

Law, Religious Freedom and National Development in Indonesia

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Abstract: Terms of development in a country is an orderly state condition, peace, justice and unity of all components of the nation. Law is a tool to achieve that condition. The life of Indonesian people can not be separated by religious life and belief. Religion born with a very noble basis and purpose, but in practice it is often a trigger of conflict-filled conditions and affect the process of development of a country. Through this article the author reviewed normatively and empirically about law and the freedom of religion and belief in Indonesia, especially in East Java Province. From the results of the study, authors found that freedom of religion has a very strong correlation with the implementation of development in a country. The results of this study are important as input for the government so the process of development can continue well.

1 INTRODUCTION

Indonesian is a very plural nation. The Indonesian nation has various nuances of pluralism embodied in ethnic groups with diverse backgrounds, local languages, traditions, customs, arts, cultures, religions and beliefs. In a very plural condition the Indonesian nation must implement development as one of the characteristics and the existence of an independent and civilized nation. The development process requires a precondition that is a condition with peace, justice and unity of all components of the nation. With such a reality, what is needed is to find ways to make pluralism or diversity valuable and beneficial for all.

The life of Indonesian people can not be separated by religious life and belief. Religious life and belief for the people of Indonesia is a manifestation of the spirit of cherishing as contained in the Pancasila as the foundation of the Indonesian state. In terms of plurality of religions and beliefs, the population of Indonesia embraces various religions with most embraced Islam. The results of data collection conducted by the Central Bureau of Statistics (BPS) in 2010 shows that from 237,641,326 people, 207,176,162 or 87.18% are Islam, 16,528,513 people or 6.96% are Christians, Catholics 6,907,873 people or 2.91%, Hindus numbered 4,012,116 people or 1.69%, and Buddhas amounted to 1,703,254 peoples or 0.72%, Khong Hu Cu totaled 117,091 people or 0.05%, other religions

recorded amounted to 299,617 people or 0.13% and 0.38% missed or not asked in the census (Tim Puslitbang Kehidupan Keagamaan, 2011).

Religion born with a very noble basis and purpose, but in practice it is often a trigger of conflict-filled conditions and affect the process of development of a country. The process of developing and spreading religions in Indonesia took place in a long time span so that in the journey it is possible to encounter with each other. In the encounter of religions it is necessary to acknowledge that there is sometimes a potential for integration but there is often a potential for competition that can lead to conflicts among religious communities in Indonesia.

Moreover, when discussing about religion it should be recognized that the differences that exist are not solely composed of external factors but also consists of internal factors. Each religion in Indonesia is not single. In it grows with fertile of sect or different religious understanding group. This internal distinction, in many cases, also has the potential to trigger conflict within the religion itself. Yet at the same time, religion is implicated in many of today's most urgent security problems. Millions have been killed or displaced due to religion-related conflicts in the first years of the 21st century alone. Such conflicts lead to political instability, prevent the consolidation of democracy, and feed terrorism.

Based of international survey data in 2007 by Pew Global Attitudes Survey, people around the

world want to be able to practice their religion freely. The Pew Global Attitudes Survey ask publics in 34 countries covering five different regions. They were asked about the importance of practicing their religion freely. The response was extremely high, ranging from 84 percent in Eastern Europe to 98 percent in Africa. On average across the 34 countries, 93 percent indicated that it is important to be able to live in a country where they can practice their religion freely, with less than 2 percent indicating that it wasn't important at all (Pew Global Attitude, 2007).

This raises a critical question: How about the Indonesian law in freedom of religion and belief in practises? Or alternatively, could religious freedom in fact be an essential part of the solution to build of pre-condition for national development? In what follows, I explore the rule of law on religious freedom in Indonesia and relationship between religious freedom and national development, drawing from extensive national data on religious freedom and various social and political development indicators.

2 INDONESIAN LAW OF RELIGIOUS FREEDOM IN PRACTISES

In the Indonesian Human Rights Law Instrument, the right of religious freedom is a right guaranteed under the 1945 Constitution so-called constitutional rights of the people. The Indonesian nation has recognized the virtue of religious freedom or is confident of being one of the essential benchmarks of independence achievement. This right is guaranteed in Article 29 paragraph (2) of the 1945 Constitution stating: "The State guarantees the independence of every citizen to embrace its religion and beliefs." That is, the state has the obligation to guarantee the right and freedom of everyone to embrace religion and beliefs according to their choice. Article 29 confirms Sila I Pancasila: "The Supreme Godhead."

This is reinforced by Law Number 39 Year 1999 on Human Rights. In Article 22 states that: "Everyone is free to embrace his or her own religion and to worship according to his or her religion and belief. And the state guarantees the freedom of every man to his or her own religion and to worship according to his or her religion and belief. "

Although there are many instruments of human rights law in Indonesia, the laws relating to religious

freedom rights are still discriminatory and disharmony with the International Human Rights Instrument so it has not been optimum to provide protection for religious freedom rights (Pratiwi, 2017). For example, the old legal instruments that are still maintained are Law Number 1 / PNPS / 1965 on the Prevention, Abuse and or Blasphemy jo Articles 156 and 156a of the Criminal Code. This law is used as the legal basis for the birth of a legal policy such as a decree prohibiting the spread of certain religious teachings, thereby providing a space for state or state apparatus to threaten or punish someone who expresses his belief if the belief is deemed to tarnish the official religion of the country.

Based on the results of several good reports published by official State Institutions such as KOMNAS HAM RI and several human rights NGOs in Indonesia, the religious freedom situation in Indonesia is still experiencing ups and downs. According to KOMNAS HAM records, the religious freedom problem has been repeated and improved compared to the previous year, which is 76 reports in 2014, 87 reports in 2015 to 97 reports in 2016 (The Wahid Institut, 2017). In the year 2016, the most prominent religious freedom issues are the problem of limiting the establishment of houses of worship, the prohibition of religious activities, and the destruction of places of worship, threats or intimidation against certain religious followers.

One of the things that caused the condition is still the existence of the notion of relativity that developed in Indonesia. The resistance of some groups to the universality of human rights has placed the notion of relativity as an alternative choice. The notion of relativity believes that human rights can not be applied equally in every region or country. The application of human rights depends on the social, economic, political and cultural conditions of a country. The idea contrast Islam with human rights, as Samuel P. Huntington puts human rights as a Western product and thus does not fit into a Non-Western culture (Mayer, 1994). While universality holds that human rights are universal, human rights apply to everyone wherever they may be regardless of their differences (Tomuschat, 2003). This means that human rights apply to Islam and non-Islam, minorities and the majority, men and women, young and old and so on.

The idea of universality of human rights strengthened after it was initiated by the United Nations (UN) was marked by the receipt of the Universal Declaration of Human Rights on December 10, 1948 as an important instrument in

protecting people. Then in 1966 the Universal Declaration of Human Rights was followed up by two international agreements, namely The International Covenant on Civil and Political Rights (CCPR) and The International Covenant on Economics and Social and Cultural Rights (CESCR) which made the provisions of the Universal Declaration of Human Rights (UDHR) legally binding, provides a more detailed description of the protected rights and provides procedures for the implementation of which member states should follow. Until now both of these understandings still have a balanced influence in Indonesia.

The fact is very contrary to the expectations of most people as the results of research that has been described at the beginning of this article. If the law is the hope of creating a conducive situation for the implementation of development does not meet the expectations of the community, how can national development working well? The law can no longer be a tool to create conditions of peace, justice and unity of all components of the nation as an orderly state condition for development.

3 PUBLIC PARTICIPATION

The state will indeed guarantee its citizens to be able to live comfortably and prosperously. However, people can not just demand without doing their duty in social life, such as being nice to others and of course live with the principle of mutual help. The duty of the people in social life highly depend on peaceful, justice, comfortable, prosperous and united life of all citizens as an important condition.

In a survey conducted in some areas known as tolerant areas in East Java, it was found that where the religious expression of citizens is appreciated, they had many ways to contribute to society, both through their religion institutions as well as through other avenues. They felt motivated to work hard and contribute to society. This is also what prompted the condition of the East Java Province Happiness Index to be in a position above the National Happiness Index; namely at the number 70.77 (BPS, 2017). Index of Happiness is arranged by BPS based on life satisfaction dimension, affect and meaning of life (eudaimonia). The indicators of the dimensions of the Happiness Index composers include the feeling of not worry / anxiety, feelings of not depressed and self-development.

The role of East Java in the formation of national GDP in the first quarter of 2018 is also quite large. East Java, along with other provinces in Java,

contributed 58.67% in the formation of national GDP in the first quarter of 2018 (BPS, 2018). With a significant rate of economic growth since 2016, BPS recorded the poverty rate in East Java during the period March 2017 until September 2017 was reduced by 0.57% (BPS, 2018).

Are there international statistical data also confirm these impressions? According to a recent study of 101 countries conducted by the Hudson Institute's Center for Religious Freedom, the answer is yes. The presence of religious freedom in a country mathematically correlates with the presence of other fundamental, responsible freedoms (including civil and political liberty, press freedom, and economic freedom) and with the longevity of democracy. All these factors encourage to create of a conducive situation for the implementation of development of a country (Grim, 2008).

Harvard Economist and Nobel Laureate Amartya Sen argues, however, that human freedom is not just the general opportunity for such freedoms, but also the specific processes within a country that result in better lives (Sen, 1999). Thus, if religious freedom is an integral part of the "bundled commodity" of human freedoms, religious freedom should be closely associated with the general betterment of people's lives. The Hudson Institute data again confirm just such a correlation. The study found that wherever religious freedom is high, there tends to be fewer incidents of armed conflict, better health outcomes, higher levels of earned income, and better educational opportunities for women. Moreover, religious freedom is associated with higher overall human development, as measured by the human development index (Grim, 2008).

In recent years, many studies have looked at the benefits of the social capital and spiritual capital generated through active civic and religious involvement. As more people actively participate in religion, religious groups increasingly bring tangible benefits such as literacy, vocational, and health training, marital and bereavement counseling, poverty relief, and more. Faith-based organizations, for example, are the major providers of care and support services to people living with HIV/AIDS in the developing world and there is a growing scientific evidence of the health benefits associated with religious participation itself. Some studies suggest that the advent of new religious forms can help to improve the lives of women and activate greater civic participation (Grim, 2017).

4 WHAT NEXT

4.1 Harmonization of Indonesian Law Products that supports freedom of religion and belief

Harmonization such legal product can be done since the process of legal drafting to be harmonized with international human rights instruments and legislation which is higher level or equivalent and have human rights perspective. Second, harmonization can also be done by monitoring and evaluation of the Law and Regulation that has no perspective of human rights. The results of research conducted by various parties stated that in Indonesia are still found many legal products both at the national level and at the local government level is not support freedom of religion and belief. Some of the legal products in question are:

1. Law no. 1 PNPS of 1965 on Prevention of Misuse and / or Blasphemy (Undang-undang No. 1 PNPS tahun 1965 tentang Pencegahan Penyalahgunaan dan atau Penodaan Agama).
2. Law no. 23 of 2006 on Population Administration (Undang-Undang No. 23 Tahun 2006 tentang Administrasi Kependudukan).
3. Joint Decree of the Minister of Religion, Attorney General and Minister of Home Affairs of the Republic of Indonesia 2008 on Warning and Order to Adherents, Members and / or Members of the Board of Ahmadiyah Indonesia (Keputusan Bersama Menteri Agama, Jaksa Agung dan Menteri Dalam Negeri Republik Indonesia tahun 2008 tentang Peringatan dan Perintah kepada Penganut, Anggota dan/atau Anggota Pengurus Jemaat Ahmadiyah Indonesia-JAI).
4. Joint Ministerial Regulation no. 9 and No. 8 of 2006 Guidelines for Implementation of Duties of Regional Head / Deputy Head of Region in Maintaining Religious Harmony, Empowerment of Forum of Religious Harmony, and Establishment of House of Worship (Peraturan Bersama Menteri No. 9 dan No. 8 tahun 2006 Pedoman Pelaksanaan Tugas Kepala Daerah/Wakil Kepala Daerah dalam Pemeliharaan Kerukunan Umat Beragama, Pemberdayaan Forum Kerukunan Umat Beragama, dan Pendirian Rumah Ibadat).
5. Various Regional Regulations governing the religious life of the community.

4.2 Enforcing the Law on Human Rights Violations, especially freedom of religion and belief, according to human rights norms and standards

Protection of human rights in general and the right of freedom of religion and belief is the responsibility of the state. Therefore, in any form of action or threat that damages or violates the rights guaranteed in International and National Human Rights Laws relating to KBB rights, the state shall be obliged to attend to stop any infringement or prevent a larger scale of violations or losses. Public access, especially minority groups to justice (access to justice) should be opened wide. States shall ensure the creation of a secure and free from all forms of violence for every individual in exercising their freedom of religion and belief rights.

Law enforcers are required to have a high level of human rights awareness and understand the basic principles of protection of freedom of religion and belief rights guaranteed in International Human Rights Law and Human Rights Law in Indonesia. Central and local governments either through education or teaching should continue to raise public awareness about the importance of tolerance and mutual respect for human rights, especially the right of freedom and religion by not imposing their will on others.

4.3 Optimizing RANHAM 2015-2019 for Strengthening freedom of religion and belief rights

As the Government's commitment to respect, protection, fulfillment, enforcement and promotion of human rights in Indonesia, the Jokowi Government has issued Presidential Regulation No. 75 of 2015 on the National Human Rights Action Plan of 2015-2019 (RANHAM) which contains targets, strategy, and the focus of priority activities as a reference for ministries, institutions and local governments.

In RANHAM 2015-2019, taking into account the evaluation of the previous RANHAM, there are at least 5 specific targets to be implemented:

1. increasing understanding of human rights of state apparatus and society through strengthening institution of human rights;
2. implementation of human rights instruments in government policy through regulation preparation, harmonization of legislation draft

- and evaluation of legislation from human rights perspective;
3. the increased participation of Indonesia in a forum of respect, protection, fulfillment, enforcement, and promotion of human rights through Education and awareness raising of the people on human rights;
 4. the increased handling of human rights violations through the application of norms and human rights standards;
 5. increased accessibility of persons with disabilities and other vulnerable groups to participate in the civil, political, economic, social and cultural fields through improving public services.

If look at RANHAM 2015-2019, two important aspects already discussed in this paper are the urgency of harmonization of all laws and regulations with human rights instruments and the application of human rights norms and standards in the handling and enforcement of human rights in the event of a violation. In relation to these two matters, it is essential that both the Central Government and the Regional Government align or harmonize all existing legal products as well as those that will be created to further ensure the right of Freedom of religion and belief. In addition, to prevent repetition and increasing violations of freedom of religio and belief rights it is important to enforce human rights norms and standards in human rights enforcement

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