

# THE RELIGIOUS RIGHT: Between Freedom and Inter-Religious Harmony

Supeno  
Rosmidah  
Imam Syafei

Law Faculty, Jambi University  
Jln. A. Manap, Telanaipura, Jambi-Indonesia  
Telp/Fak: 085266699626, Email : bungpeno@yahoo.co.id

**ABSTRACT:** Indonesia is a country which appreciate the basic principles of human rights, including religious freedom. Freedom of religion is a fundamental human right that cannot be limited by anyone because freedom of religion and to worship is a right given by God directly, mandated by the United Nations universal declaration of human rights , universal Islamic declaration of human rights , the Covenant rights, civil and political rights , regulated in the 1945 Constitution and Law No. 39 Year 1999 about Human Rights. Such protection is included in the context of the development and implementation of religion , namely in terms of building a house of worship . In an effort to protect and implement the rights of religion must necessarily maintain unity , security and order of the nation and state , the government has issued to the Letter of Agreement of 2 ( two ) Ministers to regulate the establishment of houses of worship in Indonesia .

**Keywords :** Freedom , Religious , Harmony

## 1 . INTRODUCTION

### 1.1. Background

Our state guarantees the freedom of each citizen to embrace their religion and to practice the religion or belief, as affirmation of the Constitution of the Republic of Indonesia on the guarantee of the State to give freedom to the people to choose the religion he believes in and worship according to his belief. Indonesia is a country of pluralism in religious life. Because in Indonesia, there is not only one religion but there are also some religions that exist, namely are Islam , Catholicism , Protestantism , Hinduism , Buddhism and Confucianism .

One of the essential elements for running faiths in worship is the worship house. Most of the religious

routines done in it in accordance with what was ordered by each religion. The consequence is that to be able to carry out the routines, the followers must establish a house of worship. Related to the setting up the worship house, the things do not always work well because there is still friction between adherents of religion here in an area , it can be lifted a few examples of such cases :

- a. The prohibition of the establishment of the Indonesian Christian Church ( GKI ) Taman Yasmin by Bogor city administration in 2008 , even the Bogor municipal government did not heed the decision of the Supreme Court ( MA ) NO. 127/PK/TUN/2009 confirming the validity of the building permit ( IMB ) of Taman Yasmin Church .

- b. Forced demolition of the Batak Christian Protestant Church ( HKBP ) by Bekasi reGENCY government in the reason that the grounds manager does not hold permit building license.
- c. Church sealing in block 1 No. 7-8 Pisangan Rural Housing Resident Sepatan Jaya subdistrict of Tangerang reGENCY.
- d. Rejection of residents against the construction of a mosque in the village of North Tapanuli Nahornop Marsada Tarutung 2010

Seeing this condition, the government should take constructive steps to address any problems between religious conflict in Indonesia, including on the establishment of houses of worship. According to Afif Muhammad in his book "Religion and Social Conflict Indonesian Experience Study" the steps taken by the government are "first, organizing dialogue and deliberation among religious believers, and the second, setting up various rules in the form of decrees"<sup>1</sup> Of course, the government cannot let these events continue to occur. To be able to protect and implement the rights of religious government should also be able to maintain the unity, integrity, security and order in the society, protect the public interest , the public and private together . Therefore, the government issued a Letter of Agreement of Religious and Home Affairs No. 9 and 8 on Guidelines Implementation Task Regional Head / Deputy Head of Maintenance of Religious Harmony,

<sup>1</sup> Afif Muhammad, *Religious and Moeslem Conflict, The Moeslem Experiences Study*, Marja, Jakarta, 2013, at, 121

Empowerment Forum for Religious Harmony, and the Construction of Houses of Worship .

## 2 . Freedom of religion in the context of universal

Human rights are universal rights, which means that human rights possessed by every human being without exception, the right to be respected by every person beyond the boundaries of religion, age, ethnicity, race and class, also means universal cross the line - time limit which means apply now and in the future. Human rights are also not limited by territory of a State which means that human rights apply anywhere .Sutoyo declared " Human rights are universal, meaning that applies anywhere and anytime and to anyone also cannot be taken by anyone"<sup>2</sup> , because human rights are universal then it must be known, implemented and respected by everyone without any exception, the religion right.

United Nation in December 10<sup>th</sup>1948 issued a statement about the universal human rights as stipulated in the United Nations Universal Declaration of Human Rights, one of the important things in the statement is contained in Title 18, namely :

*"Everyone has the right freedom of thought, conscience and religion ; this right includes freedom to change his religion or belief , and freedom , either alone or in community with others and in public or private, to manifest his religion or belief in teaching*

<sup>2</sup> Sutoyo, *The Civilization Study for university*, Graha Ilmu, Yogyakarta, 2011, at.106.

, *practice , worship and observance . ( Article 18 of The Universal Declaration of Human Rights).*<sup>3</sup>

From this universal statement of human rights, it is stated that the people were given the freedom of practicing their religious affairs respectively, choosing religion, converting, worshipping, stating religion as an absolute right of every human being. The manifestation of the absoluteness is that a person is given full rights to practice religion and their beliefs. On the other hand everyone should be able to respect and appreciate the beliefs held by a person without interfering in the process of worship. The education and development carried out by adherents of religion. Even religious tolerance should be developed among the religion followers.

Freedom of religion is also something that is very principle in human beings because of the growing awareness of the rights of the human conscience in nature. We can learn to Karl Josef Partsch statement in Ifdhal Kasim book entitled "Civil and Political Rights Essays" states However, it should note , that at least one of them - religious freedom as a human right appears the most fundamental human right in national and international politics instruments, long before the thought of systematic protection for civil and political rights.<sup>4</sup>

Freedom of religion is the most fundamental human right in the national and international politics

instruments, the most fundamental human rights because it has become part of conscience since human was born. It is given by God to all human kinds. Naturally, a man has awareness to seek for God, a willingness to be closed and to worship which can be done through religion. In "People Agreement (England) October 1947 stated (religion matters and the way of worshipping God empower are not given to us therefore we cannot take out or add anything into our heart as God thought, without doing sins"

Essential point in this matter is that the religious freedom of religious is the every basic of human right that has been existed before the coming of civil and political rights, the matter of religion and worshipping God is not the authority of man so we cannot take this right.

This right cannot be reduced by anyone because it is a universal right. Todung Mulya Lubis in his preface of "Hak-Hak Asasi Manusia dalam Masyarakat Dunia, Isu dan Tindakan", stated "what is included in human right of "*non-derogable*) is the right of life, freedom of abuse and violent punishment, freedom of slavery as well as working pressure , freedom of debt, freedom of *ex post facto* , freedom of thinking and freedom of religion.<sup>5</sup>

The right of religion cannot be limited (non-derogable) by anyone because it is universal and owned by human that cross the states territory. Because of its

<sup>3</sup> The United Nation, *Universal Declaration of Human Right*, 1948, Title. 8

<sup>4</sup> Ifdhal Kasim, *The Civil Rights dan Politic*, The Institution Study and Human Advocation Community, Jakarta, 2001, at.239

<sup>5</sup> A. Setiawan Abadi, *The Basic Right on the World Community*, Yayasan Obor Indonesia, Jakarta, 1993, at. xiii

universality, a state should be an institution that put this right at its supremacy without discrimination.

As the consequences, this right is implemented in the form of respecting everyone to perform their religion duties, does not differentiate any religion without any discrimination. This principle is very important in order to keep the unity of a nation. The statement of no discrimination is clearly stipulated in article ( 26 ) Covenant on Civil and Political Rights :*"everyone is equal before the law and entitled to equal protection of the law . Moreover, the law prohibits any discrimination and guarantee to all persons equal protection and will be effective against discrimination on any ground such as ethnicity, skin color, sex, language, religion, political views and other, national or social origin, property, birth, or other status"*<sup>6</sup>

### 3 . Freedom of religion in Islam

As one of the religions that has most followers, Islam also teaches how his people should live in harmony and co-exist with other faiths , it can be seen from the Qur'an Surah Al – Kaafirun : 6 which means " as for you is your faith, and for me is my faith".<sup>7</sup> It shows that Islam orders his people not to interfere of other people's faith, and instructed to only take care of their own religion as such will not occur friction and conflict with other faiths. In addition not to taking care of other people's religious affairs, Islam also teaches that faith issue should not be forced on anyone either by individuals nor by groups of countries. A man has been

given enough reason humans have been given by God to choose his way of life , respectively , can be seen in the provision of Islamic law about the namely : " there is no compulsion in ( enter ) the religion of ( Islam ) " ( QS.Al - Baqarah : 256 ) ."<sup>8</sup>

Also in the universal declaration of human rights Islam ( Universal Islamic Declaration of Human Rights ) stated the basic principles of the Islamic world view of religious freedom , namely are :

#### " X. Rights of Minorities

a. *The Qur'anic principle " There is no compulsion in religion " religion shall govern the rights of non-Muslim Minorities*

b . *In a Muslim country the religious Minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic law , or by their own laws*

#### XIII . Right to freedom of religion

*Every person has the right to freedom of conscience and worship in accordance with his religion beliefs "*<sup>9</sup>.

Based on title 10 and 13, the Islamic universal declaration of human rights contains the principles that there is no force in religion including to determine the religious rights of minorities. In Muslim countries, religious minorities have the choice to respect the personal matters in Islamic law or its own, each person

<sup>6</sup> Covenant on Civil and Political Rights, Article 26

<sup>7</sup> The Indonesian Religious Department, *Qur'an Surah Al-Kafirun* : 6, Jakarta, 2012

<sup>8</sup> The Indonesian Religious Department, *Qur'an Surah .Al - Baqarah* : 256, Jakarta, 2012

<sup>9</sup> *Title 10 dan 13 Universal Islamic Declaration of Human Rights*, 21 Dhul Qaidah 1401 19 September 1961.

based on his conscience has the freedom to worship in line with his religion and belief.

The freedom to build the house of worship is something that cannot be separated from religious freedom because one form of worship in a religious implementation carried out in houses of worship. Subhi Mahmassani in his book "Basic Concepts of Human Rights Comparative Study of Islamic Law and Modern Legislation" translated by Hasanuddin states : " as a consequence of religious freedom is to respect all places of religious worship without distinguishing between the different religions " <sup>10</sup>

#### 4 . Legal protection of religion freedom in Indonesia

The most responsible part for upholding human rights is the state (government), because the state is an organization mandated by the people to take care, protect its citizens. The state should be in the frontline in the enforcement of human rights in their respective countries and in the international context of protection human rights initiated by United Nations mandates the state to uphold human rights in each state jurisdiction.

According to James W. Nickel in his book "Human Rights, Making Sense of Human Rights , Philosophical Reflections over the Universal Declaration of Human Rights translated by Eddy titis Arini states :

" Standard answer to the question of who is supporting the load of human rights states that it is the government supporting it . Historically, the struggle for civil rights and human rights is a fight to control the abuse of state power. Focus on government as the party burdened by the norms of human rights persist in the human rights movement, mainly because the movement has been closely linked to the United Nations, an organization consisting of the countries " <sup>11</sup>

Load given to the state to ensure the protection and promotion of human rights can be manifested in various forms that ratify the global statement about human rights, ratified conventions and international agreements in the field of human rights protection, enter the subject of human rights in the state constitution, setting human rights legislation and have agency in charge of handling the cases of human rights violations.

As Indonesia is a pluralist country, it differs in various aspects of community life such as race, culture, language, religion and so on. In such condition of these differences is not an easy thing to build unity as a nation because many horizontal conflicts between ethnic and inter- religions . These conditions indicate that the conflict between religious communities is still considered as a factor threatening survival , integrity , security and order in the country. This is the duty of the state to maintain a balance between the implementation of human rights and the preservation of the integrity ,

<sup>10</sup> Subhi Mahmassani, *Human Rights Concept, The Compare Moeslem Syariat Study and Modern Regulation*, Tintamas Indonesia, Jakarta, 1993, at. 96

<sup>11</sup> James W Nickel, *Making Sense of Human Rights, Philosophical Reflection on The Universal Declaration of Human Rights*, Gramedia, Jakarta, 1996, at. 60-61.

unity, security and order in the country. It is a protective function against its citizens as mandated in the 1945 Constitution Article 4th that one task of the state is to protect all the people of Indonesia and the entire country of Indonesia.

It has been stated previously that Indonesia is a country that respects the basic principles of human rights and has a strong desire to protect and implement the rights of religion as it is mentioned in the clauses of religious rights in the state constitution, namely are:

A). Article 28E Paragraph ( 1 ) 1945 Constitution :

Everyone is free to adhere to religion and to worship according to his religion, to choose education and teaching, choose a job, citizenship, a place to stay in the area and leave the country, as well as the right to return.

B). Article 28I Paragraph ( 2 ) of the 1945

Constitution : Everyone is entitled to be free from discriminatory treatment on the basis of anything else and are entitled to protection against the discriminatory treatment.

C). Article 29 Paragraph ( 2 ) of the 1945

Constitution : The State guarantees the independence of each citizen to profess religion and to worship according to their religion or belief."<sup>12</sup>

There are three ( 3 ) important things in the articles about the religious freedom provisions:

1. Freedom to profess religion and to worship according to their respective religions

2. Free of discriminatory treatment on any grounds and is entitled toward protection against discriminatory treatment

3. The state guarantees freedom of people to possess one religion as well as to perform the religious worship and belief

Similarly, in Article 22 of Law Number 39 Year 1999 on Human Rights provides:

( 1 ) Everyone is free to adhere to their religion and to worship according to his religion or belief

( 2 ) The state guarantees freedom of every person to embrace their own religion and to worship according to his religion or belief.

If we relate between Article 28 Paragraph ( 2 ) of the 1945 Constitution with Article 22 of Law No. 39 of 1999, it is clearly do not allow discrimination on any ground, including in matters of religion, and the state guarantee the independence of every person to worship according to their religion each.

Scott Davidson in his book "Human Rights, history, theory, and practice in the International Community" translated by A. Hadyana Pudjaatmaja stated : " things that can be seen as the concept of the rule of law which implies that the rights should be

<sup>12</sup> The Constitution of Indonesia 1945, Article. 28, 29

protected by law , and that when removing or reducing individual rights, the government must comply with the requirements of constitutional law . This concept also requires the government to act in accordance with the law, and the laws that form the basis of government action was not oppressive, arbitrary, or discriminatory "13 . This suggests that government action must be based on the law, not oppressive, arbitrary or discriminatory , as a form of embodiment of the rule of law .

Todd Landman stated in *Protecting Human Rights : A Comparative Study " More speci , Protecting Human Rights is concerned with a number of critical questions : ( a ) Explains what the rapid growth of the international human rights regime ? ; ( B ) what is the strength of the relationship between international human rights law and the protection of human rights ? ; and ( c ) how do other factors , Including economic development , international trade relations , the type of democracy , and the involvement in civil or international wars , influence the level of human rights violations ? "*14

State as an institution which has a duty to protect and uphold human rights to its citizens must give great attention to the level of development of international human rights, the strength of the relationship between international human rights law with the protection of human rights and how they interrelate with the factor of

development economics, international trade relations , various kinds of democracy, the association with the war and the impact of human rights violations. By paying attention to these things, the state becomes a main pillar in the protection and enforcement of human rights , the right to take action against human rights violations , maintaining the state of life without discrimination , providing protection to all components primarily provide equal treatment to minorities .

### **5. LCS 2 ( two ) Minister between freedom and inter-religious harmony**

In the consideration of the issuance of the SKB 2 between ( two ) Minister of Religious Affairs and the Minister of Home Affairs No. 9 and 8 on Guidelines Implementation Task Regional Head / Deputy Head of Maintenance of Religious Harmony In, Empowering Forum for Religious Harmony, and the Construction of Houses of Worship stated that the government is obliged to protect every effort of the people in practicing religion and adherents worship, as long as it does not contrary to the laws and regulations , not misuse or desecrate religion , and do not disturb public peace and order ,

Indonesia as a sovereign state factor of integrity, security and order of statehood became a very important element because by ensuring the integrity, security and existence of the state order, the state will be properly maintained and can carry out the rights of citizens, including the guarantee of human rights. Besides the state that willing to enforce rights of its citizens it also responsible for the implementation of the

<sup>13</sup> Scott Davidson, *Human Rights, history, theory, and practice in the International Community* " translated by A. Hadyana Pudjaatmaja, PT. Tenprint, Jakarta, 1994, at. 7

<sup>14</sup> Tod Landdman, *Protecting Human Rights: A Comparative Study*, Essex Human Rights Review Vol. 4 No. 1, February 2007

security state of peace and public order. In such circumstances, the state can set restrictions on a rule that is not intended to impede the implementation of the rules but to enforce other rules so as to create a balance of interests in the community, especially for the implementation of Law No. 17 Year 2011 About Intelligence State, where in the judgment a law is confirmed that for the realization of national goals that protect all the people of Indonesia and the entire country of Indonesia, promote the general welfare, the intellectual life of the nation, and participate establishment of world order based on freedom, eternal peace, and social justice as mandated in in the Opening to the Constitution of the Republic of Indonesia Year 1945, it is very important to do early detection and early warning that support efforts to deter all forms of threats that endanger the existence and integrity of Indonesia.

Rescoe Pond stated that law is a tool of people imitators which is aiming to bring people towards a desired goal by the legal requirement to protect the public interest, the interests of the public and individual interests. Three interests must be run in parallel, not only protected the interests of the individual but also the community, and the public interest must be protected and performing well. Thus, the implementation of human rights in a country is also limited by the law and order and security considerations. However, such restrictions must be based on law and not discriminatory. Bambang W Suharto stated that: "restrictions can be applied only for the purposes for which has been set and must be

directly related to and in accordance with the specific needs that have been determined. Restrictions should not be applied for discriminatory purposes or applied in a discriminatory manner"<sup>15</sup> Because Indonesia as a pluralistic country in the field of religion, it is necessary to technically set the terms of the establishment of houses of worship in Indonesia because if there is no rule that technically feared there will be sealing, demolition and banning the establishment of houses of worship unilaterally by group – specific group. By the LCS of 2 Ministers, we hope for mutual respect, inter-religious tolerance in Indonesia. In the article (14) The decree stipulated:

" (1). Establishment of houses of worship must meet the requirements of the administrative and technical requirements of the building

(2). In addition to meet the requirements referred to in paragraph (1), the establishment of houses of worship must meet specific requirements include:

- a. list of names and identity cards of house of worship users at least 90 (ninety) people, authorized by local authorities according to the boundary as described in Article 13 Paragraph (3).
- b. local support of at least 60 (sixty) people authorized by the headman / village head

<sup>15</sup> Bambang W. Soeharto, *The Overcome Conflict in Indonesia*, Kata Hasta Pustaka, Jakarta, 2013, at.171.



c .written recommendation to the head of religion department office in district / city and

d .written recommendations FKUB of district / city

( 3 ). In terms of the requirements referred to in paragraph ( 2 ) point a is fulfilled and point b is not yet fulfilled, government need to facilitate the availability of the location of the construction of houses of worship".<sup>16</sup>

In Article 14, the LCS 2 ( two ) the Ministers, it is only set about technical requirements of building and special requirements to establish a house of worship that is at least 90 ( ninety ) house of worship users, get local support of the community that is not absolute and other administrative requirements. When the requirements are achieved, there will be no problem in implementing the right to build the house of worship. In this context it is necessary to develop rules and regulations respecting the religious rights can thus be implemented , inter-religious harmony are good and wholeness, unity , security and order in the state will be maintained.

Establishment of houses of worship should also be based by real need by looking at the composition of the population in the area the house of the worship will be built. So, if there is a house of worship should be established in the middle of another religious community or population it is not reasonable to set up a

house of worship. This such conditions which commonly cause conflict horizontally .

For a particular religious community, it is necessary to consider seriously the provisions of Article 13 Paragraph ( 2 ) The Minister LCS 2 which provides that the establishment of houses of worship done while maintaining religious harmony , do not disturb public peace and order , as well as comply with the legislation . With the awareness of serious religious communities in building up houses of worship, the horizontal conflict can be avoided, because the horizontal conflict will be detrimental to all parties. Authors may suggest several things that can be used as guidelines for the establishment of houses of worship , they are:

- a. Establishing a house of worship should look at the composition of population in an area
- b . Do not build a house of worship in the midst of other religious communities
- c. Build a house of worship should qualify the requirements that have been set by the government
- d. Establishment of houses of worship must uphold religious harmony , peace and public order
- e. The use of houses of worship do not interfere with the interests of others, society and the public interest

## 5. Conclusion

Religious rights are rights that can not be limited by anyone, anywhere and anytime as well as a right that

<sup>16</sup> The Article 14 LCS 2 (Two) Ministers Number of 9 and 8 about The regulation of worship house Establishmen.

granted by God and guaranteed in the Declaration of human rights , Islam , Covenant civil rights , freedom of religion also get protection from the state to include in legislation state . The purpose of the issuance of the Joint Decree ( SKB ) 2 Minister is not intended to preclude a particular religious community to build a house of worship but the goal is that the right of citizens to build a house of worship can be done well , on the other hand can remain intertwined inter-religious harmony.

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