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Combating Intolerance in the Political Year

Conditions of Freedom of Religion / Belief in Indonesia in 2018



**PUSTAKA
MASYARAKAT
SETARA**

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Jakarta, November 2018
xxxviii + 182 pages
230 mm x 155 mm
ISBN : 978-6027-4379-6-7

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Preface

All praise and gratitude we pray to Allah SWT, the Almighty God, for His blessings and grace have made it possible for us to complete our research, write and publish the report under the title of “Combating Intolerance in the Political Year”. With His grace and blessings, the whole process went smoothly.

Dear readers....

Various forms of intolerant acts and attitudes should not be allowed to develop in countries that have a very high and rich diversity of community backgrounds, such as in Indonesia. This diversity also includes origin, language, ethnicity, race and religious identity. Not only does intolerance have negative effects on people’s relationships, but it can also transform into extreme ideas that can potentially manifest into extreme actions, better known as radicalism. Intolerance contradicts the national principles of Indonesia, such as the *Pancasila* (the five nationalist principles) and the 1945 Constitution of the Republic of Indonesia. It also damages human rights, especially in giving the guarantee of religious freedom by the state.

The spread of intolerance and various forms of radicalism can involve people from various groups with different status, economic means or origin. Based on media monitoring conducted by SETARA Institute, there were many cases where the State Civil Apparatus (Aparatus Sipil Negara / ASN) was both directly and indirectly involved in the practice of radicalism. The State Civil Apparatus should carry out its duties, functions and role as the unifier of nation and promoter of diversity tolerance in Indonesia. However, The State Civil Apparatus has actually harmed these principles and has not complied with the four pillars of nationality.

Therefore, through research conducted by SETARA Institute, it is important to continuously remind the public about the freedom of religion / belief as a constitutional right that must be guaranteed by the state and must be respected by everyone. In addition, the promotion of tolerance must consistently be prioritized as a basic attitude of respect for the freedom of religion / belief.

To our respected readers...

SETARA Institute conducted this research as an initiative to persistently report on, and competently answer the demands of, freedom of religion / belief. This is to ensure that freedom of religion / belief becomes the key variable in the grounding of *Pancasila* and the actualization of the national motto of Indonesia, Unity in Diversity (*Bhineka Tunggal Ika*). The results of this research can become useful base line data. These data are not only important for SETARA Institute in following up on policy advocacy, but it is also important for ministerial level state apparatus to build institutional, procedural and instrumental mechanisms in responding to actual situations that violate or restrict the right of freedom of religion / belief. In addition, this research is also important for all civil society activists to conduct programmatic interventions in mitigating, preventing and combating the spread of radicalism within government institutions.

For the completion of this research, SETARA Institute and I would like to express our highest gratitude to the following parties:

1. SETARA Institute's researchers who worked diligently and intelligently in this research program. Challenged by complex procedures, they worked very hard to conduct the methodical procedures strictly.
2. Our activist friends and civil society organizations for their valuable interactions and input to strategically and precisely approach sensitive issues in this research.
3. The parties which are impossible to mention one by one. Let it be known that without the contribution of their roles and assistance, this research will not be properly conducted.

Hopefully, the result of this research, which is now in the hands of the readers, provides new insights that contribute to the revision of the legal framework, the enforcement procedures and, ultimately, the capacity enhancement of the auditors and supervisory apparatus, to prevent and combat radicalism within government institutions.

Jakarta, 28th of September 2019

Setara Institute Chairperson,

Hendardi

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Executive Summary

Combating Intolerance in the Political Year Conditions of Freedom of Religion / Belief and Promotion of Tolerance in Indonesia

Background

1. This Condition of Freedom / Belief Report produced by SETARA Institute is the 12th report since it was first compiled in 2007. The report was motivated by the condition of freedom of religion / belief that has not yet received full guarantee from the state and constantly experiences intolerance practices, discrimination and violence. Normatively, the state has confirmed its commitment through Article 28E Paragraph (1&2), Article 29 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Law No. 39/1999 concerning Human Rights and Law No. 12/2005 on the Ratification of the International Convention on Civil and Political Rights.
2. Substantively, freedom of religion / belief is an individual right and its fulfilment cannot be reduced and postponed (non-derogable rights). Therefore, the fulfilment of freedom of religion / belief, both for individuals and groups, must be guaranteed by the state. The principle of non-derogable rights emphasizes absolute rights. Therefore, they cannot be suspended or postponed under any circumstances.
3. There are several problems in implementing the constitutional guarantee of the freedom of religion / belief, which can be categorized into three main clusters. The first cluster is the incongruence regulation. The second cluster is the poor capacity of the state institutional governance. The third cluster is the poor performance of state officials.

4. The monitoring research on the condition of freedom of religion / belief conducted by SETARA has three main objectives: 1) to create a knowledge product to increase the public's understanding of the conditions of freedom of religion / belief, 2) to analyse aspects of violations towards freedom of religion / belief, 3) to provide baseline data for victim and policy advocacies, and other subsequent research.

Methodological Framework

5. This research utilized a mixture of qualitative and quantitative research methodology, combining both desk study and field study. The collected data was conducted by [1] group discussions focusing on researchers or peer discussions, [2] in-depth interviews with various state authorities, public figures, minorities as well as victims and [3] document analysis as well as media reporting. The data validity testing method used for this monitoring research was the triangulation technique. The triangulation technique uses the sources triangulation by comparing and checking the information validity at different times and through different tools, and also by comparing the data obtained from in-depth interviews and documentations (*person and paper*), from various documentations (*paper and paper* -including the validity testing through comparing and tracking online sources) or from various individuals (*person and person*).

Findings, Discussion and Conclusions

6. The findings of this study are grouped into two general categories. The first category is the form of quantitative data exposure that illustrates the general situation of freedom of religion / belief at the national level in 2018. Considering that the report coincides with the transition of the new government, it is necessary for SETARA Institute to present the 12 years of cumulative research data, since the first monitoring research which was conducted in 2007. These insertions are important as descriptions of patterned problems relating to actions, actors, victims and others in the issue of freedom of religion / belief. Hence, the new government can respond more adequately in providing the guarantee of freedom of religion / belief to all Indonesian citizen, regardless of the quantity of their groups. The second category is the format of qualitative

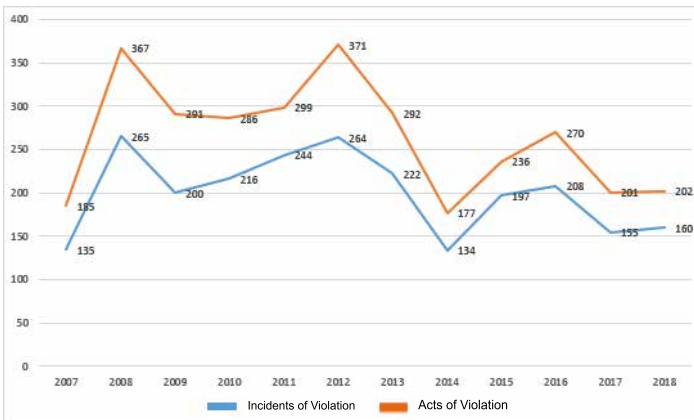
data description which provides an overview of the situation of freedom of religion and belief at the local level.

7. At the national level and throughout 2018, SETARA Institute recorded 160 incidents of violations of freedom of religion / belief with 202 forms of acts of violations that were spread out in 25 provinces. The top six provinces, and the respective number of incidents of violations that occurred in each, were: West Java (24 incidents), Jakarta (23 incidents), East Java (21 incidents), Central Java (17 incidents), Banten (11 incidents) and Jogjakarta (11 incidents).
8. Out of 202 acts of violation of freedom of religion / belief, there were 72 acts involving state officials as actors. The state actors who committed the most violations were the Regional Governments (29 incidents) and the police (17 incidents). While three institutions, ranked in the top 6, were educational institutions (8 incidents), Wilayatul Hisbah and Indonesian Nasional Army (Tentara Nasional Indonesia / TNI), with 5 incidents each.
9. The other 130 acts of violation were committed by non-state actors. In other words, the acts of violation committed by non-state actors were double the accumulated number of acts of violation committed by state actors in one year. In this category, the perpetrators of violations were citizens as well as individuals who were members of community organizations. Top 5 non-state actors who committed the highest numbers of violations were individuals (46 acts), groups of citizens (32 acts), the Indonesian Ulema Council (Majelis ulama Indonesia / MUI) with 22 acts, Religious Community Organizations (Ormas Keagamaan / Organisasi Massa Keagamaan) with 15 acts and Community Organizations (Ormas / Organisasi Massa) with 11 acts.
10. The act of violations most frequently committed by state actors (39 acts) was discrimination. This discrimination was divided into two sub-categories, namely policy and non-policy. The number of discrimination violations committed by state actors reached 54% of the total 72 acts. Other acts of violation committed by state actors include criminalization (9 acts) and the prohibition of religious activities (3 acts).
11. The most common act of violation committed by non-state actors

was intolerance (25 acts). Religious Defamation Reporting was also a common act of violation that was committed by non-state actors (23 acts). Other acts of violation include the rejections of religious activities (13 acts), rejections of the establishments of places of worship (9 acts), acts of violence, hate speeches and destruction of places of worship (7 acts each).

12. Within the year of 2018, there were 20 acts of disruption to places of worship. Acts of disruption were afflicted to churches (13 acts), mosques (4 acts), Hindu temples (2 acts) and a Pagoda (1 act).
13. In 2018, the top ten victims of violations of freedom of religion / belief were: citizens (39 incidents), individuals (38 incidents), Christians (18 incidents), State Civil Apparatus (Aparatur Sipil Negara / ASN) with 9 incidents, Shia Islam (7 incidents), the Lesbian, Gay, Bisexual and Transgender (LGBT) community (7 incidents), Catholics (6 incidents), Ahmadiyya community, female university students and the Al-Quran Tafsir Assembly (Majelis Tafsir Al Quran / MTA) with 5 incidents each.

14. In the past 12 years, there have been 2.400 incidents of violation of freedom of religion / belief with 3.177 acts of violation. When the longitudinal data was derived into more specific time units, it implied that there were 16.7 incidents with 22.1 acts in a month or 4.2 incidents with 5.5 acts per week. Fluctuations in the number of incidents and acts of violation of freedom of religion / belief each year can be seen in the following graph:



15. In the past 12 years, incidents and acts of violation of freedom of religion / belief were dispersed throughout 34 provinces in Indonesia. Ten provinces with the highest incidents from the past 12 years are illustrated in the following table:

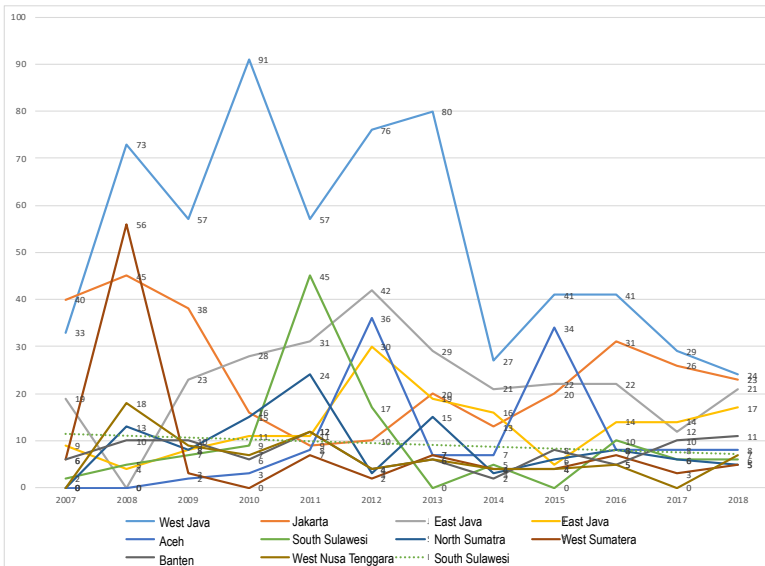
Provinces	Total Incidents
West Java	629
Jakarta	291
East Java	270
Central Java	158
Aceh	121
South Sulawesi	112
North Sulawesi	106
West Sulawesi	104
Banten	90
West Nusa Tenggara	76

The composition of the 10 provinces with the highest numbers of incidents experienced a slight change when the time spectrum was narrowed to the last 5 years or, in other words, during the first administration of President Joko Widodo. The composition of 10 provinces with the highest number of incidents can be seen in the following table:

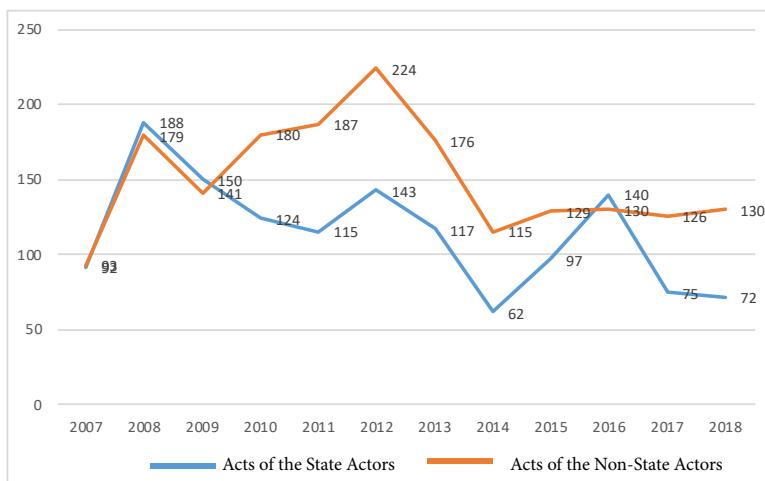
CONDITIONS OF FREEDOM OF RELIGION / BELIEF IN INDONESIA IN 2018

Provinces	Total Incidents
West Java	162
Jakarta	113
East Java	98
Central Java	66
Aceh	65
Jogjakarta	37
Banten,	36
North Sumatra	28
South Sulawesi	27
West Sulawesi	23

While fluctuations in the number of incidents of violation in each province are illustrated in the following graph:



16. In the past 12 years, the acts of violations committed by non-state actors have almost always been lower compared to those committed by state actors. Fluctuations between the comparison of state and non-state actors are illustrated in the following graph:

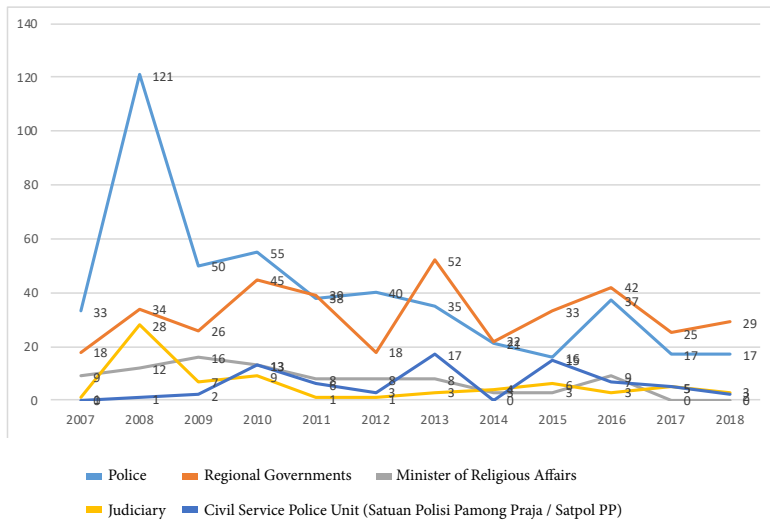


17. In the past 12 years, the state actors who committed the most violations of freedom of religion / belief were the police, followed by the Regional Governments. The composition of state actors who violated the freedom of religion / belief in the past 12 years is illustrated in the following table:

State Actors	Number of Acts of Violation
Police	480
Regional Governments	383
Minister of Religious Affairs	89
Judiciary	71
Civil Service Police Unit (Satuan Polisi Pamong Praja / Satpol PP)	71
Attorney	68

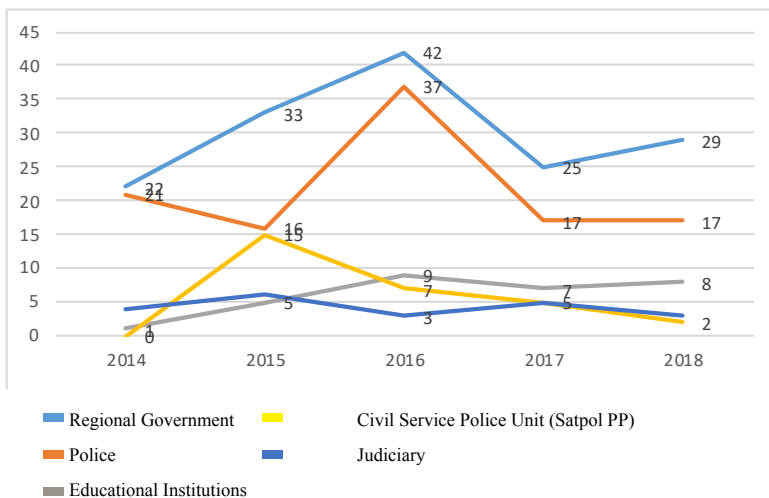
State Actors	Number of Acts of Violation
Indonesian Nasional Army (Tentara Nasional Indonesia / TNI)	63
Regional House of Representatives (Dewan Perwakilan Rakyat Daerah / DPRD)	38
Educational Institutions	35
Village Governments	33

Fluctuations in the number of acts of violation committed by 5 state actors in the past 12 years are described in the following graph:



While the fluctuations of the top 5 state actors who violated the freedom of religion / belief in the past 5 years are illustrated in the following graph:

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18. The accumulated number of non-state actors who violated the freedom of religion / belief has always been higher than state actors. Who are they? The top 10 non-state actors who violated the freedom of religion / belief in the last 12 years are seen in the following table:

Non-State Actors	Number of Acts of Violation
Groups of Citizens	600
Religious Community Organizations	249
Indonesian Ulema Council (Majelis Ulama Indonesia / MUI)	242
Islamic Defenders Front (Front Pembela Islam / FPI)	181
Individuals	92
Islamic Community Forum (Forum Umat Islam / FUI)	56
Religious Leaders / Public Figures	35
Community Organizations	33

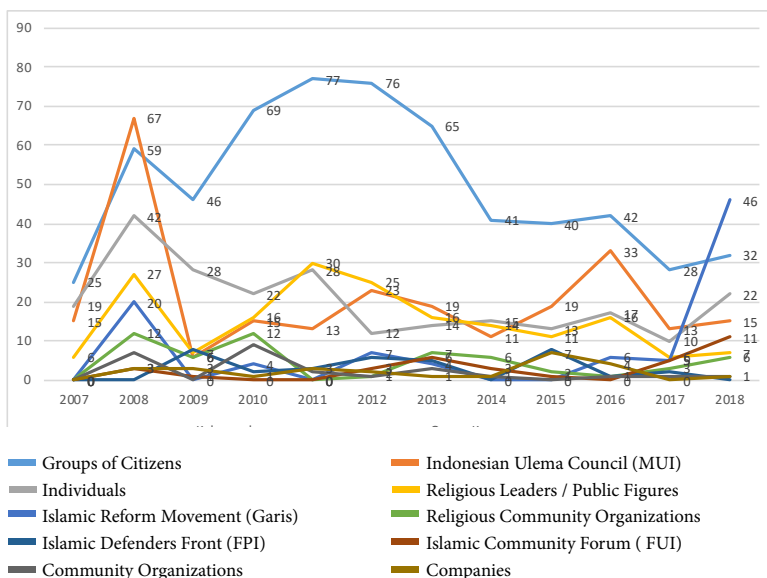
Non-State Actors	Number of Acts of Violation
Islamic Reform Movement (Gerakan Reformasi Islam/Garis)	26
Companies	26

Meanwhile, when the data were specified in the past 5 years, there was a difference in the composition of non-state actors who violated the freedom of religion / belief. It is illustrated in the following table:

Non-State Actors	Number of Acts of Violation
Groups of Citizens	183
Religious Community Organizations	91
Indonesian Ulema Council (Majelis Ulama Indonesia /MUI)	77
Individuals	57
Islamic Defenders Front (Front Pembela Islam /FPI)	54
Community Organizations	20
Islamic Community Forum (Forum Umat Islam FUI)	18
Companies	13
Religious Leaders /Public Figure	11
Ansor Youth Movement (GP Ansor)	9

While in the top 10, the fluctuations of acts of violations committed by non-state actors in the past 12 years are illustrated in the following graph:

COMBATING INTOLERANCE IN THE POLITICAL YEAR



While the dynamics of non-state actors who violated the freedom of religion / belief in the past 5 years are illustrated in the following table:

Non-state Actors / Years	2104	2015	2016	2017	2018
Citizens	41	40	42	28	32
Religious Community Organizations	11	19	33	13	15
Indonesian Ulema Council (MUI)	15	13	17	10	22
Individuals	0	0	6	5	45
Islamic Defenders Front (FPI)	14	11	16	6	7
Community Organizations	3	1	0	5	11
Islamic Community Forum (FUI)	6	2	1	3	6
Companies	1	7	4	0	1

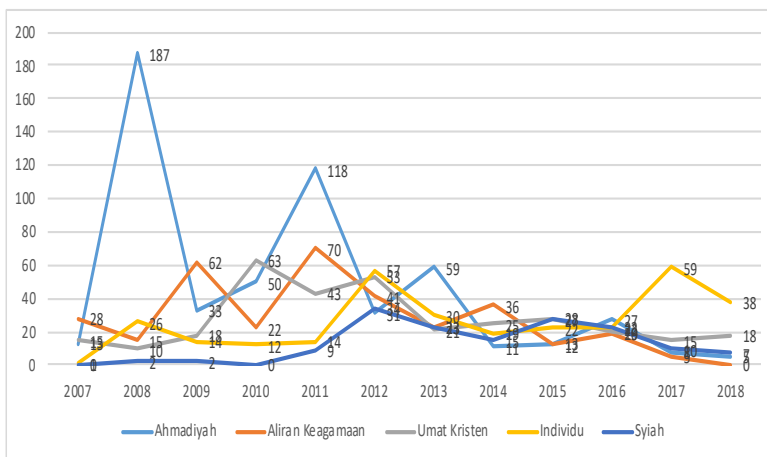
Non-state Actors / Years	2104	2015	2016	2017	2018
Religious Leaders /Public Figures	0	8	1	2	0
Ansor Youth Movement (GP Ansor)	1	1	0	4	3

19. The highest number of victims who were subjected to the violations of freedom of religion / belief in the past 12 years were the adherents of Ahmadiyya. The following is a list of victims, ranking in the top 10:

Victims	Number of Incidents of Violation
Adherents of Ahmadiyya	554
Adherents of Religious Beliefs	334
Christians	328
Individuals	314
Adherents of Shia Islam	153
Citizens	139
Muslims	79
Catholics	51
Adherents of Fajar Nusantara Movement (Gafatar)	49
Students / University Students	42

The fluctuations of incidents regarding the top 5 victims of the violations of freedom of religion / belief in the past 12 years are illustrated in the following graph:

COMBATING INTOLERANCE IN THE POLITICAL YEAR



■ Adherents of Ahmadiyya ■ Adherents of Religious Beliefs
■ Christians ■ Individuals ■ Adherents of Shia Islam

While the dynamics of victims of violations of freedom of religion /belief in the last 5 years who were in the top 10 is described as follows.

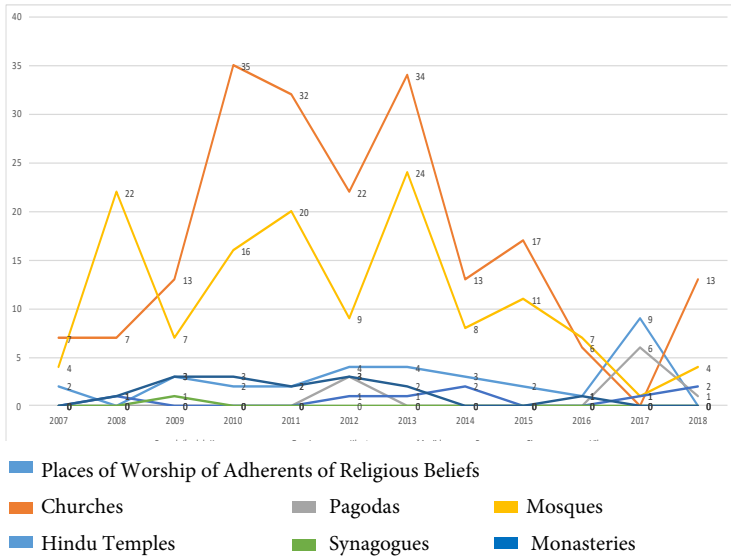
Victims / Years	2014	2015	2016	2017	2018
Individuals	19	22	22	59	38
Citizens	5	29	33	20	39
Christians	25	27	20	15	18
Adherents of Shia Islam	15	28	23	10	7
Adherents of religious belief	36	13	19	5	0
Adherents of Ahmadiyya	11	12	27	8	5
Muslims	12	21	9	0	3

Victims / Years	2014	2015	2016	2017	2018
Adherents of Fajar Nusantara Movement (Gerakan Fajar Nusantara / Gafatar)	0	9	36	0	0
Students/ university students	3	8	12	8	2
Adherents of local beliefs	7	1	0	0	3

20. Disruptions to places of worship in the past 12 years reached 398 incidents. The details are illustrated in the following table:

Places of worship	Number of Disruptions
Churches	199
Mosques	133
Places of Worship of Adherents of Religious Beliefs	32
Monasteries	15
Pagodas	10
Hindu Temples	8
Synagogue	1
	398

Whereas the fluctuations in disruptions to all places of worship in the last 12 years are described in the following graph:



- At the local level there is a strengthening of religious revivalism that grows in a pluralistic society and can be identified as a threat to democracy. As long as the religious expression is oriented only to the internal purification of its group, thus the democratic framework must be affirmed. However, the nature of religious preaching's (da'wah), which call for the widest community possible, has caused reactions from other religious groups. Not to mention, the struggle with literal religious texts that creates the understanding of radical religions. It is clear that revivalism fosters an environment that contributes to the radicalization of Islamic religious views. The report of freedom of religion / belief in 2018, compiled

by SETARA Institute, has, in parallel, presented a thematic report that discusses and explores a specific theme to capture the provincial-level trends. These trends are about the state phenomena and practices as well as their connections to the guarantee of freedom of religion / belief. The widespread adoption of Islamic Sharia as a part of positive law and the Islamization of public space are clearly inseparable from the Indonesian Islamic revivalism movement. This phenomenon was summarized and was the result of the reading and research findings from Aceh, West Sumatra and West Nusa Tenggara, in which SETARA Institute analysed the phenomenon of the strengthening of Islamic revivalism and the institutionalization of Sharia. In constitutional construction, these three regions have different authorities. Aceh adopts the asymmetric decentralization, while Sumatra and West Nusa Tenggara adopt the symmetrical or ordinary decentralization. This is also the case for other regions. Aceh is one example of the most aggressive institutionalization of Islamic Sharia in regional law (qanun), due to its asymmetric decentralization and its authority in implementing Islamic Sharia. Although not given explicit authority like Aceh, West Sumatra, which has strong religious traditions as stated in *adat basandi syara* as well as *syara basandi kitabullah*, display the same performance in adopting Islamic Sharia in the regional law in the form of Sharia regulations. Even though it is still limited to Islamic civil law, the acceleration of the West Sumatra's public in accepting and adopting Sharia regulations has confirmed the sociological justification validity of the religious-based regional legal products. West Nusa Tenggara, given the authority of attribution as guaranteed in Article 18 paragraph (6) and Article 18B of the 1945 Constitution of the Republic of Indonesia, also optimizes the majority of Islam's dominance as a justification for the institutionalization of Islamic Sharia into a regional legal product.

22. At the local level, the threat of conservatism against democracy is also strengthened through violations of the freedom of religion / belief which are part of the human rights spectrum as the main element of democracy that is of concern to civil society. Freedom of religion / belief

becomes a significant and major concern because it revolves around the daily activities of the Indonesian people who are still bound by their religions or beliefs, which have become inseparable with the culture. In addition, a religion or belief receives structural recognition by the state in constitution, laws and regulations as well as derivative regulations from the previous laws and regulations. The structural and cultural dimensions of the freedom of religion / belief encourage and activate the civil society agencies to strive for the guarantee and the enforcement of freedom of religion / belief. This dynamic was discovered by SETARA Institute in three regions (Jakarta, West Java and Jambi) which represented a portrait of the strengthening of conservatism in socio-political change. The three regions have different contexts, but they have something in common. That is, the emergence of conservatism with social and political struggles. Due to the conditions in the three regions, there is a need to erode the adverse effects of these dynamics within the context of freedom of religion / belief.

23. Another threat towards the freedom of religion / belief and the promotions of tolerance in Indonesia is the symptom of majoritarianism at the local level. The three provinces included are Bali, East Nusa Tenggara and North Sulawesi. Conceptually, religious majoritarianism refers to the largest quantity of adherents of religion in a population. In the context of Indonesia, Islam is the religion of the majority of the population. Hence, the mention of Islamic majoritarianism in Indonesia is common in sociology-religious studies. Simultaneously, several regions in Indonesia, which became the focus of this thematic study, show that the majority populations in certain regions are endemic and are not always in line with the position of the majority religion at the national level. In Bali, Hinduism, as the result of Hindu-Indian assimilation, merges with the megalithic, animistic, dynamistic, totemistic and Chinese and Javanese cultures. These beliefs are practiced by the people with the largest religion believed in the province, which is 83% of Bali's population. In the city of Manado, North Sulawesi, Christianity (Catholicism and Protestantism) is the religion

most widely practiced by the local population at around 61%. This figure is balanced by Muslims around 38%. Whereas in East Nusa Tenggara, the composition of Christianity (91% of the population) far exceeds the composition of Muslims.¹ With this composition, examining the three regions with majority religious populations will provide insights on how to read the dynamics at the local level in relation to freedom of religion / belief.

24. On the other hand, there is a threat against multiculturalism in several regions regarding the local governance of each region, namely the Special Region of Yogyakarta, Central Java and West Kalimantan. The harmony of religion and belief in Yogyakarta throughout this study has shown a decreasing scale. Many of the triggers were caused by social changes and political turmoil in the Keraton (Javanese Royal Palace) environment. Social changes resulting from the industrial acceleration around Yogyakarta encourages modern lifestyles that are far from the basic values of the people of Yogyakarta. Therefore, returning to religion as a standard and rooted belief is seen as a way to move away from modern attitudes that are highly competitive. In the effort to strengthen itself, religion is then existent in groups and begins to show its existence to the public, through attitudes of grouping and separating itself from society in general. After successfully forming a group, its existence began to spread in an effort to influence others who, in practice, begin to group into exclusive forms that polarize between Islam as an ideology and existing ideologies.

In Central Java, especially in the city of Semarang, there is a tension of socio-religious interaction in cultural governance and multiculturalism. In the protection and fulfillment of citizens' rights to freedom of religion / belief, there has been progress as a result of the work of many parties, such as the security forces (police and the Indonesian National

¹ The percentage of the number of adherents of religion used has been rounded off. Taken from the Central Bureau of Statistics (Badan Pusat Statistik / BPS) sources, 2010.

Army (Tentara Nasional Indonesia / TNI)), the government, and activists from civil society. This is indicated by the fact that there is no longer, or there is a large-scale reduction of, acts of ethno-religious violence. Many tolerance actors or organizations have emerged which have networked with policy makers in various regions in Indonesia, including regions that have had ethnicity and religious conflicts as well as those with a history of violence, such as Maluku and Poso. In addition, there are still facts about violations of freedom of religion / belief that indicate that efforts to protect political, ethnical or religious minorities and vulnerable groups are still challenging.

In West Kalimantan, the issue of freedom of religion / belief is rife most of the time. Socio-culturally, West Kalimantan is a place where various religions and beliefs are flourishing due to the tribes that exist there. There is a very close relationship between the customs of the people in West Kalimantan and the existing religions. This means that their religious life and ethnic traditions are still very dominant. For example, Christian processions are dominant in the Dayak tribe, Islamic traditions are dominant in the Malay tribe and Confucian traditions are dominant in the lives of the Chinese people. In the local context, regional / segregation divisions based on ethnicities occur. They form livelihoods, perspectives and lifestyles, as well as economic incomes. They also affect the work in promoting diversity in the context of culture and also religion / belief. The mass media also helps to establish patterns of segregation in the context of communication. Based on the data, it can be said that to date there has not been a joint movement of cross-ethnic civil society and communities in efforts to preserve diversity and peace. The role of the existing public figures seems to be exclusive and pragmatic, and only exists in certain groups.

25. By examining the data and analysis on the variable levels of violations, actors of violation, as well as the state's attitudes and treatments throughout 2018, SETARA Institute draws a number of key notes. **First**, in general, the number of incidents and acts of violations of freedom of religion / belief

in 2018 continue the relatively low trend of incidents and acts of violation in the last two years. In 2018 the number of incidents only increased by 5 points from the previous 155 incidents, while the number of acts only increased by 1 point. Whereas two years earlier SETARA Institute recorded the highest number in this government that the condition of the freedom of religion / belief at that time was synthesized as a situation of intolerance supremacy. It shows that the steps taken by civil society and government to fight intolerance - countering the politicization of identity, growing tolerant civil groups, creating the awareness necessary to fight hoaxes, as well as creating peaceful elections and regulating state policies to provide 'ideological resistance' to the ideology of Pancasila and the Republic of Indonesia - have been relatively successful in preventing a significant increase in the number of incidents and acts of violation of freedom of religion / belief.

26. **Second**, it deserves to be noted, with regard to non-state actors derived from the most up-to-date data, that citizens and individuals are becoming to be increasingly dominant as non-state actors with the highest number of acts of violation. The accumulated number of acts of individuals and citizens is 78 acts (46 of individuals, 32 of citizens). The previous year, the accumulated number of individual and citizen's acts of violation was 33. Even in 2016 when the number of acts and incidents reached the highest level in this government, the accumulated acts of citizens and individuals was 'only' 45. The dynamics of citizens' acts of violation show the increasing capacity of citizens to commit acts of violation and restrictions on the constitutional rights of all citizens to adhere to their religion / belief freely. Therefore, more significant efforts are needed to increase societal resilience and to strengthen the narrative, ethics, and citizenship culture so that citizens' acts do not contribute more to increasing the number of incidents and acts of violation of freedom of religion / belief.
27. **Third**, the high number of violations committed by non-state actors is also a concern. There has been a drastic shift in the

trends of acts of violation in which the acts committed by non-state actors are almost twice as high as acts of violation committed by the state. The data show that it is necessary to use a more progressive perspective regarding the fulfillment of the freedom of religion / belief as a basic right. In addition, we must always demand the state to fulfill its responsibilities and obligations as a duty bearer. We must also pay attention to the importance of strengthening the social base of civil society to ensure the strengthening of practices and the promotion of tolerance in the governance of diversity.

28. **Fourth**, one aspect of the freedom of religion / belief that predominated in 2018 was the case of religious defamation. There have been 25 cases of religious defamations with 23 new cases and 2 old cases. The 2 old cases have been resolved by the court. The 23 new cases that have been reported to the police include three categories of victims, namely individuals, citizens, and political parties. The data show that progressive systematic efforts from the government (executive and legislative) are needed to revise Law No. 01 / PNPS / 1965 on the Prevention of Religious Abuse and / or Defamation and Law Number 11 of 2008 on the Information and Electronic Transactions. In the context of the religious defamation Law, the Constitutional Court Judge in the concurring opinion of the Constitutional Court Decree Number 140 / PUU-VII / 2009, stated that the formulation of Article 1 of the 1965 PNPS Law contained some weaknesses. Therefore, to overcome these weaknesses, Article 1 of the Law Number 11 of 2008 on the Information and Electronic Transactions can be revised by the legislative bodies, in this case the House of Representatives (Dewan Perwakilan Rakyat / DPR) and the Government. Meanwhile, if Article 1 of the Law is revoked, there would be a legal vacuum caused by the absence of the regulation. Even though the effect of such situation could be overcome by the existing legal regulations, do so would result in heavy social consequences and require a high social cost. Despite the need to revise the formulation of Article 1 of the Law, it cannot be done just yet. This is due to the limitations of the Constitutional Court, which is only a negative legislator who is not authorized to revise the formulation of Article 1

of the Law. The statement of not having the legal force will lead to a legal vacuum. Therefore, based on the principle of expediency of waiting for improvements made by legislative body, the Law needs to be sustained for the time being. Thus, the Government and House of Representatives (Dewan Perwakilan Rakyat / DPR) are required to begin the process of 'normal legislation' to revise Law No.1 / PNPS / 1965, for which the Constitutional Court judges have admitted has many weaknesses. While the Law Number 11 of 2008 on the Information and Electronic Transactions has been problematic from the start, the most problematic articles are 27 paragraph (1), Article 27, and Article 28 paragraph (2) which contain the potential for serious restrictions on freedom to express opinions and views.

29. **Fifth**, based on the available data, some positive indicators should be appreciated as progress on the issue of freedom of religion / belief. Such indicators include: 1] Stability of the number of incidents and acts of violation of the freedom of religion and belief. 2] The reduced level of violations against religious minority groups, such as Christians, adherents of Ahmadiyya and adherents of Shia Islam who have dominated the numbers of victims in almost every period of research and monitoring. 3] The number of disruptions to places of worship is much lower than the average number of disruptions in previous periods. 4] Acts of violations committed by state actors are much lower compared to the previous year. 5] The increase of initiatives and movements of tolerant civil society, who have been considered a silent majority, to take the initiative and the role to fight intolerance, discrimination, and understandings that lead to the destruction of the values of peaceful co-existence in diversity and the strengthening of the ideology of extremism with violence.
30. **Sixth**, based on the level of violations against religious minority groups who have always been the potential targets of violations, such as Christians, adherents of Ahmadiyya and adherents of Shia, the violations committed against them throughout 2018, on average, declined sharply. With

this trend, violations against groups of victims shifted from religious minority groups to citizens and individuals. The high number of victims in the category of citizens and individuals coincides with the rise of religious politicization, the use of religious sentiments - including for acts that are often judged as religious defamation and blasphemy towards Ulema - which resulted in the widespread acts of persecution, intimidation and religious defamation reporting and hate speech.

31. **Seventh**, in terms of the number of disruptions to places of worship, significant progress was actually seen in 2016 compared to the previous research periods, which always had at least 20 disruptions. In 2015, disruptions to places of worship occurred 30 times, and the previous year disruptions occurred 26 times. In 2013, the figure reached 65 disruptions to places of worship. The illustration of the decline in the disruptions to places of worship is directly proportional to the resolution of several administrative problems in the establishment of places of worship as occurred in Jambi. For two decades, numerous problems constantly occurred when issuing Building Permits (Izin Mendirikan Bangunan / IMB). The problems were finally resolved in 2017. Some local governments also took initiatives to conduct data collection and to provide administrative dispensations of Building Permits of places of worship, as conducted by the Regency of Gunung Kidul in Yogyakarta.
32. **Eighth**, based on the data of the condition of freedom of religion / belief in 2018, regional governments were still listed as the state actors who ranked as the top violators of freedom of religion / belief. In 2017, and a few years before that, local governments were one of the biggest contributors to the violations of freedom of religion / belief. Hence, the central government must pay special attention to regulations at the central level that provide opportunities, or even prompt the regional governments, to violate the freedom of religion / belief. In addition, regional governments must pay more attention to the respective authorities to improve the perspectives of human rights and tolerance so that they

can present equality in the governance of their respective regional governments, especially in issues relating to the socio-religious identity of their citizens.

33. The ‘stability’ of the number of violations of freedom of religion / belief indicates that governments, both central and regional, show a strong political will in combating intolerance in the political year. This good will is reflected in several indicators that have accumulated since Joko Widodo and Jusuf Kalla ran for leadership in 2014. Those indicators, among others are as follows: 1] The Nawa Cita document (the nine priorities for Indonesia) which gave hope in the realization of human rights guarantees, including civil rights in the form of freedom of religion / belief. 2] Discourse on the elimination of the religious column in the identification cards (Kartu tanda penduduk / KTP) by the Ministry of Interior. The discourse helped encourage the improvement of fulfilling the rights of adherents of local belief to obtain equal administrative rights of citizenship as other citizens. 3] Pancasila Ideology Development Board (Badan Pembinaan Ideologi Pancasila / BPIP). The establishment of the Presidential Working Unit for the Development of the Pancasila Ideology (Unit Kerja Presiden Pembinaan Ideologi Pancasila / UKP-PIP), which became the Pancasila Ideology Development Board in 2018, showed the government’s strong political will to institutionalize ideas, attitudes and positions in combating intolerance, radicalism and violent extremism through the intensification of fostering the ideology of Pancasila. It must be honestly acknowledged that the formation of this institution was the government’s response to the concerns of many parties regarding the strengthening of religious identity accompanied by resistance to other different religions, the strengthening primordial sentiments or issues of ethnicity, religion, race and intergroup (Suku, Agama, Ras dan Antargolongan / SARA), particularly issues of religion in

political public spaces. This is a good modality for promoting tolerance and ensuring equality in diversity management. However, it should also be noted that the institutionalization agenda of the Pancasila Ideology Development Board must also be accompanied by technical policies to ensure simultaneous steps to strengthen our national ideology in all government institutions from the central government to regional governments. 4] Institutionalization of the President's Special Envoy for Dialogue and Cooperation between Religions and Civilizations (Pelebagaan Utusan Khusus Presiden untuk Dialog dan Kerja Sama Antar Agama dan Peradaban / UKP-DKAAP). This was a strategic agenda to strengthen the interfaith dialogue for the sake of creating harmony in religious diversity and increasing civilization in the relations between religious communities in Indonesia in order to realize the progress of our culture and civilization as a nation. 5] Dissolution of Hizbut-Tahrir Indonesia (Hizbut Tahrir Indonesia / HTI). The dissolution of Hizb ut-Tahrir Indonesia was a brave response from the government to guarantee legal and social order towards organizations that clearly supported the doctrines and ideas of anti-Pancasila, anti-nation-state, and anti-democratic. However, SETARA Institute also noted that during the dissolution process of Hizbut-Tahrir Indonesia by reducing judicial control of Community Organization through amendments can threaten the right of association and organization and open up opportunities for abuse of power in its implementation. The three steps at least indicated that the Government had a clear understanding and standing position in response to the increasing intolerance and discrimination, strengthening radicalism and religious conservatism, and the increasingly massive movements of anti-Pancasila, the 1945 Constitution, the Republic of Indonesia, and anti-pluralism in Indonesia. 6] Drafting of the Religious Protection Law. More intensive discussions regarding its content is still needed between civil society groups and agents of tolerance within and outside the government, with the intent that the provisions therein will not repeat the mistakes of the previous regulations whose arrangements restricted the freedom of religion / belief. 7]

Evaluation of the Discriminatory Regional Regulations. The government understands that one of the problems of intolerance and violations of the freedom of religion / belief lies in the problem of local regulations that are discriminatory and contrary to the provisions of the higher legislation. 8] The government support regarding the inclusion of adherents of Local Belief in the religion column in identification cards during the material test hearing of the Law on Population Administration (*Administrasi Kependudukan / Adminduk*) in 2016. During the trial at the Constitutional Court, the government took a stand not to sustain the Law being tested, and instead supported the petitioner of the hearing and asked the Constitutional Court to provide constitutional reasons why the “Local Belief” should be stated in the religion column in identification cards. The government’s statements were delivered by the Minister of Interior (Tjahjo Kumolo) as well as the Minister of Law and Human Rights (Yasonna Laoly) as their legal responses which were read in the Constitutional Court. They stated that “The government requested the Constitutional Court to give constitutionality considerations over the arrangements related to the religious column in order to determine a better policy direction for the government as the organizer of the country”. The Constitutional Court’s decision finally granted the petitioner’s demands, which was the progressive decision needed to recognize the existence of the basic rights of the adherents of Local Belief (Decision of the Constitutional Court No. 97 / PUU-XIV / 2006). 9] Improvement of the fulfilment of the right to religious teaching in formal educational institutions for adherents of Local Belief that has been set forth by the government in the form of the Regulation of the Minister of Education and Culture No. 27 of 2016 concerning Education Services for the adherents of Local Belief in the Education Unit.

34. Among the significant and promising achievements in the promotion of tolerance and guarantee of freedom of religion / belief in Indonesia, the government has not shown significant progress with two existing problems related to this subject matter, which have been protracted without resolutions. **First**, the case of the establishment of places of worship that

has lasted for about a decade; namely GKI (Gereja Kristen Indonesia /Indonesian Christian Church) Yasmin in the Regency of Bekasi and Filadelfia Batak Protestant Christian Church (Huria Kristen Batak Protestan / HKBP) in the City of Bogor. The Decision of the Supreme Court, which had legal power, favoured both parties on the dispute over the establishment of the two churches. However, until now the Supreme Court's ruling was 'defeated' by the pressure from intolerant groups. **Second**, the problem regarding the Ahmadiyya and Shia refugees. Another problem that has been protracted is the return of Ahmadiyya refugees in Mataram and Shia refugees in Sampang Sidoarjo.

35. In addition, these positive notes in progress and development are not able to cover up the fact that the violations of freedom of religion / belief, intolerance, and even the strengthening of ideologies as well as understandings that lead to extremism with violence as well as terrorism are serious problems that have to be resolved. It is also important to demand the political will of, and concrete actions from, the government with the participation of civil society to fight intolerance. The government also needs to guarantee the fulfilment of citizens' constitutional rights to worship / practice religions or beliefs freely.

Recommendations

36. The Jokowi-Ma'ruf Amin government, the new government from the result of the 2019 Presidential Election, should take concrete actions to care for pluralism and strengthen the Pancasila state. The government must take bold steps with breakthrough agendas to: (1) undermine the supremacy of intolerance and respond to the consolidation of intolerant and vigilante groups by upholding the supremacy of law and constitution, (2) prevent repetitive acts of violations against freedom of religion / belief and violations of the rights of religious minorities, and (3) affirm a zero tolerance attitude towards all acts that are contrary to diversity and which undermine the Pancasila and the Constitution of the Republic of Indonesia. With consideration for these three

key breakthroughs, the SETARA Institute emphasizes that all actions taken by the government must be measured by upholding the values of democracy and human rights.

37. SETARA Institute also submits the following recommendation proposals. **First**, government must design, schedule and optimize educational institutions to build a diversity of education which is open, tolerant and oriented towards strengthening the nation and state based on Pancasila and the 1945 Constitution of the Republic of Indonesia. **Second**, government must position its apparatus, specifically the police and local governments (from various provinces to villages) as the the frontline in law enforcement, protection of all citizens, and defense of the basic and constitutional state. **Third**, the state must guarantee strict and fair law enforcement based on Pancasila and the 1945 Constitution. **Fourth**, optimize the functions of education, outreach and literacy regarding tolerance and harmony and prevent discrimination and intolerance through the optimization of television, social media, and online media as arenas of discourses. **Fifth**, strengthen and intensify the initiatives to conduct equal dialogues between the government and the adherents of local religion / beliefs.
38. SETARA Institute encourages the Government to be more serious in providing a plenary guarantee for freedom of religion / belief and to eliminate discrimination as well as intolerance as the legacy of this government. Some specific and basic agendas that the SETARA Institute advises for immediate completion are as follows. **First**, restoration of the constitutional idea of freedom of religion, through changes, improvements, or even the annulment of legislation that are contradictory to the constitutional provisions, namely; 1) Revise or replace Law No. 1/PNPS of 1965 on the Prevention of Religious Abuse and / or Defamation with a new law that respects the freedom of religion / belief as a constitutional mandate. 2) Review the Joint Decree of the Minister of Religious Affairs and Minister of Interior Number 9 and

Number 8 of 2006 on the Guidelines for the Duties of Mayor / Vice Mayor for Inter-Religious Harmonization and the Empowerment the Inter-Religious Harmony Forum and the Establishment of Places of Worship, (Joint Decree of Two Ministers) especially regarding the establishment of places of worship. 3) Revoke the Joint Decree of Minister of Religious Affairs, the Attorney General and the Minister of Interior No. 3 of 2008 No. KEP-033/A/JA/6/2008 and No. 199 of 2008 on Warning and Order to the Believers, Members, and or Board Members of the Indonesian Ahmadiyya Community (Jemaat Ahmadiyya Indonesia / JAI) and Community Members (known as the Joint Decree of Three Ministers). These regulations have triggered various intolerant actions and policies towards the adherents of Ahmadiyya in many areas. They have even triggered deadly anarchist actions such as those in Cikeusik. 4) Review several regulations at the regional government level, both provincial and district / city, in various forms, such as Regional Regulations (Peraturan Daerah / Perda), Governor Regulations (Peraturan Gubernur / Pergub), Mayor Regulations (Peraturan Walikota / Perwal), Regent Regulations (Peraturan Bupati / Perbup), etc, which are derived from the provisions of the the Joint Decree of Minister of Religious Affairs, the Attorney General and the Minister of Interior on Ahmadiyya, and / or based on the application of certain religious teachings that are contrary to the constitution. **Second**, resolve the complexity of the problem of establishing places of worship that are clearly restrictive towards the “freedom to worship in accordance with his religion and belief” and the “freedom of religion “, as guaranteed by the 1945 Constitution. Third, stop the criminalization of beliefs and immediately free the “prisoners of conscience” who are imprisoned because their views and beliefs are different from the views and beliefs of the majority. **Fourth**, presenting the state - through law enforcement to hold legal responsibility and restore the rights of victims of violations of freedom of religion / belief.

39. On top of these recommendations, SETARA Institute encourages the new administration from the 2019 Presidential Election to prioritize the mainstreaming of diversity in all aspects of state governance through the institutionalization of inclusive governance. The President is expected to issue presidential regulations instructing all ministries and institutions to implement diversity initiatives, policies and practices that collect background diversity information in various aspects, including religious diversity. It is only through mainstreaming inclusive government that the ideals of Bhinneka Tunggal Ika and Pancasila can be realized systemically. []

CHAPTER I

Introduction

A. Background

This is the 12th report since SETARA Institute conducted the research and monitoring of the condition of freedom of religion / belief in Indonesia for the first time in 2005. After entering the second decade, this report has become increasingly urgent and relevant, given that the objective situation of freedom of religion / belief is still far away from the ideal conditions idealized by *Pancasila*, the ideology that provides equal space for all groups of citizens (including based on their religions / beliefs) to exist and that guarantees citizens' enjoyment and protection. '*Bhinneka Tunggal Ika*', as the vision of Pancasila, provides complete recognition of all the social sub-constituents of Indonesian diversity. However, until today the manifestation of the ideality has not been seen.

All victims of violations of freedom of religion / belief in Indonesia experience vulnerability, as well as communities and individuals who are not specifically associated with certain religious 'labels'. This means that violations of freedom of religion / belief do not only target those who are few in quantity or politically weak. However, since 2016, SETARA Institute has paid special attention to religious minorities (religious / local beliefs) in addition to the general conditions of the freedom of religion / belief. This was motivated by at least some of the following factors.

First, conceptually, democracy is a system of governance run by the power of majority rule to ensure the protection of the rights of the minorities. Human Rights, including the rights of the minorities, are

intrinsic parts of democracy.¹ Thus, Indonesia as a democratic country should constitute the rights of the minorities as an integral part of the political, legal, and social system.

Second, the philosophical ideal of Indonesia as an independent country is all for one (Indonesia) and one for all. The five nationalist principles (*Pancasila*) and the national motto of Indonesia, Unity in Diversity (*Bhinneka Tunggal Ika*), boldly depict State politics that are open to all elements forming the nation-State, in various sizes and quantities. The articles of the state constitution, the 1945 Constitution, either in their forms as *rechtsidee* or as *staat fundamentalnorm*, affirm the basic framework of “one State for all”, idealized by the founders of the nation-State and intrinsically outlined in the State philosophical foundation and motto. Therefore, the politico-legal regulation in the level of governance must be built on the established philosophical and constitutional foundations.

Third, in the level of its legal derivative, Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified to Law No. 12 of 2005, specifically guarantees the minority rights. Hence, the enforcement agenda, that the law is not solely the protector of the majorities but also the protector of those who are anthropologically considered minorities, should be the concern of all parties.

Fourth, according to SETARA Institute’s research and observation data or report, which is currently in the hands of the reader, from 2007 to 2016 minorities statistically constituted the primary victims of acts and incidents of violations against freedom of religion / beliefs.

Protection of the religious minorities’ rights conditions certainly cannot be separated from the freedom of religion and belief conditions. Fulfillment of religious minorities’ rights should be in line with the fulfillment of basic rights to freedom of religion / belief. Relationally, freedom of religion / belief intersects with the freedom of religion / belief that is guaranteed as an individual right in various international human rights instruments.

Rights of freedom of religion / belief are substantively regarded as

1 Beetham, David. *Democracy and Human Rights* (Polity Press: Cambridge and Malden, 2000), p. 93.

non-derogable rights in which individual rights fulfillment cannot be reduced and cannot be delayed. Therefore, freedom of religion / belief for both individuals and groups must be guaranteed by the State.² The principle of non-derogable rights affirms absolute rights and therefore cannot be suspended or postponed in any situations and circumstance.³

Accordingly, constitutional structure of Indonesia provides extra guarantees to implement freedom of religion / belief. Such guarantees can be found in the basic norm (*grundnorm*) of national legislation and the legal foundation of the State (*staat fundamentalnorm*).

As the philosophical foundation of the State, Pancasila has given philosophical and moral guarantees of freedom of religion / belief which is confirmed in the first principle. In reality, this most important principle is often interpreted paradoxically. On one hand, the first principle is defined as the principle that accommodates meta-spirituality of religion. On the other hand, it is often interpreted as a formula that refers to the formalistic diversity as well as a legalization of the dominant religious community. It is considered a religious philosophical foundation that refers to the extraction of the *Tauhid* concept, which means it is reduced in order to protect the quantitative majority of a certain religion in Indonesia, in this case, Islam.

The most sublime references in reading and interpreting the first principle of Pancasila are the statements delivered directly by the founders of the nation in the trial of Investigating Committee for the Preparation of Independence (*Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia / BPUPKI*), in particular, at the plenary meetings regarding the formulation of the philosophical foundation of

2 Davis, Derek H., *The Evolution of Religious Liberty as a Universal Human Rights*, republished on Desember 5, 2006.

3 The rights in the principle include: the right to life (to not be killed), the right of self intact (to not be tortured, kidnapped, ill-treated, raped), the right to be free from slavery, right of freedom of religion, thought and belief, the right to be treated equally before the law, the right not to be imprisoned on the ground of his / her failure to fulfill a contractual obligation and the right not to be criminalized due to the retroactive law. In that sense, all types of acts which may cause the annihilation of someone's or a group of people's rights of freedom of religion – as an element of non-derogable rights – can be categorized as human rights violations. See also Ismail Hasani dan Bonar Tigor Naipospos (eds), *Mengatur Kehidupan Beragama; Menjamin Kebebasan Beragama? Urgensi Kebutuhan RUU Jaminan Kebebasan Beragama/Berkeyakinan*, (Jakarta: SETARA Institute, 2011).

the state. One of the statements was delivered by Sukarno, due to his historical position as the main founder of Pancasila.

When reviewing the principles of Pancasila on June 1 1945⁴, Sukarno (the Son of Dawn), through his agitative speech, provided a straight forward affirmation of the divinity principle. He stated that:

Principle of Divinity! Not only should the people of Indonesia have beliefs in God, but every Indonesian should believe in his own particular God. Let us all have beliefs in God. The Indonesian state shall be a state where every person can worship God in freedom. All people should culturally believe in God, without 'religious egoism' and the State of Indonesia should be a State incorporating the belief in God⁵

As the basic norms, ideals of law (*rechtsidee*), philosophical basis (*philosophische gronslag*), views of life (*weltanschauung*), national ideology, foundation of the State, as well as the source of all laws in Indonesia, Pancasila should be implemented in a more operational, concrete, and binding constitutional guarantee. Such guarantee is stated in our constitution, the 1945 Constitution of the Republic of Indonesia (*Undang-Undang Dasar Negara Republik Indonesia / UUD 1945*).

In the 1945 Constitution there are some provisions which guarantee the rights of citizens to religion and belief. There are at least two Articles in the 1945 Constitution which can be identified as articles that provide direct guarantees of freedom of religion for everyone, a citizen or non-citizen. The two provisions, Article 28E and Article 28I, are as follows:

Article 28 E of the 1945 Constitution

- (1) Every person is free to worship and to practice the religion of his choice, to choose education and schooling, his occupation,

4 After the fall of the de-soekarnoization project undertaken by Soehart's rezime, we colossally agreed to reclaim June 01 as the Birth of Pancasila day.

5 Sukarno's speech at the BPUPKI on June 1, 1945. See Bahar, et.al [eds.], *Risalah Sidang BPUPKI dan PPKI*, (Jakarta: State Secretariat), pages 80-81, or Alam [ed), *Bung Karno Menggali Pancasila*, (Jakarta: PT Gramedia Pustaka Utama, 1995), p. 28.

his nationality, his residency in the territory of the country that he shall be able to leave and to which he shall have the right to return.

- (2) Every person has the right to be free in his convictions, to assert his thoughts and tenets, in accordance with his conscience.

Article 28I paragraph (1) of the 1945 Constitution

The rights to life, to remain free from torture, to freedom of thought and conscience, to adhere to a religion, the right not to be enslaved, to be treated as an individual before the law, and the right not to be prosecuted on the basis of retroactive legislation, are fundamental human rights that shall not be curtailed under any circumstance.

Article 28E of the 1945 Constitution guarantees everyone the right to worship his / her religion and beliefs freely. This provision implicitly declares freedom for everyone to religion and belief. At the same time, the freedom of religion is also refined as a guarantee for every person to practice his /her religion according to his /her beliefs.

The guarantee in the 1945 Constitution shows that an individual's freedom of religion is an essential human right.⁶ It firmly states that freedom of religion is the most fundamental human right. In addition, freedom of religion is neither given by the State nor by any groups. Therefore, the State cannot, and should not, intervene on the religious matters of each citizen.⁷

With such a significant position, the religious rights are in line with the norms of universal human-rights, which are categorized as non-derogable rights as stated in the Article 28I paragraph (1) of the

6 *Script Compiler Team of the Comprehensive Amendments - Constitution of the Republic Indonesia 1945, Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Latar Belakang, Proses, dan Hasil Pembahasan, 1999-2002, Buku VIII Warga Negara dan Penduduk, Hak Asasi Manusia, dan Agama (Edisi Revisi)*, (Jakarta: Sekretariat General dan Registrar of the Constitutional Court, 2008), page. 286.

7 *Ibid.*, p. 320.

1945 Constitution. Thus, the right to religion / belief cannot be reduced under any circumstances or cannot be revoked by anyone.⁸

In addition to providing guarantees and rights of religion / belief as non-derogable rights, the 1945 Constitution also regulates the relationship between the State and religion as well as the status or position of the state in the context of respect and protection of these rights. This is stipulated in Article 29 of the 1945 Constitution, as follows:

Article 29 of the 1945 Constitution

- (1) The state is based on the belief in the One and Only God.
- (2) *The state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief.*

From these two articles, it can be observed that constitutional guarantees of freedom of religion are very substantial in the 1945 Constitution. The constitutional guarantees are implicated in the perceptions (as well as the more detailed demand of derivative policy) as the following:

1. The state must guarantee the protection and the space for every citizen to practice his / her religion and belief.
2. The state must not create any prohibitions and hindrances for citizens to practice their religions and beliefs.⁹

In accordance with Article 29 of the 1945 Constitution, the state has a constitutional responsibility to protect the religious rights of every citizen. The state has an obligation to guarantee freedom of religion / belief as stated in Article 28E and Article 29 of the 1945 Constitution. They are in line with the mandate in the Article 28I paragraph 4 of the 1945 Constitution, which needs to be fulfilled by the state, especially the government. Article 28I paragraph 4 states that the protection, promotion, enforcement and fulfillment of human rights are the

8 Ibid., p. 293.

9 See Ismail Hasani (ed), *Dokumen Kebijakan Penghapusan Diskriminasi Agama/Keyakinan*, (Jakarta: Setara Institute, 2011), page 81.

responsibilities of the state, especially the government. This means that the government is obligated to protect and respect human rights.

The government's obligations to protect, to promote, to fulfill and to respect the values of human rights as mandated in the Article 28I, paragraph 4 of the 1945 Constitution should be simultaneously implemented (when one obligation is fulfilled, other obligations must be fulfilled as well). Accordingly, government should be consistent in enforcing human rights.

Therefore, the obligations to secure, protect, and promote human rights, especially freedom of religion, for every citizen belongs to the State. The State should act as stakeholder of the obligations. It is not allowed to delegate the implementations of these obligations to any non-state actors. Consequently, when the implementations of the State obligations are carried out by non-state actors, violations against rights to religion and belief will occur. In addition, it will allow certain groups to act on behalf of religions to inflict violence against people of different beliefs.

Constitutional mandate derived from the philosophical foundation is reinforced with a variety of derivative instruments in the form of acts. Several laws which can be identified in its main framework are Law No. 39 of 1999 on Human Rights and Law No. 12 on the Ratification of the International Covenant on Civil and Political Rights. The question becomes, has such implementation of the constitutional guarantees been ideal?

This is where the problem lies. There are some tensions within the implementations of the constitutional guarantees. The disparity is highly visible between the *das sollen* constitution and the *das sein* government policies, which are more specific, detailed, and concrete. The key issue to the implementations of the constitutional mandate of freedom of religion can be grouped in three main clusters.

The first cluster is the incongruence regulation. The central weak point in the incongruous guarantee of freedom of religion / belief is Law No. 1/PNPS/1965 on the Prevention of Religious Abuse and / or Defamation. This law was formed as the platform for several of its implementing regulations on managing religious life, such as 1) the Joint Decree of the Minister of Religious Affairs and the Minister of Interior No. 9 and No. 8 of 2006 on the Guidelines for the Duties

of Mayor / Vice Mayor for Inter-Religious Harmonization and the Empowerment the Inter-Religious Harmony Forum and the Building of the Place of Worship, 2) the Joint Decree of Minister of Religious Affairs, the Attorney General and the Minister of Interior No. 3 of 2008 No. KEP-033/A/JA/6/2008 and No. 199 of 2008 on Warning and Order to the Believers, Members, and or Board Members of the Indonesian Ahmadiyya Community (Jemaat Ahmadiyya Indonesia / JAI) and Community Members, and 3) several regional regulations which often become the major triggers of intolerant behaviors and discriminating acts against the religious minorities.

The second cluster is the poor capacity of the state institutional governance. The constitutional guarantees affirmed by the 1945 Constitution, along with its law derivatives, are ideally supported by institutional structures which strengthen the implementations of the constitutional mandate. However, in reality, the government created religious life problems in Indonesia through the establishment of institutions that actually negated the constitutional mandate and stimulated the acts of intolerance and discrimination against the citizens' religious lives.

The third cluster is the poor performance of the state officials. The "behind the desk" state officials are often unable to inclusively interpret the guarantee of freedom of religion / belief. Field officials are often unable and unwilling to protect the freedom of religion / belief. Even in highly escalated chaos, they have not been able to use the coercive instruments to provide human security for all adherents of religion and to prevent intolerant and discriminatory practices towards adherents of certain religions / beliefs, particularly the religious minorities.

According to SETARA Institute, these three weak points, either partially or cumulatively, are the main factors which stimulate violations, and even crimes, against freedom of religion / belief. Therefore, the religious life in this State of Pancasila is not conducive enough to provide its desired outcome. In fact, there has been an increase phenomenon of intolerant practices of religion / belief within the last five years.¹⁰

¹⁰ See Hasani and Naipospos (eds.), *Politik Diskriminasi Rezim Susilo Bambang Yudhoyono: Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia 2011*, (Jakarta: Setara Institute, 2011) .

This background illustrates one of the reasons behind SETARA Institute's yearly agenda to conduct a monitoring research and analysis of the actual condition of freedom of religion / belief in Indonesia and present them in a report on the conditions' progress or regress of freedom of religion / belief, which is analyzed through human rights perspectives and which provides study cases of intolerance and discrimination of religion / belief.

In addition, the previous reports since 2007 have shown the macro and micro poor conditions of freedom of religion / belief in Indonesia. Several bleak portraits that have been depicted in the conditions of freedom of religion / belief, among others are: the state's absence in almost all acts of violations, perpetrators of violations impunity, acts of violations omission and victims of violations abandonment. As such, this type of report finds its urgency and significance as a reminder to State officials to react, take measures, and restore the situations of freedom of religion / belief.

Moreover, at the praxis level, the accommodation of recent database and baseline national data, which serves as a reference regarding religious life in Indonesia, is also a solid guideline to sociological formulation of the state legislation and policy in encouraging the promotion of human rights. This report is quite relevant as one of the portraits on the conditions of freedom of religion / belief in Indonesia

The monitoring research and the annual report publication are aimed to: [1] document and publicize facts of violations and breakthroughs / progress of freedom of religion / belief guarantee in Indonesia; [2] encourage the State to ensure full freedom of religion / belief including to revise various products of legislations that restrict freedom of religion / belief and to restore the rights of victims; [3] provide baseline data on freedom of religion / belief; and [4] strengthen the civil society and public network in general to expand the constituency in order to participate and promote the freedom of religion / belief.

B. Methodological Framework

Within the framework of monitoring of freedom of religion / belief in 2016, SETARA Institute conducted its research with mixed methods of qualitative and quantitative combined with investigative

observations. With the use of such methods, this report includes areas in Indonesia and describes the common symptoms of conditions of freedom / belief in Indonesia.

The data were collected by: [1] having researchers' focus group discussions; [2] collecting data from religious and government institutions; [3] having in-depth interviews with various state authorities, leaders, and citizens in 10 relevant provinces; and [4] analyzing documents and media reportings.

The data collection and analysis of this monitoring utilize parameters that are theoretically used in human rights disciplines and practically guided by civilized countries. These parameters are specifically in the form of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by the Indonesian government with Law No. 12/2005, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief as pronounced in the United Nations General Assembly resolution No. 36/55 on November 25, 1981.

The triangulation technique is used to test the validity of the data in this monitoring research.¹¹ The triangulation technique uses the sources triangulation, by comparing and checking the information validity at different times and through different tools, while also comparing the data obtained from in-depth interviews and documentations (*person and paper*), various documentations (*paper and paper* -including the validity testing through comparing and tracking online sources), or from various individuals (*person and person*).

C. Theoretical Study and Conceptual Framework

1. Human Rights as a Guarantee for Freedom of Religion / Belief

The monitoring and writing of this report on the condition of freedom of religion/ belief in Indonesia is based upon a human rights perspective, which places freedom of religion/belief as an individual right whose fulfillment cannot be delayed (non-derogable rights). Therefore,

¹¹ Triangulation is a data validity checking technique that utilizes other sources to check or compare the data. See Lexy J Moleong, 2002, *Qualitative Research Methodology* (PT Remaja Rosda Karya, Bandung), p. 178

the definitions used in the monitoring and writing of this report refer to definitions in the discipline of human rights law. Freedom of religion / belief is a guarantee provided by the State as the freedom of religion / belief for an individual and as the freedom to practice religions / beliefs for individuals and communities. Freedom of religion is a fundamental human right.¹²

The terminology of ‘Religion’ or ‘Belief’, from a human rights perspective, should not be narrowly and limitedly interpreted, but should be widely constructed. A common misconception that occurs is that theism (the belief in the existence of God) is a religion. On the other hand, Buddhism (non-theism), and Hinduism (polytheism), are also called religions. The definition of religion or belief is not merely only limited to traditional religions or institutions which have the characteristics or analogous practices similar to the traditional religions. A newly formed religion / belief and a minority religion are entitled to the protection provided by the dominant and ruling religious community.¹³ The perspective of human rights also underscores that the followers of both theistic and non-theistic beliefs, and those who do not believe in any religions or have spiritual beliefs, deserve equal rights and protections.¹⁴

A primary instrument of human rights which regulates the guarantee freedom of religion / belief is the International Covenant on Civil and Political Rights (1966) particularly article 18, which includes: (1) freedom to adopt a religion or belief of his/her choice, and freedom, either individually or in community with others and in public or private, to manifest his religion / belief in worship, observance, practice and teaching; (2) no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice; (3) freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others; (4) the States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal

12 Davis, Derek H., *op.cit.*

13 Paragraph 2, General Comment of United Nation of Human Rights Committee No. 22 on Article 18, 1993

14 *Ibid.*

guardians to ensure the religious and moral education of their children in conformity with their own convictions.

In 2005, Indonesia has ratified the international covenant through Law No. 12/2005 on the Ratification of the International Covenant on Civil and Political Rights. This Covenant is legally binding and, since the State that has ratified it, Indonesia has the obligation to integrate it in the national legislations and to provide periodic reports to the United Nations Human Rights Commission.

Another Human Rights instrument regulating the freedom of religion/belief is the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, as initiated in the United Nations General Assembly resolution No. 36/55 on November 25, 1981. The declaration regulates the guarantee of freedom of religion/belief further than the International Covenant on Civil and Political Rights; nevertheless, as it is merely a declaration, it is non-binding to State party. Although it is not legally binding, the declaration reflects the wide consensus of the international community. In that regards, it has the moral power in the practices of international relations in general. As a member of the United Nations, Indonesia should not disregard the declaration in fulfilling its obligation to fulfill the human rights of its citizens.

Article 6 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief says:

In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

- 1) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- 2) To establish and maintain appropriate charitable or humanitarian institutions;
- 3) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

- 4) To write, issue and disseminate relevant publications in these areas;
- 5) To teach a religion or belief in places suitable for these purposes;
- 6) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- 7) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- 8) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- 9) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

The 1945 Constitution of the Republic of Indonesia, has also affirmed the freedom of religion / belief in Article 28E, as the following:

- (1) Every person is free to worship and to practice the religion of his choice, to choose education and schooling, his occupation, his nationality, his residency in the territory of the country that he shall be able to leave and to which he shall have the right to return.
- (2) Every person has the right to be free in his convictions, to assert his thoughts and tenets, in accordance with his with his conscience.

Based on above two instruments of human rights, as well as the Constitution of the Republic of Indonesia, it can be summarized that the operational definition of freedom of religion/belief includes the freedom to adopt a religion or beliefs of his/her choice, either individually or in community with others, and, in public or private, to manifest his religion / belief in worship, observance, practice and teaching, including the freedom to change his religion / belief as well as the freedom not to adopt a religion / belief.¹⁵ Article 28E asserts that

15 Article 18 of Universal Declaration of Human Rights (1948): "Everyone

freedom of religion / belief is a constitutional right of every citizen.

Human rights law is an international civil law which puts the state as the state parties; this means that the State is the subject of law and is obliged to obey such human rights law. Therefore, as the subject of the law, every human rights violation puts the State as the perpetrator. Violations of human rights law occur when the State does not comply with the norms that bind it, as stated in international covenants and conventions, in which the State has vowed to comply through the process of ratification.

The emphasize on human rights epistemology, as described earlier, clarifies the difference between the human rights law and the international criminal law, which puts an individual as the subject of law. As a civil law, the sanctions recognized in human rights law include international sanctions, obligation to reform policies, and fines in the forms of compensation, and restitution and rehabilitation for victims whose rights have been violated. In international criminal law (Rome Statute), apart from an individual being the subject of the law, a sanction given to a perpetrator can also come in the form of imprisonment.

Indonesia, as a state party in the international human rights law, is obliged (obligation of the state) to respect and protect everyone's freedom of religion or belief.¹⁶ The basic principle of the state's obligation to respect human rights is that the state will not do anything that violate the integrity of an individual or groups or neglect their freedom. The state also has the obligation to protect, which means to take actions needed to protect the rights of an individual/ a group of people from crimes / violations of law / violence committed by other individual or groups; this includes taking preventative actions against abandonments that hinder the enjoyment of their freedom.

Although the basic nature of human rights cannot be eliminated or revoked and is total in every human being, based on the agreed Syracuse Principle there are two types of treatment for the implementation of

has the right to freedom of thought, conscience and religion; this 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, practice, worship and observance.”

16 See article 18 of DUHAM, article 18 of ICCPR, Article 28I, Article 28E, Article 29 of the 1945 Constitution of the Republic of Indonesia.

human rights, namely: the principle of non-derogable rights (rights that cannot be postponed or suspended fulfillment) and derogable rights (rights that can be postponed or suspended fulfillment). The Syracuse principle underscores that rights which can be postponed or suspended can only be applied to certain situations or conditions that are considered to be harmful to the public interest.

Meanwhile, the principle of non-derogable rights affirms absolute rights and therefore, such rights cannot be postponed or delayed in any situations or conditions. The rights included in this principle are: the right to life (to not be killed), the right of self intact (to not be tortured, kidnapped, ill-treated, raped), the right to be free from slavery, the right of freedom of religion, thought and belief, the right to be treated equally before the law, the right to not be imprisoned on the ground of his/her failure to fulfill a contractual obligation, and the right to not be criminalized due to the retroactive law. In that sense, all types of acts which may cause the loss of an individual's, or a group of people's, rights of freedom of religion – as elements of non-derogable rights – can be categorized as human rights violations.

Although the human rights discourses acknowledge the limitations in exercising the freedom of human rights, this monitoring continues to encompass various violations from both the rights included in the international forum category and the freedom included in the external forum category. The absolute individual freedom, namely the *forum internum* (internal freedom), is the freedom in which no party is allowed to intervene in its realization and enjoyment of the rights and freedom. Included in internal freedom are (1) the right to profess and convert to a religion freely; and (2) the right not to be forced to adopt or not to adopt a religion.¹⁷

While in a particular situation, the State is allowed to limit or curb the social freedom or *forum externum* (external freedom), but only by a margin of discretion or strict and legitimate prerequisites based on the Syracuse principles.¹⁸ Included in the external freedom

17 See article 18 of DUHAM, article 18 of ICCPR, Universal Declaration of Human Rights (1981) on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and General Comment of Human Rights Committee No. 22.

18 Syracuse principles are principles on limitation and derogation provisions in

are: (1) freedom to adopt a religion or belief, either individually or in community with others, and in public or private; (2) freedom to build a place of worship; (3) freedom to use religious symbols; (4) freedom to celebrate religious holidays; (5) freedom to appoint a religious leader; (6) freedom to teach a religion or belief; (7) freedom for parents to provide religious education to their children; (8) freedom to establish religious institutions or communities; (9) freedom to deliver religious materials to an individual or groups.¹⁹

2. Violations, Discrimination and Intolerance against Freedom of Religion /Belief

Violation of the right to freedom of religion or belief is a form of the State's failure or negligence in implementing it, such as interfering with an individual's freedom or not protecting an individual or a community who becomes the target of intolerance or criminal acts based on religion or belief. Thus, freedom of religion or belief violations are acts of omission, revocation, limitation or reduction of an individual's fundamental rights to freedom of religion or belief undertaken by the State institutions, in form of both active acts (by commission) and omission acts (by omission).

Two important human rights terms that are related to freedom of religion and belief are intolerance and discrimination. Intolerance derives from the belief that one's own group, belief system or way of life is superior to those of others. It can produce a range of consequences from simple lack of civility or ignoring others, through elaborate social systems such as Apartheid, or the intentional destruction of people in the perpetration of genocide. Such actions originate from the denial of a person's fundamental values.²⁰

the ICCPR. Initiated in the colloquium of 31 experts of human rights and international laws from various countries in Sicily, Italy in 1984. The colloquium resulted in a set of standard interpretations on clauses of rights restrictions in the ICCPR.

¹⁹ All of the rights guarantees are stated in the ICCPR, article 18, General Comment of Human Rights Committee No. 22, and Universal Declaration of Human Rights (1981) on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

²⁰ UNESCO, *Tolerance: The Threshold of Peace. A teaching/Learning Guide for Education for Peace, Human Rights and Democracy* (Preliminary version). Paris:

While discrimination means “all limitations, affronts or ostracism, both direct and indirect, on grounds of differences in religion, ethnicity, race, group, faction, social status, economic status, sex, language, or political belief, that results in the degradation, aberration, or eradication of recognition, execution, or application of human rights and basic freedoms in political, economic, legal, social, cultural, or any other aspects of life.”²¹

Discrimination and intolerance based on religion²² are violations of freedom of religion, as stated in Article 2 Paragraph 2 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which says: “For the purposes of the present Declaration, the expression ‘intolerance and discrimination based on religion or belief’ mean any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis,” such as not accepting a community or expressing and exposing hate to other community based on differences in religion or belief.

Intolerant and hate crimes are acts motivated by hatred or bias against someone or a group of people based on gender, race, skin color, religion, country of origin, and/or sexual orientation. An act of intolerance can be in the form of a serious crime, such as an attack or a fight. It can also be in the form of a minor act, such as mockery on someone’s race / religion. Written communication, including graffiti which shows prejudice or intolerance against someone or a group of people can also be categorized as a hate crime. This also includes vandalism and conversations based on intolerance as well as statements

UNESCO, 1994, p. 16.

21 Law No. 39, 1999 on Human Rights, Article 1.

22 Article 1 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981): “[1] Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching; [2] No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice; [3] Freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.”

regarded by some people as jokes.

A hate crime is violence of intolerance and prejudice, intended to hurt and intimidate someone because of his / her race, ethnicity, country of origin, religion, sexual orientation, and different ability. Spreading of hatred can occur with the use, or in the form, of explosives, arsons, weapons, vandalisms, physical violence, and verbal threats of violence to instill fear to the victims, causing them to be vulnerable to further attacks and to feel alienated, helpless, suspicious and frightened. Others may become frustrated and agitated once they believe the government and other groups in the community will not protect them. When perpetrators of hate are not prosecuted as criminals and their acts are not publicly condemned, their crimes can weaken even the communities with the most powerful and healthiest race relations.²³

UNESCO documented some symptoms of intolerance and their behavior indicators²⁴:

Language: Denigrations and pejorative or exclusive language that devalues, demeans and dehumanises cultural, racial, national or sexual groups. Denial of language rights.

Stereotyping: Describing all members of a group as characterized by the same attributes - usually negative.

Teasing: Calling attention to particular human behaviors, attributes and characteristics so as to ridicule or insult.

Prejudice: Judgement on the basis of negative generalisations and stereotypes rather than on the actual facts of a case or specific behaviors of an individual or group.

Scapegoating: Blaming traumatic events or social problems on a particular group.

Discrimination: Exclusion from social benefits and activities on

23 U.S. Department of Justice, Hate Crime: The Violence of Intolerance <http://www.usdoj.gov/crs/pubs/htecrm.htm>, accessed on December 1, 2008.

24 UNESCO. *Tolerance: the threshold of peace. A teaching/learning guide for education for peace, human rights and democracy (Preliminary version)*. Paris: UNESCO. 1994, p. 16.

primarily prejudicial grounds.

Ostracism: Behaving as if the other were not present or did not exist. Refusal to speak to or acknowledge the other, or their culture (includes ethnocide).

Harassment: Deliberate behaviors to intimidate and degrade others, often intended as a means of forcing them out of the community, organization or group.

Desecration and effacement: Forms of defacement of religious or cultural symbols or structures intended to devalue and ridicule the beliefs and identities of those to whom these structures and symbols are meaningful.

Bullying: Use of superior physical capacity or greater numbers to humiliate others or deprive them of property or status.

Expulsion: Officially or forcefully expelling or denying right of entrance or presence in a place, social group, profession or any place where group activity occurs, including those upon which survival depends, such as places of employment or shelter, etc.

Exclusion: Denying possibilities to meet fundamental needs and/ or participate fully in the society, as in particular communal activities.

Segregation: Enforced separation of people of different races, religions or genders, usually to the disadvantage of one group (includes Apartheid).

Repression: Forceful prevention of enjoyment of human rights.

Destruction: Confinement, physical abuse, removal from area of livelihood, armed attacks and killings (includes genocide).

Intolerant and hate crimes are criminal acts that make individuals objects as related to freedom of religion/belief. For these types of crime, the responsibility lies on individuals as subjects of criminal law. The State also has responsibility, the responsibility to protect everyone from the threat of intolerance and to legally process the crimes that have occurred.

In the context of Indonesian laws, these types of crimes are addressed by the Penal Code (KUHP / Kitab Undang-undang Hukum

Pidana) of Article 156,²⁵ which states that:

The person who publicly gives expression to feelings of hostility, hatred or contempt against one or more groups of the population of Indonesia, shall be punished by a maximum imprisonment of four years or a maximum fine of four thousand five hundred Rupiahs.

By group in this and in the following article shall be understood each part of the population of Indonesia that distinguishes itself from one or more other parts of that population by race, country of origin, religion, origin, descent, nationality or constitutional condition.

However, in practice, this article of Indonesian law is incorrectly implemented, usually to charge people who are accused of worshipping heretical sects and defaming religions. However, this article is an instrument that should be used to criminalize the practice of intolerance.

In relation to religious intolerance, SETARA Institute distinguishes between passive intolerance and active intolerance. Passive intolerance is the residue of religious belief as a whole and the interpretation of a person's religious teachings which are believed to be the only truth for him / her as an individual and social being. Cognitively, he / she continues to believe in the teachings of his / her religion but, whether willingly or not, he / she must accept and adapt the consequence of social relations with various parties that have different backgrounds. Meanwhile, active intolerance does not just view religious teachings as the only truth, but also tend to see those who have different interpretations of the same religion, as well as different religious teachings, as false and heretical. The most obvious difference between those who have passive intolerance and active intolerance can be seen through their actions. Those who have active intolerance express their thoughts not only through their statements, but also through acts.

This report of Freedom of Religion / Belief in Indonesia is within the monitoring framework based on human rights, particularly in

²⁵ The article is an area of contestation of the interpretations of "hate crimes". So far, the implementations of this article have been identical with Article 156a, the derivative of PNPS No. 1/1965, which is often used against those who are accused of adopting heretical sects.

the International Covenant on Civil and Political Rights. Therefore, the report's preparation methods are based on the approach of 'violations'. Through such approach, this report can be comprehended as an attempt to examine the extent to which the State implements its generic obligations to respect and protect the freedom of religion / belief. The framework of this report also refers to the framework for communications developed by the Special Rapporteur of United Nation for Freedom of Religion / Belief.

Based on the definitions above, there are three forms of violations of freedom of religion / belief committed by State actors, namely; [a] committing active acts that allow restrictions, discrimination, interference, or obstruction of a person's enjoyment of freedom of religion / belief (by commission); [b] allowing a person's rights be violated (by omission), including allowing any criminal act committed by a person to be unprosecuted, and (c) forming regulations that would allow the occurrence of human rights violations (by rule / judiciary).

In addition to documenting violations of freedom of religion/ belief perpetrated by the State, this monitoring also documents violations committed by groups of citizens as non-state actors. Violations by groups of citizens are generally classified into three major classifications: [a] arson of places of worship, intimidation, physical violence, and others; [b] acts of intolerance, and [c] acts of condoning by community leaders.²⁶

Through such framework, the monitoring report divides the six (6) categories of violations based on the legal subjects and accountability;

- [1] state active acts (by commission),
- [2] state acts of omission (by omission),

²⁶ It should be emphasized that in perspective of SETARA Institute, acts of condoning (in other terms can be classified as hate speech) are categorized as violations of freedom of religion / belief, and even considered as serious violations, for the following reasons. First, substantively, acts of condoning are acts of provoking violations that can be interpreted as the propositions and triggers of movements resulting in violations. Second, many acts of violation towards freedom of religion / belief were in fact committed and initiated from propositions of public figures and government officials. Third, sociologically, in a feudal society with a strong tendency of patron-client relationship, public figures' speeches or patrons which can mobilize citizens' (clients') collective acts on wider scales.

- [3] establishment of regulations that violate / provoke violations (by rule / judiciary)
- [4] citizens' criminal acts
- [5] society's intolerance acts, and
- [6] community's condoning acts.

Regarding the violations committed by the state, the legal framework used to address them is the law of human rights which are stated in the covenant of civil and political rights as well as in several human rights conventions that have been ratified in the state constitution and in positive laws at the domestic level governing the obligations of the state. As for the violations and acts of intolerance, particularly criminal acts / crimes committed by citizens, a legal framework that can be implemented is the Penal Code.

CHAPTER 2

Conditions of Freedom of Religion / Belief in 2018

A. Background

This section of the report will specifically review the conditions of freedom of religion / belief in 2018. In general, the findings in this chapter are presented with display techniques that are consistent with past reports. Therefore, those findings can be linearly paired with the same sections in previous years. The main data of this section can be compared with data from previous years to record the dynamics of conditions of freedom of religion / belief in Indonesia.

This chapter will also describe the special conditions that have become the public concern as well as the general conditions of freedom of religion / belief in 2018 in Indonesia. General conditions are analyzed from the monitoring data with both quantitative and qualitative aspects.

Systematically, this chapter will begin with the Monitoring Findings of the Violations on Freedom of Religion / Belief which contain quantitative data and relevant analysis on several aspects of violations. Then it is concluded with several Special Reports on the Condition of Freedom of Religion / Belief.

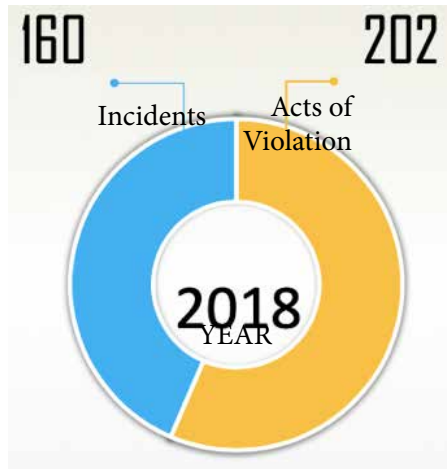
B. Incidents and Acts of Violation

In 2018, SETARA Institute recorded 160 incidents of violations in the freedom of religion / belief with 202 forms of action throughout 25 provinces. In terms of time of the occurrences, most incidents occurred in March with 23 incidents. Then occurrences continued in February with 21 incidents, April with 19 incidents, October with 17 incidents,

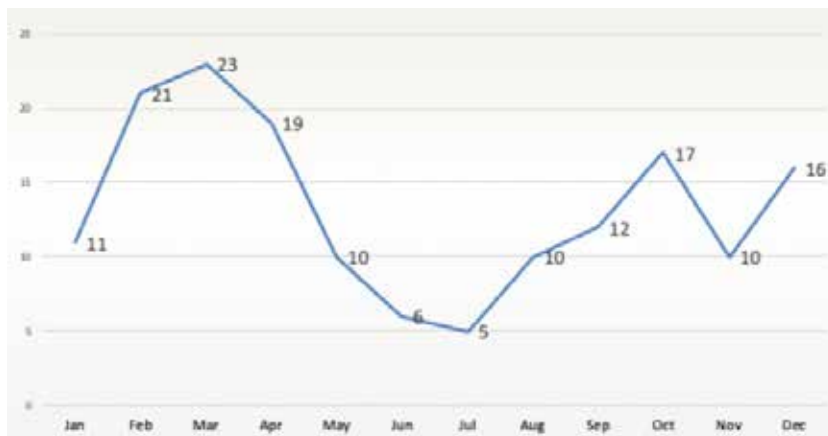
December with 16 incidents, September with 12 incidents, January with 11 incidents, May as well as August with 10 incidents each, June with 6 incidents and July with 5 incidents.

Thus, despite a decline from last year's figures, the number of violations is still very high with an average of 13.3 incidents and 16.83 acts for every month. From the time variable of the incidents, the highest number of violations occurred in particular months such as February. The issue of Valentine's Day will always trigger the use of religion as an instrument of violations. In addition, December and January are considered to be the 'vulnerable' months as violations of freedom of religion / belief related to Christmas are likely to occur in those months.

Graphic 1
Number of Incidents and Acts of Violation



Graphic 2
Distribution of Incidents per Month



C. Provinces with the Highest Numbers of Incidents of Violation

Similar to the monitoring data in previous years, the highest number of freedom religion / belief violations occurred in West Java. West Java became the number one violator of freedom of religion / belief with a number of 24 incidents. This figure is certainly still quite high but it is lower than the figures from the previous years, particularly when it is compared to the figure in 2013, reaching the number of 80 incidents.

The second position is occupied by the province of Jakarta with 23 incidents, one point lower than the number of incidents occurred in West Java. At the third position, following West Java and Jakarta, is East Java with 21 incidents. Central Java is ranked fourth with 17 incidents and Banten is ranked fifth with 11 incidents.

Graphic 3
Five Provinces with the Highest Numbers of Incidents



There are at least six factors that lead to the high numbers of incidents in West Java, the province which is now led by Governor Ridwan Kamil. The first factor is the existence of the Governor Regulation Number 12 of 2011 concerning Prohibition of Ahmadiyya Activities. The substance of the regulation naturally provokes intolerant groups who are indeed hostile and anti-Ahmadiyya to act more aggressively. The Governor Regulation is sociologically used as a justification tool by community groups to justify their acts of violation and intolerance. This regulation is derived from the Joint Decree of Three Ministers on the Prohibition of Ahmadiyya.

The second factor is the proliferation of intolerant groups. In West Java, there are groups that often commit acts of violation and intolerance, especially in regencies / cities such as Bandung, Tasikmalaya, Cianjur and others.

The third factor is the poor management of the very large number of community dynamics. It is known that West Java is demographically the largest area in Indonesia. Thus, diversity in West Java is more complex compared to other provinces in Indonesia. Hence, the factor which influences the high intolerance is actually not the large population or the high level of diversity but the failure of the regional government to manage the large population and the high diversity there.

The fourth factor is the strong Islamic conservatism in West Java. Factually and historically, the development of Islam in West Java is sociologically different from the development of Islam in Central Java or East Java. Thus, if this intersects with the inability of regional governments and local religious leaders to instill and educate tolerance in the country's diversity arena, it will potentially destroy any religious tolerance / beliefs.

The fifth factor is the type of Islamic mass organizations in West Java that is strict and tends to be quite rigid. Compared to East Java, for example, there are different types of Islamic mass organizations in West Java and they have different patterns of movement. Thus naturally, when it comes to issues of religion / belief that offend the Islamic sentiment, these mass organizations can very easily be triggered.

The sixth factor is the low awareness of diversity (plurality and multiculturalism) of the Islamic Party politicians. Religious issues are used to gain the majority of votes in General Elections (Pemilihan Umum / Pemilu) and Local Leaders Election (Pemilihan Kepala Daerah / Pilkada), as used by the Sudrajat-Ahmad Syaikh in the 2018 political contestation, the Local Leaders Election of West Java. This in itself has the potential to discredit minority groups, not only socially, but also politically as an implication of their promises to the majority Muslim group.

The high number of incidents and acts of violations which occurred in West Java both at the provincial and district / city levels as well as in other regions indicates low competency and capability of the state administrators in the government and the low political will of the government at the local level to take political-juridical policies in order to enforce constitutional provisions and guarantee the constitutional rights of citizens in the issue of freedom of religion / belief.

At the provincial level, the data also shows that in the perspective of the fulfillment and protection of human rights, the relations between the province and the regency / city and between the governor and regent / mayor are ineffective. This ineffectiveness can be seen from their reluctance, as fellows of political apparatus who are authorized to take political policy, to hand in hand eliminate intolerance in their area. In addition, the low ability of local officials to deal with problems can be seen from the high number of omission practices.

Nevertheless, it is important to appreciate the progress that has been made. For example, in this research period, SETARA Institute noted a promising change in the city of Bogor which is one of the regions that has traditionally been recorded as one of the highest contributors to violations of freedom of religion / belief.

In another SETARA Institute's research on the Tolerant City Index of 2018, Bogor City has a low tolerance index. It is ranked the seventh of all cities in Indonesia. This condition is not exceptional because Bogor City has always been one of the ten cities with the lowest tolerance index since 2015. This means that Bogor City has an alarming tolerance level because it has always been in the red zone since 2015, 2017 and 2018.

The predicate Bogor City as a city with low tolerance level is inseparable from the many policies of the City Government which are discriminatory and intolerant. In the past, the City of Bogor had prominent discriminatory policy records such as the Decree of the Head of the City Planning and Public Parks Office Number 503/208-DKTP in 2008 concerning the suspension of the Building Permit of GKI Yasmin (Indonesian Christian Church / Gereja Kristen Indonesia / GKI), Mayor Regulation No. 23/2009 concerning the establishment of organizations and work procedures of the Bogor Islamic Da'wah Central Management Agency, Mayor Regulation No. 28/2009 concerning the official attire of employees in the Bogor City Government and Mayor Regulation No. 17/2010 concerning the amendments to Mayor Regulation No. 4/2007 concerning the implementing guidelines for granting building permits.

In addition, there is the Mayor Decree Number 645.45-137 of 2011 concerning the revocation of Building Permit (Izin Mendirikan Bangunan / IMB) for GKI Yasmin Park which was issued due to the influence and pressure from certain groups. In addition, there is also Regional Regulation Number 2/2013 concerning the Tamiliniyah Diniyah Education which was intended specifically for Muslims. Then there is also the Circular Letter Number 300/321/National Unity and Politics Agency (Kesatuan Bangsa dan Politik / Kesbangpol) regarding the appeal for a ban on the celebration of Ashura (Shia Day) in the city of Bogor in order to respond to the massive rejection movement of Shia's adherents in Indonesia. Some of the policies of the city government stated that the Bogor City Government did not have a concern with the promotion of tolerance and harmony between religions.

Bogor City has long been the place of origin for perpetrators of terrorism who have been successfully arrested by the authorities. In 2017, a researcher of SETARA Institute concluded that the city of Bogor was the foundation for the development of radicalism because there was a movement to spread radical ideas conducted by radical transnational oriented groups. One of the groups in question is the salafi jihadi group who is the most active group in spreading the idea of radicalism and intolerance in the city of Bogor. These groups also spread the idea of *khilafah* (a general leadership system for all Muslims in the world to implement Islamic laws) which were aimed to replace the government with the ideology of Pancasila. In result the 2011 research, 46 percent of the people of Bogor City agreed to the idea of *khilafah*, 22.7 percent of them are Civil Servants (Pegawai Negeri Sipil / PNS).

The radical-transnational-oriented groups that are oriented towards intolerance and even terrorism try to infiltrate and dominate mosques, religious studies, Islamic boarding schools and campuses to become the centers of the spread of radicalism and intolerance. Although there are many tolerant groups and organizations in the city of Bogor, in reality it is quite difficult for them to ward off the movement of these groups. Tolerant groups in the city of Bogor tend not to dare to fight back because radical groups are hard-line radicals who do not hesitate to disregard other groups that are not in line with them. They can even resort to violence against anyone whom they perceive as an enemy.

In addition, the city of Bogor is indeed known as the birthplace and foundation for the development of various transnational Islamic religious organizations such as the Hizb ut-Tahrir Indonesia (Hizbut Tahrir Indonesia / HTI) and *Tarbiyah* (bearer of the ideas of the Muslim Brotherhood / *Ikhwanul Muslimin*). In 2016, Bima Arya Sugiarto in his capacity as Mayor of Bogor had openly attended the inauguration ceremony of the HTI's office in Bogor City. A series of conditions in the City of Bogor confirm that the dynamics of tolerance are vulnerable because of the large number of intolerant groups that developed their movements there. The presence of tolerant community groups has not been able to dismiss the fact that the city of Bogor is still an area for many intolerant groups to grow their movements in.

Bogor City's Government, especially the Mayor of Bogor, often presents himself as a party that tends to be less responsive to the presence of intolerance. The Mayor of Bogor has displayed resistance

to the results of SETARA Institute's research which placed Bogor City as one of the most intolerant cities in Indonesia. He didn't accept the results because according to him there were other good aspects in Bogor that showed high religious tolerance even though he admitted that there were still cases of intolerance in Bogor City such as the GKI Yasmin case, the Shia case, and the HTI case. The Bogor City Government also seemed reluctant to seriously respond to the results of the research as a form of follow-up.

However, lately, there has been a fundamental change in policy and social dynamics in Bogor. Since the end of 2018, the Mayor of Bogor has begun to make changes. The Mayor of Bogor seemed to be frustrated by the portrait of intolerance in Bogor that has continuously been reported by civil society organizations and the media, including by SETARA Institute.

In late 2018, The Mayor of Bogor together with the Council for Provincial and Lower Level Government Officials (Musyawarah Pimpinan Daerah / Muspida) as well as interfaith leaders, youths as well as mass organizations and Youth Community Organization (Organisasi Kemasyarakatan Pemuda / OKP) throughout the City of Bogor declared "Bogor, a Tolerant City". This was done to maintain conducivity. The Bogor City Government was committed to maintain the continuity of Christmas celebrations in the City of Bogor and encouraged the community to maintain harmony between religious communities.

In addition, the Mayor of Bogor also conducted the inauguration of three places of worship; two mosques and one church. Some of these practices deserve appreciation, even though Bogor City is still ranked in the eighth bottom position as the city with the low tolerance index after being declared as the city with the lowest tolerance score in Indonesia in 2015.

In mid 2019, Bogor's Mayor Bima Arya requested a meeting with SETARA Institute to seek for institutional support in order to reform practices and promote tolerance in Bogor City. In early August 2019, facilitated by Imparsial, the leader of SETARA Institute welcomed the Mayor of Bogor at SETARA Institute's office. The Mayor of Bogor, in the meeting, emphasized his commitment to make Bogor a tolerant city and to accelerate the resolution of violations of freedom of religion / belief in the City of Bogor, such as the protracted GKI Yasmin case.

Bima Arya was invited by SETARA Institute to be one of the speakers in a seminar titled 'Encouraging and Strengthening the Policy of Tolerance and Anti-Discrimination in Indonesia' held by SETARA Institute in Central Jakarta, Tuesday (13/8). Bima confirmed his commitment to resolve the GKI Yasmine's case. "I'm sure the Yasmin case will be resolved, hopefully there will be good news for us all by Christmas this year," he said.

Bogor's Mayor Bima Arya Sugiarto revealed two positive advances in the efforts to resolve the GKI Yasmin case. "The two things that have become the GKI Yasmin's progress are (the facts that) all have agreed to find solutions and to no longer debate legal issues and matters from the past," said Bima to reporters after speaking at the seminar organized by SETARA Institute.

This first progress was a significant effort achieved in the resolution of the GKI Yasmin case, given that this problem has occurred for years. The progress was in terms of the intensity of dialogue between the parties. Then, the formation of a Team of Seven from the church was the second progress. The team was given tasks to negotiate and communicate with the Bogor City government in discussing solutions for GKI Yasmin. Bogor City Government and the Team of Seven from the church have formulated the best alternative in order to resolve of the GKI Yasmin case.

Bima said that it was an intensive day of discussions between the Bogor City Government and the Team of Seven to resolve the GKI Yasmin case. The alumnus of the doctoral program of the Australian National University was optimistic that the GKI Yasmin problem could be resolved.

When asked by journalists about the discriminative regulations used against GKI Yasmin, Bima answered that he did not want to talk about the past and only wanted to focus on a resolution strategy because this problem was still in the process of communication. "It's too premature, as a Sundanese would say *'herang cai na, beunang lauk na'*", when the water is clear then the fish is caught. I want to find a 'win-win solution' for all," said Bima in front of the journalists.

Bima Arya also put forward various other breakthroughs to promote tolerance in Bogor. In addition to the GKI Yasmin's case resolution, the Bogor City Government (Pemerintah Kota/ Pemkot) also

strengthened the tolerance within the community through substantive policies by including the nomenclature of strengthening tolerance in the Regional Medium-Term Development Plan (Rencana Pembangunan Jangka Menengah Daerah/ RPJMD) for the next five years.

“I will make sure that the nomenclature on strengthening tolerance is included in the RPJMD which will later become an obligation for the apparatus to carry it out,” said the Mayor in the SETARA Institute’s seminar. Bima said that the seeds of intolerance and radicalism exist in every city in Indonesia, including in the city of Bogor. However, historically, Bogor City is known for its diversity and togetherness. This is shown by the symbols in the city of Bogor, such as religious leaders who are always seen together, places of worship standing side by side in the center of the city, as well as various diversity activities held together such as the yearly Bogor Street Cap Go Meh Festival.

The current problems faced by Bogor City, according to Bima, are the dynamics and the sparks of intolerance and those problems must be solved together. The issue of rejection does not only occur between cross religions between Christianity and Islam, but also between Islam and Islam.

Apart from all the problems, the key to solving Bogor City’s problems is communication. This effort is done continuously by the Bogor City Government to strengthen tolerance in every level of society. At the elite level, the spirit of diversity and tolerance is getting stronger. The City Government’ task now is to transform that understanding into substantive policies.

Bogor City’s Government has structured the RPJMD for the next five years. The strengthening of the tolerance will be applied to all regional government organization (OPD) or service activities. All offices have programs to strengthen tolerance, such as the education office and other offices.

Changes have been seen throughout Bima Arya’s two periods of leadership as Mayor,. Such leadership shows a tendency for good alignments towards the promotion of tolerance compared to the previous office period. Such alignments will actually be adopted by the middle and bottom level of government.

The Religious Harmony Forum (Forum Kerukunan Umat Beragama / FKUB) of Bogor City is also becoming very active to promote tolerance. Bogor City's Religious Harmony Forum paid an honorary visit to Bogor's Mayor Bima Arya in the Paseban Punta Room of Bogor City Hall on Wednesday (7/8/19).

The Religious Harmony Forum was included in those who initiated the inclusion of Harmony, Tolerance and Peace nomenclature in the preparation of the Regional Medium-Term Development Plan (Rencana Pembangunan Jangka Menengah Daerah/ RPJMD) of Bogor City for 2019-2024. They felt that the nomenclature proposal needs to be included in the official Bogor City Government document. Thus, the discourse of harmony, tolerance and peace become the spirit and inspiration for all future activities of the Bogor City Government. The 'harmony, tolerance and peace' nomenclature was finally agreed to be included into the program's draft of each Regional Government Work Unit (Satuan Kerja Pemerintah Daerah / SKPD) in Bogor City's Government.

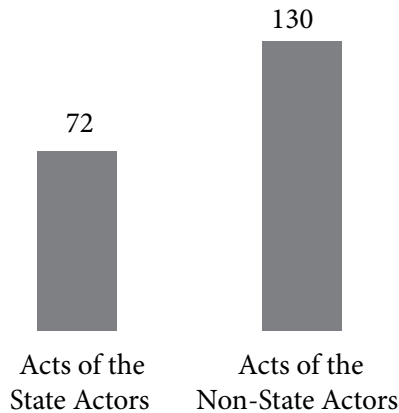
The Chairperson of the Formulation Team of the Religious Harmony Forum, Hasbulloh, who is a strategic constituent and a local partner of SETARA Institute in Bogor, stated that the distribution of the nomenclature to each Regional Government Work Unit was intended so that the responsibility in realizing a harmonious, tolerant and peaceful community life was not only imposed by one Regional Government Work Unit which had been done by the National Unity and Politics Agency (Kesatuan Bangsa dan Politik / Kesbangpol) through the Religious Harmony Forum ((Forum Kerukunan Umat Beragama / FKUB) of the Bogor City.

The aforementioned situation, based on SETARA Institute's notes, is one of the stories with significant changes in the conditions of freedom of religion / belief in 2018. The city of Bogor, which previously was the city with the most problematic situation of tolerance in Indonesia, has begun to transform systemically and systematically. It started from the local leadership alignments which then continued with policies and engagement of strategic actors.

D. State Actors, Non-State Actors and Their Acts of Violation

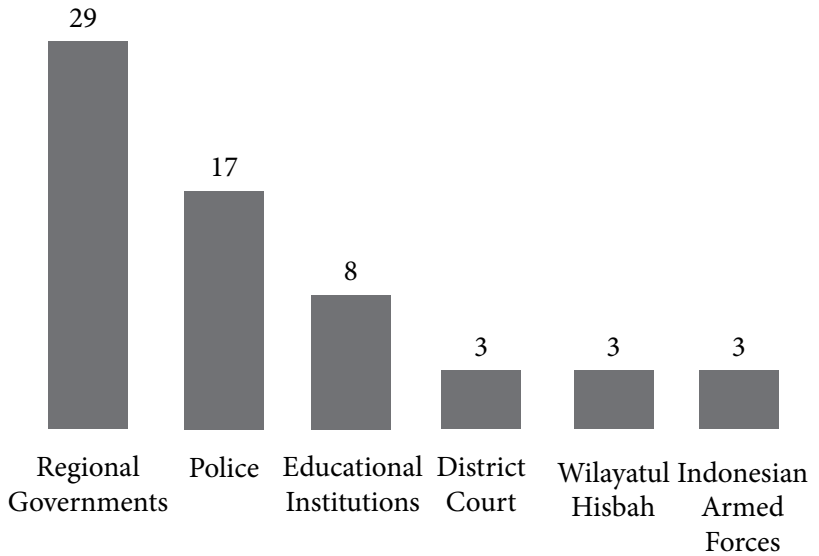
By using categories commonly used in the discipline of human rights, the actors' acts of violation of freedom of religion / belief can be divided into two categories; i.e. acts of violation committed by the state and acts of violation committed by non-state actors. Of 202 forms of violations of freedom of religious belief, there are 72 state acts of violation involving state administrators and 130 acts are committed by non-state actors. The state's acts include active acts (by commission), acts of omission, and formulation discriminatory regulations (by rule / judiciary). Included in the active state actions are statements of public officials which are provocative and trigger violence (condoning). Meanwhile, acts of violation committed by non state actors include criminal acts, condoning by public figures, and intolerance.

Graphic 4.
Comparison of Actors of Acts of Violation



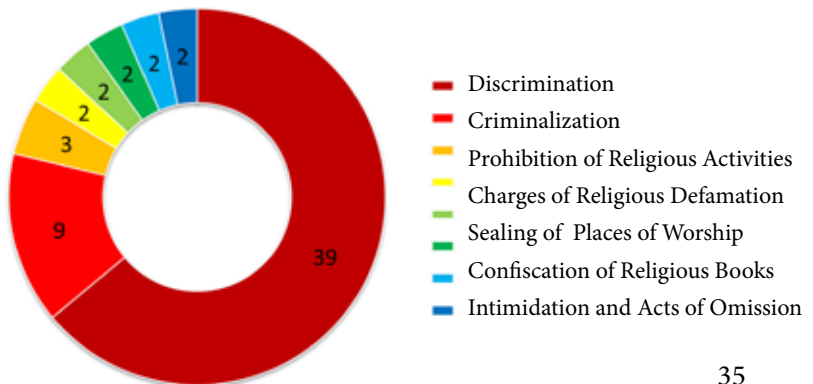
The state actors who committed the most violations were the Regional Governments (29 incidents) and the police (17 incidents). While the three institutions, ranked in the top 6, were educational institutions (8 incidents), Wilayatul Hisbah and Indonesian Nasional Army (Tentara Nasional Indonesia / TNI), of 5 incidents each.

Graphic 5.
State Actors with the Highest Acts of Violation



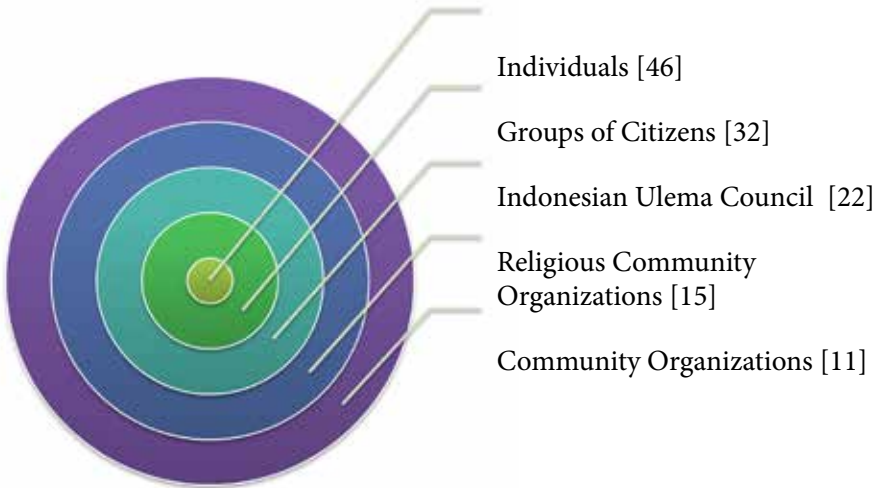
The act of violations most frequently committed by state actors (39 acts) was discrimination. This discrimination was divided into two sub-categories, namely policy and non-policy. The numbers of violations committed by state actors reached 54% of the total 72 acts. Other acts of violation committed by several state actors were criminalization (9 acts) and the prohibition of religious activities (3 acts).

Graphic 6.
Acts of Violation committed by State Actors



The other 130 acts of violation were committed by non-state actors. In other words, the acts of violation committed were double than the accumulated number of acts of violation committed by state actors in one year. In this category, the perpetrators of violations were citizens as well as individuals who were members of community organizations. Top 5 non-state actors who committed the highest numbers of violations were individuals (46 acts), groups of citizens (32 acts), the Indonesian Ulema Council (Majelis ulama Indonesia / MUI) of 22 acts, Religious Community Organizations (Ormas Keagamaan / Organisasi Massa Keagamaan) of 15 acts and Community Organizations (Ormas / Organisasi Massa) of 11 acts.

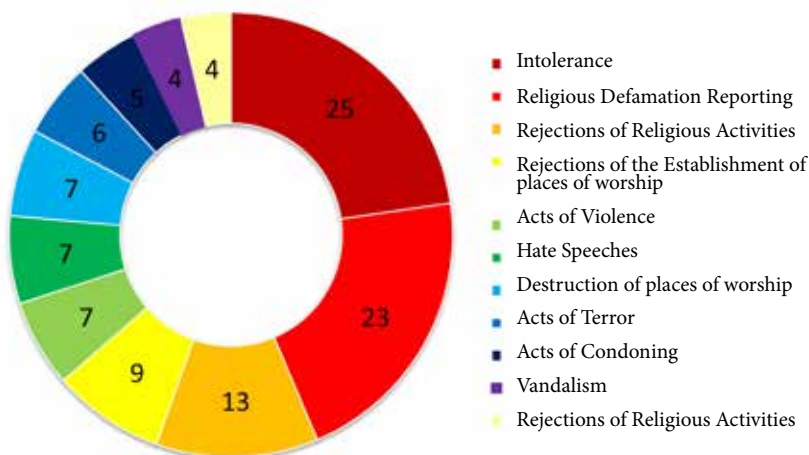
Graphic 7.
Non-State Actor with the Highest Acts of Violation



The most common act of violation committed by non-state actors was intolerance (25 acts). Religious Defamation Reporting was also a common act of violation that was committed by non-state actors (23

acts). Other acts of violation were the rejections of religious activities (13 acts), rejections of the establishments of places of worship (9 acts), acts of violence, hate speeches and destructions of places of worship (7 acts each).

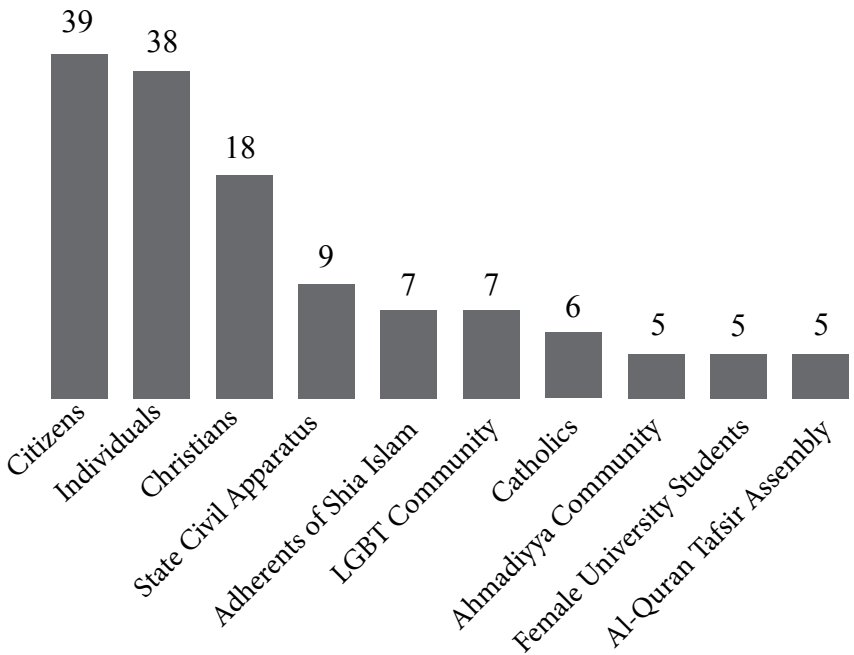
Graphic 8.
The Highest Acts of Violation Committed by Non-State Actors



E. Groups of Victims

In terms of victims, violations of freedom of religion / belief in 2018 were mostly committed to citizens. Violations of freedom of religion / belief were committed to these top ten of victims; citizens (39 incidents), individuals (38 incidents), Christians (18 incidents). State Civil Apparatus (Aparatur Sipil Negara / ASN) of 9 incidents, adherents of Shia Islam (7 incidents), the Lesbian, Gay, Bisexual and Transgender (LGBT) community (7 incidents), Catholics (6 incidents), Ahmadiyya community, female university students and the Al-Quran Tafsir Assembly (Majelis Tafsir Al Quran / MTA) of 5 incidents each.

Graphic 9.
Groups of Victims of Violation

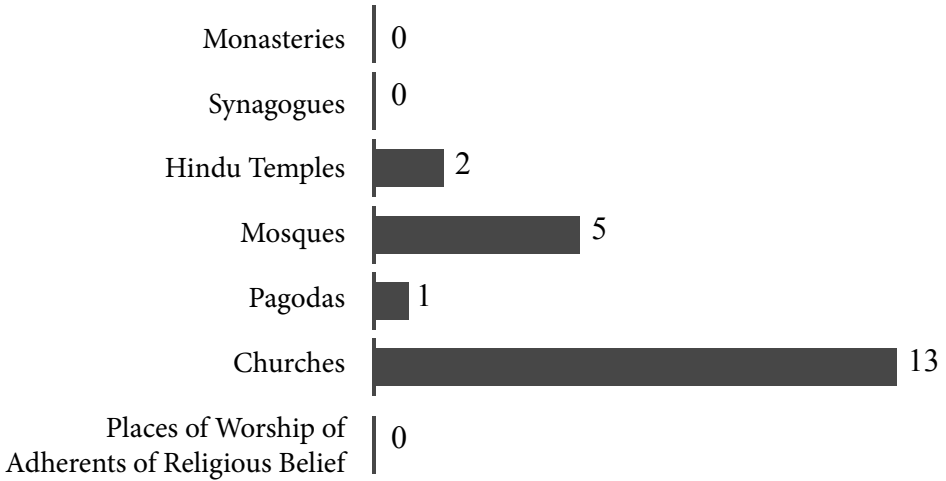


F. Disruptions to Places of Worship

Considering that the target of violations in this context are religious / belief groups, violators will automatically target their places of worship. Documented incidents of disruption to places of worship in 2018 were mostly afflicted to churches with 13 incidents.

Mosques were subjected to disruptions in 5 incidents. Most of the mosques that were victims of disruptions were Ahmadiyya Mosques. The rest were afflicted to Hindu temples with 2 incidents and a Pagoda with one incident.

Graphic 10.
Disruptions to Places of Worship Data



G. Several Key Notes

By examining the data and analysis on the variable levels of violations, actors of violation, as well as the state’s attitudes and treatments throughout 2018, SETARA Institute draws a number of key notes. First, in general, the number of incidents and acts of violations of freedom of religion / belief in 2018 continue the relatively low trend of incidents and acts of violation in the last two years. In 2018 the number of incidents only increased by 5 points from the previous 155 incidents, while the number of acts only increased by 1 point. Whereas two years earlier SETARA Institute recorded the highest number in this government that the condition of the freedom of religion / belief at that time was synthesized as a situation of intolerance supremacy. It shows that the steps of civil society and government to fight intolerance in the political year through countering the politicization of identity, developing tolerant civil groups, creating the awareness to fight hoaxes as well as creating peaceful elections and regulating state policies to

provide 'ideological resistance' to the ideology of Pancasila and the Republic of Indonesia - have been relatively successful in preventing a significant increase in the number of incidents and acts of violation of freedom of religion/ belief.

Second, it deserves to be noted, in the aspect of non-state actors in the most up-to-date data, citizens and individuals are becoming to be increasingly dominant as non-state actors with the highest number of acts of violation. The accumulated acts of individuals and citizens are 78 acts (46 of individuals, 32 of citizens). The previous year, the accumulated number of individuals and citizen's acts of violation was 33. Even in 2016 when the number of acts and incidents reached the highest level in this government, the accumulation of acts of citizens and individuals was 'only' 45. The dynamics of citizens' acts of violation show the increasing capacity of citizens to commit acts of violation and restrictions on the constitutional rights of all citizens to adhere to their religion / belief freely. Therefore, more significant efforts are needed to increase societal resilience and to strengthen the narrative, ethics, and citizenship culture so that citizens' acts do not contribute more to the increase of the number of incidents and acts of violation of freedom of religion / belief.

Third, the high number of acts of violation committed by non-state actors must also be a concern. There has been a drastic shift in the trends of acts of violation in which acts of violation committed by non-state actors are almost twice higher than acts of violation committed by the state. The data show that we are required to use a more progressive perspective regarding the fulfillment of the freedom of religion / belief as a basic right. In addition, we must always demand the state to fulfill its responsibilities and obligations as a duty bearer. We must also pay attention to the importance of strengthening the social base of civil society to ensure the strengthening of practices and the promotion of tolerance in the governance of diversity.

Fourth, based on the available data, some positive symptoms should be appreciated as progress on the issue of freedom of religion / belief, among others as follows: 1] Stability of the number of incidents and acts of violation of the freedom of religion and belief. 2] The reduced level of violations against religious minority groups, such as Christians, adherents of Ahmadiyya and adherents of Shia Islam who have dominated the numbers of victims in almost every period of research

and monitoring. 3] The number of disruptions to places of worship is also much lower than the average disruptions in previous periods. 4] Acts of violations committed by state actors are much lower compared to the previous year. 5] The increase of initiatives and movements of tolerant civil society, who have been considered as a silent majority, to take the initiatives and the role to fight intolerance, discrimination, and understandings that lead to the destructions towards the values of peaceful co-existence in diversity and the strengthening the ideology of extremism with violence.

Fifth, the violations that were committed against religious minority groups throughout 2018 on average declined sharply. These religious minority groups are those who have always been the potential targets of violations, such as Christians, adherents of Ahmadiyya and adherents of Shia. With this trend, violations against groups of victims shifted from religious minority groups to citizens and individuals. The high number of victims in the category of citizens and individuals coincides with the rise of religious politicization, the use of religious sentiments - including for acts that are often judged as religious defamation and blasphemy towards Ulema - which resulted in the widespread acts of persecution, intimidation and religious defamation reporting and hate speech.

Sixth, in terms of the number of disruptions to places of worship, significant progress was actually seen in 2016, compared to the previous research period which was always above 20 times. In 2015, disruptions to places of worship occurred 30 times and for the previous year it occurred 26 times. In 2013, the figure reached 65 disruptions to places of worship. The illustration of the decline in the disruptions to places of worship is directly proportional to the resolution of several administrative problems in the establishment of places of worship as occurred in Jambi. For two decades, numerous problems constantly occurred when issuing Building Permits (Izin Mendirikan Bangunan/ IMB). The problems were finally resolved in 2017. Some local governments also took initiatives to conduct data collection and to provide administrative dispensations of Building Permits of places of worship, as conducted by the Regency of Gunung Kidul in Yogyakarta.

Seventh, based on the data of the condition of freedom of religion/ belief in 2018, regional governments are still listed as the state actors who rank as the top violators of freedom of religion / belief. In 2017

and a few years before that, local governments were one of the biggest contributors to the violations of freedom of religion/ belief. Hence, the central government must pay special attention to regulations at the central level that provide opportunities or even prompt the regional governments to violate the freedom of religion/ belief. In addition, regional governments must pay more attention to the respective authorities to improve the perspectives of human rights and tolerance so that they can present equality in the governance of their respective regional governments, especially in issues relating to the socio-religious identity of their citizens.

On top of these two ministerial regulations, the government must also show its seriousness to revise Law Number 1/PNPS/1965 regarding on the Prevention of Religious Abuse and/ or Defamation, as mandated by the Constitutional Court. In terms of content, this law contains acute flaws. Article 1, for example, emphasizes that: *“Every one is forbidden to intentionally publicly tell, advocate or seek public support, to make interpretations of a religion adopted in Indonesia or carry out religious activities that resemble the religious activities of that religion; interpretations and activities which deviate from the principles of in the respective religion.”* The provision provides the opportunity for anyone, including the government and the judiciary, to discriminate against adherents of a religion with interpretations that are subjectively considered “not in line” with the interpretations of the majority. This causes the phenomenon of exclusion of the minority groups, which clearly or definitely are not always in line with the majority. With this logical construction, there will always be the potential for violence against minorities that is not in line with the majority’s interpretations and beliefs.

In addition, with this Law the state intervenes too far into the deepest private spaces (*internum forums*) of individual citizens, even to the space of interpretations in their minds and hearts. The state has committed serious legal violence by being the “moral police”. With this provision, it is not possible for the state to guarantee legal certainty for all citizens by forming and implementing laws governing abstract, vague and absurd objects and substances. With this absurdity, it is possible that the state will base itself on rules that legitimize its status as a “moral police”, and it is the fatwa (edict) of the Indonesian Ulema Council (Majelis Ulama Indonesia/ MUI) that is usually the basis for its

actions. Factually, this law has triggered a “flood of cases” of religious defamation. In 2017, there were 12 cases of religious defamation. In SETARA Institute records, there are 109 cases of religious defamation since the adoption of the law on religious defamation through the Presidential Decree in 1965.

However, the initiatives and movements of tolerant civil society, which is often considered as the silent majority, have begun to emerge in order to take the initiative and role to fight intolerance, discrimination, and understandings that lead to the destruction of values of peaceful living in diversity (peaceful co-existence) and ideology of violent extremism. On one hand, acts of violations committed by groups of religious organizations in the form of the dissolution of religious studies and the rejection of religious lectures from religious leaders who are suspected of being the advocates of anti-democracy and anti-*Pancasila*, should still be referred to as negative notes. On the other hand, there is an indication of the rise of tolerant and moderate groups who are pro-democracy, diversity, and the state of *Pancasila*. In that context, what is really needed is the presence of the state and its apparatus to become guarantors and promoters for the realization of tolerance and orderly law.

However, the “small progress” above, in the context of the electoral political year in 2018 and 2019, has the potential to (1) strengthen the phenomenon of religious politicization and social divisions using religious sentiments in the interests of power struggles in the Local Leaders Election (Pemilihan Kepala Daerah / Pilkada), General Election (Pemilihan Umum / Pemilu), and Presidential Election, (2) reduce focus and divert government energy from agendas to promote tolerance and promote guarantees of citizens’ constitutional rights to freedom of religion / belief.

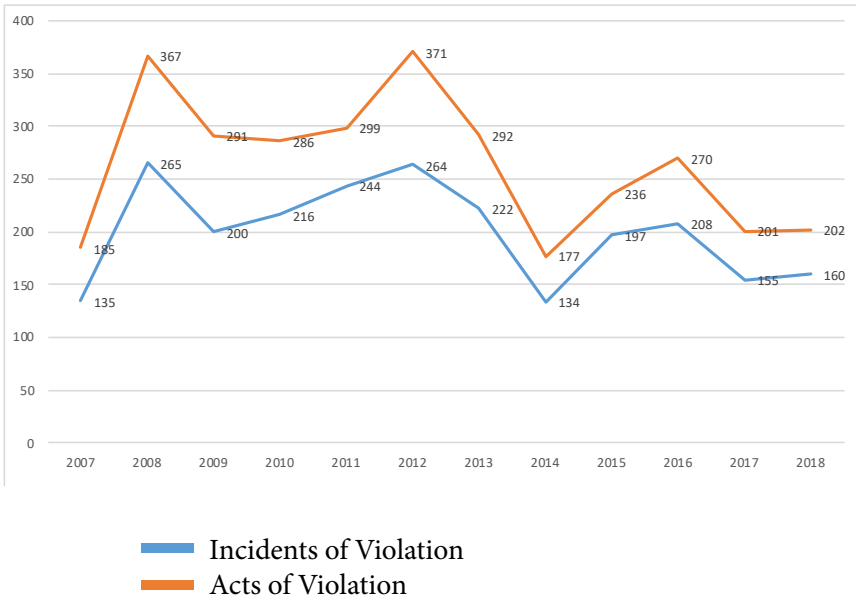
H. Conditions of Freedom of Religion and Belief in the Past 12 Years

Related to the transition of government from the first period of Joko Widodo’s administration to his second, it is important for SETARA Institute to give a glimpse of the trend of violations of freedom of religion /belief in the past 12 years. It is intended to provide understanding to public about the progress and setbacks in the guarantee of freedom of

religion / belief.

In the past 12 years, there have been 2,400 incidents of violation of freedom of religion / belief with 3.177 acts of violation. When the longitudinal data was derived into more specific time units, it implied that there were 16.7 incidents with 22.1 acts in a month or 4.2 incidents with 5.5 acts per week. Fluctuations in the number of incidents and acts of violation of freedom of religion / belief each year can be seen in the following graph:

Graphic 11.
Incidents and Acts of Violation in the Last 12 Years



In the past 12 years, incidents and acts of violation of freedom of religion / belief were dispersed throughout 34 provinces in Indonesia. Ten provinces with the highest incidents from the past 12 years are illustrated in the following table:

Table 1.
Distribution of Incidents of Violation in the past 12 Years

Provinces	Total incidents
West Java	629
Jakarta	291
East Java	270
Central Java	158
Aceh	121
South Sulawesi	112
North Sulawesi	106
West Sulawesi	104
Banten	90
West Nusa Tenggara	76

The composition of the 10 provinces with the highest numbers of incidents experienced a slight change when the time spectrum was narrowed to the last 5 years or in other words during the first administration of President Joko Widodo. The composition of 10 provinces with the highest numbers of incidents can be seen in the following table:

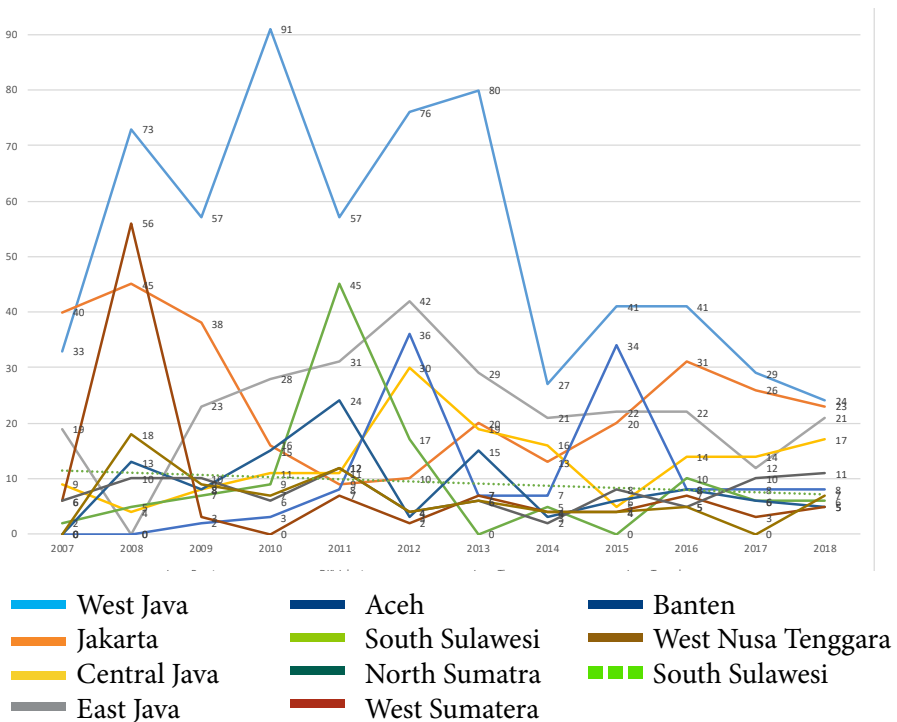
Table 2.
Distribution of Incidents in the First 5 Years of the Administration of President Joko Widodo

Province	Total incidents
West Java	162
Jakarta	113
East Java	98
Central Java	66
Aceh	65

Province	Total incidents
Jogjakarta	37
Banten	36
North Sumatera	28
South Sulawesi	27
West Sumatera	23

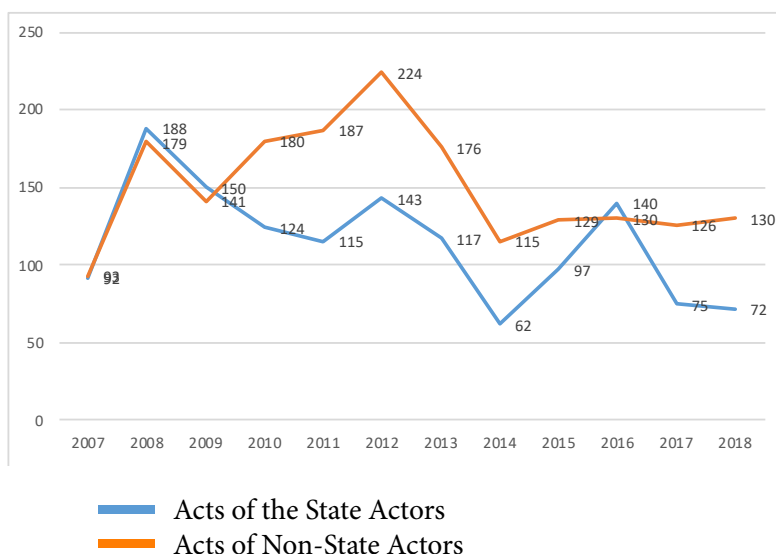
While fluctuations in the number of incidents of violation in each province are illustrated in the following graph:

Graphic 12.
Fluctuations of Incidents in Each Province in the Past 12 Years



In the past 12 years, the acts of violations committed by non-state actors have almost always been lower compared to those committed by state actors. Fluctuations between the comparison of state and non-state actors are illustrated in the following graph:

Graphic 13.
Fluctuations in the Acts of State and Non-State Actors in the Past 12 Years



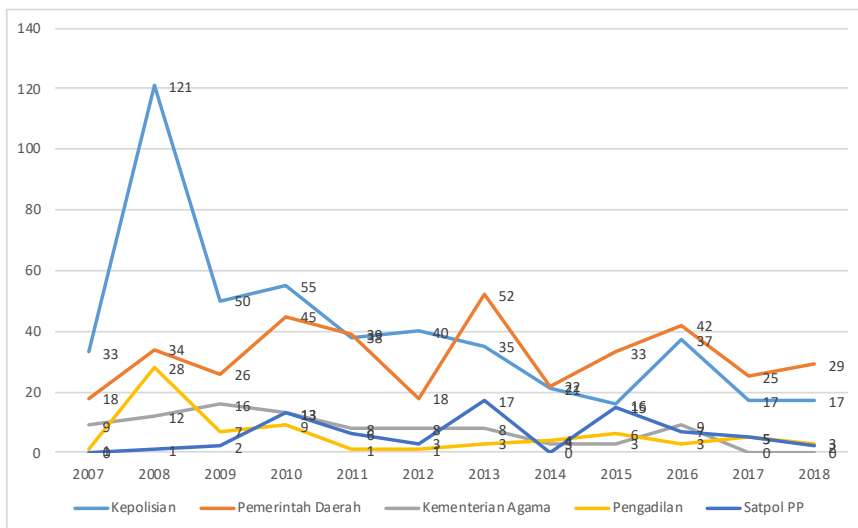
In the past 12 years, the state actors who committed the most violations of freedom of religion / belief were the police and then followed by the Regional Governments. The composition of state actors who violated the freedom of religion / belief in the past 12 years is illustrated in the following table:

Table 3.
State Actors in the Past 12 Years

State Actors	Number of Acts of Violation
Police	480
Regional Governments	383
Minister of Religious Affairs	89
Judiciary	71
Civil Service Police Unit (Satpol PP)	71
Attorneys	68
Indonesian Nasional Army (TNI)	63
Regional House of Representatives (DPRD)	38
Educational Institutions	35
Village Governments	33

The dynamics of the number of acts of violation committed by 5 state actors in the past 12 years are described in the following graph.

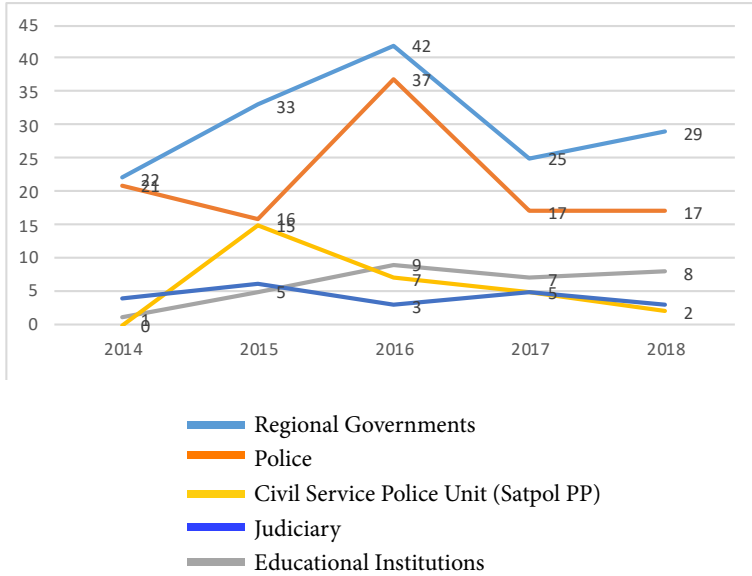
Graphic 14.
The Dynamics of State Actors in 12 Years



- PoliceRegional Governments
- Minister of Religious Affairs
- Judiciary
- Civil Service Police Unit (Satpol PP)

While the fluctuations of the top 5 state actors who violated the freedom of religion / belief in the past 5 years are illustrated in the following graph:

Graphic 15.
The Dynamics of the Top Five State Actors in the Past 5 Years



The accumulated number of non-state actors who violated the freedom of religion / belief has always been higher than state actors. Who are they? The top 10 non-state actors who violated the freedom of religion / belief in the last 12 years are seen in the following table:

Table 4.
Non-State Actors in the Past 12 Years

Non-State Actors	Number of Acts of Violation
Groups Citizens	600
Religious Community Organizations	249

Non-State Actors	Number of Acts of Violation
Indonesian Ulema Council (Majelis Ulama Indonesia / MUI)	242
Islamic Defenders Front (Front Pembela Islam / FPI)	181
Individuals	92
Islamic Community Forum (Forum Umat Islam / FUI)	56
Religious Leaders / Public Figures	35
Community Organizations	33
Islamic Reform Movement (Gerakan Reformasi Islam/ Garis)	26
Companies	26

Meanwhile, when the data were specified in the past 5 years, there was a difference in the composition of non-state actors who violated the freedom of religion / belief. It is illustrated in the following table:

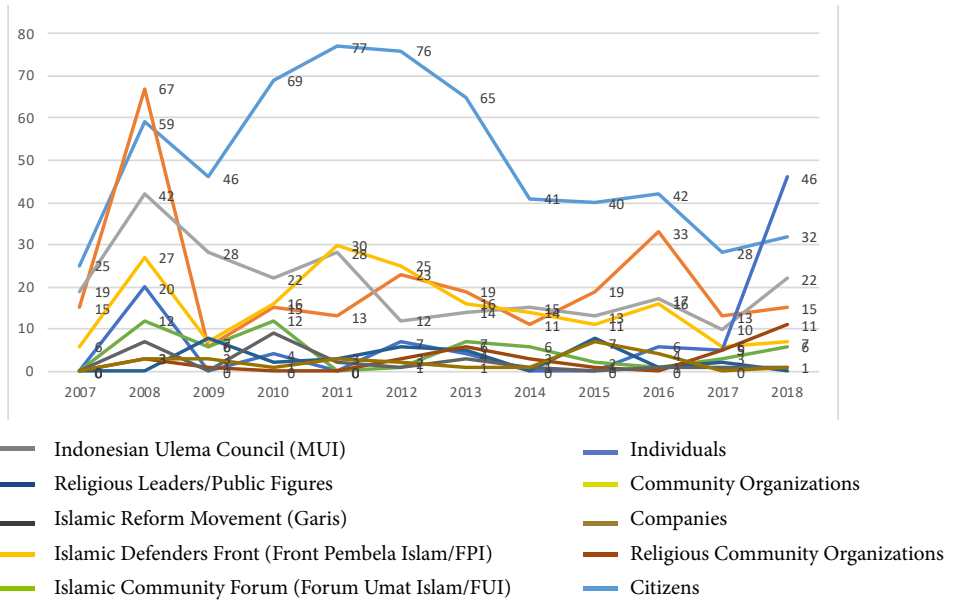
Table 5.
Non-State Actors in the Past 5 Years

Non-State Actors	Number of Acts of Violation
Groups of Citizens	183
Religious Community Organizations	91
Indonesian Ulema Council (Majelis Ulama Indonesia / MUI)	77
Individuals	57
Islamic Defenders Front (Front Pembela Islam / FPI)	54

Non-State Actors	Number of Acts of Violation
Community Organizations	20
Islamic Community Forum (Forum Umat Islam / FUI)	18
Companies	13
Religious Leaders / Public Figure	11
Ansor Youth Movement (Gerakan Pemuda Ansor / GP Ansor)	9

While in the top 10, the fluctuations of acts of violations committed by non-state actors in the last 12 years are illustrated in the following graph:

Graphic 16.
The Dynamics of Non-State Actors in the Past 12 Years



While the dynamics of non-state actors who violated the freedom of religion / belief in the past 5 years are illustrated in the following table:

Table 6.
Non-State Actors in the Past 5 Years

Non-state Actors /Years	2014	2015	2016	2017	2018
Citizens	40	41	42	28	32
Religious Community Organizations	11	19	33	13	15
Indonesian Ulema Council (Majelis ulama Indonesia / MUI)	15	13	17	10	22
Individuals	0	0	6	5	46
Islamic Defenders Front (Front Pembela Islam / FPI)	14	11	16	6	7
Community Organizations	3	1	0	5	11
Islamic Community Forum (Forum Umat Islam / FUI)	6	2	1	3	6
Companies	1	7	4	0	1
Religious Leaders / Public Figures	0	8	1	2	0
Ansor Youth Movement (Gerakan Pemuda Ansor/ GP Ansor)	1	1	0	4	3

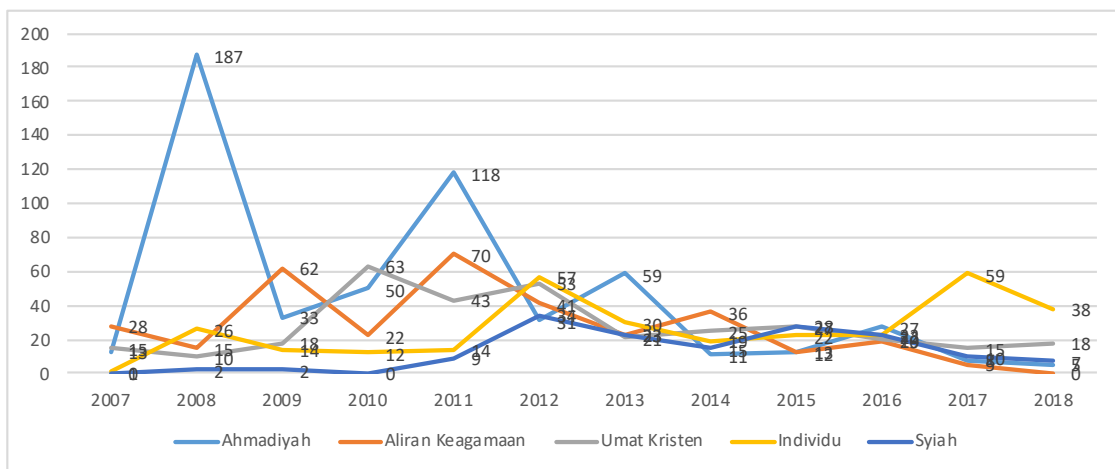
The highest number of victims who were objected to the violations of freedom of religion / belief in the past 12 years was the adherents of Ahmadiyya. The following is a list of victims, ranking in the top 10:

Table 7.
Groups of Victims in the Past 12 Years

Victims	Number of Incidents of Violation
Adherents of Ahmadiyya	554
Adherents of Religious Beliefs	334
Christians	328
Individuals	314
Adherents of Shia Islam	153
Citizens	139
Muslims	79
Catholics	51
adherents of Fajar Nusantara Movement (Gerakan Fajar Nusantara / Gafatar)	49
Students /University Students	42

The fluctuations of incidents regarding the top 5 victims of the violations of freedom of religion / belief in the past 12 years are illustrated in the following graph:

Graphic 17.
The Dynamics of Groups of Victims in the Past 12 Years



- Adherents of Ahmadiyya
- Adherents of Religious Beliefs
- Christians
- Individuals
- Adherents of Shia Islam

While the dynamics of victims of violations of freedom of religion / belief in the past 5 years who were in the top 10 is described as follows:

Table 8.
Groups of Victims in the Past 5 years

Victims/Years	2014	2015	2016	2017	2018
Individuals	19	22	22	59	38
Citizens	5	29	33	20	39
Christians	25	27	20	15	18
Adherents of Shia Islam	15	28	23	10	7

Victims/Years	2014	2015	2016	2017	2018
Adherents of religious belief	36	13	19	5	0
Adherents of Ahmadiyya	11	12	27	8	5
Muslims	12	21	9	0	3
Adherents of Fajar Nusantara Movement (Gerakan Fajar Nusantara / Gafatar)	0	9	36	0	0
Students /university students	3	8	12	8	2
Adherents of local beliefs	7	1	0	0	3

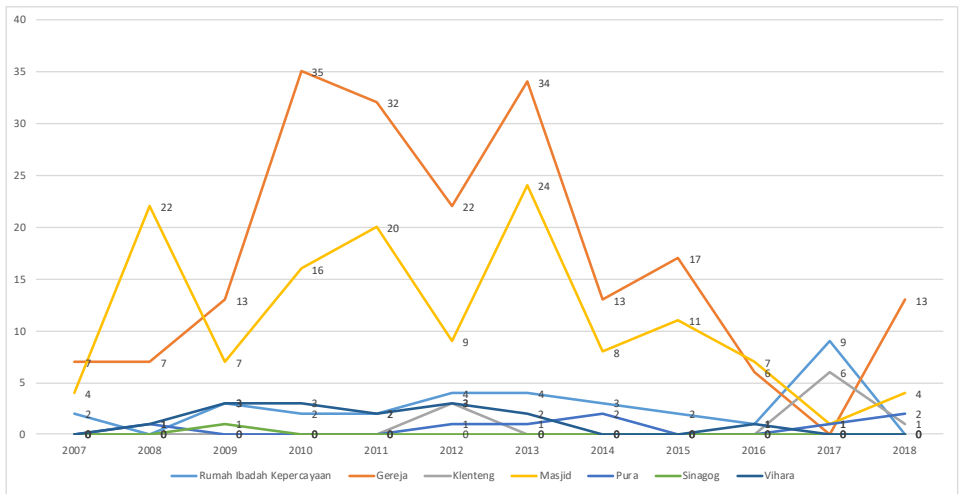
Disruptions to places of worship in the past 12 years reached 398 incidents. The details are illustrated in the following table:

Table 9.
Disruptions to Places of Worship in the Past 12 Years

Places of worship	Number of Disruptions
Churches	199
Mosques	133
Places of Worship of Adherents of Religious Beliefs	32
Monasteries	15
Pagodas	10
Hindu Temples	8
Synagogue	1
	398

Whereas the fluctuations in disruptions to all places of worship in the past 12 years are described in the following graph:

Graphic 18.
The Dynamics of Disruptions to Places of Worship in the Past 12 Years



- Places of Worship of Adherents of Religious Beliefs
- Churches
- Pagodas
- Mosques
- Hindu Temples
- Synagogues
- Monasteries

These data indicate that the issue of promoting the freedom of religion / belief and tolerance in Indonesia remains a serious problem that must be comprehensively dealt with. The Jokowi-Ma'ruf Amin government as a new government, based on the result of the 2019 Presidential Election, should take concrete actions to care for pluralism and strengthen the state of Pancasila. Government must take bold steps through breakthrough agendas, to: (1) undermine the supremacy of intolerance and respond to the consolidation of intolerant and vigilante groups by upholding the supremacy of law and constitution, (2) prevent the repetition of violations against freedom of religion / belief and violations of the rights of religious minorities, and (3) affirm a zero tolerance attitude towards all actions that are contrary to diversity and undermine the Pancasila and the Indonesian Constitution. In taking

three key breakthroughs, the SETARA Institute emphasizes that all actions taken by the government must uphold the values of democracy and human rights. []

CHAPTER 3

General Portrait of the Freedom of Religion and Belief at the Local Level

A. Background

The report on the condition of freedom of religion / belief in general portrays incidents of violation that occurred in Indonesia throughout 2018. However, SETARA Institute also paid special attention to 12 provinces which were the locations of the research. SETARA Institute compiled reports from each province separately in thematic reports. To obtain a general picture, a summary of research findings in 12 provinces will be presented in chapter IV which are classified into 4 themes, as the following: (1) Islamic Revivalism and Institutionalization of Sharia Regulations, which include research findings in Aceh, West Sumatra and Nusa Tenggara West; (2) Strengthening Conservatism in Socio-Political Change: Jakarta, West Java and Jambi; (3) Dynamics of Tolerance in Religious Majoritarianism at the Local Level, which include Bali, North Sulawesi and East Nusa Tenggara; and (4) Dynamics of Sosioreligious Interaction in Diversity Governance, which include Yogyakarta, Central Java and West Kalimantan.

B. Islamic Revivalism and Institutionalization Of Sharia Regulations: Aceh, West Sumatera and West Nusa Tenggara

Recent Islamic revivalism in Indonesia is more properly described

as a reaction to the socio-political dynamics of the state throughout the New Order rather than as an authentic expression and religious struggle that demands resurgence centered on the past images of the heyday of Islam. Although revivalism is sourced and focused on the responses of external situations, the adoption of 'original' religious views then becomes the basis of the Islamic revivalism movement which revolves more on the national political conditions. In other words, theology and religious doctrines of the revivalists then become the instruments of political Islam to contest the organization of the republic.

If theology and religious doctrine concentrate on purifying Islamic teachings and the Islamization of public space; then in the context of state politics, the movement of the revivalists is also combating for political aspirations that are different from the republic. It is believed that the rise of Islam is the only solution to the current turmoil faced by countries that are predominantly populated by Muslims, including in Indonesia. The most prominent political aspiration of Islamic revivalism is the institutionalization of Islamic sharia in the nation-state order.

According to Khamami Zada²⁷ Oliver Roy (1994) in *The Failure of Political Islam*, groups that encouraged the application of Islamic sharia were referred to as fundamentalists. According to Roy, the examples of those groups were members of the Ikhwanul Muslimin (Muslim Brotherhood), Hizb ut-Tahrir, Jama'ati Islami, and Islamic Salvation Front (Front Keselamatan Islam/ FIS).²⁸ One of the main characteristics of theology and religious doctrine is a return to the fundamental beliefs of religion in all practices of religious life which are literally based on the Qur'an and Sunnah. Due to this characteristic, John L. Esposito (1992) preferred to call this movement Islamic revivalism.²⁹

When traced, these groups of revivalists have actually been growing for a long time in the republic. In the 20th century, as an external response and spirit of nationalism, the politics of Islamic identity was aimed at countering Dutch colonialism and political-

27 K. Zada. (2002). *Islam Radikal: Pergulatan Ormas-ormas Islam Garis Keras di Indonesia*. Jakarta: Teraju, p. 181.

28 O. Roy. (1994). *The Failure of Political Islam*, London: I.B. Tauris & Co Ltd, p. 2-4.

29 J. L. Esposito. (1992). *The Islamic Threat Myth or Reality?*. Oxford: Oxford University Press, p. 7-8.

economic deprivation which formed the Islamic Union (Sarekat Islam / SI) with the ideology of Islamic revivalism, Mahdiism and anticolonialism.³⁰ This ideology was then strengthened in the Council of Indonesian Muslim Associations (Partai Majelis Syuro Muslimin Indonesia / Masyumi), the Islamic Armed Forces of Indonesia (Darul Islam/Tentara Islam Indonesia or DI/TII) and the Indonesian Islamic Da'wah Council (Dewan Da'wah Islamiyah Indonesia / DDII).³¹ DDII became the first Islamic institution who made serious and organized efforts to send students to the Middle East. Before this role was taken over by the Department of Religious Affairs, DDII became the main agent for the distribution of scholarships to study in the Middle East from Rabithah Alam Al-Islami (an international Islamic institution) which was funded by Saudi Arabia. To facilitate relations with Saudi Arabia, DDII had an office in Riyadh in the 1970s. Until 2004, DDII had sent 500 students to the Middle East and Pakistan. They were mostly recruited from cadres of modernist Islamic organizations that were structurally and culturally linked to Masyumi. These alumni of the Middle Eastern education are the main actors in spreading the Islamic revivalism movement in Indonesia.³²

In fact, religious revivalism is a phenomenon that is common in many religions. The problem is that the exclusivism of the chosen religious teachings becomes the doctrine of the movement negating different groups. This is where Islamic revivalism found its challenges. In the construction of plural societies, such as Indonesia, ideology of the revivalists is clearly incompatible. In the recent development, the revivalists have been utilizing political channels to realize their ideals. Even though they do not use violent approaches in achieving their goals, they have undermined the guarantee of freedom of religion / belief, which is actually a constitutional guarantee as well as human rights guarantee in the Constitution of the republic.

Revivalism that grows in a plural society is identified as a threat

30 A. Azra. (2000). "Muslimin Indonesia: Viabilitas "Garis Keras", dalam Gatra Edisi Khusus, p. 44.

31 I. Hasani (ed.). (2010). *Wajah Para Pembela Islam*, Jakarta: Setara Institute.

32 M. Imdadun Rahmat. (2005). *Arus Baru Islam Radikal: Transmisi Gerakan Revivalisme Islam ke Indonesia (1980-2002)*. Jakarta: Erlangga, p. 83.

to democracy. As long as the religious expression is oriented only to the internal purification of its group, thus the democratic framework must be affirmed. However, the nature of religious preaches which call for the widest community possible has caused reactions from other religious groups. Not to mention its struggle with literal religious texts that creates the understanding of radical religions. It is clear that revivalism is an environment that contributes to the radicalization of Islamic religious views.

The report of freedom of religion / belief in 2018 compiled by SETARA Institute has in parallel presented thematic reports that discuss and explore specific themes to capture the provincial-level trends. These trends are about the state phenomena and practices as well as their connections to the guarantee of freedom of religion / belief. The widespread of adopting Islamic Sharia as a part of positive law and the Islamization of public space is clearly inseparable from the Indonesian Islamic revivalism movement.

Summarizing readings and research findings from Aceh, West Sumatra and West Nusa Tenggara (NTB), SETARA Institute puts forth the topic of **Islamic Revivalism and Sharia Institutionalization**. In constitutional construction, these three regions have different authorities. Aceh adopts the asymmetric decentralization, while Sumatra and West Nusa Tenggara adopt the symmetrical or ordinary decentralization. This is also the case for other regions. Aceh is one example of the most aggressive institutionalization of Islamic Sharia in regional law (qanun), due to its asymmetric decentralization and its authority in implementing Islamic Sharia. Although not given explicit authority like Aceh, West Sumatra, which has strong religious traditions stated in *adat basandi syara* as well as *syara basandi kitabullah*, display the same performance in adopting Islamic Sharia in the regional law in the form of Sharia regulations. Even though it is still limited to Islamic civil law, the acceleration of the West Sumatra's public in accepting and adopting Sharia regulations has confirmed the sociological justification validity of the religious-based regional legal products. West Nusa Tenggara, given the authority of attribution as guaranteed in Article 18 paragraph (6) and Article 18B of the 1945 Constitution of the Republic of Indonesia, also optimizes the majority of Islam's dominance as a justification for the institutionalization of Islamic Sharia into a regional legal product.

Marzi Africo, who wrote about the **Dynamics and Expectations of Managing Religious Freedom and Belief in Aceh**, comprehensively described the new religious phenomenon in Aceh which was a form of revitalization of Islamic practices in the past, before the Aceh conflict took place. Africo critically described the dynamics of the relationship among adherents of religion and belief in Aceh. Special autonomy, which has been effective since 2006, is deemed to have failed to carry out its mandate to accelerate development in Aceh. What actually strengthened in this era is the identity politics in Acehnese society, which adversely affect the minority's freedom in practicing their beliefs.

With all its authority, Aceh has become the pioneer in implementing the institutionalization of Islamic sharia in the regional government structure. Islamic revivalism, which is similar to the awakening of religious enthusiasm, is very strong in Aceh. The dhikr assemblies thrive with the support of the local authorities who in certain events have also helped increase the electability of candidates of the same tenets. This phenomenon is certainly not a bad thing in religion. However, the use of state resources to strengthen religious domination in social relations can cause problems.

The qanuns in Aceh are the illustrations of how the Islamic revivalist group substantively dominates the local politics. This institutionalization support does not only come from Islamic political parties but also from political parties who support this idea as they can gain electoral political benefits from the enactment of the qanuns in the construction of state administration. This is actually problematic because it contradicts and / or is inconsistent with the guarantees in the Indonesian Constitution.

Sudarto from West Sumatra wrote about *Portraits of Freedom of Religion and Belief in West Sumatra*. In this article, Sudarto recorded various events that occurred in West Sumatra, not only events that occurred during the research period but also events that occurred long before. Therefore, readers can get a complete picture of the dynamics of freedom of religion / belief in West Sumatra through the article.

The central issue related to violations of freedom of religion / belief in West Sumatra discussed by Sudarto was mainly on the rights to practice religions in groups and to establish places of worship for non-Muslim communities in many areas. Interesting findings were recorded

in West Sumatera, a province that is largely populated by Muslims. There are the 19 districts / cities in West Sumatra Province. However, official places of worship for non-muslims were only found in 9 districts / cities. While, in fact, there were other adherents of religions besides the adherents of Islam in every region. In addition to the problems caused by the Joint Ministerial Decree (Peraturan Bersama Menteri / PBM) on the Establishment of Places of Worship, the dimensions of custom and interfaith relations also became the strong factors of the unfulfilment of citizens' freedom of building places of worship.

Just like in Aceh, religion-based regulations tend to be made in West Sumatera. Favoritism in local governance becomes the basis for the adoption of Islamic sharia in the positive law. Although penal code is regulated in Aceh, Islamic civil law is still regulated in West Sumatera. Local regulations regarding the obligation to recite the Quran, dress code, others are not problematic, especially since they have been processed through the available democratic procedures. However, when examined, such regulations can become the instruments of institutionalizing indirect discrimination against citizens.

The third article was written by Abdul Wahid and Atun Wardatun in the *Strengthening Conservatism and Its Dynamics in Socio-Political Change: The Context of West Nusa Tenggara*. Islamic religious life in West Nusa Tenggara centers in the Sultanate of Bima in the the past. The narrative of Islamic revivalism contradicts the local Islamic history of West Nusa Tenggara. It has worsened the religious contestation among religious organizations in West Nusa Tenggara. Organizations such as Nahdlatul Wathan (NW), Muhammadiyah, and Nahdlatul Ulama (NU) face the challenge to ensure that the strengthened conservatism does not change the residents West Nusa Tenggara to become intolerant.

Actual issues in West Nusa Tenggara are the favoritism which is institutionalized in government and the accommodation of Islamic civil law into positive regional law. Although it is effective in Aceh, the institutionalization of Islamic sharia in West Nusa Tenggara is a part of identity politicization for political purposes as the narrative war is currently happening between intolerant groups and moderate Islamic groups in West Nusa Tenggara. Moderate Islamic groups are experiencing tremendous hassles dealing with the threat of exclusive religious narratives which today have dominted schools, colleges, and

government institutions.

Wahid and Wardatun believe that intolerant groups who are anti-pluralism and anti-Pancasila operate on the view of religious conservatism. They are forming and perpetuating conservatism in the context of the West Nusa Tenggara community's social and religious life. The group's rigidity that has not yet fully accepted *Pancasila* as the basis of the state shapes the community's religious perception. In addition, the ongoing dominance of the majority to the minority as well as legal institutions and state authorities who do not act firmly against perpetrators of violence contribute to the establishment of conservatism.

The strongest drive of the institutionalization of Islamic law in West Nusa Tenggara came from the movement of young Muslim people in Bima in the search for identity. The past image of Bima as an Islamic region with the application of Islamic sharia through the Syaria Court institution often becomes a reference especially by supporters of Islamic sharia, such as elements of Hizb ut-Tahrir Indonesia (Hizbut Tahrir Indonesia / HTI), Islamic Community Forum (Forum Umat Islam / FUI), Islamic Defenders Front (Front Pembela Islam / FPI) as well as some elements of Muhammadiyah. Historical romanticism towards the past image of Bima which was triumphantly depicted in the banner of Islam during the Sultanate era was transformed by an older generation who still possessed that historical memory to the younger generation whose historical memory was blurred.

In the battle of religious ideas as explained by these two writers from West Nusa Tenggara, it becomes clear why a number of incidents of violation related to religions occurred in West Nusa Tenggara. Incidents of violation against minority groups took place on Lombok Island, such as the 171 Incident (2000), attacks towards adherents of Ahmadiyya in Mataram City (2006), attacks towards adherents of Salafi in West Lombok (twice in 2006), and attacks towards adherents of Ahmadiyya in East Lombok (2018). The 171 Incident was the most massive incident of violence that ever occurred in the city of Mataram, resulting in the destructions to several Christians' places of worship and the exodus of many Christian families and the Chinese people. In such context, the creation of conflict resolution for the Ahmadiyah refugees at Wisma Transito in Mataram was unsuccessful.

The report on **Islamic Revivalism and Sharia Institutionalization**, which is depicted in the three articles that discuss the conditions of freedom of religion / belief in Aceh, West Sumatra and West Nusa Tenggara, illustrates that the institutionalization of Islamic sharia into positive law at the local level is a revivalist political articulation supported by local government administrators who are not capable of managing pluralism. In addition, the notion of institutionalizing sharia regulations was sociologically justified by citizens due to image of the glory of the past in the banners of Islam, which was developed as a narrative introduction to the revivalists' ideas. As ideas that depart from an exclusive religious perspectives, sharia regulations are clearly challenges in guaranteeing freedom of religion / belief which requires a pluralistic ideology to flourish and develop in an area.

Reading the context of Aceh in one decade, guarantee of freedom of religion / belief is difficult to fulfil, even though there are things that can be done by parties in order to fulfill it. However, the narrative sentiment of weakening Islam which is exploited by social leaders and some political leaders in Aceh, has strengthened people's suspicion and antipathy towards reformation. In socio-religious life, the Aceh revivalist group is enjoying the privilege of asymmetrical autonomy granted by the central government as a bargaining tool with the central government, both secretly and openly.

The hope for socio-political change in Aceh lies in the younger generation and critical groups in the civil society organization sector and some campus intellectuals who are still open minded. The reformation of Aceh faces challenges from the permissive attitude of Aceh's examiners on the application of Islamic sharia. Prioritizing socio-historical justification and the asymmetrical autonomy has actually limited the spaces of reformation. In the construction of Aceh, asymmetrical autonomy is still bound to the constitutional guarantees contained in the 1945 Indonesian Constitution. In other words, asymmetrical autonomy is not a hegemonic tool used by the majority group against the religious minorities.

Almost the same as Aceh, the toughest challenge of advocacy or promotion of freedom of religion and belief in West Sumatra is centered on the narrative hegemony of the uniqueness of West Sumatra, which sociologically has a strong Islamic history. Widespread favoritism in many sectors has implications for the low guarantee of freedom of

religion / belief in West Sumatra. One of the most central issues is the rights relating to building permits of places of worship. Rejections of places of worship in many districts / cities are caused by structural and cultural issues, namely the limited regulations that guarantee the freedom of places of worship and the weak political leaderships of local governments who do not dare to take risks and to carry out the constitutional mandate. Claims of Islamic identity and adagium “*Adat Basandi Syara ‘, Syara’ Basandi Kitabullah*”, have made society to be permissive to the neglect of guarantees of freedom of religion / belief.

The use of constitutional guarantees to adopt regional specificity as one of the themes that can be arranged by regional heads has been used in an exploitative manner which is precisely intended to reap electoral political benefits. Law 22 of 1999, Law 32 of 2014, and Law 23 of 2014 concerning the Regional Government, have never explicitly formulated the limits or margins of appreciation of religious norms to be adopted into positive law in an area. As a result, the 421 discriminatory regional policies (The National Commission on Violence Against Women / Komnas Perempuan, 2016) and the 145 intolerant regional legal products (SETARA Institute, 2019) have never received adequate treatments from the state. This omission is indirectly a form of political recognition of local governance that threatens pluralism.

In such situation, sharia regulations continue to be instruments of institutionalizing discrimination against citizens. Apart from different religious groups, school students, women and also the state civil apparatus who have different religious views from the hegemonic mainstream are victims of discrimination.

The strengthening of identity politics, occurred in almost all research areas as the follow-up effect of the DKI Jakarta Regional Election (2017), the Simultaneous Local Elections (2018) and the Presidential Election (2019). In the three provinces that were the research areas, identity politics seemed very strong. Citizens in those provinces favored Prabowo and Sandi as the president / vice president candidates who promised political accommodation for revivalist groups. Narratives of anti-plural, anti-Chinese, Communist Party of Indonesia (Partai Komunis Indonesia/PKI), and others were resounded in religious forums.

Observing the development of systematic conservatism that

has been rooting in West Nusa Tenggara, intelligent work is indeed needed from various parties. However, according to Bruinessen, this conservatism can develop if the government is not strong and does not firmly respond to its emergence and growth. At the local level, the cultural leadership developed by the West Nusa Tenggara Governor, Muhammad Zainul Majdi - often referred to as TGB (Tuan Guru Bajang) in the previous period, had influenced the dynamics of the religious movements, especially among the people of Lombok. Tuan Guru Bajang, who was a member of the Aswaja Nahdlatul Wathan (NW) organization, could maximize his political position to influence religious developments. However, during his leadership, favoritism was widespread in many service sectors.

Hoping that changes are made in Nahdlatul Ulama (NU), Nahdlatul Wathan (NW) and also Muhammadiyah can indeed contribute to the moderation of religious views. However, given that the virus of intolerance is spread by the revivalists, it is not enough to just rely on these religious organizations. The state must have a holistic scheme addressing the issue of asymmetrical autonomy, the existence of intolerant-discriminatory local regulations, and the strengthening narrative of diversity in order to strengthen social security through educational institutions.

Parallel to this non-judicial measure, law enforcement officials must take continuous action against incidents that are in fact incidents of violation of the law. In West Nusa Tenggara, the enforcement of the revivalism articulation in the form of a criminal offense received a justification of national law. Meanwhile, preventing the spread of intolerance virus and mainstreaming inclusive governance to strengthen tolerance remain to be the responsibilities of the government and civil society.

C. Strengthening Conservatism in Socio-Political Change: Jakarta, West Java and Jambi

The condition of freedom of religion / belief can be seen from a diverse spectrum. One reality that can explain the worsening condition of freedom of religion / belief is the strengthening of conservatism. This topic on Strengthening Conservatism in Social Change covers Jakarta, West Java and Jambi. Sociologically, conservatism is spread in society.

The tendency of conservatism has existed since the past decade and has caused disruptions in various sectors. One of the sectors as an arena of the struggle for conservatism is politics.

The conservatism of religious groups, in the process of consolidating democracy with various political agendas, is not only one of the variables, but it is also a major feature of freedom of religion / belief today. The dominance of the conservative agenda in Muslim discourses that influences policy making from the local to the national level is a symbol of transformation in the democratic process. However, conservatism causes legitimate acts of violence to emerge, ranging from direct, cultural, to structural acts of violence. Conservatism creates intolerance in the society.

SETARA Institute notes that conservatism contributes to a number of incidents of violations of freedom of religion / belief in various forms. Violations of freedom of religion / belief centered on conservatism include “(1) intolerance, (2) misdirection of teachings, (3) coercion of beliefs, (4) expulsion, (5) hate speech, (6) acts of terror, (7) condoning, (8) forced termination and prohibition of religious activities, (9) threats against children of the adherents of minority religions / beliefs, (10) discrimination, (11) neglect, (12) criminalization, (13) denial and forced termination of construction and / or renovation of places of worship, (14) intimidation, (15) sealing of places of worship, (16) banning of scientific forums, (17) dissolution and denial of religious activities, (18) destruction of houses of the adherents of minority beliefs, (19) extortion, and (20) coercion wearing religious attributes that are against the beliefs of the majority.”³³

Conservatism has various meanings and needs to be understood contextually. In this context, conservatism refers to Islamic conservatism. Islam is a mainstream religion as well as the majority who has a greater bargaining power position than the minority. Thus, the dynamics of conservatism in Islam create a significant influence. Van Bruinessen views conservative Islam as a form of various schools of thought that cannot accept the reinterpretations of Islamic teachings or ways of life which are considered to be a liberal and progressive. Conservative Islam is also defined as a tendency to maintain the standardization of

³³ SETARA Institute’s Report on Conditions of Freedom of Religion and Belief of 2015 - 2018.

interpretations and social systems that are believed to originate from the primary sources.³⁴ In the sociological context of the community which is closely related to the inequality of power relations, the narratives about standardization are owned by the majority group who has the tendency to exclude ideas and to exclude those with ideas that are different from of the established standardization.

In their dynamics, conservative Islamic movements have antagonistic relations with liberal Islam or progressive Islam that carries the idea of contextualization and reinterpretation of Islamic teachings which are not always interpreted literally. In addition, it needs to be understood that conservative Islam is different from the fundamentalist Islam or the “Islamist”. The fundamentalist Islamic movement is interpreted as a movement that calls for reconciliation to the basic teachings of Islam contained in basic sources of Islamic teachings, such as the Qur’an and Hadith. While the “Islamist” is a forum that provides support for the ideas and meaning of Islam as a political system and arena of struggle in order to achieve the objectives of establishing an Islamic state.³⁵

Nevertheless, conservatism has been disruptive in all aspects of life, including the socio-political aspect. The merging of conservatism and social politics cannot be negated. Conservatism has grown in social life in which there are relational connections between parties. The relationship has the nature of mutual influence and efforts to maintain influence to defend owned ideas, including conservative ideas. The chosen path of power contestation are varied, both daily political processes and structurally practical politics by supporting political infrastructure and superstructure in Indonesia.

The threat of conservatism towards democracy through violations of freedom of religion / belief, which is part of the human rights spectrum as the main element of democracy, is the concern of civil society. Freedom of religion / belief becomes a significant and major concern because it revolves around the daily activities of the Indonesian people who are still bound by religions or beliefs and has become an inseparable culture. In addition, a religion or belief receives structural

34 D. Wahid. (2014). *Kembalinya Konservatisme Islam Indonesia*. *Studia Islamika* Vol 21 No 2, 377-378.

35 *Ibid.*

recognition by the state in constitution, laws and regulations as well as derivative regulations from the previous laws and regulations. The structural and cultural dimensions of the freedom of religion / belief encourage and activate the civil society agencies to strive for the guarantee and the enforcement of freedom of religion / belief.

Human rights-based advocacy is considered to be the solution to face conservatism that influences the transition to religious conditions in Indonesia by civil society. Forms of advocacy vary with basis that is strengthened through a research. Therefore, the Thematic Report on the Strengthening of Conservatism in Social and Political Change has been prepared as a basis for advocacy that refers to the specific dimensions of the issues that characterize violations of freedom of religion /belief.

This report was compiled through observations to the dynamics occurring in the three regions that represent portraits of the strengthening of conservatism in socio-political change. The territorial approach was chosen to provide a contextual portrait and to show the reality that is present in society with the lens of the nearest social locus in the form of government territory under the national government. The provincial government has a character that accommodates macro and micro portraits of the socio-political conditions of the community.

In this report, there are three parts of writing that present the strengthening of conservatism in socio-political changes in DKI Jakarta, West Java, and Jambi. The three regions have different contexts. However, all three have something in common; the emergence of conservatism that is met with social and political struggles. Conditions in the three regions have left a note of the need to erode the adverse effects of these dynamics on freedom of religion / belief.

The portrait of strengthening intolerance that meets with identity politics is presented through a description of conditions in Jakarta. Achmad Fanani Rosyidi through his paper, the Trend of Strengthening Intolerance and Identity Politics in Electoral Contestation in Jakarta in 2018 showed that the electoral contestation in Jakarta in 2018 was an important point that marked the influence of conservatism in social politics. In general, this paper mapped the conditions of freedom of religion / belief in Jakarta in the midst of the strengthening of conservative groups, the causes of strengthening conservative groups

in Jakarta, and actors from both conservative and political elites that provided the space for political existence of intolerance.

The merging of conservatism with politics occurred in the political year and it created threats. The span of the year marked a series of electoral processes, namely the second wave of Local Leaders Election (Pemilihan Kepala Daerah / Pilkada) in 2017 with the momentum of the 2019 Presidential Election and the third wave of simultaneous Local Elections. Society was faced with high intensity of political events and high vulnerability of political polarization along with high political contestation. The high level of polarization was inseparable from the Basuki Tjahaja Purnama (Ahok) incident in the 2017 Local Election. The incident became the trigger for a wave of movements that had antagonized religious elements. The 212 action against Ahok became a starting point for strengthening the political intolerance movement.

Stated in the paper, the position of Jakarta became an important factor of the dynamic political polarization which was likely to occur in this region. Jakarta, which is the center of government and the epicenter of national political dynamics, was the area with the highest level of political intolerance. The transformation of religiosity in this region has been quite significant since the politicization was closely embedded in it. This paper emphasized that for the first time throughout the 11 years of monitoring researches conducted by the SETARA Institute, Jakarta was found to be the province with a higher level of religious intolerance than West Java. This increase in position could not be separated from the massive movement of intolerant actors in the dynamics of society.

The condition in Jakarta was explained by looking at several important variables that could explain the merging of conservatism and social politics, namely the strengthening of identity politics, vigilante group dynamics, the further threat of intolerance with the elite changes, the transformation of post-212 Islamic movements, and the threat of potential intolerance that could occur after the 2019 elections.

Strengthening identity politics is seen as something that occurred a long time ago, but it was strengthened in the Jakarta context because it was very easy to influence the public. Vigilante was described as a dynamic in the form of masterminds behind the 212 Action to Defend

Islam (Aksi Bela Islam 212), who had bad track records of violations of freedom of religion / belief. These masterminds were previous actors of violations and there were no new actors involved in this movement. The Action to Defend Islam movement was allegedly supported by groups of jihadists, and it was a moment of unification and consolidation of conservative Islamic movements which previously had different views and paths.

On the other hand, further threat of intolerance with elite changes could be seen through the election of KH Ma'ruf Amin which was filled with identity politics and had a problematic record related to freedom of religion / belief. The Islamic Movement had also been highlighted by recorded transformation patterns, namely the movement had already had a mass base of conservative Islam which was highly segmented, massive, and organized, the movement was increasingly organized with the 212 Action to Defend Islam (Aksi Bela Islam 212) as a binding identity, and the emergence of institutions for the organization of new Islamic movements in the 212 movement. The potential threats emerged in the form of polarization based on religious identity that was strengthened in this election.

The tendency to strengthen conservatism that is able to change the social and political dynamics is also apparent in West Java. Irwan Amrizal portrayed this condition in his paper on the Situation of Freedom of Religion and Belief in the City of Bandung and its Challenges. Two main portraits of concern to the situation in Bandung as the capital of West Java Province were the projected potential of the *hijrah* movement to accelerate intolerance in society and the political leadership of regional leaders who did not show partiality towards freedom of religion / belief. Both portraits were in one unifying domain, which was in line with the vigilante groups.

The trend of the *hijrah* movement in this region was still at a neutral level and had not shown a significant level of threats. However, the development of the *hijrah* movement had the potential to adversely affect the conditions of freedom of religion / belief. The parties that were involved in the movement came from conservative, exclusive and intolerant groups. Their involvements in the movement were influential because they were the figures of mentors whom people listen to. Therefore, young people are now involved in the movement and tend to engage in activities that are closely related to intolerance, such

as acts of rejection of groups deemed heretical.

The intolerance movement of the young people was strengthened by the inclusion of leadership which had a low alignment to freedom of religion / belief. Such leadership was present when Oded Muhammad Danial and Yana Mulyana were elected as Mayor and Deputy Mayor of Bandung 2018-2023. The couple, who were supported by the Great Indonesia Movement Party (Gerakan Indonesia Raya / Gerindra) and the Prosperous Justice Party (Partai Keadilan Sejahtera /PKS), did not have track records or perspectives on tolerance and human rights. In fact, Oded, in particular, was known to be quite close to mass organizations that were against groups deemed heretical.

The merging of these two elements supports the strengthening of the conservative Islamic groups. Government also accommodated the initiation of the *hijrah* movement in this region. The starting point for the formulation of the *hijrah* movement was the “Young People, Street Da’wah, Fragmentation of Religious Authorities” movement, a missionary movement targeting young people in Bandung, especially motorcycle gangs, initiated by the Islamic Da’wah Center (Pusat Dakwah Islam / PUSDAI) in Bandung around 2015. This activity was supported by Ridwan Kamil who was the Mayor of Bandung at the time because young people were his the main constituents. However, in its development, the initiated movement is transformed into a source of intolerance among young people who are a significant community group. This age group revives a community context that still preserves social-religious segregation and exclusion, such as an antagonistic attitude towards the Shia community.

The changes above contributed to the dynamics of the vigilante group in this region. The youths became the new militia in the vigilante group. In general they came from a number of mosques in the city of Bandung that gather young people of *hijrah* movement. Changes in actors in the vigilante group were also accompanied by increasingly strategic narrative changes so that they experienced reinforcement. The narrative change in the form of intolerant groups seemed to hijack the discourse of tolerant groups. They also campaigned for the concept of the Republic of Indonesia (Negara kesatuan Republik Indonesia / NKRI) Sharia. They continued to defend this narration and discourse at similar demonstrations. This trend apparently received the attention of certain political parties and their candidates. They then used the narration and

discourse as political campaign jargon to win votes from the Muslim voters who were pro-212 demonstration in the 2019 Legislative Election (Pemilihan Legislatif / Pileg). In addition, they carried out a narrative to enlarge the alliance. The discourse or narrative of the Pancasila and Republic of Indonesia was considered as a middle way to accommodate the interests of the two groups in order to fight together against groups deemed heretical.

The ways of the vigilante groups that are adopted in the political process are alarming because they produce political elites who occupy strategic positions in government. Electoral political residue shows that Prabowo Subianto's support group remains strong and has not diminished, but Jokowi's supporters have not increased. In addition, there is continuity between the results of the 2019 Presidential Election and Legislative Election. The support given by the intolerant group to Prabowo is also given to the parties perceived to be able to accommodate their interests, namely the Great Indonesia Movement Party (Gerakan Indonesia Raya / Gerindra) and the Prosperous Justice Party (Partai Keadilan Sejahtera / PKS).

The political track record of elected leaders is a concern because the political parties that support the elected leaders have a conservative Islamic ideology. The closeness of elected leaders to groups that have intolerant political aspirations is also feared to be more accommodating to intolerance than tolerant initiatives. This concern is also based on the existence of public services and discriminatory and intolerant regulations that have existed even before the old government.

The intolerance movement of the young people that has the potential to strengthen and agency openness for intolerant groups in the structure correlate with incidents of violations of freedom of religion / belief which are still present in this region. The prominent forms of violation of freedom of religion / belief in West Java are sealing houses of worship belonging to minority groups, discrimination in the name of religion, spreading hate speech, heresy of different groups, and so on. The groups that are often victims of violations in West Java are Christians, Adherents of Ahmadiyah, and Shia.

Attention to conservatism and social and political change was also directed to Jambi which showed an anomaly in the past few years. Husnul Abid showed such transformation in the Report on the

Condition of Religious Freedom / Believe in Jambi. The concerns in the report were the cause of the increase of the number of violations of freedom of religion / belief and actors of violations. Contextually, the report highlighted the social political dynamics influenced by conservatism.

In this region it was noted that several vigilante organizations were present and growing rapidly. The presence was inseparable from efforts to regain power, such as the role of Hadrami which was rapidly declining in the area, especially in the field of religion and social community. Hadrami wanted to revitalize such rapidly declining role. His opportunities to do so were increasingly available after the reformation. Not only present, these vigilante groups also committed a number of incidents violates freedom of religion / belief.

Those vigilante groups had close relations with local political actors. Therefore, alliances were established. Vigilantes groups' destructive acts of violations were aimed to support the regional government to enforce regional regulations or, in their language, to help carry out "social control". Thus, they were continuously accommodated by the ruling political actors. Relations between the vigilante organizations and politics were also seen from some of the core administrators of the vigilante organizations who were also local political actors. Apart from the exponents that were connected with politics, the existence of the vigilante organizations in Jambi was also benefited by local political actors who compete to become district heads and in turn they formed an alliance with the organizations.

Such alliance was seen in the politicians' participation in a number of intolerance movements carried out by the vigilante organizations, such as the sealing/closing of four places of worship, the 212 Action to Defend Islam, and the demonstration on the case of the writing of Allah on Christmas ornaments at the Novita Hotel. In particular, this report highlighted the accuracy of sealing of the church attitude which ultimately led to the decision to relocate the church as a way of to resolve the conflict. However, relocations of places of worship were seen as choices that were not accommodating and were not in favour of the victims. Reasons for such view among others were; the distance between the places of worship and the Christians' houses was too far away, churches in the Pinang Merah area would be isolated because they were not naturally developed and were forced to exist in the region and

Pinang Merah region would one day be referred to as a “church area” or “Christianity area”. Such identity could indeed cause new problems in the Islamic Malay community.

Portrait of conservatism, social and political change in the third area is a reminder for all parties to reduce the negative impacts that can harm the freedom of religion / belief. In addition, awareness of such threat must be followed up with emancipatory efforts. Thus freedom of religion / belief can be enforced. Agency of each party is needed by activating its roles constructively. Each party is a part of the community who is now trapped in the destructively maintained conservatism. Thus, each party also has the opportunity to improve the conditions of the community.

The strengthening conservatism in society brings changes in social and political conditions that are destructive, especially when viewed from the perspective of freedom of religion / belief. A number of incidents in social political dynamics in Jakarta, West Java, and Jambi are particular examples that provide illustrations of micro and macro attentions. The portraits captured from such reality contain patterns that reflect the conditions of freedom religion / belief, among them are the emergence of conservatism in cultural and structural aspects as well as in the lowest level of society and government, conservatism creates segregation and vulnerability of disintegration in the community, the merging of conservatism and political power is based on pragmatism. Thus, transactional relations and electoral politics become the source of merging of conservatism and political power, and minority groups are victims of this destructive relationship.

The three regions show that conservatism is beginning to grow and even develop in the cultural and structural aspects. Quotidian cultural pathway becomes a stretch of conservatism. The lowest level of society is an area for conservatism to grow and develop culturally. Vigilante groups and potential vigilante groups are parts of the community. Therefore, they can expand their influence in those regions. In addition, conservatism is structurally entrenched with the presence of conservative individuals who have close relationships with the vigilante group with strategic positions in the government. The individuals utilize their positions to accommodate conservative agendas through government tools, such as rules and regulations.

In the sociological dimension of society, conservatism is treated as the idea that emphasizes the narratives of standardization of one dominant party. Thus it can create segregation and vulnerability of disintegration in the community. Society is composed of individuals and groups of diverse religious perspectives. Conservatism which rigidly regards standardization as the only truth can be the basis of opposing behavior against other parties deemed incompatible with the value of the predetermined standardization. In fact, this understanding can cause the other parties to be negated. Thus, the antagonistic relationship in society is created. Opposing parties will lose the common denominator that binds them as a society.

Unfortunately, destruction in society occurs due to the merging of conservatism and political interests that are addressed pragmatically and transactionally. Actors utilize political identity in order to gain political power because this is seen as the easiest way. Politicians and vigilante groups form alliance to manage public emotions for the sake of gaining votes by creating conflicts that polarize society. Polarization in society can be used to gain constituents with strict attitudes. Therefore, it is easy for them to gather militants who are easily mobilized, including for electoral political interests. If the vigilante groups have contributions to winnings in the electoral processes, their interests can be accommodated by politicians who have gained positions of leadership.

The above pattern was increasingly accommodated in the political year which provided large electoral agendas. Elections were held in that year, including the second wave of the 2017 Local Leaders Election (Pemilihan Kepala Daerah / Pilkada) with the momentum of the 2019 Presidential Election (Pemilihan Presiden / Pilpres), as well as the third wave of Simultaneous Local Elections. One of the triggers of the conservative Islamic movements in various regions was the Action to Defend Islam (Aksi Bela Islam) which began with the dynamics of the Jakarta Election. Antagonism to Ahok created a common denominator for some regions to embed religion / belief with political agendas, including the elections of leaders. Therefore, there was a tendency for conservative leaders to gain leadership positions. Their electabilities were influenced by conservative agendas in government.

Yet again, adherents of minority religions / beliefs have become

the victims of such condition. Several incidents of violation freedom of religion / belief were committed towards adherents of minority religions / beliefs. These incidents included direct attacks, misdirection, and sealing of places of worship. The acts were committed by conflict entrepreneurs to increase conflict tensions. Thus, people were divided and easily mobilized. Due to the political interests, adherents of minority religions / beliefs found it difficult to be free from the oppression that has been afflicted to them for a long time.

D. Dynamics of Tolerance in Religious Majoritarianism at the Local Level: Bali, North Sulawesi and West Nusa Tenggara

The Topic of Dynamic Tolerance in Religious Majoritarianism at the Local Level includes portraits from three provinces namely: Bali, East Nusa Tenggara, and North Sulawesi. Conceptually, religious majoritarianism refers to the largest quantity of adherents of religion in a population. In the context of Indonesia, Islam is the religion of the majority of the population. Hence, the mention of Islamic majoritarianism in Indonesia is common in sociology-religious studies. Simultaneously, in several regions in Indonesia that become the focus of this thematic study show that the majority populations in certain regions are endemic and are not always in line with the position of the majority religion at the national level.

In Bali, Hinduism which is the result of Hindu-Indian assimilation merges with the megalithic, animistic, dynamistic, totemistic and Chinese and Javanese cultures. These beliefs are practiced by the people with the largest religion believed in the province, which is 83% of Bali's population. In the city of Manado, North Sulawesi, Christianity (Catholicism and Protestantism) is the religion most widely practiced by the local population at around 61%. This is figure is balanced by Muslims at around 38 %. Whereas in East Nusa Tenggara, the composition of Christians (91% of the population) far exceeds the composition of Muslims.³⁶ With this composition, examining the three regions with

³⁶ The percentage of the number of adherents of religion used has been rounded off. Taken from the Central Bureau of Statistics (Badan Pusat Statistik / BPS) sources, 2010.

majority religious populations will provide insights on how to read dynamics at the local level in relation to freedom of religion/ belief.

Reports that include the overviews from Bali, North Sulawesi and East Nusa Tenggara (NTT) illustrate the dynamics of religion or belief in each research area. Each region has the specificity and high social capital in guaranteeing freedom of religion / belief manifested by the embodiment of tolerance between citizens or patterns of attitude towards foreigners or immigrants.

Bali, which is dominated by the Balinese Hinduism, as it is called, has a philosophy of life that supports the creation of a society which is inclusive, tolerant, and plural in Balinese society. Cross-cultural forums in Balinese society which are intailed in Hindu Darma and tolerance with other communities have long been parts the local wisdom of the people. The ideals and scenes of tolerant life as well as traditions that unite various religious communities have been entrenched in the society for a long time. For the Balinese people, Harmony is the way to reach God, whatever God is. Thus, the existence of foreigners of different cultures generally is not an issue for Balinese citizens or does not trigger any defensive attitudes.

In the context of diversity in the cities of Manado and North Sulawesi in general, the principle of brotherhood is a something that is upheld by the people. The motto "*Torang Samua Basudara*" ("We are all brothers") is entrenched in the minds of the North Sulawesi people. Therefore, the attitude to support, help and protect each other is an obligation in the kinship without differentiating religions. This is proven by the mixed marriages between different ethnicities, religion, race and culture. The attitude of life of the Manado people who are open minded in their social interactions is the social capital of the condusive unity of the community life.

In East Nusa Tenggara, the foundation of kinship becomes the soul that inspires relations between different religious communities. Therefore, harmony in the lives of East Nusa Tenggara people can be created. Various specificities, wisdoms, and social capitals at this local level not only forms of inheritance that can strengthen relations in the local community concerned but they are also implementations that can be spread and imitated by communities in other regions.

Unfortunately, after the New Order regime and after the

enactment of the principle of decentralization that created local political contestations in accordance with the specificity of the region, regional elites often competed by using religion as a political idea that unified and provided votes for the majority group. Such political strategy led to the competition for power with other minority religions. As a result, it does not positively contribute to the promotion of tolerance or freedom of religion / belief.

In the Province of Bali, the phenomenon of politicization of religion emerged after the Bali bombings. The incidents made the Balinese Hinduism community suspicious of immigrants especially the Javanese people and Muslims which then caused tensions of identity. Changes in the character of the Balinese society strengthened the Balinese Hinduism identity and the emergence of the *Ajeg Bali* discourse. As a result, the exclusivism of Hinduism was strengthened and the alienation of immigrants became inevitable. When examined further, such narration did not come to that end, but it was continued by the emergence of various frictions in the Balinese Hinduism relations with Islam in various sectors.

The dynamics of religion / belief in Manado was recently marked by a series of cases of violations of freedom of religion / belief. Such examples were the case of threats committed by a citizen (Christian) to a muezzin who was told not to proclaim the call to prayer through loudspeakers in Dendengan village, the prohibition of the use of public facilities for Islamic religious groups, as well as the phenomenon of marginalization of Islamic groups in local government politics.

Similar incidents also occurred in East Nusa Tenggara. Although tolerance was inherent in the life of diversity in East Nusa Tenggara, portraits of discrimination could still be found. Like in many areas, Islamic majoritarianism, which negates the right of freedom of religion / belief of minority Islamic groups such as Shia and Ahmadiyah, was likely to occur. In East Nusa Tenggara, the same issue occurred. Christian majoritarianism towards Islam, which was influenced by religious factors at the national level, was interesting to be further explored. The one aspect that differentiates is the existence of the religious minorities such as Shia and Ahmadiyah in some districts in East Nusa Tenggara that could still be growing.

The centralized system was applied At the New Order era. The

decentralized governance is centered on the central government and is not adaptive to the diversity at the regional level. After the reformation era, the amendments to the Constitution that gave the absolute power to the people to appoint their own regional heads caused open political struggles and strengthened the practice of identity politics regarding the values of tradition and religiosity. Such practice was conducted by political actors. In addition, several factors in the development religious / belief life in Bali, Manado and East Nusa Tenggara are important to be noted. These factors are related to religion / belief policies at the central level and the aspirations accommodation of the majority of Islam at the national level.

The first factor is the policy that allows the state to consult with big religious organizations when deciding on the acceptance of religious minority groups. This occurred even after the decision of the Constitutional Court was made. This regulation affects the general harmony by sacrificing unpopular beliefs and marginalizing minority groups. Such policies have directly and indirectly influenced the dynamics of freedom of religion / belief at the local level.

The second factor is the dynamics of politics at the national level which ultimately have a direct impact on the dynamics of diversity at the level area. For their political interests, political elites at the national level put forth the narrative of majority-minority. Such narrative is then taken as an idea that can be applied at the local level. However, it undermines the diversity at the local level that has harmoniously existed.

In 2005, President Susilo Bambang Yudhoyono increased the authority of the Indonesian Ulema Council (Majelis Ulama Indonesia / MUI) as a semi-official institution. In the National Congress of Indonesian Ulema Council he promised to increase the authority of MUI to allow it to define what constituted proper Islam. Not long after that, MUI issued a fatwa banning interfaith prayers, mixed marriages, interfaith inheritance, religious pluralism, liberalism and secularism. They caused further upheavals and disputes at the local level and they created the local will to redesign majority-minority relations, whatever religion is regarded as the majority religion.

The third factor is the Joint Ministerial Decree (Peraturan Bersama Menteri/ PBM) governing the provisions of the establishment of places

worship issued by the government in 2006. In 2008, in the Susilo Bambang Yudhoyono administration issued a Joint Decree (Surat Keputusan Bersama /SKB) on the prohibition of Ahmadiyah. Policies at this central level were the causes of disputes of religion / belief in the three loci of this study.

In West Nusa Tenggara, the Joint Ministerial Decree inevitably became the basis or trigger for the growth of intolerance in the community related to the establishment of places of worship. At first, the West Nusa Tenggara community did not have any issues on the provisions regarding the establishment places of worship. This was particularly due to strong kinship system the West Nusa Tenggara community. Previously, the West Nusa Tenggara community had never had any issues on the diversity of religions and beliefs. The emergence of the Joint Ministerial Decree finally destroyed the relationships among religious communities. It made them feel different. Due to the emergence of the Joint Ministerial Decree, religious communities needed the approval of the majority community in order to establish places of worship and this had never occurred before.

Similar issue was experienced by the Balinese people. The narrations that were spread at the central level created disputes. The narratives clearly stated the relationship between the religious majority and minorities. The religious majority appeared to rule over the religious minorities. However, diversity conditions in Bali were different than in West Nusa Tenggara. In Bali, Islam was not the religion of the majority and adherents of Hinduism could not be referred to as minorities. Provocative narratives against the minorities harmed the people of Bali. The Balinese Hindu community distrusted the Muslim community. It was not surprising that political narratives which discredited the Muslim community eventually received people's sympathy.

In the context of diversity in Manado, articulation of conservative Islamic politics accommodated at the national level provoked prejudice. Regarding the issue of diversity in these three regions, the polarization of harmony is destroyed when religions are used as political tools. Therefore, this problem needs to be examined and the dangers need to be anticipated in order to maintain the diversity and peace in Indonesia in the future.

One of the reports that provided the description of dynamics

majoritarianism and the effects of the state favoritism at the central level of a particular religion (read: Islam), was written by Iif Fikriyati Ihsani titled the *Traumatic Impacts of Bali Bombings: Defense Mechanisms of Two Religious Communities: Islam and Hinduism*. The in-depth reviews presented in this report showed how acts of terrorism marked the new relation between Islam and Hindu. As mentioned above, due to the incidents of terrorism in Bali, the Hinduism community developed new defensive attitudes in building social relations with the Islam community.

The next report was titled *Muslim Minorities in Context of Freedom of Religion and Belief*, written by Rahman Mantu from Manado. Rahman focused on proving the thesis on majority bias in religious relations. With Christian dominance in North Sulawesi, then the aspiration of the dominance of the social-governmental structure was also apparent. However, on some occasions, this fact was disputed by officials in the area. Although the report presented facts of the impacts experienced by minority groups, it actually encouraged all elements to comply with the ideology of the nation and the Republic of Indonesia's Constitution in governance. Therefore, further impacts would not be experienced by the minority group.

The last report was written by Yohanes Victor Usbobo and Ps. Emmy Suhertian who raised the topic of Kinship as Foundation of Freedom of Religion / Belief in West Nusa Tenggara. Usbobo and Suhertian in their reviews believed that strong kinship between adherents of Christianity and Islam became a strong foundation in managing tolerance of religious / belief in West Nusa Tenggara. According to them, breakthroughs in resolving violent conflicts related to religions and ethnic groups from 1980 to 2000 were proofs that tolerance in West Nusa Tenggara was strong.

Although the social mitigation of the people of West Nusa Tenggara was sufficient to be the solution as well as the drive of conflict resolution, majority bias was indeed unavoidable in West Nusa Tenggara, particularly the majority of Christian's bias against Christians of different orders. Escalation of intolerance appeared as a reaction to the attitudes of the majority group elsewhere. The incident experienced by Basuki Tjahaja Purnama, the Governor of Jakarta, triggered intolerance of Christians against Islamic groups. In from 2016 to 2017 he was accused of committing religious defamation. Eventhough, the

incident did not create serious conflicts, this kind of relation needs to be dealt with.

The exposure of conditions of freedom of religion / belief in the three provinces shows that each region has great a social capital and kinship system that unite such religious differences or beliefs. In the city Manado and West Nusa Tenggara, there are strong kinships between adherents of Christianity and Islam. They become the foundation in managing tolerance which provides freedom to religious communities to worship according to their religions and beliefs. This has proven to be able to help the community and local government to resolve violent conflicts that are related to religions and ethnic groups. The same foundation is also found in the people of Bali who are mostly adherents of Hinduism. Adherents of Hinduism and Islam have a long history of harmony in their social orders.

From the three loci of this study, it is shown that religions are inseparable parts of life the people of Bali, Manado or West Nusa Tenggara. With the implementation of direct regional head elections by the people after the reformation era, the political contestation in the regions started the frictions between religious groups which were caused by the use of religious ideology in the narratives of regional government campaigns. Therefore, impulses to show the existence minorities or to strengthen the dominance of the majority are inevitable in the contestation of power in the regions.

This research shows a cause and effect relationship between the mainstreaming Islamic majoritarianism at the national and local levels. Basically, central government has taken part in creating situations or conditions of disharmony and disassociation between religious communities at the local level. Such situations are dangerous, create unrests and social conflicts in the community, support the development of political exclusion, and negate the respect for diversity which is the soul of the Indonesian people.

Various regulations and policies at the national level have become the basis of the legitimacy of acts of intolerance and discrimination at the level local. In addition, the social disputes that had never occurred at the loci of research immediately emerged after the issuance of a Joint Ministerial Decree (Peraturan Bersama Menteri / PBM) regarding the establishment of places of worship. Various disputes on the

establishment places of worship as explained in all three regions indicate that the Joint Ministerial Decree, whose validity can be interpreted and enforced retroactively, has taken away freedom of religion. This is indeed contrary to the general legal principles. For example, after the Joint Ministerial Regulation was issued, the validity of the Al-Khairiyah Mosque in the Texas village which was built in 1968 was questioned.

In addition, there is an example of Islamic majoritarianism at the national level that has a discriminatory impact towards the East Nusa Tenggara province which is dominated by Christians. Although Christianity is a majority religion, but adherents of Christianity experience structured discrimination committed by the state from the center to regional governments. One concrete example is in the field education. In order to obtain accreditations, universities under the auspices of the Religious Office namely the College of Pastoral Sciences / Sekolah Tinggi Ilmu Pastoral (Catholic) and the Theological College / Sekolah Tinggi Teologia (Protestant) must be assessed by assessors from Islamic Colleges / Sekolah Tinggi Islam. These assessors do not understand about Catholic and Protestant theology. In addition, the education assistance provided by the Ministry of Religious Affairs is given more to Islamic Colleges than to Catholic and Protestant Colleges which are the majority groups in East Nusa Tenggara and Kupang City.

There are some interesting points about the fact that the religious majoritarianism which is not Islam at the regional level. One of which is that it gives an example that Islamic minorities whose developments are inhibited in many regions dominated by Islamic groups can grow and develop. The Shia and Ahmadiyya communities can still exist without being disturbed in areas dominated by Christian populations. The Shia and Ahmadiyya communities still exist in several districts in East Nusa Tenggara. In the city of Manado, adherents of Shia can even express their religious practices (especially in the way they dress) straightforwardly. The loss of the dominance of Islam in areas dominated by Christian groups provides and guarantees more freedom of religious expressions to Shia and Ahmadiyya communities.

In addition, the targets or objects of discrimination in some areas where the majority are not Islam are different. The objects of discrimination can refer to certain religious beliefs that are considered deviant by the adherents of the majority religion or they can refer to certain local beliefs that are endemic. Majority dominations against

the minorities in non-Islamic majority areas are not always towards the Islamic minorities. For example in context diversity in East Nusa Tenggara, adherents of Catholics who are the minorities become the targets of Protestant domination. This shows the same issue with Islamic majoritarianism in many regions of Indonesia. Mainstream Islam has dominated the non-mainstream Islam such as Shia as well as Ahmadiyya and they become the targets of the society's religious intolerance.

Overall, issues of intolerance or religious discrimination in the research areas have not reached a level that causes divisions or conflicts. However, symptoms that appear cannot be ignored. Information dissemination through social media in fact has contributed in the formation of radical religious mindset. Religious preachers who spread the ideas of exclusivism and gaps between religious groups have impacts on the regions. Freedom of expression in public spaces that does not have preventive circulation mechanisms has directly spread unhealthy ideas for diversity and tolerance. This condition indicates the real need to moderate religious understanding which does not contribute to the creation of religious tolerance by using the Indonesian identity as the unifier of the nation.

E. The Dynamics of Sosio-religious Interaction in Diversity Governance: Yogyakarta, Central Java and West Kalimantan

The latest descriptions of the 12 provinces are illustrated in the Dynamics of Sosio-religious Interaction in Diversity Governance which includes key findings from Yogyakarta, Central Java and West Kalimantan. The first report was presented by Iif Fikriyati Ihsani, in the Tensions of Socio-Religious Interaction in Culture Governance and Multiculturalism of the Special Region of Yogyakarta: The New Stage of Political Identity and Politics of Identity.

As a special region that is awarded with many privileges, the Special Region of Yogyakarta is a city that is always expected to be a portrait for the continuity of pluralism in Indonesia. Carrying out the mandate as a cultural center, Yogyakarta indeed has uniqueness compared to other cities. Local traditions that exist in Yogyakarta reflect a long history of Indonesia in religious life and interaction between local traditions with

the other religions³⁷.

The harmony of religion and belief in Yogyakarta throughout this study has shown a decreasing scale. Many of the triggers were caused by social changes and political turmoil in the Keraton (Javanese Royal Palace) environment. Social changes resulting from the industrial acceleration around Yogyakarta encourages modern lifestyles that are far from the basic values of the people of Yogyakarta. Therefore, returning to religion as a standard and rooted belief is seen as a way to move away from modern attitudes that are highly competitive.

In the effort to strengthen itself, religion is then existent in groups and begins to show its existence to the public, through attitudes of grouping and separating itself from society in general. After successfully forming a group, its existence began to spread in an effort to influence others who in practice begins to group into exclusive forms that polarized between Islam as an ideology as opposed to existing ideologies, which is seen a failure to make Indonesia and Yogyakarta as friendly and safe places.

Narrative of exclusivism uses more relationships majority and minority, where the majority is considered to lose its authority because the government tends to side with the minority. Whereas for the minority, the majority's attitude that is not open to the minority makes the minority lean fully on the government as the administrator of the state. Minority requires an inclusive majority to be able to multiculturalize pluralism. Therefore, the role of the government and all its apparatus is important. If the government, in this case the *Keraton*, cannot resolve the conflicts within, then Yogyakarta will lose values of its origin, or at least it will begin to move toward strong exclusivism.

The second report was obtained from Singgih Nugroho who presented the key findings in Central Java. The report was titled

37 The historical discourse of the Special Region of Yogyakarta Province originated from the mandate of Sri Sultan Hamengkubuwono IX and Sri Pakualam VIII as the Kings of the Ngayogyakarta Hadiningrat and Kawedanan Pakualaman Palaces who declared to join and support the Republic of Indonesia on September 5, 1945. Thus, President Soekarno legitimized Yogyakarta as a Special Region with Sri Sultan Hamengkubuwono IX and Sri Pakualam VIII as the Regional Head and Vice Regional Head, in the inauguration certificate of President Soekarno and strengthened in Law Number 3 of 1950 jo Law Number 19 of 1950.

Consolidation of Civil Society Movements in Combating Intolerance and Radicalism in the City of Semarang, Central Java. It also illustrated the dynamics of the violations facts and the progress of freedom of religion / belief in Central Java in 2018. It broadly presented the tensions of socio-religious interaction in cultural governance and multiculturalism through a case study in Semarang city. Substantially, this topic is important to study at least for two reasons. First, in the protection and fulfillment of citizens' rights to freedom of religion / belief, there has been progress as a result of the work of many parties such as the security forces (police and the Indonesian National Army (Tentara Nasional Indonesia / TNI), the government, and activists from civil society. This is indicated by the fact that there is no longer or there is a large-scale reduction of acts of ethno-religious violence, and many tolerance actors or organizations have emerged which have networked with policy makers in various regions in Indonesia, including regions that have had ethnicity and religious conflicts as well as violence in the past such as Maluku and Poso.

The second reason is that there are still facts about violations of freedom of religion / belief indicating that efforts to protect political, ethnical or religious minorities and vulnerable groups are still challenging. From various reports about the conditions of the freedom of religion / belief, there are four trends in terms of the violations freedom of religion / belief, as the following; (a) regulation aspects concerning the freedom of religion / belief that are discriminatory or are potentially used to discriminate, such as Law No. 01 / PNPS / 1965 on the Prevention of Religious Abuse and / or Defamation; (b) elements of the state who are increasingly repressive by violating freedom of religion / belief and participate in acts of intolerance and discrimination committed by some groups of people; (c) effective spread of violations and acts of intolerance towards the right of freedom of religion / belief; and (d) violations and intolerance related to the places of worship have made the society to be more intolerant in terms of establishment place of worship.³⁸

The third reason is that, as pluralistic regions, especially in terms of types of beliefs and ethnicities, Java Province and Semarang City provide

38 Ismail Hasani (ed.), *Dokumen Kebijakan Penghapusan Diskriminasi Agama/Keyakinan*, Setara Institute, Jakarta, 2011, p. 57.

a database of varied dynamics of multiculturalism. Basic characteristic of Javanese culture tends to prioritize social harmony and avoid open conflicts. Although it is still dominant, a number of cases reveal the opposite fact. Tensions, conflicts and violence in certain periods and regions have also been seen throughout the development of those areas. Thus studies in these areas are expected to provide important learnings in viewing the latest cultural structures.

In general, Central Java as one of the regions where the Javanese culture is originated has a socio religious and heterogeneous culture which is influenced by regional characteristics, and manifested in the diversity of elements such as dialects, folk arts, food, etc. Based on the 2000 population census, the area is inhabited by at least 19 ethnicities. The most dominant ethnicity is Javanese, followed by Sundanese, Chinese, Bataknese and Madurese. Religious and the ethnicity relations in Central Java are dynamic. Relations among its people are generally peaceful. However, incidents of religious tensions and violence often occur.

Similar situations also occurred in Semarang City. Various descriptions of cases in this report show the Semarang's dynamic plurality conditions are indicated by the peaceful conditions and the small scale of conflicts or tensions. Based on the historical records in the past, in Semarang City there were 4 cases; 1 case of peaceful conflict, and 3 cases of racial violence. All of them also occurred in certain periods with one racial case sourced from within (internal Semarang) and two cases sourced from outside. After the anti-Chinese racial riot of 1980 - as an impact of Solo - and until this report was compiled, social conditions in Semarang had been generally peaceful. Incidents of conflict and violence had not massively occurred. There have been a number of religious social incidents that emerged. However some people consider them minor incidents.

Based on the analysis of various study reports and also the findings of this study, there are still a number of challenges as well as hopes for the advancement in the field of religious tolerance development. The dynamics of intolerance and violence in the name of religion, both internal and interreligious, have increased each year. At least since 2016, this region has been in the top 5 as a region with a record of intolerance in Indonesia. According to SETARA Institute's report in 2018 there were 17 cases of violation of freedom of religion/ belief.

According to the report of the Institute for Social and Religious Studies (Lembaga Studi Sosial dan Agama / eLSA) of Semarang, there were 14 cases related to terrorism; 7 cases of incidents related to religion; 3 cases categorized as discrimination by judicial (discrimination by the state through legal documents); and 9 cases of horizontal conflicts. The conditions are in line with the results of Religious Harmony Index carried out by the Research and Development Agency of the Ministry of Religious Affairs (Badan Penelitian dan Pengembangan Kementerian Agama /Balitbang Kemenag) in 2018 which placed Central Java Province in 13th out of the 34 provinces surveyed with a score of 78.7 % in the harmony category.

The dynamics of the freedom of religion / belief conditions in Semarang City in 2018 were marked by 4 religious cases included suspected terrorist arrests, incidents relation to religion (raids of groups suspected to be heretical), acts of intolerance (the refusal of the arrival of Ustadz Abu Somad, and the refusal of Ashura in Semarang by the Surakarta Muslim Community Forum (Forum Umat Islam Surakarta/ FUIS) by requesting the cancellation of the permission of the Central Java Regional Police). In 2018, there was a decline in the number of cases compared to 8 incidents in 2017.

In a number of aspects, the emergence of a number of cases in the city of Semarang was influenced by changes in the constellation of religious politics after 1998. Like other areas, a variety of religious and socio-political based mass organizations were also developed in the city of Semarang. Some of them were previous organizations that publicly declared themselves after 1998. In the context of Islamic organizations, apart from the mainstream groups such as Nahdlatul Ulama (NU) and Muhammadiyah along with their the various autonomous institutions, varied small groups emerged and had different ideologies such as the Surakarta Muslim Community Forum (Forum Umat Islam Surakarta/ FUIS), Islamic Defenders Front (Front Pembela Islam / FPI), *Ansharut Tauhid Community (Jamaah Ansharut Tauhid / JAT)*, *Ansharut Daulah Community (Jamaah Ansharut Daulah / JAD)*, Ansharusy Sharia Community (Jamaah Ansharusy Syari'ah / JAS), etc. The presence of these groups, although not always directly correlated, undeniably influenced the social religious dynamics in this city. At least these groups were involved in several religious incidents in the city of Semarang.

The data show that the development of social religious life is

dynamic. The graphics are heavily influenced by a number of factors including the dynamics of local and national political events. The dynamics of identity politics in the Jakarta Local Leaders Election (Pemilihan Kepala Daerah / Pilkada) are thought to have significantly influenced the development of social religious life. Another factor is the Hizb ut-Tahrir's (*Hizbut Tahrir* / HTI) flag burning in Garut as well as regulations on religious defamation and establishment of places of worship. Such situation was evident, among others, in a number of limited scale incidents of violence that occurred during the period of the political year (2018-2019), such as destructions to tomb stones in Magelang, a Christian school, Nahdlatul Ulama Branch Representative (Pengurus Cabang Nahdlatul Ulama / PCNU) office in Blora Regency, and persecution village *Kyai* (Islamic expert) in Kendal. Before the 2019 General Election (Pemilihan Umum / Pemilu, there were also cases of vehicles burning in four regions, namely the Semarang City, Semarang Regency, Kendal Regency, and Grobogan Regency.

In another section, some progress in the promotion of freedom of religion / belief was also noted, such as the speed of the state apparatus (regional government and security forces) in responding to cases related to ethnicity, religion, race and intergroup (Suku, Agama, Ras dan Antargolongan / SARA) that were regarded as disruptions to the conduciveness of the security and public order (*keamanan dan ketertiban masyarakat / kamtibmas*). A number interfaith organizations both initiated by the state and the civil society began to show more participation in handling the issue freedom of religion / belief. Since the end of 2014, the Religious Harmony Forum (Forum Kerukunan Umat Beragama / FKUB) of Central Java has made breakthroughs, among others by initiating the FKUB associations throughout Indonesia, strengthening the capacity of FKUB Regency / City administrators throughout Central Java in designing its activities, communicating with the respective regional heads, and being involved in solving religious issues. In addition, some FKUB in districts / cities have formed or established FKUB Muda and the interfaith communities at the sub-district and village levels.

Among the civil society, participation in campaign activities, prevention and resolution of religious cases have begun to predominate, for example the existence of Sobat Forum, the interfaith forum initiated by the *Nursery for the Love of Humanity*

(Persemaian Cinta Kemanusiaan / PERCIK, Edi Mancoro Islamic Boarding School and the Synod of the Javanese Christian Church (Gereja Kristen Jawa / GKJ) since 2002. In addition, there is also the Gusdurian Network (Jaringan Gusdurian / JGD) which has existed in many areas in Central Java. In Semarang City, numbers of actors and peace support groups and tolerance activists are also increasing. Since 2016, activists working in the Institute for Social and Religious Studies (Lembaga Studi Sosial dan Agama / eLSA), and the Legal Aid Institute (Lembaga Bantuan Hukum / LBH) of Semarang, the EIN Institute and the *Interfaith Relations Commission* (Komisi Hubungan Antar Agama dan Kepercayaan / Kom-HAK) of the Archdiocese of Semarang (Keuskupan Agung Semarang / KAS), have played important roles in initiating Interfaith Brotherhood (Persaudaraan Lintas Agama / PELITA of Semarang City. The presence of these local peace figures is part of the latest developments in a more flexible format (informal) and a more diverse network. They are developed from the need of the local people of figures that are able to respond quickly to social practices that are considered intolerant in their regions or other regions so that such practices do not occur in those areas. The development of information technology such as the internet and social media actually also plays an important role in facilitating the growth of peace support groups.

The presence of these “new” groups becomes the additional ammunition for the peace movements that had been carried by the previous groups. They participate in peaceful narrative campaigns in each region and are willing to cooperate with state officials such as the local police, regional governments and the Religious Harmony Forum (Forum Kerukunan Umat Beragama / FKUB). Forms of support include visits, informal discussions, petitions and unconventional humanitarian solidarity actions. Frequently, they are directly involved in organizing joint activities with state officials for pluralism events. Through this collaboration there has been sharing of information with the police and regional government on issues of diversity and radicalism in each region and it strengthen state apparatus such as the police in responding to pressure from intolerant groups. They are also quite active in spreading the values of tolerance and peace by reporting on activities and posting them on their social media accounts (Facebook, Instagram and Twitter).

The last report came from West Kalimantan, titled Portrait of

Freedom of Religion / Belief and National Political Challenges in West Kalimantan, written by Syarifah Ema Rahmaniah.

Issues on religious freedom are rife almost all the time, especially in West Kalimantan. Socio-culturally, West Kalimantan is a place where various religions and beliefs are flourishing due to the tribes that exist in it. There is a very close relationship between the customs of the people in West Kalimantan and the existing religions. This means that their religious life and ethnic traditions are still very dominant. For example, Christian processions are dominant in the Dayak tribe, Islamic traditions are dominant in the Malay tribe and Confucian traditions are dominant in the lives of the Chinese people.

In the local context, regional / segregation divisions based on ethnicities occur. They form livelihoods, perspectives and lifestyles, as well as economic incomes. They also affect the work in promoting diversity in the context of culture and also religion / belief. The mass media also helps to establish patterns of segregation in the context of communication. Based on the data, it can be said that to date there has not been a joint movement of cross-ethnic civil society and communities in efforts to preserve diversity and peace. The role of the existing public figures seems to be exclusive and pragmatic, and only exists in certain groups.

The government as the party who formulates policies is expected to be more concerned with handling and preventing conflict in West Kalimantan. Concrete efforts in creating peace, especially in the supervision of Freedom of Religion and Belief are needed. Assistance and cooperation are needed from all parties from the government as well as the community and educational institutions to maintain the unity of the Republic of Indonesia and to maintain peace and in particular to create a multiculturalist social life, to maintain tolerance between religious communities in order to create harmony and peace in social life.

All cross-ethnic, religious and cultural communities are expected to always maintain brotherhood and good relationships. There is no self-righteous arrogance. It is requested and proposed to all parties to maintain attitudes of accepting and appreciating differences in accordance with the principle of Unity in Diversity, to respect each other, to tolerate, to provide solutions and to prioritize negotiations in resolving problems that arise.[]

CHAPTER 4

Institutionalization of the Criminalization of Beliefs

A. Background

Religious Defamation is one of the problems in the issue of Freedom of Religion / Belief, especially in the form of problematic restrictions. The most often justified argument is the possibility of derogation or reduction and restriction on certain rights, especially civil and political rights. In the Indonesian constitution, restrictions and reductions are based on the provisions of the Constitution, which states:

“In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.”³⁹

Among the restrictions that are often used as justification to prosecute the adherents of religions / beliefs is the doctrine of religious defamation. The main regulation used to establish restrictions on freedom of religion / belief is Law No. 1 / PNPS / 1965 on the Prevention of Religious Abuse and / or Defamation. The state regulation regarding the religious abuse and / or defamation as a form of restriction on

39 Article 28J paragraph (2) of the 1945 Constitution.

the freedom of religion / belief becomes increasingly strict after the Constitutional Court ruling which stated that Law No.1 / PNPS / 1965 did not contradict the constitution. In its development, religious defamation has not only become a doctrine of restriction, but also the institutionalization of the criminalization of beliefs.

B. Episteme of Religious Defamation

Contemporary world society pays great attention to defamation or religious defamation, in the context of Indonesia. In 2009, the General Assembly of the United Nations approved a resolution on Combating Defamations of Religions. The determinant factor in the resolution is the tendency that religious defamation can trigger social disharmony and human rights violations. However, the resolution does not give states the authority to limit freedom of belief, opinion and expression on the grounds of religious defamation which is a fundamental civil and political right as stipulated in the 1966 International Covenant on Civil and Political Rights (ICCPR).

One of the war missions against religious defamation is the fulfillment of human rights, so the substantive norms that should be referred to are human rights instruments, which are legally binding, especially the ICCPR. Specifically for the Indonesian context, the ICCPR is a positive law because it has been ratified through Law No. 12 of 2005. The ICCPR asserts freedom of religion / belief is a basic right.⁴⁰ In the Convention there is no specific definition of religious defamation. However, there is a specific restriction relating to religion, namely Article 20 paragraph which states that (2): *“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”*. This means that external expressions of internal freedom (*forum internum*) for religion and belief are guaranteed by law, as long as they do not contain hate speech, ie incitement to discrimination, hostility, and violence. By using visual and teleological-sociological interpretation methods, hate speech is the main substance of religious defamation according to human rights instruments.

40 ICCPR, Article 18 paragraph (1-4).

Whereas according to Article 156a of the Penal Code and Article 1 of Law No. 1 / PNPS / 1965 concerning the Prevention of Religious Abuse and / or Defamation, the substance of religious defamation is the interpretation and religious activities that deviate from the main points of religious teachings. These provisions are problematic, because interpretations that are merely different (especially from the mainstream interpretation of certain religious teachings) have the potential to be referred to as defamation, especially if they are legitimized by misdirection. In fact, there are many differences in the main points of the teachings of various schools of thought or sects in one religion, let alone between religions. One can imagine the magnitude of the potential “defamation”. Therefore, the provisions of the two laws and regulations must be revised.

In the problematic defamation regime, the state will easily become a tool of tyranny of the mainstream interpretation of religion to the marginal; the majority against the minority, from the noisy to the silent. At the very least, adherents of religions with the majority interpretations will “help” the state in punishing other adherents with the “distorted interpretations”. Many cases like these have occurred in Indonesia. It is at this point that the potential for social disharmony and human rights violations occur. This clearly contradicts the anti-defamation mission of religion declared by civilized nations in the world.

Moreover, the data show that the defamation regime, which suffers from paradigmatic flaws, is often enforced legally by gathering political energy. SETARA Institute noted that Law No. 1 / PNPS / 1965 was most widely used during the *Susilo Bambang Yudhoyono*'s administration with the support of the mass movements. From 2004 until 2014, the religious defamation law was used for more than 100 cases. Meanwhile, during the 32 years of Soeharto's autocratic rule, the same law was noted to be used in only 10 cases.

After the reformation era, the fragile religious defamation regime was upheld more by relying on political energy, especially in the form of mass mobilizations.⁴¹ One actual and prominent example was the criminalization of Tajul Muluk who was charged with religious

41 SETARA Institute elaborated this fact in its 2016 report. See Halili, *Supremasi Intoleransi: Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia Tahun 2016* (SETARA Institute, Jakarta, 2016).

defamation in Sampang. In fact, the leader of Shia and the congregations were clearly victims of violence, attacks and arson which resulted in damage to property, loss of life and deprivation of civil, political, economic, social and cultural rights. However, the mass and intolerant groups insisted Tajul Muluk to be imprisoned with the argument of religious defamation and the state granted their demands.

Such law enforcement cannot occur. The state must enforce a regime of religious defamation based on the basis of the state, constitution and *zeitgeist* of *Bhinneka Tunggal Ika* (Unity in Diversity, the national motto of Indonesia) and refer to the human rights instruments that are also used by civilized countries.

C. Religious Defamation in the between the Doctrines of Derogation and Limitation

In the perspective of human rights theory, there are doctrines of reduction and restriction in civil and political rights. Derogation is a mechanism that allows “exceptions” for a country to deviate from its legal responsibilities due to special or emergency situations. Then the rights that can be questioned are known as derogable rights.

Article 4 of the International Covenant on Civil and Political Rights states that *“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”* In general, almost all international treaties have provisions on derogation, as do the provisions in the International Covenant on Civil and Political Rights.

Derogation can be carried out in national legislations, at least, carried out in 3 main situations, namely: in an emergency which is essential and threatens the life of a nation, when there is an essential threat to national security, and when national disintegration occurs, such as civil wars and severe natural disasters, like the Aceh tsunami.

However, derogation can only be imposed on certain rights. It

cannot be carried out on all rights stipulated in the International Covenant because derogation allows a country to free itself from violations of certain parts of an international agreement. Whereas in principle, all basic rights recognized by civilized countries as well as recognized and regulated in national norms and instruments must be respected, fulfilled, and protected optimally and as much as possible.

Based on the Syracuse principle,⁴² there are two treatments towards the implementation of human rights, namely non-derogable rights (rights of which the fulfillment cannot be delayed or postponed) and derogable rights (rights of which the fulfillment can be delayed or postponed). The Syracuse principle underlines that the rights which can be delayed or postponed (derogable rights) can only be delayed or postponed in a specific situation or condition that is considered dangerous to the public interests.

Meanwhile, the principle of non-derogable rights affirms absolute rights and therefore, they cannot be postponed or delayed in any situations or conditions. The rights included in the principle are: the right to life (to not be killed), the right of self intact (to not be tortured, kidnapped, ill-treated, raped), the right to be free from slavery, the right of freedom of religion, thought and belief, the right to be treated equally before the law, the right to not be imprisoned on the ground of his/her failure to fulfill a contractual obligation, and the right to not be criminalized due to the retroactive law. In that sense, all types of acts which may cause the loss of an individual's or a group of people's rights of freedom of religion – as elements of non-derogable rights – can be categorized as human rights violations.

Meanwhile, limitations are doctrines that allow the state to restrict certain rights. Article 12 of the International Covenant on Civil and Political Rights, which has been ratified by Indonesia through Law No. 12/2005, asserts that restrictions on civil and political rights are basically

42 Syracuse principles are principles on limitation and derogation provisions in the ICCPR. Initiated in the colloquium of 31 experts of human rights and international laws from various countries in Sicily, Italy in 1984. The colloquium resulted in a set of standard interpretations on clauses of rights restrictions in the ICCPR. See Ismail Hasani and Bonar Tigor Naipospos (ed.) (2011), see also Halili and Bonar Tigor Naipospos (2014), *Stagnasi Kebebasan Beragama*, Jakarta: SETARA Institute, p. 6.

prohibited, except for reasons which can be justified by the Covenant, namely:

- 1) to protect national security and public order
- 2) to protect public health or morals, or
- 3) to protect the rights and freedoms of others, and which are in accordance with other rights recognized in the Covenant

In addition, these restrictions must be applied proportionally. The principle of proportionality in the limitations, at least, must be done by fulfilling two aspects: 1) must not be applied discriminatively, and 2) must be set forth in the form of laws and regulations.

Thus, limitations are also the “exclusion norms” of the general norms of human rights as stated in the International Covenant. Since they are exceptions, the criteria and indicators imposed must also be strict, with reference to international norms and law.

In the context of such derogation and limitations, regulation on freedom of religion / belief can be carried out, but not within the framework of state actions (including legal actions) that open the possibilities, or even determine the occurrence of violations of freedom of religion / belief. On the contrary, the state “intervention” in the form of developing regulations and policies must be aimed to respect, protect and guarantee the implementation of freedom of religion / belief as a basic right.

Substantively, freedom of religion / belief is a human right that is guaranteed and protected by the State Constitution, national law and international law. The right of every citizen to adopt a religion / belief is a human right that is absolute, cannot be reduced, limited, or interfered by anyone, under any circumstances, even in a state of war.⁴³

43 The legal basis for freedom of religion / belief in the form of national and international instruments is as follows: 1) General Declaration of Human Rights in 1948 (article 18), the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights (article 4 , article 22 paragraph (2), Law Number 29 of 1999 concerning Ratification of the International Covenant on Elimination of All Forms of Racial Discrimination / CERD or Covenant for the Elimination of All Forms of Racial Discrimination, Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Right / ICCPR or Covenant on Civil and Political Rights.

Freedom of religion / belief must be protected and upheld by the state. In that perspective, the state must provide legal mechanisms that provide guarantees and enforcement mechanisms if violations of the right occur.

The right of freedom of religion / belief is related to several aspects. The first aspect is the substance of the right. In essence, freedom of religion / belief is an absolute right and cannot be reduced, limited, interfered with in any circumstances, including in a state of war (non derogability). However, restrictions are still possible at least when referring to the doctrine of limitations, especially for the reasons mentioned in the previous review, namely, in order to protect the public interest, public health and morality, as well as the rights and freedoms of others. Therefore, the limitations that are made are basically for the protection and promotion of the right, not for the reduction.

The second aspect is the function of the state. The state must stand tall and be consistent in fulfilling its axiological functions, among others:

1. to implement law order to achieve goals and avoid violent conflicts,
2. to strive for the welfare and prosperity of the people,
3. to guard and defend from incoming threats and attacks, and
4. to enforce courts through judicial bodies.⁴⁴

Thus, in the context of freedom of religion / belief, the state must provide all legal mechanisms and procedures to protect the rights of citizens, prevent violations committed by citizens - especially by the state apparatuses, and enforce the law in the event of violations of freedom of religion / belief.

The third aspect is the state regulation. In connection with those two aspects, the actions of the state are not taboo instead they are aimed to protecting, promote, prevent violations, and enforce the law on the existing violations. Such context leaves the questions of: What is the scope of the restrictions? What are the criteria?

Before reviewing the limitations of these restrictions, we need

⁴⁴ See Miriam Budiardjo (1998), *Dasar-Dasar Ilmu Politik*, Jakarta: PT Gramedia, p. 46.

to review the scope of freedom of religion / belief which is the object of affirmation in various national and international instruments. The main human rights instrument that forms the basis for guaranteeing freedom of religion / belief is the International Covenant on Civil and Political Rights adopted by the United Nations in 1966. Article 18 of the International Covenant on Civil and Political Rights emphasizes that freedom of religion / belief includes:

1. Freedom to adopt a religion or belief of his/her choice, and freedom, either individually or in community with others and in public or private, to manifest his religion / belief in worship, observance, practice and teaching;
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice;
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others;
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

In 2005, the Indonesian government ratified this International Covenant through Law No. 12/2005 concerning the Ratification of the International Covenant on Civil and Political Rights. This Covenant is legally binding and as a ratified state party, Indonesia is obliged to include it as part of national legislation and provide periodic reports to the Human Rights Commission of the United Nations.

While other Human Rights instruments governing the guarantee of freedom of religion / belief are the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief which was initiated through the resolution of the General Assembly of the United Nations No. 36/55 on 25 November 1981. This declaration regulates the guarantee of freedom of religion / belief in more detail compared to the International Covenant on Civil and Political Rights. However, as it is in the form of a declaration, it is non-binding for the

state parties. However, although not legally binding, this declaration reflects the universal consensus of the international community. Therefore, it has moral strength in the practice of international relations in general. As a member of the United Nations, Indonesia cannot suddenly ignore this declaration in carrying out its obligations to fulfill the rights of its citizens.

Article 28E of the 1945 Constitution of the Republic of Indonesia has also affirmed the guarantee of freedom of religion / belief, which states:

1. Every person is free to worship and to practice the religion of his choice, to choose education and schooling, his occupation, his nationality, his residency in the territory of the country that he shall be able to leave and to which he shall have the right to return.
2. Every person has the right to be free in his convictions, to assert his thoughts and tenets, in accordance with his conscience.

From the two paragraphs of the article of the Constitution, it can be observed that the constitutional guarantee of the right to religion / belief is very strong. The constitutional guarantee has implications for the meaning and the derivative policy demands, at least as follows:

1. The state must provide guarantees of protection and the space for every free citizen to adopt a religion and practice his religion and beliefs.
2. The state must not make various restrictions and obstacles for the citizens to practice their religion and beliefs.⁴⁵

In accordance with Article 29 of the 1945 Constitution, the state has a constitutional responsibility to protect the religious rights of every citizen. The state has an obligation to guarantee freedom of religion / belief as stated in Article 28E and Article 29 of the 1945 Constitution. This is in line with the mandate of Article 28I paragraph (4) of the 1945 Constitution which must be fulfilled by the state, especially the government. Article 28I paragraph (4) states that *protecting, promoting,*

⁴⁵ See Ismail Hasani (ed) (2011), *Dokumen Kebijakan Penghapusan Diskriminasi Agama/Keyakinan*, SETARA Institute, Jakarta, p. 81.

upholding, and the full realization of human rights are the responsibilities of the state, foremost of the government. That means that the government has the obligation to protect and respect human rights.

Based on the two human rights instruments and the Constitution of the Republic of Indonesia above, the scope of freedom of religion / belief generally covers:

- 1) freedom to adopt a religion or belief of his/her choice,
- 2) freedom, either alone or in community with others to practice a religion or belief of his/her choice
- 3) freedom to obey, practice and organize teachings in public or private.⁴⁶

Indonesia as a state party in the international human rights law is obliged to respect and protect everyone's freedom of religion or belief.⁴⁷ The basic principle of the state's obligation to respect human rights is that the state does not do things that violate the integrity of individuals or groups or ignore their freedom. While the obligation to protect is to take the necessary actions to protect the right of a person / group of people to crimes / violations of law / violence committed by other individuals or groups, including taking precautions against neglect that inhibits the enjoyment of their freedom.

Although the basic nature of human rights cannot be eliminated or revoked and is total in every human being, but based on the agreed Syracuse Principle, derogations and limitations are possible and can be applied to certain situations or conditions that are considered to endanger the public interest.

Even though the discourse on human rights recognizes that there are restrictions on the fulfillment of guarantees of freedom of human rights, this monitoring still covers a variety of violations both rights that are included in the international forum category and freedoms included

46 Article 18 of Universal Declaration of Human Rights (1948): "Everyone has the right to freedom of thought, conscience and religion; this 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, practice, worship and observance."

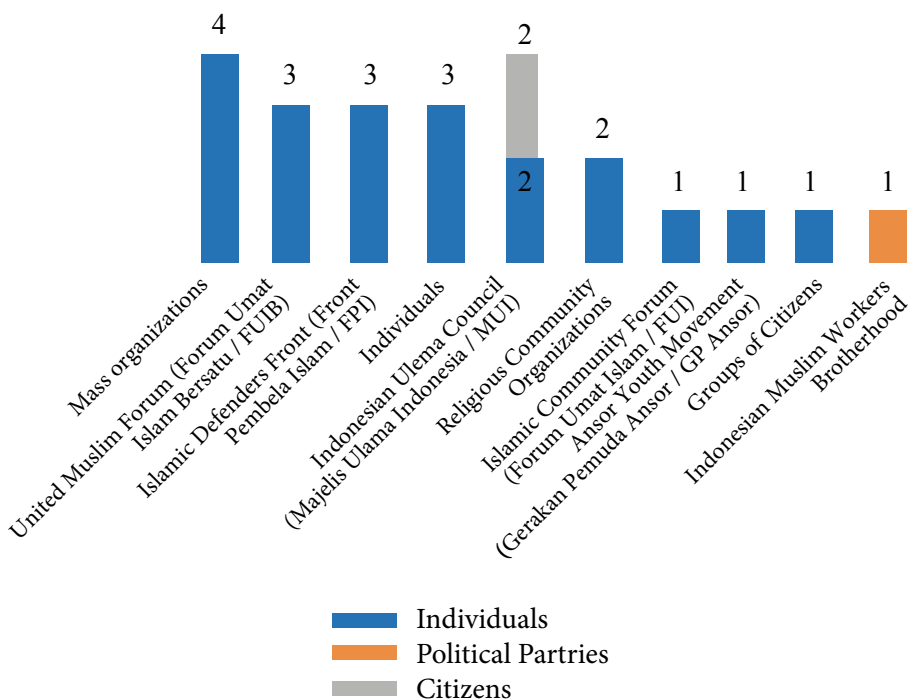
47 See article 18 of DUHAM, article 18 of ICCPR, Article 28I, Article 28E, Article 29 of the 1945 Constitution of the Republic of Indonesia.

in the external forum category.

D. Religious Defamation Mainstreaming in 2018

One aspect of the freedom of religion / belief that stood out in 2018 was the case of religious defamation. There were 25 cases of religious defamation, 23 new cases and 2 old cases. 2 cases have been decided by the court; the 23 new cases reported to the police included three categories of victims, namely individuals, citizens, and political parties. Complete data on actors, victims, and number of cases can be seen in the following graph.

Graphic 18.
Religious Defamation Case of 2018



The data shows that progressive systematic efforts from the government (executive and legislative) are needed to revise Law

No. 1/PNPS of 1965 on the Prevention of Religious Abuse and / or Defamation and Law Number 11 of 2008 on the Information and Electronic Transactions. In the context of the religious defamation Law, the Constitutional Court Judge in the concurring opinion of the Constitutional Court Decree Number 140 / PUU-VII / 2009, stated that the formulation of Article 1 of the 1965 PNPS Law contained weaknesses. Therefore, to overcome these weaknesses, Article 1 of the Law Number 11 of 2008 on the Information and Electronic Transactions can be revised by the legislative bodies, in this case the House of Representatives (Dewan Perwakilan Rakyat / DPR) and the Government. Meanwhile, if Article 1 of the Law is revoked, there will be a legal vacuum caused by the absence of the regulation. It can cause extensive social consequences even though the effect itself can be overcome by the existing legal regulations, but to do so it would require a high social cost.

Despite the need to revise the formulation of Article 1 of the Law, it cannot be done just yet. This is due to the limitations of the Constitutional Court which is only a negative legislator who is not authorized to revise the formulation of Article 1 of the Law *a quo* with a different formula. The statement of not having the legal force will lead to a legal vacuum. Therefore, based on the principle of expediency of waiting for improvements made by legislative body, the Law needs to be sustained for the time being. Thus, the Government and House of Representatives (Dewan Perwakilan Rakyat / DPR) are required to begin the process of ‘normal legislation’ to revise Law No.1 / PNPS / 1965 which is admitted by the Constitutional Court judges admitted to have many weaknesses. While the Law Number 11 of 2008 on the Information and Electronic Transactions has been problematic from the start. The most problematic articles are 27 paragraph (1), Article 27, and Article 28 paragraph (2) which contain the potential for serious restrictions on freedom to express opinions and views.

E. Problems of Criminalization though the Presidential Decree (Penetapan Presiden / PNPS)

Law Number 1 / PNPS / 1965 is one of the fundamental problems in the legal hierarchy of freedom of religion / belief in Indonesia. The law that began with “non-formal” legislation in the form of a Presidential

Decree (PNPS) contains several material defects.

Article 1 of the Law confirms:

Every person is prohibited from publicly telling, encouraging or seeking public support, to make an interpretation of a religion that is held in Indonesia or to conduct religious activities that resemble the religious activities of that religion; which interpretations and activities deviate from the main points of the religious teachings.

Judge Harjono, who submitted a concurring opinion in the judicial review of the Law at the Constitutional Court, stated that the 1945 Constitution had been amended. In these changes there are two elements that must be considered, namely: (1) religious protection; (2) the right of freedom to adopt a belief. The relationship between the two elements must be united in a formula that does not negate each other. In this connection, Judge Harjono was of the view that the adoption of the Law on the Religious Defamation can lead to an imbalance. Therefore it undermined the desire to find a balance between the two elements.⁴⁸

According to Harjono, from the editorial point of view, Article 1 of the Law contained ambiguity. Thus it did not meet the requirements of criminal acts which should have been clear (*lex certa*). For this reason, he suggested the Legislative Bodies to revise the Law on the Religious Defamation.

One thing for certain is that the Law cannot give the certainty for the implementation of the right of religion / belief for citizens. The law also cannot guarantee that discriminatory treatment in the exercise of one's religious rights and beliefs will not occur. This is caused by the fact that the law contains material elements whose meanings are unclear or contain many interpretations. These facts were recognized by all constitutional judges who examined the review process of this Law.

48 Margiyono and associates., *"Bukan Jalan Tengah"* Public Examination of Constitutional Court Decision Regarding Judicial Review of Law Number 1 / PNPS / 1965 on the Prevention of Religious Abuse and / or Defamation, The Indonesian Legal Resource Center (ILRC), Jakarta, 2010, p. 76.

These conditions also indicate that the law is inadequate to provide certainty to carry out the right to religion / belief without violation and discrimination.

Thus, the fundamental errors in the Law - as explicitly illustrated in the formulation of Article 1 above - include: 1) the government discriminates the adherents of religions with interpretations that are subjectively judged to be “incompatible” with the majority’s interpretation, 2) the state intervenes too deep into the deepest private spaces (*internum forums*) of its citizens, even to the interpretive space in their minds and hearts, 3) the state does not guarantee legal certainty for all citizens by forming and implementing laws governing abstract and absurd objects and substances.

In addition, this law also contains material defects related to the proceedings against the religious abuse and defamation. This law does not regulate the legal mechanisms that must be carried out by law enforcement officers. When a person or an organization is suspected of committing an offense, a reprimand or a warning is given. Reprimands and warnings can be given without investigations or proofs. These conditions allow arbitrary actions and treatments of discrimination to occur in the exercise of the rights to religion and belief.

Therefore, elements of civil society – including SETARA Institute – proposed a judicial review of the PNPS Law material to the Constitutional Court. Through the Decision Number 140 / PUU-VII / 2009 in the Judicial Review of Law Number 1 / PNPS / 1965, the Constitutional Court stated that the Law was constitutional, and the petition was rejected. However, the Constitutional Court acknowledged that this Law had weaknesses that required changes. In point [3.71] of its legal opinion, the Constitutional Court stated that:

Considering that the Court can accept the views of experts such as Andi Hamzah, Azyumardi Azra, Edi OS Hiariej, Emha Ainun Nadjib, Siti Zuhro, Jalaludin Rakhmat, Ahmad Fedyani Saifuddin, Taufik Ismail, and Yusril Ihza Mahendra, who stated the need of revision of the Law on Prevention of the Religious Defamation, both in the formal scope of legislation and in substance in order to have material elements that are more clarified so that in practice they do not cause misinterpretations.

However, because the Court does not have the authority to make improvements to the editorial and scope of content, but may only declare the constitutional or unconstitutional status, then given that the substance of the Law on the Prevention of the Religious Defamation as a whole is constitutional, the Court cannot cancel or change the editorial. Therefore, it becomes the authority of the legislative bodies to improve it to be perfect, through the normal legislation process.⁴⁹

Whatever controversy is behind it, in the end the law remains a positive law in the national legal hierarchy. Until now the Law remains the basis for the formation of several regulations.

Thus, we can inference that the PNPS Law is actually not compatible with human rights doctrines and theories in terms of derogation and limitations. In addition, the PNPS Law also contradicts the normative and legal framework of human rights. It even tends to open space for violations of freedom of religion / belief as a constitutional right of every citizen, both community and state, in various forms of violations both in the form of direct action (by commission) and in the form of implementing discriminatory regulations (by rule).

With an objective background that the PNPS Law is problematic from several aspects, the state must develop a new legislative policy that is corrective to the Law. The state, in that context, must take adequate measures to prevent violations of freedom of religion / belief.

Through the new normal legislative politics, the state in this case the government and / or the House of Representatives (Dewan Perwakilan Rakyat / DPR), must create the formation of a new Law. The formation of the new law must be based on the urgency and perspective of human rights.

Some basic references for new legislation to replace the PNPS Law are as follows:

49 Ismail Hasani (Ed.), Judicial Review Decision Law No. 1 / PNPS / 1965 on the Prevention of Religious Abuse and / or Defamation Against the 1945 Constitution in the Constitutional Court, Setara Institute Publication, Jakarta, 2010, p. 336.

1. The new law must be based on the constitutional guarantee of freedom of religion / belief contained in the 1945 Constitution of the Republic of Indonesia.
2. The new law must negate discriminatory and stimulative legal realities against violations of freedom of religion / belief in Indonesia.
3. The new law must provide legal and material certainty to avoid the vulnerability of politicization and criminalization on the basis of religious Abuse and Defamation.
4. The new Law drafted through the normal legislative process should be oriented towards eliminating discrimination and intolerance of religion / belief.

The momentums of the new legislation have actually been present since the last administration period. The Politico-legal dynamics of the last five years have enabled the formation of the new law. Several factors that have enabled the legislation process include:

1. The Constitutional Court of the Republic of Indonesia mandated the establishment of new laws or revisions to Law No. 1 / PNPS / 1965 concerning the Prevention of Religious Abuse / Defamation.
2. The House of Representatives of the Republic of Indonesia together with the Government included the Religious Harmony Bill (Kerukunan Umat beragama / KUB) in the National Legislation Program.
3. National Legislation Program (Program Legislasi Nasional / Prolegnas) 2009-2014, which meant that the Religious Harmony Bill or the like should be on the agenda of discussion of the House of Representatives of the Republic of Indonesia. The fact is just the opposite.
4. The government opened up the possibility of the revision of Joint Decree of the Minister of Religious Affairs and the Minister of Interior No. 9 and No. 8 of 2006 on the Guidelines for the Duties of Mayor / Vice Mayor for Inter-Religious Harmonization and the Empowerment the Inter-Religious

Harmony Forum and the Establishment of the Places of Worship; and the Joint Decree of Minister of Religious Affairs, the Attorney General and the Minister of Interior No. 3 of 2008 No. KEP-033/A/JA/6/2008 and No. 199 of 2008 on Warning and Order to the Believers, Members, and or Board Members of the Indonesian Ahmadiyya Community (Jemaat Ahmadiyya Indonesia / JAI) and Community Members.

5. Elements of civil society have contributed to the possibility of revising a number of laws and regulations.
6. The latest events have been the accelerators of the preparation of the PNPS Law legislation and its derivative regulations.

Unfortunately, these momentums were passed by, both by the last period government and the House of Representatives. Therefore, there is no other choice for the government of this period to hasten the drafting of new legislation to compile the Law in lieu of the PNPS Law. That is a test for the government, whether they will uphold the constitution and the ideals of the law relating to diversity - especially in religion / belief- or they will submit to the demands of the intolerant groups and will continue to witness violations after violations of freedom of religion / belief in this country of *Pancasila*.

F. Strengthening Criminalization in the Penal Code Bill

Lately, there has been deterioration in the institutionalization of the criminalization of religion / belief through the Penal Code Bill. This Bill was agreed upon by the government and the House of Representatives to be enacted but it was rejected by the public. Based on the draft of the Penal Code Bill, the result of an internal government meeting on June 25, 2019, criminal offenses against religions are regulated in six articles, namely Article 313 to Article 318. The six articles are placed in Chapter VII with the title Criminal Acts against Religion and Religious Life.

In the assessment of SETARA Institute and several civil society organizations that are members of the *Coalition for Freedom of Religion or Belief Advocacy*, the articles in the Penal Code Bill are problematic. The articles on religion in the Penal Code Bill increasingly open the spaces for discrimination, conflicts, and legitimacy of acts of intolerance in the community.

There are several issues noted by the SETARA Institute. First, naming the title is not accurate. Chapter VII identifies religions as the subjects of the law. Meanwhile, the adherents of religions are the ones who should be the subjects of the law. This situation raises serious problems because it will not guarantee legal certainty. Religions should not be able to represent themselves in the legal process.

Second, uncertainties will also arise because of the large potential for multiple interpretations because religion is not singular. These multiple interpretations open the space for discrimination. There are so many religious interpretations, not only in the interfaith spectrum, but also in one religion. The state opens the space for discrimination if only one interpretation of religion is used as the basis for criminal acts against religions.

Third, apart from the matter of religious nomenclature, several articles also contain multiple interpretations that have the potential to open the space for the emergence of discriminatory practices, such as the use of the word insult in article 313. Article 313 of the Penal Code Bill states that:

Every person in public commits an insult to the religion adhered to in Indonesia shall be liable to a maximum imprisonment of 5 (five) years or a maximum fine of Category V.

The ‘insult’ nomenclature emphasizes the institutionalization of the criminalization of beliefs that has occurred all this time. Penal Code Bill should regulate acts and hate speech to protect religious adherents from crime. Another problem also arises in Article 315 on the unclearly formulated incitement. It has the potential to target those who only persuade others to embrace a religion. Article 316 on making commotion near buildings where religious practices are taking place also has the potential to trigger persecutions. The word “commotion” can have multiple interpretations because what categorized as commotion is not clearly explained.

Fifth, expansion of the religious defamation nomenclature includes the omission of religion. The original intent of the elimination of religion was clearly targeting the atheists. But in terms of *lex scripta*,

there is no clear element of punishment for the negation of religion. Therefore, it has the potential to extend the criminalization of the expression of belief and conscience towards groups labeled as atheists, such as left-wing activists in Indonesia.

In general, the articles regarding the Penal Code Bill restrictively institutionalize the criminalization of religion / belief. In addition to not providing guarantees of legal certainty, the articles in the Chapter on criminal acts regarding religion are substantively contrary to the 1945 Constitution and the universal tendency regarding guarantees of the rights of the international forum and the external forum in the freedom of religion/ belief.[]

CHAPTER 5

Intolerance and Intolerant Regional Legal Products

A. Background

Freedom of religion / belief is a human right that is universally applicable and codified in international human rights instruments. The legality of the right to freedom of religion and belief is in harmony with the freedom of thought and attitude according to conscience. Thus, this right is also categorized as a non derogable right.⁵⁰ The principle of non-derogable rights emphasizes absolute rights, and therefore cannot be suspended or postponed under any circumstances.⁵¹

Freedom of religion / belief has obtained guarantees of freedom

⁵⁰ The Indonesian Legal Resource Center (ILRC), *Kompilasi Hasil Penelitian Putusan Pengadilan dan Kebijakan Daerah Terkait Hak-Hak Atas Kebebasan Beragama/Berkeyakinan*, ILRC, Jakarta, 2014, p. 1.

⁵¹ The rights in the principle include: the right to life (to not be killed), the right of self intact (to not be tortured, kidnapped, ill-treated, raped), the right to be free from slavery, right of freedom of religion, thought and belief, the right to be treated equally before the law, the right not to be imprisoned on the ground of his / her failure to fulfill a contractual obligation and the right not to be criminalized due to the retroactive law. In that sense, all types of acts which may cause the annihilation of someone's or a group of people's rights of freedom of religion, as an element of non-derogable rights, can be categorized as human rights violations. See Ismail Hasani dan Bonar Tigor Naipospos (eds), 2011, *Mengatur Kehidupan Beragama; Menjamin Kebebasan Beragama? Urgensi Kebutuhan RUU Jaminan Kebebasan Beragama/Berkeyakinan*, (Jakarta: SETARA Institute, 2011, *Mengatur Kehidupan Beragama; Menjamin Kebebasan Beragama? Urgensi Kebutuhan RUU Jaminan Kebebasan Beragama/Berkeyakinan*, Jakarta: SETARA Institute.

in the Indonesian Constitution contained in Article 29 and in Article 28E of the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 concerning Human Rights, Law No. 29 of 1999 concerning Ratification of the Convention on the Elimination of All Forms of Racial Discrimination, Law No. 11 of 2015 concerning Ratification of the Covenant on Economic, Social and Cultural Rights, and Law No. 12 of 2005 concerning Ratification of the Covenant on Civil and Political Rights. All of these provisions explicitly guarantee the rights and freedom of religion and belief which must be fulfilled, protected, and recognized by the state.⁵²

However, as presented in various reports, the trend of freedom of religion / belief is still relatively high and there have been no significant breakthroughs in the past 10 years. When explored, one of the causes of violations of freedom of religion / belief is the dynamics of regional autonomy that create regional policies or discriminatory regional legal products. On the other hand, referring to Article 10 paragraph (1) of Law Number 23 of 2014 concerning Regional Government, it is explained that religion is one of the 6 absolute government affairs. In paragraph (2) of the a quo Law, it is explained that in carrying out absolute government affairs, the central government (a) self-implements; or (b) delegates authority to vertical agencies⁵³ existing in the region or governor as a representative of the central government based on the principle of deconcentration.

One example of the prominent intolerant-discriminatory regional legal products is the West Java Governor Regulation No. 12 of 2011 concerning the Prohibition of the Activities of the Indonesian Ahmadiyya Congregation in West Java. In addition to clearly having intolerant-discriminatory content, this regional legal product has also become a justification for the acceleration of intolerant acts. SETARA Institute has noted that 72 regional regulations are categorized as intolerant which limit the freedom of religion / belief of minority groups, including Ahmadiyya, Shia, Millah Abraham, and others. This

52 The Indonesian Legal Resource Center (ILRC), *loc.cit.*

53 Article 1 point 10 defines vertical agencies as a set of ministries and / or non-ministerial government institutions that attend to government affairs and that are not submitted to autonomous regions within a certain area in the context of deconcentration.

report covers regional legal products that have been passed since 2000.⁵⁴

Intolerant-discriminatory regional legal products are the impacts of complete / real decentralization which is not accompanied by preventive mechanisms as mitigation instruments for the potential adoption of intolerant-discriminatory norms in regional laws and regulations. As a result, in addition to the actual emergence of legal products that have the potential to contradict the Constitution, there are also the strengthening of identity politicization, political branding, and institutionalization of discrimination through regional legal products which in the construction of human rights is a form of violation by rule.

To date, there has not been any management of the intolerant-discriminatory regional legal products. The government together with the House of Representatives (Dewan Perwakilan Rakyat / DPR) actually facilitated the revival of local (adat) laws through the adoption of the principle of living law in the Penal Code Bill (Kitab Undang-Undang Hukum Pidana / KUHP). Through the article that regulates the legal provisions that live in the community or living law in Article 2 jo. Article 598,⁵⁵ the potential inflation of regional legal products with religious content can have an impact on the strengthening the institutionalization of intolerance-discrimination. Potential problems arise because of the lack of clarity between the living law in a society and the customary law. Thus, when it was to be regulated in a local regulation (as explained in the Penal Code Bill on September 15, 2019), it had the potential to create discriminatory local regulations or

⁵⁴ Ikhsan Yosarie and associates., *Dampak Produk Hukum Daerah Diskriminatif Terhadap Pelayanan Publik*, Jakarta : SETARA Institute 2019, p. 18.

⁵⁵ Article 2 paragraph (1) regulates that the provisions referred to in Article 1 paragraph (1) shall not reduce the enactment of living law in a society which determines that a person is liable to be punished even if the act is not stipulated in the legislation. Then in paragraph (2) it is regulated that the living law in a society as referred to in paragraph (1) applies in the place where the law lives and as long as it is not regulated in the legislation and in accordance with the values contained in Pancasila, the 1945 Constitution of The Republic of Indonesia, human rights, and general legal principles recognized by civilized society. Article 598 paragraph (1) of the Penal Code Bill regulates that every person who commits an act which according to the law that lives in the community is declared as a prohibited act, is threatened with criminal punishment. In paragraph (2) then stipulates that the criminal referred to in paragraph (1) is in the form of fulfilling customary obligations as referred to in Article 66 paragraph (1) letter f.

regional legal products.⁵⁶ In the government discussion with the House of Representatives on August 28, 2019, the government even admitted that it had not performed a research on the application of “living law in the society”. Research in the form of compilation of customary law would only be carried out after the Penal Code Bill was passed in a 2 year transition period.⁵⁷ The unclear adoption of living law in the Penal Code Bill has the potential to add to the list of intolerant-discriminatory regional legal products in the future.

The existence of intolerant-discriminatory legal products erodes the guarantee of protection, free from discrimination by every citizen. Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia has mandated that every person is free from discriminatory treatment on any grounds and has the right to receive protection from such discriminatory treatment. As part of human rights, in accordance with paragraph (4) and paragraph (5) of the a quo article, protection, promotion, enforcement and fulfillment of human rights are the responsibilities of the state, especially the government and their implementations are guaranteed, regulated, and stated in laws and regulations.⁵⁸ The existence of these intolerant-discriminatory legal products clearly has denied the mandate of the Constitution which emphasizes the principle of non-discrimination against all Indonesian citizens and the obligation of the state to protect. Due to the fact that the legal products are the basis of ongoing discrimination, the National Commission on Violence Against Women (Komnas Perempuan) calls it the institutionalization of discrimination.⁵⁹

56 ICJR, Sep 20, 2019, *Pasal-Pasal Dalam RUU KUHP yang Menjadi Perhatian Publik*. Can be accessed at <http://icjr.or.id/data/wp-content/uploads/2019/09/Tanggapan-atas-Keterangan-Menkumham-tentang-RKUHP.pdf>.

57 *Ibid.*

58 *Ibid.*

59 According to the National Commission on Violence Against Women (Komnas Perempuan), the initiation and implementation of this policy did not only allow the practice of discrimination to continue to live in the community, but they also created situations that showed state institutions to be the initiators and direct perpetrators of acts of discrimination against citizens. These situations are referred to as the institutionalization of discrimination, Kamala Chandrakirana, and associates, 2010, *Atas Nama Otonomi Daerah: Pelembagaan Diskriminasi dalam Tata Negara-Bangsa*, Jakarta: Komnas Perempuan, National Commission on Violence Against Women, p. 1.

Intolerant-discriminatory policies are originated from discriminatory practices found in the community, including discrimination based on religion, local belief, race, gender and other identities. The presence of the intolerant-discriminatory regional policies do not only perpetuate the practice of discrimination in people's lives, but also position the discrimination practices as legal actions in national and state governance with state institutions and government agencies as the initiators and direct perpetrators of acts of discrimination against citizens.⁶⁰

The obligations of the government to protect, promote, fulfill and respect human rights values as mandated by Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia must be done *simultaneously*. When one obligation is performed, the other obligations must also be performed. At that point, the government must be consistent in upholding human rights.⁶¹

Therefore, the obligation to provide guarantees, protection, promotion of human rights, specifically the right to freedom of religion / belief for every citizen lies with the state. The state acts as the duty bearer. The state is not allowed to delegate these obligations to non-state actors to carry them out. Because, the implementation of state obligations by non-state actors will open the space for violations of guarantee of freedom of religion / belief. In addition, it will also open the space for the emergence of groups in the name of religion to commit violence against people of different beliefs.⁶²

B. Measuring Framework

1. Human Rights

Article 1 point 1 of the Law of the Republic of Indonesia No. 39 of 1999 defines human rights as a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, upheld and protected by the state, law, government, and all people in order to protect human dignity and worth.

⁶⁰ *Ibid.*, p. 17.

⁶¹ Halili, *op.cit.*, p. 7.

⁶² *Ibid.*

Furthermore, in point 6, it is explained that human rights violations mean all actions by individuals or groups of individuals including the state apparatus, both intentional or unintentional, that unlawfully diminish, oppress, limit, or revoke the human rights of an individual or group of individuals guaranteed by the provisions set forth in this Law and who do not or may not obtain fair and total legal restitution under the prevailing legal mechanism.

Although the basic nature of human rights cannot be eliminated or revoked and is fundamental in every human being, according to Syracuse principle that has been agreed upon, there are two treatments towards the implementation of human rights, namely non-derogable rights (rights of which the fulfillment cannot be delayed or postponed) and derogable rights (rights of which the fulfillment can be delayed or postponed). The legality of the right to freedom of religion / belief is in line with the freedom of thought and attitude according to conscience. Thus this right is also categorized as a non derogable right.

The principle of non-derogable rights emphasizes absolute rights, and therefore cannot be suspended or postponed in any situations or conditions. All types of acts that can result in the loss of the right of a person or group of people to freedom of religion, as one element of non-derogable rights, can be classified as violations of human rights.

Violation of the right to freedom of religion or belief is a form of the State's failure or negligence in implementing it, such as interfering with an individual's freedom or not protecting an individual or a community who becomes the target of intolerance or criminal acts based on religion or belief. Thus, freedom of religion or belief violations are acts of omission, revocation, limitation or reduction of an individual's fundamental rights to freedom of religion or belief undertaken by the State institutions, in form of both active acts (by commission) and omission acts (by omission).⁶³

The terminologies of human rights related to freedom of religion and belief are intolerance and discrimination. Intolerance derives from the belief that one's own group, belief system or way of life is superior to those of others. It can produce a range of consequences from simple lack of civility or ignoring others, through elaborate social systems

63 *Ibid.* p. 16.

such as Apartheid, or the intentional destruction of people in the perpetration of genocide. Such actions originate from the denial of a person's fundamental values.⁶⁴

While discrimination means "all limitations, affronts or ostracism, both direct and indirect, on grounds of differences in religion, ethnicity, race, group, faction, social status, economic status, sex, language, or political belief, that results in the degradation, aberration, or eradication of recognition, execution, or application of human rights and basic freedoms in political, economic, legal, social, cultural, or any other aspects of life."⁶⁵

2. Constitution and Legislations

Article 28E of the 1945 Constitution of the Republic of Indonesia has confirmed the guarantee of freedom of religion / belief, which states:

- (1) *Every person is free to worship and to practice the religion of his choice, to choose education and schooling, his occupation, his nationality, his residency in the territory of the country that he shall be able to leave and to which he shall have the right to return.*
- (2) *Every person has the right to be free in his convictions, to assert his thoughts and tenets, in accordance with his conscience.*

Based on above two instruments of human rights as well as the Constitution of the Republic of Indonesia, it can be summarized that the operational definition of freedom of religion/belief includes the freedom to adopt a religion or beliefs of his/her choice, either individually or in community with others, and in public or private to manifest his religion/belief in worship, observance, practice and teaching, including the freedom to change his religion / belief as well as the freedom not to adopt a religion / belief.⁶⁶

64 UNESCO, *Tolerance: The Threshold of Peace. A teaching/Learning Guide for Education for Peace, Human Rights and Democracy* (Preliminary version). (Paris: UNESCO, 1994), p. 16.

65 Article 1 of Law No. 39, 1999 on Human Rights.

66 *Ibid.* p. 15.

In addition to providing guarantees and rights of religion/ belief as non-derogable rights, the 1945 Constitution also regulates the relationship between the State and religion as well as the status or position of the State in the context of respect and protection of these rights, as stipulated in Article 29 of the 1945 Constitution, as follows:

- (1) *The state is based on the belief in the One and Only God.*
- (2) *The state guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief*

The constitutional guarantees are implicated in the perceptions as well as the more detailed demand of derivative policy, as the following:

1. the state should guarantee the protection and the space for every citizen to practice his / her religion and belief.
2. the state should not create any prohibitions and hindrances for citizens to practice their religions and beliefs.⁶⁷

While in the context of legislation, Indonesia has a number of laws and regulations. Article 2 of Law No. 39 of 1999 concerning Human Rights explains that:

The Republic of Indonesia acknowledges and holds in high esteem the rights and freedoms of humans as rights which are bestowed by God and which are integral parts of humans, which must be protected, respected and upheld in the interests of promoting human dignity, prosperity, contentment, intellectual capacity and justice.

Then in Article 3 of Law No. 39 of 1999, which states that that:

1. *Everyone is born free and equal in dignity and human rights, and is bestowed with the intellect and reason to live with others the spirit of brotherhood.*
2. *Everyone has the right to be recognized, guaranteed, protected, and treated fairly and is entitled to equal legal certitude and treatment before the law.*
3. *Everyone has the right to protection of human rights and basic*

⁶⁷ See Ismail Hasani (ed), *Dokumen Kebijakan Penghapusan Diskriminasi Agama/Keyakinan*, (Jakarta: Setara Institute, 2011), page 81.

human freedoms, without any discrimination

Furthermore, in article 5 of Law No. 39 of 1999, that:

1. *Everyone is recognized as an individual who has the right to demand and obtain equal treatment and protection as befits his or her human dignity before the law.*
2. *Everyone has the right to truly just support and protection from an objective, impartial judiciary.*
3. *All members of disadvantaged groups in society, such as children, the poor, and the disabled, are entitled to greater protection of human rights.*

In addition, there are also Law No. 29 of 1999 concerning the Ratification of the Convention on the Elimination of All Forms of Racial Discrimination, Law No. 11 of 2015 concerning Ratification of the Covenant on Economic, Social and Cultural Rights, and Law No. 12 of 2005 concerning the Ratification of the Covenant on Civil and Political Rights. The various laws and instruments above emphasize the guarantees of freedom of religion / belief, including by prohibiting the formation of policies that are contradictory or inconsistent with the guarantees of freedom contained in the Constitution or other laws and regulations.

By using these regulatory benchmarks, a number of regional policies in the form of Local Regulations (Peraturan Daerah/ Perda), Regional Head Regulation (Peraturan Kepala Daerah / Perkada), and circular letters are indicated to be in conflict with the guarantee of religious / belief freedom because they provide justifications for the practice of intolerance.

3. International Provisions

There are three international provisions that serve as references regarding intolerant policies, namely the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, and the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Beliefs.

First, Article 1 of the Universal Declaration of Human Rights (UDHR) which mandates that:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Then also the Article 2 of the Universal Declaration of Human Rights (UDHR), which states that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Second, Article 2 point 1 of the International Covenant on Civil and Political Rights, that states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Then in point 3, which mentions that:

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Third, Article 2 point 1 of the Declaration on the Elimination of

All Forms of Intolerance and Discrimination Based on Religion or Beliefs, which mandates:

No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or belief.

Then Article 4 of the same declaration, regulates that:

Paragraph (1): All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

Paragraph (2): All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter.

4. Analysis Methods

In analyzing regional legal products, SETARA Institute firstly formulates the definition of intolerance. In relation to religious intolerance, SETARA Institute distinguishes between passive and active intolerance. Passive intolerance is the residue of complete religious beliefs and interpretations of religious teachings which are believed to be the only truth for people as individuals and social beings. Cognitively, they still believe in the teachings of their religions. However, as a consequence of social relations with various parties of different backgrounds they inevitably accept this reality and adapt.⁶⁸

On the other hand, people with active intolerance do not only see religious teachings as the only truth but also tend to see those with different interpretations of the same religion and also the teachings of other religions as false and heretical. The most obvious difference between those with passive intolerance and active intolerance is their actions. Those who are in the category of active intolerance do not

68 Halili, *op.cit.*, p. 23.

only express themselves through statements but also through actions.⁶⁹

Referring to the basic meaning of discrimination and the term of regional legal products, the intolerant-discriminatory regional legal products can be defined as regulations issued by the regional government, both at the provincial or district / city level. Those regulations are in the form of *regeling* such as local regulations, regent regulations, mayor regulations, governor regulation, or in the form of *beschikking* such as decrees.⁷⁰ Included in regional legal products are circular letters, guidelines issued officially by the government, which contain discriminatory norms. They both directly and indirectly limit, harass, or isolate human differences on the basis of religion, belief, ethnicity, race, group, class, socio-economic status, gender, language and political orientation, which results in the reduction, deviation or elimination of recognition, implementation of human rights and basic freedoms in the life of both individuals and collectives in the political, economic, legal, social, cultural, and aspects of life.⁷¹

To test whether a regional policy (as well as other policies) is discriminatory or not, analysis methods are carried out in three levels.⁷² The *first* level is the purpose of forming regional policies. This test can be carried out by using the content analysis method for regional policies or through analyzing the perception of the initiators and the parties involved in the formulation of the objectives of the regional policies.

The *second* level is the impact caused by the presence and implementation of regional policies. This can be done through the method of observation, interviews with parties who are the targets of the implementation of regional policies and analysis of public perception in general. The *third* level is the practice of democracy in the process of policy formulation. The main attention is paid to the extent to which citizens, without exception, can actively participate in the process of formulating and monitoring policies that are part of their constitutional rights as citizens.

⁶⁹ *Ibid.*

⁷⁰ Ikhsan Yosarie and associates, 2019, *Dampak Produk Hukum Daerah Diskriminatif...*, *op.cit.*, p. 14.

⁷¹ *Ibid.*

⁷² Kamala Chandrakirana and associates, 2009, *Atas Nama Otonomi Daerah...*, *op.cit.*, p. 17.

C. Intolerant Regional Law Products Map

Studies on regional legal products with various focuses have been carried out by various institutions and individuals since 2008. Some of the studies have been carried out by Robin Bush (2008),⁷³ the National Commission on Violence Against Women / Komnas Perempuan (2009),⁷⁴ SETARA Institute (2008),⁷⁵ Michael Buehler dan Dani Muhtada (2016).⁷⁶

More specifically, the National Commission on Violence Against Women (Komnas Perempuan) noted that from 1999-2009 there were 154 discriminatory policies due to the fact that they criminalized women, controlled women's bodies, and due to the partiality in certain groups. The number then increased to 421 in 2016. While Buehler and Dani Muhtada (SEA Research, 2016), recorded 422 discriminatory legal products in Indonesia (shari'a and non-shari'a clusters) throughout 1998-2013. Then Buehler (Cambridge, 2016), mentioned there were 443 discriminatory legal products in Indonesia in the same time span.

The various focuses can be seen in the brief descriptions of the above researches. For example, the National Commission on Violence Against Women focused the research on regional legal products related to discrimination against women in general. Then Buehler focused the research on the sharia and non sharia clusters. Thus, this research focuses on aspects of local legal products that are intolerant towards adherents of religions / beliefs. This choice then automatically focuses on the religious-based legal products or religious perceptions. These

73 Robin L. Bush, Regional "Sharia" Regulation in Indonesia: Anomaly or Symptom, 2008, in Greg Fealy dan Sally White, *Expressing Islam: Religious Life and Politics in Indonesia*, Institute of Southeast Asian Studies, Singapore, p. 174.

74 Kamala Chandrakirana and associates, *Atas Nama Otonomi Daerah: Pelembagaan Diskriminasi Dalam Tatanan Negara-Bangsa*, Jakarta: National Commission on Violence Against Women / Komnas Perempuan, 2009.

75 Ismail Hasani and associates., *Berpihak dan Bertindak Intoleran, Intoleransi Masyarakat dan Restriksi Negara dalam Kebebasan Beragama/Berkeyakinan*, Jakarta: SETARA Institute, 2009, p. 23-24.

76 Michael Buehler dan Dani Muhtada, *Democratization and the Diffusion of Shari'a Law: Comparative Insights from Indonesia*, Southeast Asia Research, Vol. 24, No. 2, (261-282), 2016 dan Michael Buehler, *The rise of shari'a by-laws in Indonesian districts: An indication for changing patterns of power accumulation and political corruption*, South East Asia Research, 16, 2, p. 255-285.

regional legal products are examined in the perspective of human rights. Aside from being forms of politicization of identity (religion), the legal products are also constitutionally problematic, because they conflict with the guarantees of citizens' constitutional rights.

In 2019, SETARA Institute recorded 145 regional legal products in Indonesia that had the potential to be intolerant of certain adherents of religions / beliefs throughout 2001-2019. They were divided into several types, namely: Governor Regulations (4), Regional Regulations (62), Aceh Qanuns (5), Joint Decrees (9), Decrees (18), Circular Letters (28), Regent / Mayor Instructions (4), Regent / Mayor Regulations (14), and Nagari Regulation (1).

Meanwhile, groups that had the potential to become victims of direct intolerance were the Ahmadiyya Community, Shia community, Millah Abrahah community, Christians, Women, and adherents of Fajar Nusantara Movement (Gerakan Fajar Nusantara / Gafatar). While groups that had the potential to become victims of indirect intolerance were civil servants, students, business people, and citizens in general.

The forms of intolerance experienced were classified into 4, namely (1) the right to freedom of religion / belief, (2) the right to freedom of worship, (3) the right to freedom from discrimination, and (4) the right to religious expression.

1. Direct and Indirect Intolerance

From 145 regional legal products, 37 regional legal products caused direct intolerance, and 108 others caused indirect intolerance.⁷⁷ Violations by rule occurred because the formulation of norms in a regional legal product was contrary to the guarantee of citizens' constitutional rights and freedoms guaranteed by the 1945 Constitution of the Republic of Indonesia.⁷⁸

Legal products that caused direct intolerance were related to the prohibition of the spread of teachings or the activities of the Ahmadiyya Community, Shia, Millah Abrahah, Christians, and Gafatar. For example the Governor Regulation No.12 of 2011 concerning the Prohibition of

⁷⁷ Can be seen in Table 1 Chapter V.

⁷⁸ Ikhsan Yosarie and associates, 2019, *Dampak Produk Hukum Daerah Diskriminatif...*, op.cit, p. 15.

Activities of Ahmadiyah Congregations in West Java, Circular Letter of the Governor of South Sulawesi Number: 450/0224 / B. Welfare Year 2017 Regarding the Awareness and Anticipation of the Shia Community, Governor Regulation No. 9 of 2011 concerning the Prohibition of the Teachings of Millah Abraham in the Province of Aceh, Mayor Decree No. 503/367-Huk Regarding Cancellation of Decree No. 601/389-Pem of 2006 concerning the Establishment of Yasmin Church of Bogor City (Christians' church), and the Regent Regulation (Peraturan Bupati / Perbup) of Lebak Regency Banten Number 11 Year 2015 concerning the Prohibition of the Teachings of Gafatar.

Meanwhile, legal products that resulted in indirect intolerance were related to legal products that regulated the prohibition of commerce activities during the month of Ramadan, the dress codes for civil servants and students, and certain religious programs in the education sector.

In the context of direct intolerance-discrimination, the Ahmadiyya Community is a clear example of how legal products directly cause intolerance to occur. Referring to the data from the previous years, there were 244 cases of intolerance, discrimination and violence against the adherents of Ahmadiyya in various regions in West Java throughout 2007-2017. From the 244 cases found, 583 practices of discrimination in public services in 2 sectors. 285 of which were in the administration sector and 298 were in the service sector.⁷⁹

The enactment of the Cianjur Regency Regulation No. 03/2006 concerning the Commendable Community Development Movement or commonly referred to as the Good Moral Conduct (Gerbang Marhamah) Regulation was an example of the impact of intolerant-discriminatory regional legal products. The cases that occurred were not the purpose of the regulation, but they were the impacts of the implementation of the Good Moral Conduct (Gerbang Marhamah) Regulation, such as curfew regulations, mandatory to wear headscarves/hijabs in offices, and closing of food stalls in the month of Ramadan. In terms of the substance of the norms contained in Article 1 point 6 and its essence in Article 2, the regulation refers to one religion. Thus some of its implementations have the potential to be incompatible with other

79 *Ibid.*, p. 60.

religions / beliefs and potentially do not provide rooms of recognition for groups other than Islam.⁸⁰ According to one resident who was not a Muslim:

“... It is not so pleasant for the rest of us. Why not use terms that reflect equality more. In the end, we feel that it is not ours. We feel that we are not recognized. The spaces in the regional regulations are not for us, I think.”⁸¹

Then, according to another resident:

“... Cianjur City is known as a developed and religious city, but now after some discussions with friends, it has become an Islamic and not a religious city anymore. I wish that if religious values are to be highlighted, other cultural facilities should also be added.”⁸²

2. Distribution of the Intolerent Legal Products

The recorded 145 intolerant regional legal products were spread in 73 cities / regencies and 21 provinces in Indonesia. Those regions were Sukabumi Regency (7), Banjar Regency (5), Tasikmalaya City, Bulukumba Regency and Indramayu Regency respectively (4 each), Padang City, Banjarmasin City, Depok City, Serang City, and Pekanbaru City (3).

Meanwhile, at the provincial level, they were spread in the top 5 provinces. Those provinces were West Java (34), West Sumatra (26), South Kalimantan and South Sulawesi (12), Nanggroe Aceh Darussalam and Banten (10), and East Java (7).

⁸⁰ *Ibid.* p. 57.

⁸¹ SETARA Institute interview with Hendra from the Indonesian Christian Church (GKI), Cianjur, Feb 17, 2019.

⁸² SETARA Institute interview with Willy from the Indonesian Social Community of the Chinese People (Paguyuban Sosial Marga Tionghoa Indonesia/ PSMTI), Cianjur, Feb 17, 2019.

Table 10.
Distribution of the Intolerant Legal Products (Provinces and Total)

No.	Provinces	Total
1	West Java	34
2	West Sumatera	26
3	South Kalimantan	12
4	South Sulawesi	12
5	Aceh	10
6	Banten	10
7	East Java	7
8	East Nusa Tenggara	6
9	Riau	5
10	North Sumatera	3
11	South Sumatera	3
12	Southeast Sulawesi	3
13	Jambi	2
14	Riau Islands	2
15	Central Java	2
16	East Kalimantan	2
17	Gorontalo	2
18	Bangka Belitung	1
19	Jakarta	1
20	West Kalimantan	1
21	North Sulawesi	1
Total		145

D. Limited Mechanisms Regarding the Intolerant Legal Products

The issuance of discriminatory regional legal products shows that the mechanisms available in the Indonesian constitutional system have not worked effectively. On one hand, the authority of the Minister of Interior regulated in Article 251 of Law No. 23 of 2014 concerning the Regional Governments in order to cancel the existing provincial and district / city regional legal products have been canceled by the Constitutional Court (Decision No. 137 / PUU-VIII / 2015). Similarly, the authority of the provincial government to cancel district / city legal products has also been canceled by the Constitutional Court. On the other hand, Preventive authority and design of supervision over the formation of regional legal products have not been effective.

How do central, provincial and district / city governments respond to the existing intolerant legal products and prevent the formation of intolerant regional legal products in the future?

1. Normative Framework for Handling Intolerant-Discriminatory Regional Legal Products.

Previously, there was an episode where the central government had full authority in responding to the growth of local regulations and other regional legal products which were considered to contain problems. Even though they were not fully intended to respond to the existence of intolerant-discriminatory regulations, regulations contained in Law 32/2004 could actually have been the solutions for the government.

Law No. 23 of 2014 concerning the Regional Governments regulates the handling of regional inconsistencies through Article 251 (1), which states that “*Provincial Laws and regulations that conflict with the provisions of the governor’s legislation higher, general interest, and / or decency canceled by the Minister.*” While in paragraph (2) Article 251 it is explained that the Regency / City Regulations and regents / mayors regulations that are in conflict with the provisions of the higher laws, public interests, and / or decency are canceled by the governor as the representative of the Central Government. However, if the governor as a representative of the Central Government does not cancel the Regency / City Regulations and regents / mayors regulations that conflict with the provisions of the higher laws and regulations, then the task can be

taken over by the Minister of Interior.

Such design as regulated in Law No. 23 of 2014 is an effective and repressive way to respond to problems related to regional legal products that are not in accordance with the higher regulations, including those that are intolerant-discriminatory. Through the Law, as many as 3,143 local regulations deemed contrary to higher laws and regulations were canceled in 2016. The local regulations canceled were related to the economy, investment and taxation except for one local regulation regulating the prohibition of prostitution. The Ministry of Interior actually had planned to also cancel other regional legal products which were discriminatory in the next episode.

However, such authority had been annulled by the Constitutional Court in two material tests at once. First, the Constitutional Court Decision No. 137 / PUU-XIII / 2015 in April 2017. The decision annulled the authority of the Ministry of Interior regarding the cancellation of Regency / City Regulations and regulations of regents / mayors. as the Constitutional Court's ruling "granting the Petitioner's request throughout the review of Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) along the phrase '... cancellation of Regency / City Regulations and regent / mayor regulations as referred to in paragraph (2) are stipulated by the governor's decision as representative of the Central Government', Law Number 23 of 2014 concerning the Regional Government. " Second, the revocation of the authority of the Ministry of Interior through Decision of the Constitutional Court Number 56 / PUU-XIV / 2016. This decision was related to the cancellation of the local regulations by the governor and the minister. With this Constitutional Court ruling, the Minister of Interiors can no longer revoke Provincial Regulations.

The consideration of the Constitutional Court in canceling Article 251 was to uphold the principle of legal certainty in accordance with what is guaranteed by the Indonesian Constitution. The Constitutional Court also argued that Regency / City Regional House of Representatives (Dewan Perwakilan Rakyat Daerah / DPRD) and the Provincial Regional House of Representatives are representations of people's sovereignty in areas which are the legislative organs. Therefore, unilateral cancellations by the executive organ are contrary to the principle of rule of law. Legislative products can only be canceled through political reviews by their constituent organs, namely the legislative and executive elements

as well as through judicial reviews by the Supreme Court.

Even though repressive authority has been canceled, in fact the authority of the central government in handling discriminatory regional legal products can still be exercised. However, it is limited to regional legal products that have not been determined by the Regent / Mayor and Governor. The Minister of Interior still has the authority as stipulated in Article 242 Article 1-9 of Law No. 23/2014, the Minister of Interior Regulation No. 80/2015 concerning the Regional Legal Products and the Minister of Interior Regulation No. 120/2018 concerning the Amendment to Minister of Interior Regulation No. 80/2018. In addition, the normative framework can also refer to Minister of Law and Human Rights Regulation No. 2/2019 Concerning the Settlement of Disharmony between Laws and Regulations through Mediation.

In short, these provisions can still be used as a basis for the central government supervision to the provincial government and provincial government supervision to the district / city government. The essence of the supervisions is that all regional regulations must obtain clarifications and registration numbers from the higher government as a manifestation of the tiered role of government supervision in the Republic of Indonesia.

On the other hand, in the normative provisions in Law 12/2012 on the Formation of Laws and Regulations, if Law 23/2014 on Regional Governments which governs the subject matter of regional regulations and regional legal products is actually obeyed, there would not be any discriminatory local regulations. However, there is the problem of the government's willingness to supervise the formation of discriminatory local legal products and there is also a problem of the ineffective technical coordination between the Ministry of Interior and the Ministry of Law and Human Rights in ensuring the issuance of discriminatory regional legal products that are contrary to human rights. In addition, the strengthening of religious politicization and identity politicization as outlined in the regional legal products, has made it difficult to handle these problems.

2. Follow-up Measures

The plan to establish the National Legislative Center submitted by President Joko Widodo (1/17/2019) was the best opportunity to do two things at once: (1) to respond to existing intolerant-discriminatory

regional legal products that lead to political review recommendations in the regions they issued. Thus, they do not violate the decision of the Constitutional Court No. 137 / PUU-XIII / 2015 and No. 56 / PUU-XIV / 2016; and (2) to design and carry out an integrated and ongoing supervisory role in the draft local regulations and other regional legal products. The formation of this board requires the reconciliation of the supervisory authorities of the Ministry of Interior and the Ministry of Justice and Human Rights and at the same time it severs the authority 'tag of war' between the two ministries. To form this board, Jokowi only needs to issue a Presidential Regulation by gathering the executive authorities spread across the Ministries and the Provincial Governments as the main tasks of the new board. Strengthening the authority of the new board has also been justified by a limited revision of Law No. 12 of 2011 concerning the Procedures for the Formation of Regulations that gives the legitimacy to the establishment of the National Legislation Center. Limited revision is also needed for Law 23 of 2014 concerning the Regional Government, particularly concerning the procedures for establishing local regulations.

Parallel with the establishment of the National Legislation Center, the central government through the Ministry of Interior and the Ministry of Law and Human Rights needs to form a Task Force to compile a centralized regional policy index and a repository that produces data and recommendations for the revision / revocation of regional legal products, in a framework that does not conflict with the Constitutional Court Ruling.

Provincial and district / city governments that issue discriminatory regional legal products are encouraged to revise and restore the right to quality public services to affected communities, through 3 steps: (1) for Governor Regulations (Pergub), Regent Regulations / Mayor regulation (Perbup / Perwali), regional governments can revise them directly and / or the central government creates the absence of variable of discriminatory legal products as a requirement for accessing the Special Allocation Funds (Dana Alokasi Khusus / DAK) and / or appraisal variables in various indices compiled by the central government. (2) for regional legal products in the form of Regional Regulations, Governors and Regents / Mayors take the initiative to conduct legislative reviews through legislative mechanisms in the Provincial Regional House of Representatives (Dewan Perwakilan Rakyat Daerah / DPRD) and the

Regency / City Regional House of Representatives. (3) local governments make an immediate recovery of affected groups by fulfilling the rights to public services and or compiling new anti-discrimination public service guidelines.

As a manifestation of mainstreaming inclusive governance to prevent intolerance-discrimination, the provincial governments established Local Law Center (LLC) as a form of institutionalization of civil society participation in the formation of regional legal products. In addition to ensuring an effective consultation process, LLC will ensure the involvement of affected groups in the process of forming regional legal products. Governors only needs to issue Governor Regulations as a legal basis for the operation of the LLC, which consists of the Provincial Legal Bureau, Regional Office for Law and Human Rights, universities and civil society organizations.[]

CHAPTER 6

Places of Worship as Elements of Freedom of Religion / Belief

A. Guarantee of Right to Places of Worship

Based on the Constitutional Court Decision, a belief in God Almighty is a *forum internum* for everyone that must be assessed from an Indonesian perspective. Thus, it differs from the concept of freedom of religion / belief that exists and is adopted in other countries.⁸³ Similarly, the degree of respect for conventions and various international legal instruments must be judged based on the philosophy and constitution of the country.⁸⁴ In its 2009 decision, the Constitutional Court affirmed freedom of religion as one of the most basic and fundamental human rights. This right is agreed upon as an individual right that is directly attached and that must be respected, uphold and protected by the state, government and by everyone without exception for the honor and protection of human dignity.⁸⁵

In addition, guarantees of religious freedom have been established in a number of international legal instruments, including Article 18 of the Universal Declaration of Human Rights (Deklarasi Universal hak Asasi Manusia / DUHAM) and the International Covenant on Civil and Political Rights (ICCPR). Those legal instruments have been adopted both directly and indirectly in the Indonesian constitution through Law

83 Decision of the Constitutional Court Number 140 / PUU-VII / 2009, part of legal considerations, p. 273-4.

84 *Ibid*, p. 275.

85 *Ibid*, p. 276.

Number 39 Year 1999 concerning Human Rights and Law No. 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights.⁸⁶

The Constitutional Court distinguishes freedom of religion / belief in terms of expressing thoughts and attitudes to religion / belief or manifesting religious beliefs. The freedom of belief according to the Constitutional Court is an absolute freedom that cannot be limited by coercions or cannot be judged because the freedom of religion or belief is freedom that is in the mind and heart of a person. This is entirely a *forum internum* that cannot be limited but it is still not immune from various environmental influences.⁸⁷

While the freedom to manifest religions and beliefs is part of the *forum externum* because it involves relations with other parties in a society. Thus, the manifestations or forms of religious freedom can be limited.⁸⁸ The Constitutional Court affirms that a religion in the sense of implementing or practicing beliefs is the domain of the *forum externum* relating to the human rights of others which are related to social life, public interest, and the interest of the state.⁸⁹

In the language of the National Commission on Human Rights (Komisi Nasional Hak Asasi manusia / Komnas HAM), the personal aspect of believing in a religious value or norm, thought, or belief is related to the use of religious symbols. It is a private freedom within the realm of each individual (*forum internum*). Whereas the adherence to it (manifestation) is a form of personal freedom carried out in public spaces (public freedom) both collectively with other community members and interactively with other members of the society (*forum externum*).⁹⁰

In a more specific context, establishing places of worship is a right that cannot be separated from the religious freedom in general. The right to places of worship is believed to be the right that belongs

86 *Ibid*, p. 276-277.

87 *Ibid*, p. 288.

88 *Loc.cit*.

89 *Ibid*, p. 292.

90 National Commission on Human Rights: *Standar Norma dan Setting No. 02 "Kebebasan Beragama dan Berkeyakinan,"* (September 2019), p. 5-6.

to every religion.⁹¹ From the perspective of human rights described in the Constitutional Court Decision above, the establishment of places of worship is part of the *forum externum* which allows it to be limited.⁹² As stated in the General Comment on The Right to Freedom of Thought, Conscience and Religion, freedom to manifest a religion or belief can be manifested in the form of worship, obedience, practice and religious teaching that includes a variety of diverse actions. The concept of worship includes rituals and ceremonial activities which express a direct expression of belief, including various other inseparable practices, including establishing places of worship.⁹³

However, restrictions on the right to places of worship as part of the *forum externum* must still be carried out with the standards of restrictions set by human rights disciplines. In addition to the matter of restrictions, the establishment of places of worship is not merely a matter of a Building Permit of the place of worship (IMB) but it directly concerns the right of everyone to worship. Congregations can not practice their religions if the places of worship could not be established and they can not do so in peace if their presence is always disturbed and considered to cause unrest by the residents.⁹⁴ The issue of freedom of worship requires a guarantee of freedom to establish a place of worship. Interdependence is absolutely necessary because it is impossible for someone to worship without a place of worship.⁹⁵

In its development, the state has the obligations to fulfill the

91 Ihsan Ali-Fauzi and associates, *Kontroversi Gereja di Jakarta*, (Yogyakarta: Center for Religious & Cross-cultural Studies, 2011), p. 21.

92 Ismail Hasani, *Dimana Tempat Kami Beribadah? Review Tematik Pelanggaran Kebebasan Beragama/Berkeyakinan tentang Rumah Ibadah & Hak Beribadah, Januari-Juli 2010*, Jakarta, SETARA Institute, 2010, p. 14. The same thing was also stated by the Institute for Policy Research and Advocacy (Lembaga Studi dan Advokasi Masyarakat / ELSAM) through Siti Aminah & Uli Parulian Sihombing, *Memahami Kebijakan Rumah Ibadah*, (Jakarta: Delapan Cahaya Indonesia Printing – Canting Press, 2010), p. 5. See also Wahid Institute, *Laporan Tahunan Kebebasan Beragama/Berkeyakinan dan Intoleransi 2014* The Wahid Institute, (Jakarta: The Wahid Institute, 2014), p. 9.

93 Office of the High Commissioner for Human Rights, General Comment No. 22: *The right to freedom of thought, conscience and religion (Art. 18)*: .30/07/93, point no. 4.

94 Ismail Hasani, *Dimana Tempat Kami Beribadah?...*, *op.cit.*, p. 14.

95 *Ibid.*, p. 15.

right to places of worship. Such example is the Decision of the Bosnia Herzegovina Human Rights Commission in a legal case between the Islamic Community in Bosnia and Herzegovina vs The Republic of Srpska. The Bosnian Human Rights Commission explains the positive obligations of the state to effectively, reasonably and appropriately protect places of worship and other sacred religious sites.⁹⁶ In the context of countries belonging to the wider European Union, it agrees to provide free access to places of worship.⁹⁷

B. Quantity and Types of Disruptions to Places Of Worship

SETARA Institute noted that throughout 2018, there were 20 acts of disruption to places of worship. Most of the disruptions (13 acts of disruption) were directed to Churches. In addition, there were 4 acts of disruption were targeted to mosques, 2 acts to Hindu temples and 1 act to a Pagoda. Throughout this year, there were no disruptions to monasteries, synagogues or places of worship of adherents of certain religious beliefs. The following is the table of the places of worship disruptions.

Table 11.
Disruptions of Places of Worship in 2018

Places of worship of Adherents of Religious Beliefs	0
Churches	13
Pagoda	1
Mosques	4

96 Siti Aminah & Uli Parulian Sihombing, *Memahami Kebijakan Rumah Ibadah*, *op.cit.*, p. 5-6.

97 *Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-Operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-Up to the Conference*, (1989), Number (16.4).

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Hindu Temples	2
Snagog	0
Monastery	0
Total	20

In addition, based on the results of monitoring conducted by the SETARA Institute from 2007 to 2018 or during the 12-year period, there were 398 total disruptions to places of worship. Disruptions were afflicted to churches (199 acts of disruption), mosques (133), places of worship of adherents of religious beliefs (32), monasteries (15), pagodas (10), Hindu temples (8) and a synagogue.⁹⁸

Table 12.
Disruptions of Places of Worship from 2007 to 2018

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Jumlah
Places of worship of Adherents of Religious Beliefs	2	0	3	2	2	4	4	3	2	1	9	0	32
Churches	7	7	13	35	32	22	34	13	17	6	0	13	199
Pagodas	0	0	0	0	0	3	0	0	0	0	6	1	10
Mosques	4	22	7	16	20	9	24	8	11	7	1	4	133
Hindu Temples	0	1	0	0	0	1	1	2	0	0	1	2	8
Synagogues	0	0	1	0	0	0	0	0	0	0	0	0	1
Monastery	0	1	3	3	2	3	2	0	0	1	0	0	15
Total	13	31	27	56	56	42	65	26	30	15	17	20	398

Based on the mapping in the past 12 years, the escalation of

⁹⁸ Processed from the Freedom of Religion/ Belief database of SETARA Institute, 2019.

disruptions to places of worship occurred consecutively from 2010 to 2013 and decreased in 2014.⁹⁹ There were 56 disruptions of places of worship in 2010. This figure is inversely proportional to the previous year, as there were 27 disruptions of places of worship. There were 56 disruptions to places of worship in 2011, 42 disruptions in 2012, and 65 disruptions in 2013.¹⁰⁰

Quantitatively, the total number of attacks to churches did exceed the number of attacks or disturbances to mosques. When the number of places of worship of the religious groups throughout Indonesia is compared to the number of attacks or disturbances received by the places of worship of those groups, then the ratio of attacks on churches and mosques is 6: 1 or if it is reversed, there is 1 disruption to a mosque and 6 disruptions to churches.

The calculation is as follows:¹⁰¹

(a) Total number of churches (Catholic and Protestant) = 70.394

$$\text{Thus: } \frac{\text{Number of Distruptions}}{\text{Number of Places of Worship}} \times 100\% = \frac{199}{70.394} \times 100\% = 0.3\%$$

(b) Total number of mosques = 296.797

$$\text{Thus: } \frac{\text{Number of Distruptions}}{\text{Number of Places of Worship}} \times 100\% = \frac{133}{296.797} \times 100\% = 0.05\%$$

Recalling the historical record of the invasion and disruptions to churches from 1969 to 2006, this comparison is not surprising. There were more than 1000 churches throughout Indonesia that were destroyed during such time period.¹⁰² As Melissa Crouch described in

99 Attacks to places of worship that have increased this year are attacks on churches. Setara Institute noted that the escalation of attacks to places of worship, especially to adherents of Christian continued to increase when compared to the previous year. There were 17 acts in 2008; 18 acts of violation in 2009 that targeted the adherents of Christians in various forms and in 2010 from January to July, there were 28 incidents of violations of freedom of religion / belief. Setara Institute: *dimana tempat kami beribadah?*, *op.cit*, p. 3.

100 *Loc.cit*.

101 The Ministry of Religious Affairs of the Republic of Indonesia in Figures 2016 'Ministry of Religious Affairs in Figures 2016,' (Jakarta: Secretariat General of the Ministry of Religious Affairs, 2017), p. 50.

102 Data of Hera Diani & Muninggar Saraswati's in their writing "Doubts Dog

her journal, before the Joint Ministerial Decree of 1969, from 1945 to 1966 (the Soekarno era) only 2 churches were destroyed. Whereas in the Soeharto era (1966-1998), 456 churches were destroyed. The destructions of churches increased during the President Habibbi era, 156 churches were destroyed. Then during the President Abdurrahman Wahid era, there were 232 churches destroyed and under the leadership of President Megawati, 68 churches were destroyed.¹⁰³

Disruptions to places of worship can be in the form of sealing, vandalism,¹⁰⁴ arson, forcing an agreement to relocate the places of worship,¹⁰⁵ rejections of the establishment of places of worship, prohibitions of the establishment of places of worship,¹⁰⁶ forced closure,¹⁰⁷ revocation of licenses targeting churches or places of worship that have already been established, revocation on plans for the construction of churches, even for churches that have legally obtained building permits,¹⁰⁸ closure of access roads leading to places of worship,¹⁰⁹ the dissolution of worship activities followed by the destruction of places of worship,¹¹⁰ threats and intimidations of assault to places of worship, insistence on closure of places of worship, forced termination of construction of places of worship, signs removal of places of worship,

Revised Decree on Places of Worship” in the Jakarta Post on March 24, 2006 and quoted through the journal of Melissa Crouch, *Regulating Places of Worship in Indonesia: Upholding Freedom of Religion For Religious Minorities?*, (Singapore Journal of Legal Studies, 2007), p. 101.

103 Melissa Crouch, *Regulating Places of Worship in Indonesia: Upholding Freedom of Religion For Religious Minorities?*, (Singapore Journal of Legal Studies, 2007), p. 101.

104 Ismail Hasani, *Mengenal lokus diskriminasi dalam PBM 2 menteri ‘Legal Review terhadap Peraturan Bersama Menteri Agama dan Menteri Dalam Negeri No. 9/2006, No. 8/2006 tentang Pedoman Pelaksanaan Tugas Kepala Daerah/Wakil Kepala Daerah dalam Pemeliharaan Kerukunan Daerah dalam Pemeliharaan Kerukunan Umat Beragama, Pemberdayaan Forum Kerukunan Umat Beragama, dan Pendirian Rumah Ibadat,’* Jakarta, SETARA Institute, 2010, p. 2.

105 Ismail Hasani, *Dimana Tempat Kami Beribadah?*, *op.cit.*, p. 5.

106 *Loc.cit.*

107 *Ibid*, p. 6.

108 *Ibid*, p. 3.

109 Processed from SETARA Institute’s Freedom of Religion/ Belief database, 2010.

110 Processed from SETARA Institute’s Freedom of Religion/ Belief database, 2011.

bombings,¹¹¹ and attacks with sharp weapons.¹¹²

Some examples of disruptions to places of worship cases, based on a series of forms of disruption to places of worship, were the cases of the establishments of places of worship that had lasted for about a decade, namely GKI (Gereja Kristen Indonesia /Indonesian Christian Church) Yasmin in Bogor City, West Java and HKBP (Huria Kristen Batak Protestan / Filadelfia Batak Protestant Christian Church) in Bekasi Regency, West Java. According to the Supreme Court's decision, as their legal force, the churches had won the cases. However, to this day the Supreme Court's decision is 'defeated' by the pressure from the intolerant groups who do not approve of the existence of these churches.¹¹³

Recently, the Bogor City Government finally revoked the building permit of the GKI (Gereja Kristen Indonesia /Indonesian Christian Church) Yasmin whose constructions were half completed. The permit was revoked due to the strong pressure of the intolerant groups.¹¹⁴ This issue was in line with the report of the Center for Religious and Cross-cultural Studies (CRCS) which detected the dysfunction of the local government officials in responding to the pressure of intolerant groups regarding the establishment of places of worship. Local governments frequently revoked bulding permits of places of worship due to the strong community pressure.¹¹⁵

111 Setara Institute's data on the freedom of religion and belief in 2013 dan 2016.

112 *Serangan terhadap Gereja di Slemen, Lima Luka-luka* through <https://www.voaindonesia.com/a/serangan-terhadap-gereja-di-sleman-lima-luka-luka/4248611.html>, on October 12, 2019, at 7 PM. Compare data on violations of religious and belief freedom issued by Wahid Institute. Violations of freedom of religion and belief related to disruption to places of worship are in the form of sealing places of worship, worship restrictions in places of worship, prohibitions of worship in places of worship or can be manifested in the form of omission of mass executions of places of worship. See Wahid Institute, *Annual Report on Freedom of Religion / Belief*, Op.cit., p.12.

113 Setara Institute's Press Conference, Combating Intolerance in the Year of Politics, March 31, 2019, p. 9.

114 *Curahan Hati Jemaat GKI Yamin, Terusir dari Gerejanya Sendiri*, through <https://nasional.kompas.com/read/2017/11/12/22395911/curahan-hati-jemaat-gki-yasmin-terusir-dari-gerejanya-sendiri>, on October 12, 2019 at 3 p.m.

115 Ihsan Ali-Fauzi and associates, *The Controversy of Churches in Jakarta*, op.cit., p. 22.

C. Actors and motives

State or non-State actors are violators of freedom of religion / belief, especially related to places of worship. This can be seen in the SETARA Institute's Freedom of Religion / Belief report. Throughout 2018, there were 9 rejections of the construction of places of worship and 7 acts of destruction of places of worship by non-state actors.¹¹⁶ Meanwhile, the State actors were accountable for affirming the strong pressure on the refusal of a place of worship. For example, the Sawangan Community Forum (Formas / Forum Masyarakat Sawangan/) insisted the Al-Hidayah Mosque in Depok Sawangan, which was a place of worship of the Ahmadiyya Congregation, to be sealed. This community used the Indonesian Ulema Council (Majelis Ulama Indonesia/ MUI) edict as the basis for its legitimacy against the mosque.¹¹⁷ The edict considered the Ahmadiyya community as misguided and prohibits any Ahmadiyya activities. The Sawangan Community Forum demanded the State to ban all Ahmadiyya activities. Finally, the local government through the Civil Service Police Unit (Satuan Polisi Pamong Praja / Satpol PP) granted the request by repeatedly sealing the Al-Hidayah Mosque in Sawangan.

The same rejection was also given towards the Pentecostal Church in Indonesia (Gereja Pantekosta di Indonesia / GPdI) in Sedayu, Bantul Regency. The Regional Government of Bantul, specifically the Bantul Regent, revoked the Building Permit (Izin Mendirikan Bangunan / IMB) of a place of worship that had been owned by GPdI. This was done by the Regent to end the polemic that occurred between the groups who rejected the church and the church founding group.¹¹⁸

The motives for the disturbances to places of worship vary depending on the types. Disturbances to churches, for example, are based on the fear of Christianisation of the Muslim community around

116 Setara Institute's Press Conference, *Combating Intolerance in the Year of Politics*, March 31, 2019, p. 3.

117 *Ribuan Warga Depok Dukung Penyegehan Masjid Ahmadiyah* through <https://www.rappler.com/indonesia/berita/172472-ribuan-warga-depok-dukung-penyegehan-masjid-ahmadiyah>, on October 8, 2019, at 1 p.m.

118 *Pemkab Bantul Batalkan IMB Gereja, Ini Penjelasan Bupati* through <https://yogyakarta.kompas.com/read/2019/07/29/20090781/pemkab-bantul-batalkan-imb-gereja-di-sedayu-ini-penjelasan-bupati?page=all>, on October 12, 2019, at 8 p.m.

the churches. The fear then triggers the disruptions of the churches, despite the fact that the community did not question the existence of the churches at first. However, when the issue of Christianization was developed, the community began to question churches Building Permits, whether or not the churches were in accordance with PBM of 2006 (Joint Regulation of The Minister of Religion and The Minister of Internal Affairs of 2006 / Peraturan Bersama Menteri Agama dan Menteri Dalam Negeri Tahun 2006).¹¹⁹

A place of worship which was used by the Shinsei Bukkyo Buddhist community in Citarunggal Village, Babakan Madang District in Bogor was rejected by the local people. Residents came to the place of worship and protested against the ongoing worship activities. The protest was carried out because the place of worship was not licensed.¹²⁰

Whereas one case of disruption to a mosque occurred at the Imam Ahmad bin Hanbal Mosque in the Bogor which was rejected by the local community. At the end of 2017, the Government of Bogor City, specifically Bima Arya, the mayor of Bogor city, suspended the Building Permit (Izin Mendirikan Bangunan / IMB) of the Mosque on the grounds of social unrest in the community. However, in October 2018, the Bandung City Administrative Court thoroughly granted the suit filed by the Imam Ahmad bin Hanbal Mosque. Thus, based on this decision, the Decree of the Mayor of Bogor, which suspended the mosque's Building Permit, had to immediately be revoked.¹²¹

Problems related to the places of worship establishments or various types of problems of interference actually have the same motives as the intensity of the increasing incidents of violations of freedom of religion / belief. In addition to the intolerant political ideology and aspirations in a region, the intolerant groups also use the issue of the legality of places of worship as political capital and the da'wah to strengthen the

119 Ihsan Ali-Fauzi, *Sengketa Rumah Ibadat di Indonesia, Mengevaluasi Peran Forum Kerukunan Umat Beragama*, (Jakarta: Pusat Paramadina, 2019), p. 10.

120 *Warga Protes Gedung Jadi Tempat Ibadah*, through <https://poskotanews.com/2018/09/26/warga-protas-gedung-jadi-tempat-ibadah/>, pada 12 Oktober 2019, pukul 8 p.m.

121 *Masjid Imam Ahmad Bin Hanbal Bogor Menang Perkara IMB*, through <http://www.moeslimchoice.com/read/2018/10/13/14479/masjid-imam-ahmad-bin-hanbal-bogor-menang-perkara-imb>, on October 12, 2019, at 10 p.m.

bargaining power in the eyes of the authorities. For regional heads who have low pluralistic visions, the temptation of small groups with big voices is then capitalized as part of an identity politics strategy, both to subdue political opponents and to maintain and expand new political support. Thus, one of the main issues in establishing places of worship is the capacity and leadership of a regional head.

Technically, the establishment of places of worship is also problematic because of intolerant-discriminatory legal products that justify the refusal of places of worship each year. The fact that houses of worship are part of the externum forum which can be limited by the state, becomes the government's reason to restrict the establishment of places of worship without daring to break through legal restrictions as manifestations of tolerant leadership.

D. Intolerant - Discriminative Legal Basis

In the midst of the Indonesian government's verbal commitment to protect the freedom of religion / belief of its citizens, the commitment to take adequate steps to investigate, punish and provide solutions to cases of violations of freedom of religion / belief,¹²² there are still no visible effort by the central government to eliminate various regulations at the central and regional levels which form the basis of the lasting legitimacy of violations of freedom of religion and belief at the provincial or district / city level. Various laws and regulations at the national level such as Law 1 / PNPS / 1965 and other provisions that have restricted the freedom of religion / belief are still applied today.¹²³

In the context of the establishment of places of worship, there are

122 UN General Assembly: *Human Rights Council 'Working Group on the Universal Periodic Review Twenty-Seventh session', National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 "Indonesia,"* page 15. In addition, the Indonesian government of basically also promised to conduct a review of various laws, regulations and policies, including regional regulations that are not in line with the spirit of religious freedom and the culture of tolerance. UN General Assembly, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 "Indonesia," p. 16.

123 United Nations General Assembly: Human Rights Council 'Working Group on the Universal Periodic Review Twenty-seventh session,' *Compilation on Indonesia "Report on the Office of the United States High Commissioner for Human Rights,"* p. 5.

a series of laws and regulations both at the central and regional levels that become the obstacles towards the right to build houses of worship for citizens.¹²⁴

1. **Joint Ministerial Decree of The Minister of Religious Affairs and The Minister of Interior of No. 9 / 2006 and No. 8 / 2006**

Up to this day, there are no clear references to the rules regarding the establishment of places of worship and there are still differences in rules between places of worship for religion and belief groups. The Joint Ministerial Decree of the Minister of Religious Affairs and the Minister of Internal Affairs regarding the Guidelines for Implementing Duties of Regional Heads / Deputy Regional Heads in Maintaining Religious Harmony, Empowering Forum for Religious Harmony, and Establishing Places of Worship (Pendirian Rumah Ibadat / PBM), which was established in 2006 and specifically regulates the establishment of places of worship, is seen as a moderate solution by the government.¹²⁵ However, the Joint Ministerial Decree has unintended effects. It causes tensions among religious groups and results in difficulties to gain access to establish places of worship.¹²⁶

Despite the existence of the technical requirements, administrative requirements and special requirements for the establishment of places of worship,¹²⁷ the Joint Ministerial Decree did not set the minimum conditions for the establishment of places of worship so that it triggered conflicts in the community. The Joint Regulations requires 90 congregations and 60 supporters in order to establish places of worship

124 United States Commission on International Religious Freedom, in the annual report on International Religious Freedom related to Indonesia (2019).

125 Ismail Hasani, *Dimana Tempat Kami Beribadah?..*, op.cit., p. 15.

126 United States Commission on International Religious Freedom, in the annual International Religious Freedom report on Indonesia (2019). The Joint Regulation is essentially unenforceable because it is discriminatory and can be used to institutionalize discrimination. Setara Institute, *Recognizing the Locus of discrimination in the Joint Regulation of The Minister of Religion and The Minister of Internal Affairs*.

127 See Joint Regulation of the Minister of Religion and Minister of Home Affairs Number 9 of 2006, Number 8 of 2006 concerning Guidelines for Implementing Duties of Regional Heads / Deputy Regional Heads in Maintaining Religious Harmony, Empowering Religious Harmony Forums, and Establishing Places of Worship, Article 13 and Article 14.

in one area. Such provision often makes it difficult to gain access to build places of worship. In reality, many congregations do not live in the area where the places of worship are established.¹²⁸

In addition, the Joint Regulation is used as a basis for the legitimacy of the actions of hardliners and various intolerant groups to accuse the absence of permits or the existence of misused permits to protest the existence of places of worship and they urge the local government to seal the places of worship.¹²⁹ The minimum requirement in the Joint Ministerial Regulation becomes a problem in the effort to obtain a Building Permit of a place of worship. In reality, the hardliners try to pressure local people to oppose the constructions of places of worship of certain religious groups.¹³⁰

To Melissa Crouch, the requirement to gain permits to build places of worship was an unrealistic provision and it is contrary to religious freedom possessed by everyone.¹³¹ According to her, the provision of 90/60 discriminates the minority religious groups that had less than 90 members. Melissa argued that permits to build a place of worship should not be based on the size of a religious group, but it should be granted because it is people's right to have a place of worship.¹³²

A similar opinion was stated by Ismail Hasani, who expressed that the use of quantitative considerations of congregations in granting permits for the establishment of places of worship was not in accordance with the guarantee of freedom of religion / belief. The provisions restriction of the establishment of places of worship in order to limit the rights of citizens of other countries of different religions, only gave

128 Drs. Maad Umar, MPd, *Akar Konflik Karena Tidak Saling Memahami Tradisi Agama*, accessed through http://www.wahidinstitute.org/v1/Programs/Detail/?id=17/hl=id/Akar_Konflik_Karena_Tidak_Saling_Memahami_Tradisi_Agama, On October 8, 2019, 12 p.m.

129 United States Commission on International Religious Freedom, in the annual report on International Religious Freedom related to Indonesia (2019).

130 *Ibid.* A similar opinion was expressed by Melissa Crouch. The Joint Regulation is used as a tool for hardline Islamic groups to justify the sealing of places of worship for minority groups. See Melissa Crouch, *Regulating Places of Worship in Indonesia: Upholding Freedom of Religion For Religious Minorities?*, (Singapore Journal of Legal Studies, 2007), p. 98.

131 Melissa Crouch, *Regulating Places of Worship in Indonesia*, *op.cit.*, p.109.

132 *Ibid*, p. 111.

excessive protection to Muslims.¹³³ This is evident from the comparison of the number of mosques that are significantly massive compared to the number of churches throughout Indonesia today.¹³⁴ Therefore, the Joint Ministerial Regulation which still uses the minority and majority paradigms, and the quantity of congregations¹³⁵ cannot be enforced.

In her Journal, Melissa Crouch also illustrated how difficult it was for Christians to collect 60 signatures from local people in a city that was dominated by Muslim residents. This difficulty will get worse for minority groups like Ahmadiyya. These minority groups can actually face violence from radical Islamic groups if they want to establish places of worship. The same thing can be questioned to Christians, how many Christians are willing to support the establishments of mosques in areas dominated by Christians.¹³⁶

Melissa Crouch also paid attention to the recommendation requirements that must be obtained from the local regent / mayor. Unfortunately, the Joint Ministerial Decree does not contain further provisions governing standards or considerations when recommendations should be issued by regional heads. Melissa Crouch concluded that minority religious groups were not able to meet the conditions required by the Joint Ministerial Regulation.¹³⁷

A similar opinion was also expressed by Ihsan Ali-Fauzi and associates in the book entitled *Kontroversi Gereja di Jakarta* (The Church Controversy in Jakarta). According to him, the Joint Ministerial Decree had the opportunity to discriminate several aspects:¹³⁸

- (a) Politicization of authority of regional government in issuing Building Permits (Izin Mendirikan Bangunan / IMB).

133 Ismail Hasani, *Mengenal Lokus Diskriminasi dalam PBM 2 Menteri*, *op.cit.*, p. 11.

134 There are 296,797 mosques and 70,394 Catholic and Protestant churches. See the Ministry of Religious Affairs in Figures in 2016 'Ministry of Religious Affairs in Figures 2016,' *op.cit.*

135 Ismail Hasani, *Mengenal Lokus Diskriminasi dalam PBM 2 Menteri*, *op.cit.*, p. 12.

136 *Ibid.*

137 *Ibid.*

138 Ihsan Ali-Fauzi and associates, *Kontroversi Gereja di Jakarta*, *op.cit.*, p. 37.

One example was the authority to issue Building Permits in exchange for votes from certain groups to win the Local Leaders Election (Pemilihan kepala Daerah / Pilkada). In some regions prospective regional heads promised to issue Building Permits providing they won the elections. Problems occurred when the prospective regional heads use the authority to issue the Building Permits for places of worship in order to inhibit the rate of growth of non-Islamic places of worship.¹³⁹

- (b) The Religious Harmony Forum (Forum Kerukunan Umat Beragama / FKUB) membership is based on the representation of the number of adherents of religions.

The Religious Harmony Forum's decision-making, based on the Joint Ministerial Decree, is done by consensus agreement, but in reality, it is often based on voting. This is detrimental to the representation of minority religions because it does not give rooms for the diversity of denominations in some religions.¹⁴⁰

- (c) Requirements for community support in the form of 60 Identification Cards (Kartu Tanda Penduduk / KTP) leads to discrimination.

Based on SETARA Institute research and supported by various other studies, they indicate that through the Joint Ministerial Decree, administrative requirements have become the extraordinary obstacles for the fulfillment of the right to religion and belief in Indonesia. One case was in Bekasi. The Filadelfia Batak Protestant Christian Church (Huria Kristen Batak Protestan / HKBP) in Jejalen Village, North Tambun, Bekasi was unilaterally sealed by 300 people on the basis that the church did not have the Building Permit required by the Joint Ministerial Decree.¹⁴¹ Other cases were the arson cases of the HKBP Church and the Pentecostal Church in Sibuhuan, Padang Lawas, North

139 *Ibid.*

140 *Ibid.*

141 Ismail Hasani, *Dimana Tempat Kami Beribadah?.., op.cit.*, p. 4.

Sumatra. The arson cases of those churches were based on residents' concerns as the number of their adherents was increasing and it troubled them. At the time, the churches had not fulfilled the requirements for the establishments of places of worship since the churches were built in 1992.¹⁴² Problems related to the Building Permits were also experienced by the Cilangkap Church in East Jakarta. The church was unable to obtain the permit because it was considered unsettling by the local community. The church had sought for the Building Permit for 12 years and still has not obtained it.¹⁴³

It can be concluded that there is a pattern of rejection of various places of worship. It is only based on public unrests. Moreover, the state does not act according to law but solely based on the pressure from the society.¹⁴⁴ Frequently, although the minimum requirements of 90/60 of the establishments of places of worship have been met, society's pressure is still able to defeat this administrative provision. As a result, The Religious Harmony Forum (Forum Kerukunan Umat Beragama / FKUB) prefers to negate minority groups by participating in banning the establishments of places of worship.¹⁴⁵

The basic rejection of places of worship that emphasizes on public unrests and completely negates the guarantee of freedom of religion / belief, which is an underderogable right, has severely violates human rights that it cannot be justified.¹⁴⁶ The proposition of public order cannot be used to limit a person's rights, without a clear relationship between the restrictions imposed by the social order who wishes to protect or destroy if such restrictions are not imposed.

In terms of its validity, the Joint Ministerial Decree is not justified in terms of both international and national law aspects, which require that human rights restrictions can only be done through law.¹⁴⁷ This is in

142 *Ibid*, p. 5.

143 *Persoalan IMB juga dialami Gereja Jemaat Kapel Katolik Stasi Capar Sumber Cirebon. Ibid*, p. 6 and 8.

144 *ibid*, p. 14.

145 Ismail Hasani, *Dimana Tempat Kami Beribadah?...*, *op.cit.*, p. 15.

146 *Loc.cit.*, and see also Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

147 Ismail Hasani, *Mengenal Lokus Diskriminasi dalam PBM 2 Menteri...*, *op.cit.*, p.11. See also Article 29 paragraph (2) of the Universal Declaration of Human

accordance with the Decision of the Constitutional Court which states that restrictions on freedom of religion and belief can only be carried out by law to guarantee recognition and respect for the freedom of others and meet fair demands in accordance with moral considerations, religious values, security and public order in democratic societies.¹⁴⁸ In addition, the Joint Ministerial Decree is also procedurally flawed, because it does not have a formal basis for the formation of a Ministerial regulation, which is indeed provided by the Constitution or the Law. A new norm can only be made through a Law made by the House of the People's Representatives (Dewan Perwakilan Rakyat / DPR) and the Government.¹⁴⁹

In addition to being problematic in terms of the basis of its formation and form / type of regulations, the Joint Ministerial Decree also contains substance that diverts responsibility to guarantee freedom of worship and establishing places of worship from the central government to local governments. Whereas based on Law No. 23 of 2014 concerning the Regional Government, religious issues are absolute matters of the central government which can only be carried out by them. Those matters can not just be delegated to vertical agencies in the region or governors as representatives of the Central Government not the regents / mayors as the Joint Ministerial Decree stipulates.¹⁵⁰

2. Regulation of the Governor of Aceh

In addition to adopting the requirements for the establishments of places of worship that are regulated in the Joint Ministerial Decree (2006) such as the real and serious needs based on the composition of

Rights (Deklarasi Universal Hak Asasi Manusia / DUHAM), Article 73 of the Human Rights Act, and Article 18 paragraph (3) of Law 12/2005 concerning Ratification of the International Convention on Civil and Political Rights.

148 Decision of the Constitutional Court Number 140 / PUU-VII / 2009, legal considerations, p. 288. Re-quoted in Decision of the Constitutional Court Number 56 / PUU-XV / 2017 which reexamined Law 1 / PNPS / 1965 concerning Prevention of Religious Abuse and / or Defamation in conjunction with Law 5 of 1969 concerning Statements of various Presidential Decrees and Presidential Regulations as Laws, p. 531.

149 *Loc.cit.*

150 See Article 10 along with the explanation of Law Number 23 of 2014 concerning Regional Government. See also Ismail Hasani, *Dimana Tempat Kami Beribadah?...*, *op.cit.*, p. 16.

the population, the uninterrupted public order, as well as the fulfillment of administrative and technical requirements of buildings, the Aceh Provincial Government strengthens the provisions of 90/60 regulated by the Joint Ministerial Decree (2006). Based on the Governor of Aceh Regulation No. 25/2007 concerning the Guidelines for the Establishment of Places of Worship, the minimum requirement for the establishment of a place of worship is to have at least 150 congregations in a place of worship and to receive support from the local community of at least 120 people in an urban village.¹⁵¹

Whereas based on the latest Aceh Qanun in 2016, which still governs the same provisions regarding permits for the establishments of places of worship, this number has decreased. In this latest Qanun, the provisions of 150/120 are reduced to 140/110. This means that the requirement for establishing a place of worship is to have 140 congregations in a place of worship and 110 supports from local residents.¹⁵²

Although there is a decrease in the amount of support for obtaining permits for the establishments of places of worship, these two Governor Regulations clearly contradict the Joint Ministerial Decree of 2006. Therefore, the impact produced by the Qanun is certainly worse than the Joint Ministerial Decree.¹⁵³

3. Other Regulations

In addition to the fact that the Joint Ministerial Decree often becomes an obstacle for religious groups to establish houses of worship, there are also opinions stated by certain religious institutions which become the basis or justification for the loss of the right to establish places of worship for a minority religious group. Indonesian Ulema Council (Majelis Ulama Indonesia / MUI) Fatwa (Edict) Number 11 / MUNAS / VII / MUI / 15/2005 on the Ahmadiyya states that Ahmadiyya is a heretical sect, therefore, the spread of Ahmadiyah teachings and all

151 See Article 2, 3, 4, and 5 of the Regulation of the Governor of Nanggroe Aceh Daerussalam Number 25 of 2007 concerning Guidelines for Establishing Places of Worship.

152 See Article 14 of the Aceh Qanun Number 4 of 2016 concerning Guidelines for Maintaining Religious Harmony and Establishing Places of Worship.

153 See the case of the establishment of the Aceh Singkil Church.

its activities must be banned. This fatwa is used as a basis for those who are against the Ahmadiyya adherents to seal their mosques. The MUI fatwa also serves as a justification for attacks on places of worship.

This fatwa has legitimacy in the Indonesian state administration. Law No 1 / PNPS / 1965 is a legal provision at the national level which forms the basis for the establishment of various regulations relating to religious minorities, including the Ahmadiyya. In the petition of judicial review of the PNPS Law, Ahmadiyya community argued that due to the existence of the Law, they could not express their religious practices because they were deemed to deviate from or pollute the Islamic teachings.¹⁵⁴ The limitation of religious manifestations or beliefs deemed deviant through the PNPS Law results in logical consequences, depriving Ahmadiyya community from the right to establish or own a place of worship as part of the *externum forum* on religious freedom.¹⁵⁵

154 Constitutional Court Decision Number 56 / PUU-XV / 2017, p. 529. The Ahmadiyya group in their petition argued that “... *the legal uncertainty experienced by the Petitioners is caused by the application of norms in Law No.1 / PNPS / 1965 through the Joint Decree (Surat Keputusan Bersama / SKB on Ahmadiyya), regional head regulations, and provincial and district / city regional government decisions which serve as the basis for sealing and even destroying mosques where the Petitioners used to worship. In which case, according to the Petitioners, the Joint Decree and the regional government decisions were formed based on the norms of Article 1, Article 2, and Article 3 of Law 1 / PNPS / 1965 which have various interpretations.*”

155 In the petition filed by the Ahmadiyya , the Constitutional Court is of the opinion:

“... every religious community is guaranteed the right and freedom to have a religion and worship according to their respective beliefs. However, when a person wishes to interpret the teachings of religion, the person is bound by the main reference of that religion ... Interpretation cannot be done as freely as possible on the basis of the rights and freedoms of individuals to practice religion and beliefs. As when the freedom to interpret religion is done or left freely to each individual, chaos in practicing religion will occur. “ Ibid, p. 530.

This ruling closes the potential of entirely different beliefs and religions that are deemed deviant. This decision pretends to be uniform in belief and religion. Thus, religious understanding that is different from the majority cannot be accepted. As it is stated that “*The role of the state is not intended to limit one’s beliefs (forum internum), but rather intended to limit religious expression through public conscience statements and attitudes (forum*

In addition, the Joint Decree of the Minister of Religious Affairs, Attorney General, and the Minister of the Interior ban all forms of Ahmadiyya's religious activities because they are deemed to deviate from Islamic teachings.¹⁵⁶ It can be concluded that the provisions prohibiting the Ahmadiyya, both in terms of *lex generalist* and *lex specialist* namely the existence of the PNPS Law, the Joint Ministerial Decree which was supported by the MUI opinion, have made it difficult for the Ahmadiyya adherents to exercise their freedom. Not surprisingly, the emergence and perpetuation of the prohibition of this community have indirectly become the basis for the legalization of the disappearance of the right to places of worship which is an inseparable part of freedom of religion and belief.¹⁵⁷

Referring to the various legal bases described above, there are a number of things that can be concluded in guaranteeing the freedom to establish places of worship for citizens:

- (1) In various cases of violations of religious freedom, especially which guarantees for places of worship show that there are no clear concepts of who the perpetrators and who the victims are in such cases of the violation. In order to preserve

externum) so as not to deviate from the main points of religious teachings adopted. " *Ibid*, p. 530 and 532.

156 Whereas in the context of freedom of religion and belief, the State is obliged and responsible to respect, protect and fulfill the right to freedom of religion and belief. Komnas HAM further defines that respect means not intervening in freedom of religion and belief. In this case the state does not label whether a religion or belief is 'official', 'legal', or 'true', 'heretical' or 'wrong'. The state protects means that there are effective efforts made by the state to prevent violations of freedom of religion and belief, both from non-state and state actors. If there is a violation of freedom of religion and belief, the state immediately takes steps to correct or remedy the victims. Whereas the state fulfills the meaning that the state must provide adequate legal guarantees in the exercise of freedom of religion and belief, both in the form of legislation and in the form of policies. In addition, the state must also ensure that there are internal regulations of government institutions that bind every state apparatus to act and act in accordance with the norms of freedom of religion and belief. This obligation to fulfill is also implemented in the form of affirmative action for vulnerable groups and religious / belief minorities. National Commission on Human Rights: Standards and Norms No. 02 "Freedom of Religion and Belief," (September 2019), p. 26.

157 In the language of Paul Marshall who wrote *The Ambiguities of Religious Freedom in Indonesia* said that allowing the government or state to consult with large religious organizations in deciding whether or not a minority group is acceptable causes suppression of unpopular beliefs and marginalized minority groups.

the existing social order, victims (those who are attacked) are often given an obligation to limit their religious practices. Those religious practices are considered to cause offense, causing attacks, riots or mass mobilizations,¹⁵⁸ or other disruptions to places of worship.

- (2) Learning from the various arguments on the sealing of places of worship of religious minorities, the various instruments governing the establishment of houses of worship do not provide guarantees of protection of freedom of places of worship. These various regulations are in fact useful to protect the interests of the majority when they disagree on the establishments of places of worship of certain religious groups. The Mayor of Depok expressed that the Ahmadiyya mosque was sealed because the mosque was basically for the public, not for certain groups. This caused the Ahmadiyya community to lose their freedom to adhere to their religion or belief guaranteed by the constitution. Whereas, if Ahmadiyya opened its mosque to the public as expected by the Mayor of Depok, indeed this could be a boomerang to the Ahmadiyya as it would be considered or had the opportunity to spread religious teachings to the wider community. It can be concluded that any in forms of attitude toward minority religious groups, it is difficult to find justification for the right to places of worship except termination (termination) of religious activities that are considered to be deviant.
- (3) In various regulations, both at the central and regional levels, there are no guarantees of scope of the right to a rigid place of worship. In general, citizens are entitled, but the importance of emphasizing public opinion revokes the guarantee of that right. Therefore, the absence of legal certainty of the right to places of worship has become a trigger for the disruption to places of worship in various places. If the scope of guarantee of the right to establish a place of worship is clear and if the minimum requirements to establish of a place of worship are

158 National Human Rights Commission (Komisi Nasional Hak Asasi Manusia/ Komnas HAM): Standards of Norms and Setting No. 02 "*Kebebasan Beragama dan Berkeyakinan*," (September 2019), p. 21-22.

met or are within the specified scope, no matter how strong the demands from the society are, they can not be granted by the local government.¹⁵⁹

E. Good Practices Of the Guarantee of Establishing Places of Worship

Despite the many cases of disruption to places of worship which prevent them from being build or operating, or which cause them to operate but they always receive protests from the community and so forth, there are still good practices that are able to guarantee citizens the freedom of worship. These good practices are the administrative dispensation of permits for places of worship that had been established before 2006 in Gunung Kidul Regency and the law enforcement commitments of the Bekasi City Government.

1. Administrative Dispensation of Building Permits (Izin Mendirikan Bangunan / IMB) of Places of Worship in Gunung Kidul.

The rejection and activities termination cases of Pentecostal Church in Indonesia (Gereja Pantekosta di Indonesia / GPDI) in the village of West Tunggul in Gunung Kidul Regency began with the Community Service Program (Kuliah Kerja Nyata / KKN) for the college students of the Semarang Theological School in October 2010. The activities of the Community Service Program, which were conducted in the villages around the church, were started and closed with prayers of Christianity. This troubled the surrounding Muslim community and they worried about Christianization. The community finally complained and demanded that the religious services in the Church to be temporarily stopped because the church did not have Building Permit and asked Pastor Augustine to leave the church.¹⁶⁰

159 In the context of freedom of speech in America, the US Supreme Court determines the scope or boundaries of guarantee of freedom of speech (in the form of high context speech). Thus, any forms of opinions that are high context speeches, cannot be criminalized.

160 Ihsan Ali-Fauzi, *Sengketa Rumah Ibadat di Indonesia*, *Op.cit.*, p. 10.

Pastor Augustine finally chose to propose the restoration of his church to the Gunung Kidul Regional Government without having to go through court proceedings. The regent of Gunung Kidul finally gave Tommy Harahap, the most senior official in the government field, the authority. Tommy finally held a stakeholders meeting at the district level and stressed that there should be no statement given to the media or the public regarding the case being handled. At the last meeting, he stressed that there were some problems. The first problem was the unclear status of the church. According to those opposing the church, the church did not have a Building Permit, therefore, so it was not valid. Tommy then asked the stakeholders present at the meeting, what their demands were:¹⁶¹

“If a church does not have a Building Permit, then what should the government do?” Their representative said, “Just seal the church and don’t use it anymore.” I then told them: “Okay, if that’s the proposal, we [the local government] will seal any churches without permits. We will soon list the places of worship in Gunung Kidul of whatever religions. We will seal those places of worship.” They were surprised as thousands of mosques in fact did not have Building Permits. They refused this as their proposal could cause thousands of mosques to closed and prohibited from operating.”¹⁶²

In the following meetings, the stakeholders agreed to compromise: all the places of worship that had been established for a long time and had not obtained Building Permits were given the administrative dispensation and therefore be allowed to have legal status. “I welcome the proposal and I will compose a draft of the Regent Decree (Surat Keputusan Bupati / SK Bupati) regarding the administrative dispensation of the places of worship,” said Tommy. “Then, the regent will sign the decree, and now one problem is resolved. The Pentecostal Church in Indonesia (Gereja Pantekosta di Indonesia / GPDI) will have

161 *Loc.cit.*, p. 11.

162 Results of an interview with Tommy Harahap, the Assistant Regional One (Asisten Daerah 1 /Asda I), government official assigned by the Gunung Kidul Regent to address the issue of church closures, expulsions of pastors, and Christianization. Excerpted from the writings of Ihsan Ali-Fauzi, *Sengketa Rumah Ibadat di Indonesia: Mengevaluasi Peran Forum Kerukunan Umat Beragama* (Jakarta: Pusad Paramadina, 2019), p. 11.

a legal status based on the Regent's Decree."¹⁶³

The initiatives to collect data and the program of administration dispensation of permits for places of worship, carried out by the Regent of Gunung Kidul in Yogyakarta, are good practices¹⁶⁴ and can be used by other local governments to end problems regarding the establishments or the prolonged permit disputes of places of worship

2. Commitment of the Government of Bekasi City to Fulfill the Religious Rights

The Santa Clara Church in the North Bekasi District, Bekasi City is a church that experienced a long polemic in its establishment. For 21 years the church congregations had sought the establishment of the Catholic church until finally on August 11, 2019 the church was inaugurated by Bekasi Mayor Rahmat Effendi. This church obtained the Building Permit in 2015. However, there were refusals which came from various parties. The climax was a demonstration which was based on the argument that the Santa Clara Church was administratively flawed by hundreds of masses calling themselves the Bekasi Muslim Community Gathering Assembly (Majelis Silaturahmi Umat Islam Bekasi / MSUIB).¹⁶⁵

Six days after the big demonstration, a citizens' data verification trial was held to openly support the establishment of the church by calling 64 residents from the neighbourhood who supported the construction of the church. The data was then verified. The open trial was attended by the Bekasi City Religious Harmony Forum, the Verification Team from Harapan Baru Urban Village, the Verification Team from the North Bekasi District, the establishment committee of the Santa Clara Church, and the Verification Team from the Ministry of Religious Affairs. The National Commission on Human Rights (Komisi Nasional Hak Asasi manusia / Komnas HAM) coordinator for

163 Ihsan Ali-Fauzi, *Sengketa Rumah Ibadat di Indonesia: Mengevaluasi Peran Forum Kerukunan Umat Beragama*, (Jakarta: Pusat Paramadina, 2019), p. 12.

164 Setara Institute's Press Release, *Melawan Intoleransi di Tahun Politik*, 31 Maret 2019, p. 6.

165 *Jalan Panjang Pendirian Gereja Santa Clara di Bekasi Utara* through <https://bekasi.pojoksatu.id/baca/jalan-panjang-pendirian-gereja-santa-clara> on October 15 at 7 a.m.

Freedom of Religion / Belief evaluated the construction of the church in accordance with the procedures. Thus, the construction of the Santa Clara Church continued until it was officially inaugurated with a total of 8,515 congregations.¹⁶⁶

Under the leadership of the Mayor of Bekasi, Rahmat Effendi, issues of 4 problematic churches including the Santa Clara church have successfully been resolved. The other three were Mangseng Church, Galilee Church, and Kalamiring Church. The Mayor of Bekasi is the mayor who maintains the Building Permit policy that has been issued even though there is a massive rejection from the community.¹⁶⁷ Although this precedent can only be useful for large religious groups in quantity, this open and immediate verification practice can be used by other local governments to resolve disputes over places of worship that have not been resolved to date.[]

166 *Loc.cit.*

167 *Loc.cit.*

CHAPTER 7

Closing

A. Conclusion

Based on the previous reviews, several key conclusions can be drawn regarding the conditions of violations of freedom of religion / belief and the promotion of tolerance in Indonesia.

1. The 'stability' of the number of violations of freedom of religion / belief indicates that governments, both central and regional, show a strong political will in combating intolerance in the political year. This good will is reflected in several indicators that have accumulated since Joko Widodo and Jusuf Kalla ran for leadership in 2014. Those indicators, among others are as follows. 1] **The Nawa Cita document** (the nine priorities for Indonesia) which gave hope in the realization of human rights guarantees, including civil rights in the form of freedom of religion / belief. 2] **Discourse on the elimination of the religious column** in the identification cards (Kartu tanda penduduk / KTP) by the Ministry of Interior. The discourse helped encourage the improvement of fulfilling the rights of adherents of local belief to obtain equal administrative rights of citizenship as other citizens. 3] **Pancasila Ideology Development Board (Badan Pembinaan Ideologi Pancasila / BPIP)**. The establishment of the Presidential Working Unit for the Development of the Pancasila Ideology (Unit Kerja Presiden Pembinaan Ideologi Pancasila / UKP-PIP), which became the Pancasila Ideology Development Board in 2018, showed the government's strong political will to institutionalize ideas, attitudes and positions in combating intolerance, radicalism and violent extremism

through the intensification of fostering the ideology of Pancasila. It must be honestly acknowledged that the formation of this institution was the government's response to the concerns of many parties regarding the strengthening of religious identity accompanied by resistance to other different religions, the strengthening primordial sentiments or issues of ethnicity, religion, race and intergroup (Suku, Agama, Ras dan Antargolongan / SARA) particularly issues of religion in political public spaces. This is a good modality for promoting tolerance and ensuring equality in diversity management. However, it should also be noted that the institutionalization agenda of the Pancasila Ideology Development Board must also be accompanied by technical policies to ensure simultaneous steps to strengthen our national ideology in all government institutions from the central government to regional governments.

4] Institutionalization of the President's Special Envoy for Dialogue and Cooperation between Religions and Civilizations (Pelembagaan Utusan Khusus Presiden untuk Dialog dan Kerja Sama Antar Agama dan Peradaban / UKP-DKAAP). This was a strategic agenda to strengthen the interfaith dialogue for the sake of creating harmony in religious diversity and increasing civilization in the relations between religious communities in Indonesia in order to realize the progress of our culture and civilization as a nation.

5] Dissolution of Hizbut-Tahrir Indonesia (Hizbut Tahrir Indonesia / HTI). The dissolution of Hizb ut-Tahrir Indonesia was a brave response from the government to guarantee legal and social order, and address issues which have arisen with organizations that clearly supported the doctrines and ideas of anti-Pancasila, anti-nation-state, and anti-democratic. However, SETARA Institute also noted that, by reducing judicial control of Community Organization through amendments during the dissolution process of Hizb ut-Tahrir Indonesia, the right of association and organization have been threatened and opportunities for abuse of power in its implementation have opened up. The three steps at least indicated that the Government had a clear understanding and standing position in response to the increasing intolerance and discrimination, strengthening

radicalism and religious conservatism, and the increasingly massive movements of anti-Pancasila, the 1945 Constitution, the Republic of Indonesia, and anti-pluralism in Indonesia.

6] Drafting of the Religious Protection Law. More intensive discussions regarding its content is still needed between civil society groups and agents of tolerance within and outside the government, with the intent that the provisions therein will not repeat the mistakes of the previous regulations whose arrangements restricted the freedom of religion / belief.

7] Evaluation of the Discriminatory Regional Regulations. The government understands that one of the problems of intolerance and violations of the freedom of religion / belief lies in the problem of local regulations that are discriminatory and contrary to the provisions of the higher legislation.

8] The government support regarding the inclusion of adherents of Local Belief in the religion column in identification cards during the material test hearing of the Law on Population Administration (Administrasi Kependudukan/ Adminduk) in 2016. During the trial at the Constitutional Court, the government took a stand not to sustain the Law being tested, and instead supported the petitioner of the hearing and asked the Constitutional Court to provide constitutional reasons why the “Local Belief” should be stated in the religion column in identification cards. The government’s statements were delivered by the Minister of Interior (Tjahjo Kumolo) as well as the Minister of Law and Human Rights (Yasonna Laoly) as their legal responses which were read in the Constitutional Court. They stated that “The government requested the Constitutional Court to give constitutionality considerations over the arrangements related to the religious column in order to determine a better policy direction for the government as the organizer of the country”. The Constitutional Court’s decision finally granted the petitioner’s demands, which was the progressive decision needed to recognize the existence of the basic rights of the adherents of Local Belief (Decision of the Constitutional Court No. 97 / PUU-XIV / 2006).

9] Improvement of the fulfilment of the right to religious teaching in formal educational institutions for adherents of Local Belief that

has been set forth by the government in the form of the Regulation of the Minister of Education and Culture No. 27 of 2016 concerning Education Services for the adherents of Local Belief in the Education Unit.

2. Among the significant and promising achievements in the promotion of tolerance and guarantee of freedom of religion / belief in Indonesia, the government has not shown significant progress with two existing problems related to this subject matter, which have been protracted without resolutions. **First**, the case of the establishment of places of worship that has lasted for about a decade; namely GKI (Gereja Kristen Indonesia / Indonesian Christian Church) Yasmin in the Regency of Bekasi and Filadelfia Batak Protestant Christian Church (Huria Kristen Batak Protestan / HKBP) in the City of Bogor. The Decision of the Supreme Court which had legal power, favoured both parties on the dispute over the establishment of the two churches. However, until now the Supreme Court's ruling was 'defeated' by the pressure from intolerant groups. **Second**, the problem regarding the Ahmadiyya and Shia refugees. Another problem that has been protracted is the return of Ahmadiyya refugees in Mataram and Shia refugees in Sampang Sidoarjo.
3. In addition, these positive notes in the progress and development are not able to cover up the fact that the violations of freedom of religion / belief, intolerance, and even the strengthening of ideologies as well as understandings that lead to extremism with violence as well as terrorism are serious problems that have to be resolved. It is also important to demand the political will of, and concrete actions from, the government with the participation of civil society to fight intolerance. The government also needs to guarantee the fulfilment of citizens' constitutional rights to worship / practice religions or beliefs freely.

B. Recommendation

After reading the objective issues and key conclusions that have been formulated, SETARA Institute proposes the following recommendations:

1. The Jokowi-Ma'ruf Amin government, the new government from the result of the 2019 Presidential Election, should take concrete actions to care for pluralism and strengthen the Pancasila state. The government must take bold steps with breakthrough agendas to: (1) undermine the supremacy of intolerance and respond to the consolidation of intolerant and vigilante groups by upholding the supremacy of law and constitution, (2) prevent repetitive acts of violations against freedom of religion / belief and violations of the rights of religious minorities, and (3) affirm a zero tolerance attitude towards all acts that are contrary to diversity and which undermine the Pancasila and the Constitution of the Republic of Indonesia.
2. SETARA Institute also submits the following recommendation proposals. **First**, government must design, schedule and optimize educational institutions to build a diversity of education which is open, tolerant and oriented towards strengthening the nation and state based on Pancasila and the 1945 Constitution of the Republic of Indonesia. **Second**, government must position its apparatus, specifically the police and local government (from various provinces to villages) as the the frontline in law enforcement, protection of all citizens, and defense of the basic and constitutional state. **Third**, the state must guarantee strict and fair law enforcement based on Pancasila and the 1945 Constitution. **Fourth**, optimize the functions of education, outreach and literacy regarding tolerance and harmony and prevent discrimination and intolerance through the optimization of television, social media, and online media as arenas of discourses. **Fifth**, strengthen and intensify the initiatives to conduct equal dialogues between the government and the adherents of local religion / beliefs.
3. SETARA Institute encourages the Government to be more

serious in providing a plenary guarantee for freedom of religion / belief and to eliminate discrimination as well as intolerance as the legacy of this government. Some specific and basic agendas that the SETARA Institute recommends be completed immediately are as follows: **First**, restoration of the constitutional idea of freedom of religion, through changes, improvements, or even the annulment of legislation that are contradictory to the constitutional provisions, namely; 1) Revise or replace Law No. 1/PNPS of 1965 on the Prevention of Religious Abuse and / or Defamation with a new law that respects the freedom of religion / belief as a constitutional mandate. 2) Review the Joint Decree of the Minister of Religious Affairs and Minister of Interior Number 9 and Number 8 of 2006 on the Guidelines for the Duties of Mayor / Vice Mayor for Inter-Religious Harmonization and the Empowerment the Inter-Religious Harmony Forum and the Establishment of Places of Worship, (Joint Decree of Two Ministers) especially regarding the establishment of places of worship. 3) Revoke the Joint Decree of Minister of Religious Affairs, the Attorney General and the Minister of Interior No. 3 of 2008 No. KEP-033/A/JA/6/2008 and No. 199 of 2008 on Warning and Order to the Believers, Members, and or Board Members of the Indonesian Ahmadiyya Community (Jemaat Ahmadiyya Indonesia / JAI) and Community Members (known as the Joint Decree of Three Ministers). These regulations have triggered various intolerant actions and policies towards the adherents of Ahmadiyya in many areas. They have even triggered deadly anarchist actions such as those in Cikeusik. 4) Review several regulations at the regional government level, both provincial and district / city, in various forms, such as Regional Regulations (Peraturan Daerah / Perda), Governor Regulations (Peraturan Gubernur / Pergub), Mayor Regulations (Peraturan Walikota / Perwal), Regent Regulations (Peraturan Bupati / Perbup), etc, which are derived from the provisions of the the Joint Decree of Minister of Religious Affairs, the Attorney General and the Minister of Interior on Ahmadiyya, and / or based on the application of certain religious teachings that are contrary to the constitution. **Second**, resolve the complexity of the

problem of establishing places of worship that are clearly restrictive towards the “freedom to worship in accordance with his religion and belief” and the “freedom of religion “, as guaranteed by the 1945 Constitution. Third, stop the criminalization of beliefs and immediately free the “prisoners of conscience” who are imprisoned because their views and beliefs are different from the views and beliefs of the majority. **Fourth**, present the state - through law enforcement to hold legal responsibility and restore the rights of victims of violations of freedom of religion / belief.

4. On top of these recommendations, SETARA Institute encourages the new administration from the 2019 Presidential Election to prioritize the mainstreaming of diversity or diversity in all aspects of state governance through the institutionalization of inclusive governance. The President is expected to issue presidential regulations instructing all ministries and institutions to implement diversity initiatives, policies and practices that collect background diversity information in various aspects, including religious diversity. It is only through mainstreaming inclusive government that the ideals of Bhinneka Tunggal Ika and Pancasila can be realized systemically. []

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