broadcasting, foreign assistance, the establishment of houses of worship, religious education, and legal instruments (perda) with Islamic sharia nuances. Third, the realm of civil society. At this level the most serious challenge is the strengthening of the current Islamist movement, not only at the center but also at the regions. Apart from that, of course there are things worth considering is the role of the media and the existence of mass organizations in building the character of a more harmonious and tolerant society.

However, this does not mean that the issue of freedom of religion does not have a strong constitutional umbrella. Article 29 of the 1945 Constitution clearly emphasizes the substance of this issue: (1) "The state is based on Belief in the One and Only God." (2) "The state guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and beliefs."

This affirmation is in line with the contents of the 1948 UN Universal Declaration on Human Rights, article 18, namely: "Everyone has the right to freedom of thought, conscience and religion, in this case including the freedom to change religion or belief, and freedom to express religion and belief in any way teach it, practice it, worship and obey it, both alone and together with others, in public and private."

In fact, it is more interesting because the Indonesian constitution contains a matter of guaranteeing freedom of religion before the Declaration of Human Rights. That is why Indonesia can easily accept the existence of this declaration on this Indonesian motherland.

To facilitate the implementation of Article 29 (2) of the 1945 Constitution, the government then issued Law No. 1/PNPS/1965 concerning the prevention of abuse and/or blasphemy of religion which was confirmed by Law No. 5 of 1969 concerning statements of various Presidential Decrees.

The rule of law is seen as quite neutral, namely merely reminding citizens to be careful about making accusations that tarnish religious communities, such as calling out the term "infidel". This means that the rule applies in general to all religious and belief communities or communities of adherents.

In subsequent developments, the government issued a new policy supporting freedom of religion through the 1998 TAP MPR No. That." This provision is in line with the formulation contained in the 1945 Constitution of the Republic of Indonesia.

More than that, this religious right is recognized as a human right that cannot be reduced under any circumstances (non-derogable) as stated in TAP MPR No. XVII of 1998, chapter x concerning the protection and promotion of human rights, Article 37: "The right to life the right not to be tortured, the right to freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of a law that applies retroactively are human rights that cannot be reduced in circumstances anything (non-derogable)."

METHOD

This research method uses an empirical juridical method with a qualitative descriptive approach, to describe and/or analyze the development of religious life and the dynamics of a pluralistic society after the reformation (amendments to the 1945 Constitution), and a causality approach to reveal the facts contained in the implementation of freedom and belief in worship according to beliefs of each citizen.

Sources of data in this study included primary data in the form of interviews, observations, and documentation in the regions of West Java, Banten, and Papua. Secondary data was taken from literature studies relevant to this study from journals and books.

DISCUSSION

A. Observing Legal Instruments

Explicitly, guarantees of freedom of religion and/or belief can be seen in a number of policies as listed below:

1. Article 28 E, paragraph (1) of the 1945 Constitution: Everyone is free to embrace a religion and worship according to his religion. Paragraph (2): Everyone has the right to freedom of belief, express thoughts and attitudes according to his conscience.
2. Article 29, paragraph (2) of the 1945 Constitution: The state guarantees the freedom of every citizen to embrace their own religion and to worship according to their religion and beliefs.
3. Law No. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights Article 18 Paragraph (1): everyone has the right to freedom of thought, conscience and. This right includes freedom to adopt or accept a religion or belief of his choice, and freedom, either individually or collectively with other people, and whether in public or private, to practice his religion or belief in worship activities.
4. Law No. 39 of 1999 concerning Human Rights Article 22 Paragraph (1): everyone is free to embrace their own religion and worship according to their religion and beliefs. Article 22 Paragraph (2): The

state guarantees the freedom of every person to embrace their own religion and to worship according to their religion and belief.

5. Law No. 1/PNPS/1965, Jo Law No. 5/1969 concerning the Prevention of Religion Abuse and/or Blasphemy, in the explanation of Article 1 reads: "The religions embraced by the Indonesian population are Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism. This can be proven in the history of the development of religion in Indonesia. However, it does not mean that other religions such as Judaism, Zoroastrian, Shinto, Taoism are banned in Indonesia. They still get full guarantees as provided for in Article 29 Paragraph (2) and they are allowed to exist.

So, based on what is implied in Article 70 of Law No. 39 of 1999 concerning Human Rights and stated in Law No. 12 of 2005. Article 18 Paragraph (3) concerning Ratification of the International Covenant on Civil and Political Rights, the government as the regulator can

regulate / limit the freedom to practice religion or belief through laws .

Based on the juridical arguments on the aforementioned grounds, from a human rights perspective, the right to freedom of religion or belief can be summarized into eight components, namely:

1. Internal freedom, everyone has freedom of thought, belief and religion. This right includes the freedom to adopt or determine a religion or belief of one's own choice, including to change one's religion or belief.

2. External freedom. Everyone has the freedom, individually or in society, publicly or privately, to manifest his religion or belief in teaching, experience and worship.

3. No coercion. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

4. Not discriminatory. The state is obliged to respect and guarantee the freedom of religion or belief of all individuals within its territory without distinction of ethnicity, skin color, gender, language and beliefs, politics or opinions.

5. Rights of parents and guardians. The state is obliged to respect the freedom of parents and legal guardians to ensure that the religious and moral education of their children is in accordance with their own beliefs.

6. Institutional Freedom and Legal Status. Vital aspects of freedom of religion or belief.

7. Permissible Restrictions on External Freedoms. Freedom to manifest one's religion or beliefs can only be limited by law.

8. Non Derogability. The state may not reduce freedom of religion or belief under any circumstances.

B. Challenges and Dynamics of Religious Freedom

1. Legal Perspective

In the context of a rule of law state in Indonesia, the existence of the 1945 Constitution is known as the source of all sources of law which are the foundations of every existing rule.

The legal levels in Indonesia after the 1945 Constitution are: Laws, Government Regulations, Presidential Regulations, Government Regulations in Lieu of Laws, and Regional Regulations. In the global (universal) legal system, Indonesia has also ratified many international agreements such as the International Covenant on Civil and Political Rights through Law No. 12 of 2005. During the reformation period, the 1945 Constitution was recorded as having experienced four amendments, truly a period of very rapid changes in the law in Indonesia. Indonesia.

Indeed, it must be admitted that many legal products were born during the reform period. Reform is running with various legislative efforts to fill the legal space of the Indonesian State with various legal products.

It is undeniable that legal challenges and dynamics have resulted in a number of legal products, ranging from laws to regional regulations.

However, it is very unfortunate that a number of existing legal or regulatory products have caused tension in society and overlapped and some even called them products - products of multiple interpretations. This can be seen in the 2002 Child Protection Law, 2003 National Education System Law, 2006 Population Administration Law, Presidential Decree No 11 of 2003 concerning the implementation of Islamic law in Aceh, as well as various regional regulations (perda). regarding the application of Islamic Sharia in several areas.

2. Post-Reformation Dynamics.

The expression of diversity seen in the portraits of various religions and recent developments, as has been explained, is a real fruit as well as something legitimate in democracy.

In fact, they are not the only ones who believe that plurality must be maintained and managed properly. However, more than that, democracy provides space for religious groups that seem to reject plurality to thrive. Unfortunately, the diversity and differences in their views often lead to acts of violence, a situation that actually endangers democracy itself.

It can be noted that throughout the reformation era until now, patterns of religious violence emerged in two forms. First, the phenomenon of deception and violence against certain religious beliefs and beliefs with religious reasons.

2006. Throughout the year it continues to increase until the end of 2022 showing the dynamics of rapid development. Setara Institute for Democracy and Peace in its annual report recorded 535 cases of violations of freedom of religion and belief.

In addition, forms of violence take the mode of acts of terrorism and inter-religious conflict. The 2003 Report on International Religious Freedom for Indonesia, published by the United States Bureau of Democracy, Human Rights and Labor, for example, clearly describes how this type of violence took place.

Another case, Christianization and closing of houses of worship. In the report of the Indonesian Church Association (PGI) management and the Indonesian Church Guardians to Komnas HAM that from 2004 to the end of 2022 there had been continuous cases of closing, attacking, and destroying churches. Most occur in the regions of West Java, Banten, Poso, Central Java and Bengkulu.

These various series of events show very clearly the consequences that must be borne as a result of the separation policy between religions recognized by the state and those who are classified as "not having a religion". The groups that were removed, which constituted the real majority of this nation, became "strangers" in their own land. Their beliefs were not respected, their ritual practices were not recognized, and even their civil rights as citizens were denied. all the consequences.

Explicitly, the explanation above also shows that at the level of the policy paradigm, namely how "religious meaning" and/or beliefs or beliefs are constructed, in fact there has been no significant change after the reformation (May 1998).

However, the separation policy between state-recognized religions and those whose existence is not recognized is still maintained today. This can be seen in the formulation of Law No. 23 of 2006 concerning Population Administration, which is the first time the term "religion that has not been recognized by the state" has been officially used, and is very thick in coloring the expansion of the articles "religious offenses" of the Criminal Code Bill.

Previously, I have emphasized that the political demand for equality is the "fate of pluralism" at stake. It even strengthened the fate of Indonesia as a "shared home". The current conditions, these political demands are increasingly reinforcing and even more urgent in the midst of the ongoing democratization transition. In the midst of today's transitional turmoil, it is not enough just to utter the words tolerance and dialogue. Because the transition to democracy is actually not only focused on procedural tweaks, but also has the potential to become the tyranny of the majority.

For this reason, the struggle for democracy must at the same time be a struggle for the upholding/fulfillment of human rights in which the principle of equality is the foundation. The two sides are democracy and human rights. So, here it can be underlined where the politics of equality is the key.

3. Law Enforcement as a Challenge

Strengthening legal instruments (law enforcement) does not in itself show that the protection and guarantee of freedom of religion and belief in Indonesia has been well realized. There are at least three basic things that can be portrayed as a form of "challenge" for law enforcement and the government's duty to provide guarantees for the rights to freedom of religion, including protection for minority rights, cultural expressions and beliefs.

In my opinion, the three challenges are: first, the unclear interpretation of the position of the state and therefore also the government in the name of religion.

The basic question is, can the government intervene in regulating beliefs and can the government determine an official or unofficial religion, so that differences in government services (discrimination) are built up against a religion or belief group? The jargon of political elites and officials that "Indonesia is not a secular country but also not a religious country" reflects the state's ambivalent position on religion or the "double standard" attitude of the government that represents the state in Indonesia.

As explained from the outset, that Article 29 paragraph 2 and Article 28 especially letters E, D and I of the 1945 Constitution as well as other laws and ratification of the ICCPR are expressly quite clear regarding the state's position on religion, namely the government guarantees freedom of religion and belief and guarantees every religion and belief is to worship according to the religion and belief of its adherents.

Thus, the state and government should not have a preference to admit or not to recognize and interfere with religious beliefs, in this case religious beliefs and interpretations.

However, it must be admitted that if one looks closely there are various laws which also expressly contradict the constitution and these laws. Even though it is precisely the law that is often used in court proceedings to limit and even punish those who are considered to give interpretations and practices that do not

The Wahid Institute noted that around 27 cases of violence took place from 2004 to February which are not in accordance with the goals of religion in Indonesia, which are carried out by the state and / or the government.

At that point, it can be seen from Law No. 1/PNPS/1965 concerning the Prevention of Misuse or Blasphemy of Religion which in Article four recommends incorporating Articles in the Law into Articles of the Criminal Code which are then placed in Article 156a. Article 156a of the Criminal Code makes it clear that the state and government can interfere in matters of citizen beliefs.

As for what is meant by the article in full as follows: "Every person is prohibited from deliberately publicly telling, suggesting, or seeking public support for interpreting a religion that is adhered to in Indonesia or carrying out religious activities that resemble those religious activities." which interpretations and activities deviate from the main points of the teachings.

Based on the meaning of the Article, it can be understood that what is regulated is not religious expression but "interpretation" and "practice", which interpretations and practices resemble the main religion, but are considered deviant by the main religion.

In fact, this article does not provide (deny) protection to the rights of individuals and religious and cultural minorities. Rather, on the contrary, it provides protection to the main religion. That is why this article is so popular lately and is often shouted on the streets for those who claim to be the main religion to corner groups that are considered deviant and minorities. Instead of the government protecting and guaranteeing the accused individuals, the government often uses state tools such as the police, prosecutors and judges to make victims of attacks and violence as accused, to then be arrested and tried on charges of blasphemy.

Not only that, the laws that were issued after the amendments to the 1945 Constitution did not help to explain the position of the state and government on religion nor did they clarify the explanation of the constitution regarding freedom of religion and belief. In several articles of Law No. 23 of 2006 concerning Population Administration, for example, it is explicitly stated that the state or government can recognize or not recognize certain religions or beliefs.

Thus, it can be explained that the combination of unclear conceptual positions on the relationship between religion and the state, increasing "identity politics" and the unclear vision of the government regarding the position of the state and religion and guarantees of religious freedom is an obstacle to legal instruments for law enforcement against the constitution and laws on freedom of religion.

The achievement of a constitutional amendment which is so firm in positioning the relationship between religion and the state and the mandate to the government to guarantee religious freedom is almost meaningless. Not only did the amendments have no effect on the laws and regulations that were born before the amendments which contradicted the spirit of the constitution,

So it is important for the government, perhaps the next government (the results of the 2024 presidential election) to seriously review various laws and regulations in terms of freedom of religion and protection of minorities and then be required to have the courage to revise and/or correct various irregularities that have occurred

Of all these reviews, the most important thing is to determine the position of the state in relation to religion in a neutral manner as stated in the constitution. Without serious effort about this, deviation after deviation may continue to occur and accumulate.

It is important that a government establishes a vision and position on the constitution, and does not hesitate to carry out audits of various rules and institutions, especially religious institutions, which are directly related to the state or government which have the potential for domination and monopoly which has implications for discrimination and even intimidation. against minority groups.

CONCLUSION

- In the modern era (post-reformation) religion does not exclusively and primordial carry the aspirations of its own group, but rather brings universal aspirations of civil society. In other words, religion is required to formulate universal challenges to humanity, such as poverty, ignorance, economic inequality, and more importantly respect for humanity such as freedom of religion, cultural expression and minority communities;

- It is also necessary to emphasize that in the context of presenting religion as a blessing for all mankind, one thing that can be done is to present awareness of religious tolerance, because tolerance is fundamental/essential in religion. Thus, the view of tolerance in Islam has an important position, so that many verses place how Muslims should be tolerant of other people;

- The majority-minority problem as a political reality in Indonesia is still a Pandora's box, because In the dynamics of this republican challenge, the majority are always in a politically advantaged position, but the minority feel marginalized. Therefore it becomes important to think about ways that allow for mutually beneficial negotiations between the majority and minorities in a legal state called Indonesia;

- Identity politics is an unavoidable part of religious dynamics in Indonesia. Therefore, as a pluralistic country, we should have the courage to formulate perspectives on freedom of religion and belief that

are more qualified and dignified in realizing religious brotherhood in order to avoid the appearance of religious people in an emotional/sensitive stage over matters that are formality rather than religious substance.

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REFERENCE

Book :

1. Abustan, Constitutional Law (State & Democracy), PT Rajagrafindo Persada, printed 1 February 2022,
2. ---- Human Rights (critical issues & contextual human rights values), PT Rajagrafindo Persada, print 1 August 2021.
3. Abdussami, Humady and Masnun Tahir, Islam and interreligious relations, Lkis, Yogyakarta
4. Azyumardi Azra, Religious Tolerance in a Plural Society: Indonesian Muslim Perspective, print 1, November 2009
5. Siti Musdah Mulia, Portrait of Freedom of Religion and Belief in the Reformation Era, Celebrating religious freedom, Cet 1, November 2009

Journal

1. Abustan, Implementation of Democracy and Legitimacy of Acting Regional Heads in Indonesia, E-ISSN: 2776-9674, ILREJ, Vol 2, No 3, 2022

Newspaper

1. Abustan, Observing Correlation Between State Institutions, Opinion Column, 6 September 2021, Kompas.
2. Trisno S Sutanto , Caring for Pluralism Sprouts, Kompas, 5 May 2007

Law document

1. Law No. 23 of 2006 concerning Population Administration