

A U T H O R S

Halili, *Et al.*

E D I T O R

Bonar Tigor Naipospos

The Condition of Freedom of Religious/Belief in Indonesia 2012

# Leadership Without Initiative



**Leadership Without Initiative**  
The Condition of Freedom of Religio/Belief  
in Indonesia 2012

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# Foreword

The report on condition of freedom of religious/belief in Indonesia was released to public in December 17, 2012. Because of many things, the report published in March, 2013. As a monitoring report, this publishing aimed to spread out the reader spectrum and SETARA Society constituent together to advocate the freedom of religious/belief in Indonesia.

This report is titled Leadership without Initiative, was the 6<sup>th</sup> report where since 2007 SETARA Institute publishes annual report. As the report before, the accidents of freedom of religious/belief violation reported using certain method and note. Modification is used regularly to the current theme which tend trough the year.

In this report, is consisted with special study about the solving modus by the state upon some important accidents until the report being written. The government, both central and regional, did not show the good will and the best effort to solve the problem until drag on. The Ahmadiyya follower refugees in Transito Mataram, West Nusa Tenggara still live in bad condition, also Shia community abandoned to go back where they belong, and still stay in a sport building in Sampang and forced to live their life in uncertainly, law negation done by the City Government of Bogor from the Supreme Court verdict which canceled the permit revocation of GKI Yasmin Bogor, also HKBP Filadelfia Bekasi which treated by the Bekasi Government inappropriate. The description of state solving modus described in Chapter Four aimed

to show to any institution that the solving patter all this time is only in words and stage. Even though there is an effort, merely is an instant solution which impact in victims' head more deep same problem and became new humanity violation to the same victims.

The theme of this 6<sup>th</sup> report represents the national leader attitude that becomes the state performance parameter in anti climax on promoting pluralism and assurance of the freedom of religious/belief in Indonesia. The politic of discrimination which chose by the state, described from the serial accidents since 2007-2012 which always increase and no serious action from the state. The report also bring all the readers to think, to take side and to act tolerant and push all of the state elements in participate on furtherance human rights.

Jakarta, March 2012

**HENDARDI**

Chairperson

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# Introduction

## A. Background

The freedom of religious/belief, from its protection mechanism means as a basic rights which guaranteed by international norms that universally recognized by civilized states. As a part of the civilized states (red: United Nations), Indonesia has a responsibility to progressively referring on the universal norms standards in implementing the freedom of religious/belief in the context of national jurisdiction.

In the variety instruments of international human rights, the freedom of religious/belief is substantively considered as an individual rights which its compliance could not be diminished and postponed (*non derogable rights*). In consequence, the freedom of religious/ belief for individu or group must be guaranteed its compliance by the state.<sup>1</sup> The principle *non-derogable rights* emphasize about absolute rights, and that's why it could not be disiminished and postponed in any circumstances.<sup>2</sup>

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

2 Rights in this principle includes: right to life (not killed), the right to integrity of self (not persecuted, kidnapped, tortured, raped), the right not to be enslaved, the right to freedom of religion, thought and conscience, the right to be treated equally before the law, the right not to be imprisoned for failure contractual obligations, and the right to not convicted based on the retroactive law. Thereby,

Indonesian constitution so far, has a good adequate guaranty in giving protection on the freedom of religious/ beliefs. That guarantee can be founded in the basic norms (*ground norm*) of national legislation and in the state basic law (*staat fundamental norm*).

Pancasila which is approved by the founding fathers as the foundation of state, give a philosophical and moral guaranty on the freedom of religious/ belief. The first principle of Pancasila, “The Almighty Divinity,” which interpreted to underlie the four other principles, even some interprets it diametrically. On one side, the first principle of Pancasila is conceived as the principle which accommodating the Indonesian human spirituality. But, on the other hand, it is also interpreted as a formula that refers to the formalistic diversity, or it is infrequently even to legitimate some domination interests on the society of dominant religion.<sup>3</sup> The first principle, secondary interpreted as the philosophy support of diversity which refers to the extraction concept of tawhid (monotheism). It means that principle was slightly reduced to preserve the majority quantitative of particular religious in Indonesia (red: Islam). But the actually the case is the concept of “The Almighty Divinity” which evolved by the founding fathers was quite general and did not refer to the theological interpretation of any particular religion.

The most valid and sublime referral on that first principle is the viewpoints that directly state by the founding fathers in the trial of Indonesian Independence Preparation Investigative Assembly

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any kind of action that could result in the loss of the right of a person or group of people to freedom of religion-as one of the non-derogable rights-can be classified as a violation of human rights. See Ismail and Bonar Tigor Naipospos (eds), *Mengatur Kehidupan Beragama; Menjamin Kebebasan Beragama? Urgensi Kebutuhan RUU Jaminan Kebebasan Beragama/Berkeyakinan*.

- 3 The individual who embraces a non-theistic belief regarded to have not certain place in Indonesian Society and the consequence is being discriminated if improving their perspective to public. The up-to-date sample is the case of Alexander Aan who reported by the local religious leader to the police in West Sumatera because considered as the doer of spreading the view of atheis through social media.

(BPUPKI), precisely on the meeting discuss about drafting of basis of state. One of referrals – the most primary figure whose have historical position was approved as the excavator of Pancasila – Soekarno.

The Son of the Sun, when talked about Pancasila on June 1, 1956<sup>4</sup> through his agitative speech, gave the straightforward affirmation about that principle of divinity. He said:

“The Godliness/ Divinity principle! It doesn’t just mean that Indonesian must trust in God indeed, but all of us must have our own God. ... Let’s us godless have. Let the state of Indonesia become a country where the people could pray the God with unimpeded way. All of Indonesian must worship our own God in cultured ways, no “egoistic religion”. And Indonesia should be one of godliness-have state!”<sup>5</sup>

As the fundamental norm, legal ideals (*rechtsidee*), basic philosophy (*philosophische gronslag*), way of life (*weltanschauung*), national ideology, basis of the state, and the source of all source of law in Indonesia, Pancasila became a derivate of constitutional guarantee which more operational, concrete, and binding. That guaranty should be founded inside the 1945 Constitution (UUD 1945).

Inside the 1945 Constitution stated some of provisions about the guarantee given on citizens to have religion and belief. At least, there are two subsections/articles in the 1945 Constitution that could be identified as the statement about given guarantee of freedom of religious/ belief to the citizens. Those provisions are article 28E and article 28I which reads:

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4 Latter, we collosally agreed mentioned as Pancasila birth day.

5 Soekarno’s speech before BPUPKI on June 1<sup>st</sup> 1945. See Bahar, et.al [eds.], 1995, *Risalah Sidang BPUPKI dan PPKI*, (Jakarta: Sekretariat Negara), p. 80-81, or Alam [ed], *Bung Karno Menggali Pancasila*, (Jakarta: PT Gramedia Pustaka Utama), p. 28.

### Article 28E of the 1945 Constitution

- (1) Everyone have own rights to have one religion/belief and to worship according to their religions, to choose education and learning, jobs, citizenship and their residence in the area of states or leave it, and get back again.
- (2) Everyone has own rights to trust one belief, to state their mind and attitude, on accordance to his conscience.

### Article 28I (1) of the 1945 Constitution

The right to life, right not to be tortured, right of freedom of thought and conscience, right of freedom of religion, right to do not be treated as a slave, right to be treated equally before the law, the right to do not be prosecuted on retroactive law, are the human rights which cannot be diminished under any circumstances.

The article 28E of the 1945 Constitution gives guarantee to the people to embrace a religion and belief freely. Those provisions explicitly declared a freedom for everyone to have their own religion or belief. In the same time, they can pray accordance to their religion and belief.

A guarantee inside the 1945 Constitution evidences that the right to have a religion or adherence to a religion by an individual, is an essential human right.<sup>6</sup> In the empathic statement could be said that

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6 The Text drafting team of Comprehensive Process and Result of Change of the 1945 Constitution, *The Comprehensive Text of Change the Undang-Undang Dasar Negara Republik Indonesia 1945, Background, Process and Results of Discussion. 1999-2002, Book VIII The Nation and Resident, Human Rights, and Religion (Revision Edition), General Secretary and Secretariat of Constitutional Court, Jakarta, 2008, page. 286. (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*

the freedom of religion or belief is the most fundamental right of all human rights. Besides that, the freedom of religion is not a granting of state, that's why state cannot requires citizens or the state even should not intervene on the issue of each citizen's religion.<sup>7</sup>

With its significant position, the freedom of religious/ belief – based on the universal rights of Human Rights – is placed as derogable right – as stated as Article 28I (1) of the 1945 Constitution. As one of the non derogable rights, the freedom of religious/ belief cannot be diminished or revoked by anyone else.<sup>8</sup>

Besides giving the guaranty and adequate position of freedom of religious/ belief as the *non derogable rights*, The 1945 Constitution also arrange the relations between states and religion, the portion of state in the context of respect and protection on that rights. That is stipulated in Article 29 The 1945 Constitution:

#### The Article 29 The 1945 Constitution

- (1) The state is based on the almighty divinity
- (2) The state guarantees the people to have a freedom of religious/ belief and worshipping/praying themselves accordance to their religions/beliefs.

Based on those two articles, could be inferred that the constitutional guaranty on freedom of religious/ belief is strongly stated in the 1945 Constitution. That constitutional guaranty implicates to the proposing (also the detail of policy demands), such as:

1. The states must guarantee the aegis and a spacious place for independence citizens to get his freedom of religious/ beliefs and worship/praying themselves accordance to their religions/beliefs.

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*Manusia, dan Agama (Revised edition)*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Jakarta, 2008, p. 286).

7 *Ibid.*, p. 320.

8 *Ibid.*, p. 293.

2. The state is not allowed to make some of prohibitions and obstacles for citizens to pray or to practice their religion/belief.<sup>9</sup>

In accordance with Article 29 the 1945 Constitution, the state has a constitutional responsibility to protect the right of freedom of religious/ belief on its citizens. State also has an obligation to guarantee the freedom of religious/ belief as stipulated on Article 28E and Article 29 the 1945 Constitution. That is in line with what mandated in Article 28I (4) of the 1945 Constitution that should be fulfilled by the state, especially the government. It means that the government has an adequate responsibility to protect and to respect the Human rights.

The obligation of protecting (to protect), promoting (to promote) and fulfilling (to fulfill) and respecting (to respect) of Human Rights' values as mandated in Article 28I (4) of the 1945 Constitution, should be done on balance, where one of the obligations is executed, so the other one should be too. That's the reason why the government should be consistent in implementing the enforcement of human rights.

Therefore, the responsibility to give guaranty, protection, promotion, the particular right of freedom of religious/ belief for citizens is held by the state. The state serves as the obligations stakeholders. State is not allowed to delegate that obligation execution to the non-governance actor to execute it. Because the execution of state's obligation run by non-governance actor will open a space to the group to do some discriminations and violence in the name of religion.

The mandate of constitution which derived of basic state philosophy, are supported by its instruments in the term of regulation. Some of regulations can be identified on its main framework stipulated in the law 39 of 1999 on Human Rights and the Law number 12 about International Covenants Ratification of Civil Rights and Politics. Thus, have that constitutional guaranty implementation become ideal already? This is the lies of problem. There are some tensions in that constitutional guaranty implementation. The disparity between *das*

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9 See Ismail Hasani (Ed), *The Document of Deletion Policy of Discrimination on Religion/Belief*, Pustaka Masyarakat SETARA, Jakarta, p. 81.

*sollen* constitution and *das sein* policy is highly visible more specific, detail, and concrete. The main problem of constitutional mandate implementation on freedom of religion can be classified into three main clusters.

First is incongruence regulation. The central weak point in unbalance on guaranty of freedom of religious/ belief is stipulated in the Law 1/PNPS/1965 says on prevention of abuse and/or defamation of religion. The Article 1 of that law states that:

“Everyone is not allowed in front of the public to telling, recommending or attempting the public support to intrepret a followed religion in Indonesia or doing some religious activites that resembles religion’s activities; interpretation and which activity that deviate from that religion’s main doctrine.”

The fundamental mistakes in that law – as explicitly illustrated in Article 1 above – inter alia: 1) The government do discrimination on religion followers using the interpretation which subjectively judged “different” with majority interpretation, 2) The state do a too-far intervention into private space (*forum internum*) of citizens, infiltrating even into their head and heart, 3) The state does not guarantee legal certainty for whole of citizens by forming and adjusting the laws which arrange the object and substance that abstract, unclear and absurd.

That minor situation of constitutional guaranty implementation of freedom of religious/belief supported by the decision of Constitutional Court of Republic of Indonesia in judicial review on the law 1/PNPS/1945 which filed by civil society group. The Constitutional Courts gave weak arguments juridically and unable to expressly explaining about religion-state relations. The Constitutional Court decides a choice of law (politics) to stay consider that law as a constitution. Although the Constitutional Court through decisions 1/PNPS/1965 confessed about that law containing weakness, therefore, change is really necessary.

Even having some problems, the law 1/PNPS/1965 still stays as a positive law that becomes an anvil to create some operational/

implementing regulation about religious life. That regulation in the form of Joint Decree of Ministers, namely:

1. Joint Decree between Minister of Religion and Minister of Internal Affair 9 and 8 of 2006 on Guidelines Task of Regional Head/ Deputy in Maintenance of Religious Harmony, Empowerment Forum for Religious Harmony, and Construction of Houses of Worship (Joint Decree of Two Minister);
2. Joint Decree of Minister of Religion, Attorney General, and Minister of Internal Affair 3 pf 2008, KEP-033/A/JA/6/2008, 199 of 2008 on Warning and Order to the Followers, Members, and/ or Board Member of Jemaah Ahmadiyah Congregation (JAI) and Citizens (Joint Decree of Three Ministers).

Moreover, not less than 15 regulations on regional level were published which containing the principles and content that refers to regulations above. That regional regulation can be founded in West Java<sup>10</sup>, Bekasi<sup>11</sup>, Bogor,<sup>12</sup> East Java<sup>13</sup>, South Sumatera<sup>14</sup>, and others.

Many kinds of regulation are often factually become a main trigger of some intolerant behavior and discrimination violence on minority religion group. In the perspective of Human Rights, any regulation

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10 As the sample in West Java, has made a Local Government of West Java 12 of 2012 on The Cessation on Worshipping Activities of Ahmadiyah Follower in Indonesia in West Java Governor's Area.

11 In Bekasi District there is a decree of Major 40 of 2011, on the disallowance of Ahmadiyah followers in Bekasi Regent.

12 In Bogor Regency, July 20, 2005 The Regent of Bogor, Head of Local Representatives of Bogor, Dandim 0621, Kepala Kejaksaan NegeriCibinong, Kapolres Bogor, Head of PN Bogor, DANLANUD ARS, Ministry of Religion and MUI of Bogor have made a Joint Decree of Disallowance of Activities of Ahmadiyah Community in Indonesia in Bogor Regency.

13 Disallowance of Ahmadiyah mentioned in Decree of East Java Governor No. 188/94/KPT/013/2011 about disallowance of Activity Ahmadiyah Followers in Indonesia, in East Java.

14 The regulation of South Sumatera Governor No. 563/KPT/BAN. KESBANGPOL &LINMAS/2008 on September 1, 2008.

could be categorized as the Human Rights Violations through the law and regulation (*violation by rule*).

Second is lack of institutional supporting power of the state government. The constitutional guaranty which affirmed by the 1945 Constitution and its derivatives law is ideally back-up by institutional structure which reinforcing that implementation of constitutional mandate. But the fact is, the government doing some mistakes on life of religion/belief in Indonesia through establishment of institution which precisely negated that constitutional mandate and also stimulated some intolerant behavioral practices and discrimination in life of religious/belief of citizens.

The governmental institutions that participating in legitimize intolerant behavior and discrimination on the followers of particular religion/belief, such as: Indonesian Ulema Council (MUI). The main problem of MUI in the context of freedom of religious/ belief is its authority in giving fatwa (Islamic decree) about certain religion misdirection, sects, or mazhab (Islamic thought).

Another institution that also takes a part on making mistakes in the context of freedom of religious/ belief is Coordination Agency of Society Beliefs Monitoring (*Bakorpakem*). That is the first recognized governmental institution of Republic of Indonesia in almost three decades which has a serious authority. Its authority is adjusted through the Decree of Attorney General of Republic of Indonesia KEP-108/J.A./5/1984, that is: preventing the defamation of religion in Indonesia. According to the Chairman of National Commission of Human Rights (Komnas HAM) on the period of 2007-2012, Ifdal Kasim, that authority would break the right of freedom of religion that constitutionally guaranteed.<sup>15</sup>

One of “working result” of semi-permanent institution that whose membership comes from elements, such as: Attorney General, State

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15 See “*Kewenangan Bakorpakem Harus Dipersempit*”, in <http://orangnusantara.blogspot.com/2009/01/kewenangan-bakorpakem-harus-dipersempit.html>, accessed on December 1, 2012

Intelligence and Minister of Religion, which charges in processing and officially recommending cessation of Ahmadiyah religious activities in Indonesia. From its task and authority, this institution should be taking part in intervening of the highly-privacy of citizens, the freedom of religious/ belief that guaranteed by constitution.

Besides MUI and Bakorpakem, the Inter-Religious Harmony Forum (FKUB) is also being the problem. Ideally, “FKUB has role to guarantee people to pray or to do their worship, people are free to choose any religion, and it is extremely guaranteed safely and comfortably. Then FKUB also should to mediate in order to find similar points of religious groups, certainly in the context of living together as a part of citizens in nation life.”<sup>16</sup>

It means that FKUB should be a mechanism of enforcement of horizontal and non-structural religious/belief pluralism. The leaders and religious leaders who involved in, is a part of participation and civil engagement that promotes the plurality and maintains the harmony. The fact is, FKUB becomes a part of state’s structure, regime’s structure. FKUB dominantly seems as the state-power instrument to equalize perception about the truth that determined by “established religion” in Indonesia.

Third is the lack of performance of state government official. The government official “behind the desk” is frequently not performing inclusive commentary about freedom of religious/ belief. Even in escalated *chaos*, they unable to use their coercive instruments to create *human security*, to prevent intolerant action and discrimination for the certain religion’s followers, especially for minority group.

Those three weak points, partially or cumulatively, in the perspective of SETARA Institute, becomes important factors that stimulate some of violent or abuse on freedom of religious/ belief. So that, the situation of religious life in the country of Pancasila, becomes not conducive,

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16 H. Abdurrahman K., The Director of FKUB South Sulawesi, in interviewed by researcher team of SETARA Institute in order to collecting data on a research on December 28, 2012.

and the phenomenon escalation of intolerant action of religion/belief happened within in five years.<sup>17</sup>

This background becomes one of *back mind* behind the annual plan of SETARA Institute to do “camerawork” on the actual situation of freedom of religious/ belief in Indonesia and perform it through the report about *progress* or *decline* situation of freedom of religious/ belief which analyzed by using the human rights’ perspective, and enclosed with deepening the intolerant cases and discrimination of religion/ belief.

This report is being more relevant as the real condition portrait of freedom of religious/ belief in Indonesia. Monitoring and publication on this annual report is aimed to [1] to document and to publish the facts of violent and breakthrough/progress of guaranty of freedom of religious/ belief in Indonesia; [2] to push the state to fully guarantee the freedom of religious/ belief, including to do the change of some products of regulations that restricting the freedom of religious/ belief and recovery of victims right; [3] to provide *baseline* data about freedom of religious/ belief; and [4] to enforce the linkage around the civil society and public in general to expanding constituency to push it in giving guaranty of freedom of religious/ belief.

## **B. Methodology**

Programatically, on 2012 SETARA Institute monitored in 13 provinces of Indonesia, they are: Aceh, North Sumatera, Riau, Banten, Jakarta, West Jawa, Central Jawa, Yogyakarta, East Jawa, South Sulawesi, South Kalimantan, Bali, and West Nusa Tenggara. Nevertheless, the condition potrait of freedom of religious/ belief in other regions was also collected from many sources of medias and monitoring network. Even so, the presented report also still covered other regions of Indonesia.

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17 Read Hasani and Naipospos (eds) 2011, *Politik Diskriminasi Rezim Susilo Bambang Yudhoyono: Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia 2011*, (Jakarta: Pustaka Masyarakat Setara), as particularly

The data collection is done by [1] monitoring of 13 regional observers; [2] data collection is taken from some religious institutions; and [3] observing from local and national media. That monitoring program was held from January 1 – December 15, 2012. The monitoring was done by using the human right parameter, particularly International Covenant about Civil Right and Politics that ratified by Indonesian government in the law 12 of 2005. Another parameter that used also is *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion/ Belief* which coined through the resolution of General Assembly of United Nation 36/55 of 25 November 1981.

Refers to Framework of human rights, there are two ways of state of doing violent, such as; [a] by doing an active action that enable the occurrence of disallowance, discrimination, interference, and or enjoyment blockage of freedom of religious/ belief (*by commission*); and [b] by allowing the violation of a person's rights (*by omission*), including to allow every criminal action done by someone but cannot be prosecuted.

Besides to documenting of the violent of freedom of religious/ belief that was done by state, this monitoring also refers to documenting the criminal actions that done by citizens on other citizens which including as the abuse on freedom of religious/ belief. Those citizens' actions largely covering; [a] the criminal action in form of assault of places of worship, intimidation, physical violence, and ecetera; and [b] intolerant actions.

This monitoring report divides 4 categories of violation acts with the subject of law and responsibilities;

- [1] By commission actions by the state
- [2] By omission actions by the state
- [3] Crime by citizens
- [4] Intolerant by citizens

Through the violent category of *by commission* and *by omission*, the legal framework to question the matters is the human rights law figured in Civil Covenant and Political Rights and also founded in

other ratified human right conventions, coupled with Constitution and Domestic law regulating about the state's obligations. Meanwhile, for the category of crime done by citizens and intolerance, the legal framework which can be used is Criminal Code (KUHP).

### C. Operational Definition

Monitoring and report making about condition of freedom of religious/belief in Indonesia rests on the perspective of human rights which placed the freedom of religion/belief as an individual right as non derogable right. Regarding on it, the definition that used in this monitoring and report making rests on the disciplines of human rights law. The freedom of religious/ belief is a guaranty given by the state for freedom of religious/ belief and freedom of worship for individual and group. The freedom of religious/ belief is fundamental human rights.<sup>18</sup>

The term of religion or belief in the perspective of human right is not narrowly interpreted and closed, but it must be widely constructed. Public misconception happened, usually says about belief on God (theisme) which called religion. But the actually case is non-theistic Buddhism and polytheistic Hinduism also called as religion. The definition of religion or belief is not being confined as a traditional religion or the institution which has characters or analog practice with those traditional religions. Religion or belief which has just be formed and minority religion has the right to get the equal protection that dominant and powerful.<sup>19</sup> The human rights perception also confirms about theistic, non-theistic, or following the religion or belief is same in reserved the right and protection.<sup>20</sup>

The main instruments of human rights that arrange about an guarantee of freedom of religious/ belief is International Covenant on Civil Right and Political Rights (1966), particularly article 18,

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

19 Article 2 – General Comment 22 about Article 18, Human Right Committee of UN, 1993

20 *Ibid.*

that contains of: (1) freedom to follow or to choose a religion or belief depend on their own choice, and the freedom, individually or collectively with others, in the public places or closed place, to apply their religions or beliefs in worship, obedience, practice, and instruction; (2) without coercion to follow or to choose religion or belief according to his wishes; (3) freedom to interpret religion or belief just confined by prescribed by law, and if necessary to protect public safety, orderliness, health, or moral, or fundamental freedom on others; (4) The countries which pro to this Covenant promises to respect the freedom of parents, legal guardians if approved, to ensure the religion and moral for their children are in accordance with their children's liking.

Indonesia on 2005 had ratified this international covenant through the Law 12 of 2005 on Ratification International Covenant about Civil Rights and Political Rights. This Covenant is legally binding and as the state parties that had ratified it, Indonesia is compulsory to include it as a part of national regulation and make periodically report to Human Rights Commission of United Nations.

The other instruments of Human Rights which arrange of guarantee of freedom of religious/belief is *Declaration on The Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* which triggered through the Resolution of General Assembly of United Nation 36/55 on November 25, 1981. This declaration is more detail to organize the guarantee of freedom of religion or belief that International Covenant about Civil Right and Political Right, but unfortunately, it is only a declaration so that its role is not binding for state party. But, even it is not legally binding, that declaration reflects broad consensus from international community. Because, it's generally has moral power on international relation. As a member of United Nation, Indonesia cannot ignore this declaration in order to run its obligation on fulfilling its citizens.

The article 6 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion/ Belief:

Based on the certainty of Article 1 of this Declaration and also obedient on certainties in article 1 (3) freedom of thought, conscience, religion or belief should including some freedoms, such as;

- 1) Worship and gathering in relation to one religion or belief, and build and also manage places for those purposes;
- 2) To build and manage some of real charity or humanity institution;
- 3) To make, to get and to use all of their own-made materials which needed to hold their ceremony or customs of a religion or belief;
- 4) To write, to express and to promote any kind of publication which relevant to these field;
- 5) To teach about a religion or belief in the certain place for these purposes;
- 6) To collect and to achieve any kinds of charity and other voluntary donations from individual or institution;
- 7) To train, to point, to choose or to nominate with certain leader succession who asked with requirements and standards of any religion/belief;
- 8) Respecting the rest days, and celebration and ceremonial days;
- 9) To build and to manage communication among individual and society in the context of problems of religion or belief in the scope of national and international, religious ceremony accordance with personal religion or belief;

The 1945 Constitution, in the Article Pasal 28E also confirms about the guaranty of freedom of religious/ belief, as the sounds of this following articles:

- (1) Every human being has his own freedom to follow religion and to worship/to pray accordance his religion, to choose education and instruction, job, citizenship, places to stay in the country and to leave it, then to get back again.
- (2) Every human being has a right on freedom of belief, to state his thought and attitude, accordance with conscience.

Based on the mentioned international instrument of human rights and the 1945 Constitution, the operational definition of freedom of religious/ belief briefly consists of freedom of religious/ belief accordance with his own choice, the individual freedom or together with others to worship his certain religion/belief accordance his chosen religion/belief, and obey, practice and teach it openly or secretly, including freedom to change religion or belief, or even to do not following any religion or belief also.<sup>21</sup> Meanwhile the Article 28E confirms that the freedom of religious/ belief is the constitutional right for every citizen.

The Law of Human Rights is the international civil law which places state as the state party; it means that state is the subject of law which responsible to obey the law of human law. As the subject of law, so that every human right violation happened, always points the state as the perpetrator. The violation on human right happened when the state cannot obey the binding norms which stipulated in the covenant and international conventions, even the state has promised to obey it through the process of ratification.

The confirmation of epistemology of Human Rights as explained above is more clarifying the difference human right and international criminal law, which has places individual as the subject of law. As the civil law, kinds of punishment in the context of human rights law is the international sanction, obligation of policy change, and the fines are intended for victims who their rights have been violated in the form

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21 Article 18 The Universal Declaration of Human Rights (1948): "Every human being has freedom of thought, conscience and religion; in this context includes the freedom to change his religion or belief, and freedom to declare his religion or belief by teaching, practicing, and doing worship and obeying it, either alone or with others, in front of the public or himself."

compensation, restitution, and rehabilitation. While in international criminal law (Statuta Roma), besides the individual is being the subject of the law, the sanction inflicted to the perpetrators also formed as sentence of imprisonment.

Indonesia as the state party on the international law of human rights has an obligation (*obligation of the state*) to respect and to protect the freedom of religious/belief.<sup>22</sup> The main principle of state to respect the human rights is, the state do not doing everything which break the individual integrity or group, or ignores their freedom. Meantime, the obligation to protect is taking some needed actions to protect people's right on his crime/lawlessness/violence which done by individual or other group, including to take the action on preventing of ignoring on their enjoyment freedom.

Even the main character of human rights cannot be removed or revoked and comprehensive on every humankind, but based on the principle of Siracusa which mutually agreed, there are two treatments of the implementation of human right, that is: principle *non-derogable rights* (the rights which cannot be diminished or postponed its fulfillment) and *derogable rights* (the rights which can be diminished and postponed its fulfillment). The principle of siracusa underlines that the rights which can be diminished and be postponed only is enforced on the certain situation and condition which considered can endangered public interests.

And meantime, the principle of *non-derogable* rights confirms about the absolute rights, and therefore that rights cannot be diminished or postponed in any certain situation or condition. The rights which contained in this principle includes: right to life (not killed), the right to integrity of self (not tortured, kidnapped, persecuted, raped), the right not to be enslaved, the right to freedom of religion, thought and conscience, the right to be treated equally before the law, the right not to be imprisoned for failure contractual obligations, and the right to not convicted accordance to a retroactive law. Thus, all of actions

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22 See Article 18 DUHAM, article 18 ICCPR, Article 28 I, 28E, 29 the 1945 Constitution.

which lead to disappearance the rights of people or group to free in following his/their religion – as a matter of *non-derogable rights*— can be classified as human rights abuse.

Even the discourse of human rights admits of disallowances to fulfill the guaranty of human rights, this monitoring stays to cover some of rights, either which included in category of *forum internum* or freedom of *forum externum*. The *forum internum*, as the absolute freedom of individual, fundamental, is a freedom where there's none can be doing intervention on manifestation and enjoyment of these rights and freedom. Which including in internal freedom category are: (1) freedom to follow a certain religion and move from one religion to other; and (2) right not to be forced to adhere or not adhere to a religion.<sup>23</sup>

In contrary, the social freedom or *forum externum* (external freedom), in a certain situation, is allowed to restrict or restrain these rights and freedom, but through the *margin of discretion* or strict prerequisites and legitimate based on the principles of Siracusa.<sup>24</sup> Which including in external freedom category are: (1) freedom to worship both individually or collectively; (2) freedom to build places of worship; (3) freedom to use religious symbols; (4) freedom to observe religious days; (5) freedom to lead certain religion; (6) the right to teach and spread the teachings of religion; (7) the right of parents to educate a religion to their children; (8) the right to build or manage organization or religious associations; and (9) the right to deliver religious materials to individual or groups.<sup>25</sup>

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23 See article 18 of DUHAM, Article 18 ICCPR, The Universal Declaration of 1981 about The Deletion of Intolerance and Discrimination based on Religion/ Belief, and general comment No.22 Committee of Human Rights of UN.

24 The Principle of Siracusa is a principle talks about provisions on disallowance and derogation in the term of ICCPR. Established in the meeting Panel of 31 experts on human rights and international law from the world countries in Sicilia, Italy on 1984. This meeting produced a set of standard of interpretation on caluses of limitation right in ICCPR.

25 All of these guaranties listed in Article 18 of ICCPR, the general comment No.22 Committee of Human Rights of UN, and Universal Declaration 1981

The violation on freedom of religious/ belief is a form of failure or negligence in the implementation of state such as to intervene people or to protect people or group whom become the targets of intolerance or crimes based on religion or belief. So, the violation on freedom of religious/ belief is an action of removal, revocation, limitation or reduction of rights and basic personal right on freedom of religious/ belief done by institution of the state, either active actions (*by commission*) or omission of action (*by omission*).

The next terminology of human rights related to freedom of religious/ belief is intolerance and discrimination. Intolerance is derived from the belief which claims that the group, belief system or lifestyle, is higher than others. This can lead to a number of consequences from the lack of respect or neglect of others up to institutionalized discrimination, such as *apartheid* (racial segregation policy) or the deliberate destruction of people through genocide. Those all action comes from a denial of human fundamental values.<sup>26</sup>



Photo: <http://www.rmanews.com>

While discrimination is “any disallowances, harassment, or exclusion which directly or indirectly based on the differences in religion, ethnicity, race, ethnic group, class, social status, economic status, gender, language, political views, which results in reduction,

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about The Deletion of Intolerance and Discrimination Based on Religious/ Belief.

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

deviations or removal admission, implementation or application of human right and basic freedom in the life of personal or group in the aspects of politics, economy, law, social, culture and others.”<sup>27</sup>

The discrimination and intolerance accordance to the religion,<sup>28</sup> means a form of violations on freedom of religion, as stipulated in Article 2 (2) of the Declaration on *The Elimination of All Forms of Intolerance and of Discrimination Based On Religion Or Belief*, is “any distinction, exclusion, prohibition or preferential treatment (favoritism) based on religion or belief and the purpose or its consequence to negate or to reduce admission, enjoyment or implementation of human rights and fundamental freedom on similar basic,” as if does not want to accept a group or disclose and expose hatred to another groups accordance to their differences on religion or belief.

The intolerance crime and hatred are actions which motivated by the hatred or bias on a person or group accordance to the gender, race, skin color, religion, home country, and/or their sexual orientation. The intolerance action is a serious crime, such as assault or fighting. It also can be lighter actions, such as a mockery of the person’s race/religion. The written communication, including graffiti that shows prejudice or intolerance on individual or group based on the hatred. Including the vandalism (destruction) and dialogue accordance to intolerance or other which are considered by some people as the joke.

The violation on hatred is an intolerance crime and prejudice that aims to harm or to intimidate someone because of his race, tribe, home

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27 Law 39 of 1999 on Human Rights, Article 1.

28 The Article 1 of UN Declaration about The Deletion of all forms of Intolerance and Discrimination on Religion or Belief (1981): “[1] Humankind has right on freedom of thinking, conciousing, and having religion. This right also includes the freedom to follow a religion or belief based on his choice, and freedom, either individually or in a group, both closely or openly, to interpret his religion or belief through his worship, ritual, practice and preachment; [2] No one could get coercion which could disturb his freedom in following his choosen religion or belief; [3] The Individual Freedom to practice his religion or belief just restricted by the determination of law which important to protect the safety, peace and moral public and another’s freedom.”

country, religion, sexual orientation and different ability factor. The dissemination of hatred through the detonation, burning, weapons, vandalism, physical violence, verbal abuse and threats in order to instill the fear to the victims, to make them become vulnerable to further attack and feel alienated, helpless, suspicious and frightened. Some of them perhaps become frustration and angry and assume that government and other group in their communities won't to protect them. When the perpetrator of hatred not be prosecuted as criminals and their actions stated as a mistake, their crimes can weakens the community, even the community with its relation with the most strongest/good race.<sup>29</sup>

UNESCO noted some of intolerance indications and its behavioral indicators: (UNESCO: Tolerance: the threshold of peace. A teaching/learning guides for education for peace, human rights and democracy (Preliminary version). Paris: UNESCO. 1994, p. 16.)

**Language:** contamination and pejorative language or exclusive language which eliminates the valuecondescend and humanizes the group of culture, race, national or sexual. The disclaimers right on language.

**Making stereotype:** to describe the member in a group which characterized by the same attribute – it is usually negative.

**To satirize:** attract attention to the behaviors, attributes and certain characteristics with the purpose of mocking or insulting.

**Prejudice:** judgment based on negative generalizations and stereotypes accordance to the actual facts of a case or the specific behaviors of individuals or groups.

**Scapegoating:** to blame the traumatic moment or social problems on a certain person or group.

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

**Alienation (ostracism):** behave seemed the other is absent or does not exist. The refusal of speak or admit the other and even their cultures.

**Harassment:** the behavior that is intended to intimidate and humiliate others, frequently meant as way of removing them by force out of community, organization or group.

**Desecration and elimination:** forms of desecration of a symbol or a religious or cultural structure which aims to eliminating the value and mocking their beliefs and identities which to it the structures and symbols mean on.

**Snarling (bullying):** use of superior physical capacity or a large number of (people - ed.) to insult others or to eliminate their ownership or status.

**Expulsion:** to officially or forcibly evict or disclaimers the right to enter or to be present in a place, in social groups, professions or other places where there are group activities, including where survival depends on, such as the workplace or place of refuge (shelter), and so on.

**Expenditure:** disclaimers possibilities to fulfill basic needs and/or fully participate, particularly in joint activities.

**Segregation:** forcible separation of people by race, religion or gender which is different, usually in order to disadvantage of certain groups (including apartheid).

**Repression:** forcibly preventing of the enjoyment of human rights.

**Destruction:** detention, physical violence, livelihood displacement, armed assault and murder, (including genocide).

Intolerance violation and hatred is one of crime with individual-object being, who relates with freedom of religious/ belief. For this violation, the obligation is addressed to the individuals as the criminal law subject. Whereas the responsibility of the state are protecting

people<sup>30</sup> from intolerance threat and processing it through the law when a violation happened.

In the context of Indonesian law, this kind of violation actually accomodated by Criminal Code, Article 156<sup>31</sup> which confirms:

“Who ever expressed the hostility, hatred or humiliation to one or some group segment of Indonesian society in public, will be threatened by imprisonment 4 years maximally and fine of four thousand and five hundred rupiah.”

The term of segment here and other articles means every part of Indonesian people which different each other or some other because of their races, home country, religion, descendants, nationality or position in constitutional law.

Thus, in practice of Indonesian law, these articles actually used the oppositely, that to ensnare those accused of heretical and desecrate of religion. Though, this article is an instrument which could be used to criminalize the practice of intolerance.

In relation to religious intolerance, SETARA Institute distinguishes the terms of passive intolerance with active intolerance. Passive intolerance is the residue of a whole religious belief and the interpretation of the religion which is believed as the only one truth for themselves as individuals and social beings. He still believes in his religion cognitively but as a consequence of social relations with others who has different background, even in case ready or not, must be accepting that real condition and adapting. Instead active intolerance not only see their religion as the only one truth, but also tend to see

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30 Article 2 (1) of 1966 on ICCPR. The responsibility of State in the context of fulfilling its obligation that published from this ICCPR, is absolutely and immediately.

31 This article is an area of contestation of interpretation on “hate crimes”. During this time, the use of this article always be related to the article 156a which a product of PNPS 1/1956, that precisely be used to ensnare those who accused as heresy.

their different interpretations in each other religion and other religions as well as wrong and heretical. The obvious different among the passive intolerance and active intolerance lies on the action. For the active intolerance, the express it not only through the statement, but also the action.

The report of freedom of religious/ belief in Indonesia is stipulated in the human right-based monitoring Framework, particularly in the clamps of International Covenant on Civil and Political Rights. Therefore, the method of this report preparation is based on the approach of ‘violation’. Through this approach of ‘violation’, this report could be understood as the effort to measure how far the state do its generic obligation in respecting and protecting the freedom of religious/ belief. The writing Framework of this report refers to the *Framework for communications* which improved by the United Nation (UN) Special Rapporteur for freedom of religious/ belief.

Referring to definitional explanation above, so there are two ways of state to do violations; [a] by doing an active action that possibly create disallowances, differences, intervention, and or obstructing a person in the enjoyment of freedom of religion / belief (*by commission*); and [b] by allowing a person’s rights to be violated, including allowing any criminal offense which committed by a person that not be prosecuted (*by omission*).

Besides documenting violations on freedom of religious/ belief which done by state, this report also states about criminal offense which done by people to other (citizens) connected to the freedom of religious/ belief. These citizen’s actions generally include; [a] to burn houses of worship, intimidation, physical violence and others, are included in the terms of crime, and [b] intolerance actions.

With such Framework, this monitoring report divides 4 categories of violations with subject of law and different responsibility;

- [1] Active-action by the state (by commission)
- [2] Omission-act by the state (by omission)
- [3] Criminal-action by citizen, and
- [4] Intolerance by society.

To the category of by commission and omission violation, the legal Framework to question it must be referred to the Human Rights' Law which stated in some of Ratified-Conventions about Human Rights, coupled by the constitution and domestic law which sets about responsibility of the state. And, for the category of crimes committed by citizens and intolerance action, the legal Framework that could be used is Criminal Code (KUHP). []



# The Real Condition of Freedom of Religious/Belief

From the monitoring of SETARA Institute, in the period of 2012, the amount of intolerance action case and discrimination of freedom of religious/ belief has increased. It was represented by 264 and 371 cases on violations of freedom of religious/ belief as the constitutional rights which protected and guaranteed by the state. The number of 264 and 371 as representing as in the graphic of the amount of Cases and Actions (see graphic 1), shows the significant escalation about minor situation in freedom of religious/ belief if compared with last year, where the each “only” 244 and 299.

The various violations of freedom of religion / belief on this year occurred in different months (see graphic 2). Violations that occurred along this year mostly occurred in May (38 violations) and October (40 violations). The factor of month in this case is not a primary factor analysis to find certain patterns relating to the violation of freedom of religion / belief of the time (months) occurrence. In the previous year research, the month that became the “culmination” month of the violation was on February (45 violations) and March (48 violations).<sup>32</sup>

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32 See Hasani and Naipospos (Eds), 2012, *Politik Diskriminasi Rezim Susilo Bambang Yudhoyono: Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia 2011*, (Jakarta: Pustaka Masyarakat Setara), p. 22.

The spread of those violations in various month describes about the pattern which relatively “static”, which related to the “major” incident that stimulates some of “derivative” violations.

In this year the big number of violation happened on May that relates to the HKBP Filadelfia Bekasi and GKI Yasmin Bogor which again heats up in February-April 2012 so that the violations “culminated” in May. This key incident also occurred in Aceh Singkil. The violation is forcibly closure the Christian’s place of worship on the beginning of May, 2012. And the others incident culminated on October “supplied” by barbaric incident on Shia (Syi’ah) congregations session 2 in Sampang, Madura, which occurred on ultimo August and continued on September and others violation happened on October also.

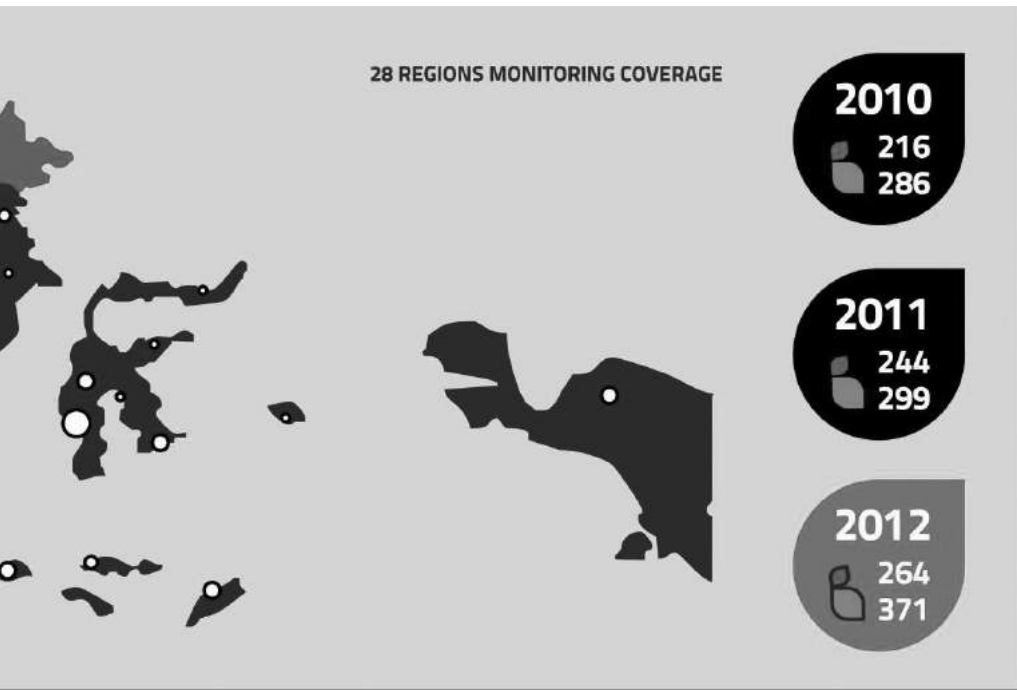
If compared with the culminated violations occurred years past, what happened on February and March relates to two key incidents which occurred sequentially, there is the massacre of Ahmadiyah in Cikeusik and church burnings which occurred in Temanggung.



The culmination of violations which occurred on May and October also could be interpreted symbolically. The two “sacred” months for the Republic actually unable to evocative the spirit of the people of Indonesia to sow tolerance as stipulated as the concept of “Bhinneka Tunggal Ika” among the adherents and followers which has different sight of religion and belief.

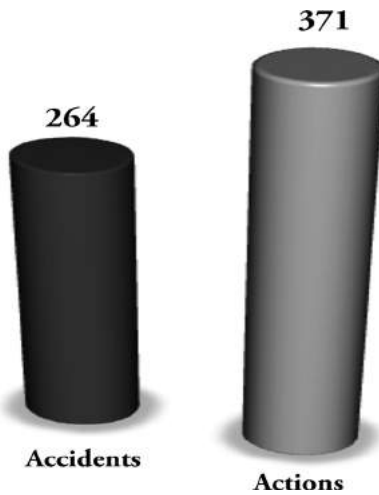
As we all know, May and October are the important month of Indonesian people where the precious moments of Indonesia commemoration, namely “bulan kebangkitan nasional” (The National Awakening Day-on May), and October as the day of Sumpah Pemuda (youth pledge), that day being the historic day of Indonesian concatenation-history of nation shapers (young people) to be united in their different.

The culmination of violation which occurred on May and October confirms that the sacred spirit of *Kebangkitan Nasional* (National Awakening) and Youth Pledge/ *Sumpah Pemuda* have not growing in

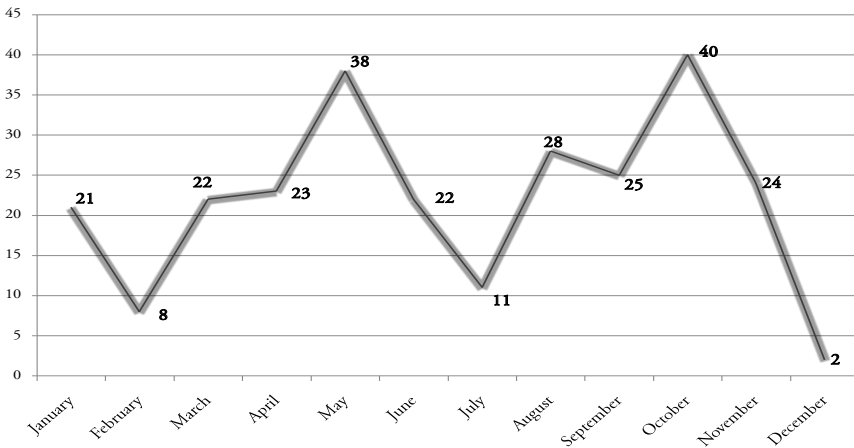


Indonesian which has different and diversification as their naturally given. Politically, this condition could be read as a serious problem for existence and national integration of our nation (nationality). Are the nation as a community, be imagined – or at least base on the opinion of Huntington – be treated such as through the reproduction of sacred symbols of nationality.

Graphic 1  
Amount of the incidents and actions.



Graphic 2  
The Monthly report of Distribution of Occurrence Violation Time



From the location of occurrence violation, SETARA's monitoring shows that most of provinces of administrative jurisdiction area of Republic of Indonesia, contributes some violations' data on freedom of religious/ belief. Those violations to spread occur in 28 provinces (see graphic 3). The number of violations leveled on more than 10, occurred in 6 (six) provinces. While the most massive and significant violation, quantitatively occurred to spread in 5 areas (graphic 4). The most-high violations occurred-province is West Java. It becomes the "champion" of the past. In fact, in terms of the quantity, the violations that occurred in that neighbor-city of Indonesia – 76 cases of violations – it increased if compared to the condition on last year which "only" 57 cases.

The stable status of West Java as the most intolerance province in Indonesia, reflects the deepest apprehension if related to its position as the biggest demographic contributor of Indonesia. As recorded in statistical notes of Central Statistics Agency (BPS/ *Badan Pusat Statistik*),<sup>33</sup> West Java is the most densely-populated provinces of Indonesia. By analyzing the relation pattern of Indonesian population, could be assumed that the level of diversity of West Java is also high. Thereby, the failure of experimentation on tolerance in the terms of differences (including religious/ belief) in West Java can be interpreted as a failure of tolerance hotbed in the greatest socio-demographic miniature of Indonesia.

Trough the data, is also needed to be asked the epistemological questions, why West Java? SETARA Institute within the Framework regrets the weak position and role of local elites, in this case is the Governor of West Java. Governors who are the real power in West Java is a figure at once carried by the Prosperous Justice Party (PKS), the Islamic Party since 2009 claims have formally transformed into

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33 For data on 2010, the newest population data can be accessed by Central Statistics Agency (BPS), the population of West Java is 43,1 milion or almost 20% of the total population of Indonesia in the same year which amount 237,6 milion people. See on the site of BPS through this link [http://www.bps.go.id/tab\\_sub/view.php?kat=1&tabel=1&daftar=1&id\\_subyek=12&notab=1](http://www.bps.go.id/tab_sub/view.php?kat=1&tabel=1&daftar=1&id_subyek=12&notab=1) accessed on December 11, 2012.

an opened-party. The political platform as the opened-party should be applied concretely by Ahmad Heryawan in his politico-juridical policy as the head of government of West Java in order to establish West Java become the inclusive and tolerance province.

From the deployment regional where the violations occurred also could be identified its stagnancy or deterioration in compliance of freedom of religious/ belief as the constitutional right in top 5 provinces. The highest contributor of violation on freedom of religious/ belief this year is not shifting. The shifting only occurred in North Sumatera and Banten. North Sumateran on the last research ranked the second after West Java with the number of violations as much as 45 cases of violations, and now it “donates” 3 cases. The position of North Sumatera on top 5 was replaced by “neighbor country” Naggroe Aceh Darussalam with 36 cases. And Banten which became the place where 14 cases happened, now is out of top 5 with 4 cases only. The top 5 position of Banten was replaced by Central Java when this year ranked on third position as intolerance province in Indonesia with 30 cases of violations.

Meanwhile three (four) provinces as the other occupant of the top 5 other, was not shifting. The position of West Java, East Java and South Sulawesi stayed on top 5 (five) as same as last year. From the quantity the freedom of religious/ belief increase significantly in West Java (last year 57 cases) and East Java (31 cases). This phenomenon of province’s position which “again” on the top of 3 as the intolerance provinces, reflecting the lack of regional initiative to take progressive actions to fulfill the constitutional rights of its citizens in the form of freedom of religious/ belief. There’s fact of strong tendency that Regional Government did the omission even in certain extend in order to create worsen the situation of intolerance and discrimination. That tendency could be captured in East Java by the case of persecution on Shia congregations in Sampang and West Java, case of GKI Yasmin, and case of HKBP Filadelfia.

An advance situation brightly shows incompetency, incapability and lack of political will of the local government to take breakthrough

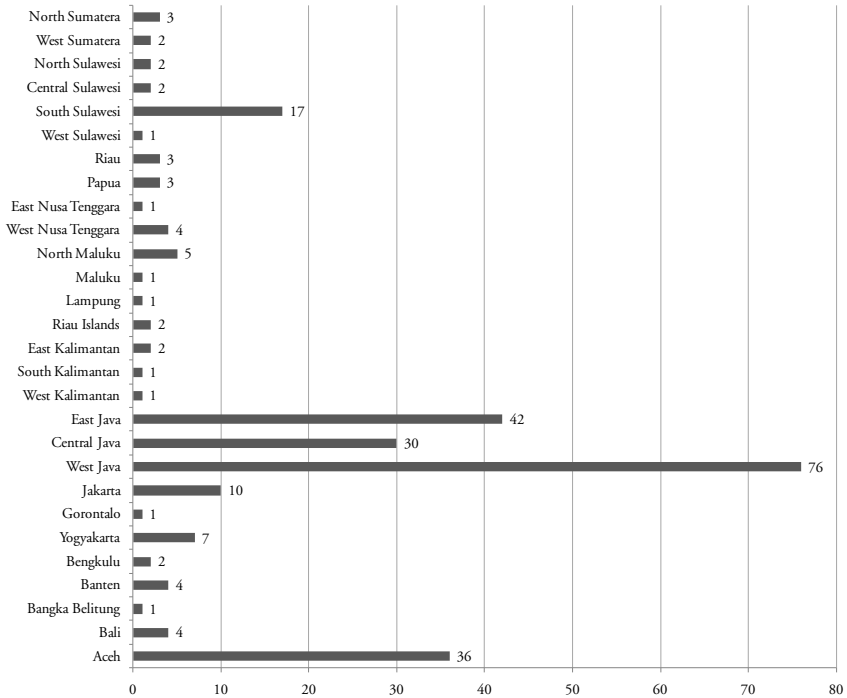
policy in order to promote the constitutional guaranty for freedom of religious/ belief. Not only that, the data also show ineffectiveness of relations among the provinces-districts/municipality cum governor-regent/mayor which represented by disability of governor “to control” or “to direct” his underling-governmental unit. This ineffectiveness relation is reinforced by the amount of violations which carried out by the district government/municipality government or regent/mayor (see graphic 6) as one of factors.

This minus situation aggravate the similar situation in national level, where the regulation in governmental level, ministry, and institutions “the auxiliary” of the state, such as MUI<sup>34</sup> and Bakorpakem, tend to fail in embodying the constitutional guaranty for freedom of religious/ belief in the field of politico-juridical policy under the basic law of the state. Incongruence and inconsistency of governmental policy both politically or administratively with constitutional policy design which stipulated in the 1945 Constitution (UUD) of the state, becoming the fundamental problem for freedom of religious/ belief. This description has been done in Chapter 1 of this report.

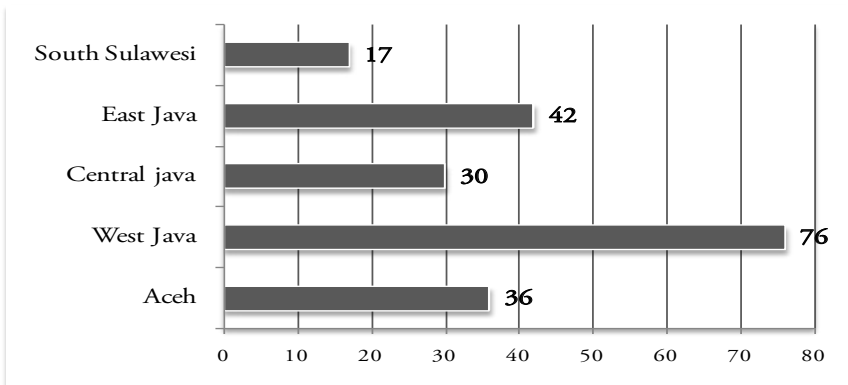
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34 The ambiguity of institutional position (institutional) of MUI that considered as the *state agency* or an ordinary community organization (Ormas) like NU and Muhammadiyah, dyes the discourse relation between state and religion in Indonesia. At first, MUI was established by state/government of Orde Baru Regime to control the religious community organization, but in that development, the position of MUI become more significant and moreover its authority was strengthened related to some of regulations, such as: Syaria Bank, Zakat and Halal Certification.

Graphic 3  
The Regional Distribution of Violations Occurrence (per-Province)

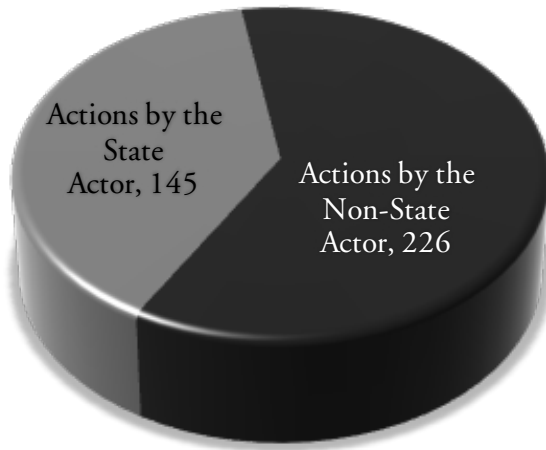


Graphic 4  
The Top 5 (five) Regional of Highest Violations Occurrence



From the side of actors behavior, by using the normal category in study and human rights perspective, the violations on freedom of religious/ belief can be categorized as two kinds, such as; the actions committed by state, and action committed by non-state actor. The research result of SETARA Institute shows that the action committed by state actor tend to lower than by non-state actor, means 39% of violation, compared with the percentage of action which committed by non-state actor, means 61% (see graphic 5). Cumulatively, the percentage of this action classification based on the actor, is not significantly shifting.<sup>35</sup>

Graphic 5  
The intensity of Action by Actors



State actor which being the biggest violation quantitatively is Indonesia National Police (Polri), means 40 cases. This confirms that

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35 In counting the actor, SETARA Institute bases itself to who involved in an incident. In one incident, some governmental institutions could be merged to do an action. Likewise happened between the state institutions and society groups could be merged to do some of actions in an incident.

the position of the state police as the *potential offender* which in human right perspective generally congruence with its Tri Brata Corps in the specific issue of freedom of religious/ belief. The violations committed by the police, on this year as equal as which committed by them on years ago (40 cases of violations). Meanwhile, the other institutions which committed the highest action of violation after police, is district with 28 cases and city with 10 cases. The composition of violation which committed by district government and city government (38 cases) escalates significantly if compared with last year condition (only 18 cases).

Mostly the actors of state government (executive) are who sat in national or local level, as the main state agencies or auxiliary state agencies. Those state institutions --exclude police and district government/municipality government—namely attorney, ministry (particularly Religious Affairs Ministry), provincial government, Public Order Agency (*Satpol PP*), agency, sub-district head, and so other.

If classified by using the perspective of human rights, the violation committed by the state could be divided into 3 kinds, such as direct-act violation (by commission), indirect-act violation (by omission), and through the policy which overarching or provoked the violation (*by rule/judiciary*). Mostly violation committed in the form of direct action (112 cases/ 77, 2%). Indirect act violation occurred around 28 times (19, 3%), and in the form of policy around 5 (five) times of violation (3, 5%). The direct act committed by state actor could be including the prohibition of establishing a place of worship, to force a belief, the dissolution of the discussions, dissolution the religious activity, misdirection, investigation on allegations of religious desecration, suspicion of religious desecration, prosecution on religious desecration, verdict of indictment, and so on (see table 1).

Graphic 6  
State Actor and Amount of Violations

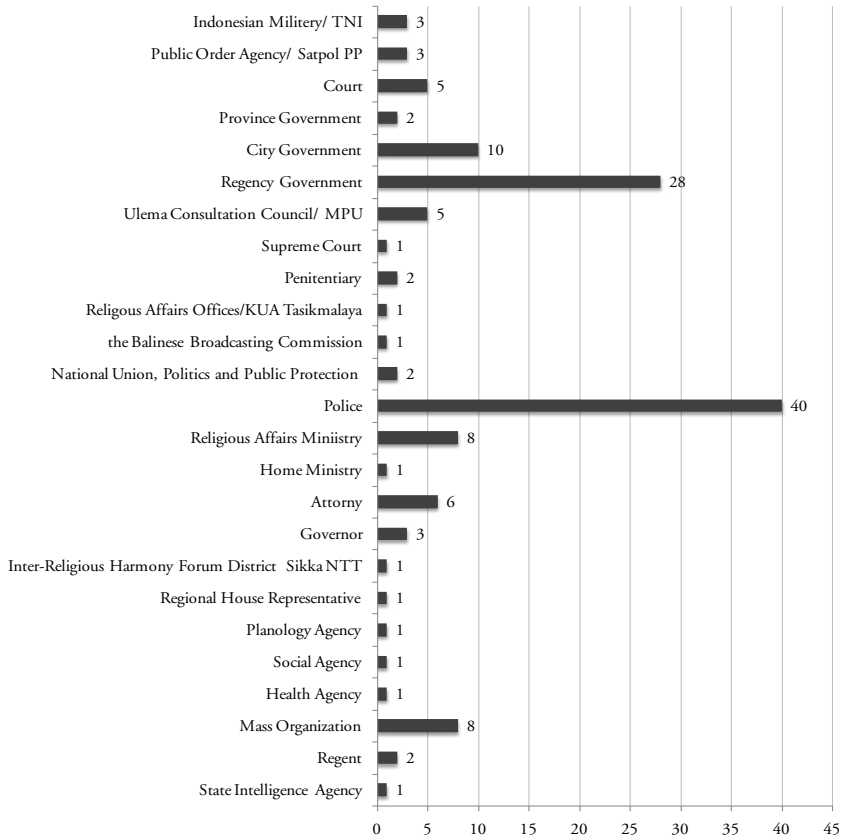


Table 1  
Violation Act by the State

Violation	Amount
Threat of Dismissal	1
Threat of worshipping place closure	1
Condoning	8

Discrimination	18
Intimidation	4
Discriminative policy	5
Disallowance of religious belief	1
Disallowance of worshipping	5
Disallowance of religious activity	1
Disallowance of establishing Educational Institution of Religion	1
Disallowance of establishing worshipping place	4
Coercion of belief	7
Disallowance of freedom of expression	7
Omission	28
Dissolution of discussion	1
Dissolution of religious activity	1
Extrajudicial investigation	1
Detention	2
Detention on Religion Desecration	1
Arbitrary Detention	1
Arrestment	6
Neglect of Refugees	2
Eviction	2
The Sealing Action of House of Worship	19
Misdirection	6
Investigation on Allegation of Religion Desecration	1
Suspicion on Religion Desecration	3
Prosecution on Religion Desecration	4
Verdict of indictment on Religion Desecration	4
<b>Total</b>	<b>145</b>

Meanwhile, the act committed by non-state actors (61% from the whole of violation's cases) mostly cases involving the organization and religious irregulars, society/individual, and other non-state organizations (see table 2). The institutional actor which in the research data is mentioned as biggest contributor in doing violations on freedom of religious/ belief, is Indonesian Ulema Council (MUI)<sup>36</sup> with 25 violations and Islam Defenders Front/ *Front Pembela Islam* (FPI) which "donates" 24 violations. The violations committed by those institutions is only lower that committed by society – individual group which its collective affiliation and organization, is difficult to be identified – committed 76 cases of violation.

Table 2  
Non-State Actor and the Amount of Violation.

Actor	Amount
Businesses	2
Fatayat NU Kudus	1
FBR	1
FKAM	1
FKUB District of Bekasi	1
Forkabi	1
FPI	24
Front Jihad Indonesia (FJI)	1
Front Pembela Pancasila (FPP)	1

36 Technical Operationally in research of SETARA Institute, MUI categorized as the non-state actor, even institutionally there is an ambiguity in the component of institutional of MUI, is this institution part of state agency of mass organization. The choice of this categorization is substantially not problemati. The problem of this institution's role, as the state agency or mass organization, is not significant. The point of significance lies precisely on this institution's contribution on escalation of violations on freedom of religious/ belief.

FUI	1
FUUI	1
Garis	1
Gerakan Anti Maksiat (GAM)	1
Gerakan Anti Pemurtadan dan Aliran Sesat (Gapas)	1
Gerakan Muslim Penyelamat Aqidah (Gempa)	1
Gerakan Pemuda Ka'bah (GPK)	2
GP Anshor	1
HTI	1
Individual	6
Educational Institution	9
IPNU-IPPNU Kudus	1
Jamaah Hizbullah	1
JAT	1
Kokam	1
Laskar Sabilillah(LS)	1
Laskar Umat Islam Solo (LUIS)	1
LPI	1
LSM Pandam	1
Majelis Mujahidin Indonesia (MMI)	5
Muhammadiyah Jatim	1
MUI	25
NU Jawa Timur	2
Hindu-Student Organization (KMHDI Bali, BEM IHDN Denpasar)	1
Pagar Aqidah (Gardah)	2
Islamic Mass Organization	10
PMII Kudus	1

Persis Bandung	1
Religious Leaders	6
Residents	76

Related to MUI and FPI, if juxtaposed with last-year data, so could be inference that both organizations are being the serious obstacles in compliance and realization of freedom of religious/ belief. On 2011, violations committed by these organizations were also high, more increased around 2-3 points. Referring the last-year data, both each organization was committing 28 cases of violations, and it meant lower than violations committed by society, 80 cases.<sup>37</sup>

Connected to the number of “contribution/donation” on violations of freedom of religious/ belief, should be noted that society could be the agents of violation or harshness in incidentally in the name of religion/belief, even systematically or sporadically. This facts show about the weakness of lower layer condition among plural Indonesian society. Besides that, on the level of curative-prosecutorial, the in juridical-management on violations of freedom of religious/ belief would be facing serious troubles in some cases and claim of violation victim’s rights. And, the violation committed by non-state actor, is mostly formed in intolerance action (42 cases) and misdirection (23 cases). The violation which mostly committed also is offensive and torture actions. The number of physic persecution which generally occurred (murder, torture, sporadically offense, destruction of worshipping places and property of different group, burning of worshipping places, residence, and other property of minority group) was sharply increasing in 2012 (see table 3).

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37 Hasani and Naipospos (eds), *op.cit.*, page 27.

Table 3  
Violation Action by Non-State Actor

<b>Violation Actions</b>	<b>Amount</b>
Threat of Dismissal	1
Threat of murder	1
Threat of worshipping place closure	1
Threat of Offense	2
Condoning	15
Discrimination	11
Intimidation	9
Intolerance	42
Proscription of Belief	3
Proscription of Worshipping	12
Proscription of Discussion	1
Proscription of religious activity	3
Proscription to establish the religious facility	2
Proscription of establishing the worshipping places	6
Detention of belied	8
Detention to worship	1
Burning residence	3
Burning the property	2
Burning the worshipping place	2
Burning of religious activity's place	1
Disallowance of freedom of expression	8
Property Demolition	1
Dissolution of Discussion Activity	1
Dissolution of worshipping activity	2
Dissolution of religious activity	2
Murder	2

Terror/shooting of worshipping place	1
Torture	13
Eviction	1
Road access closure	2
Residence Sealing	1
Worshipping Place Sealing	5
Sporadic attack	15
Discretion	23
Worshipping place destruction	5
Property destruction	5
Worshipping place destruction	13
<b>Total</b>	<b>226</b>

The important question that also explored by SETARA Institute which related to the violation on freedom of religious/ belief is about who become the victim and how is the quantitative overview of that violation on that victim. The monitoring data shows the variety of victim's group. Generally, SETARA Institute classifies these groups based on its special socio-religious identity when the violation on freedom of religious/ belief occurred.

By using that indicator, the victims could be divided into 25 groups, plus 2 "groups" of victims which hard to be identified its collective-affiliation and special social identity when the violation occurred; there is individual (for individual victim) and society (for more than one victims in every one action of similar violation). The group of victims which being the object of violation with highest amount are Christian (50 cases). The next victim with number of highest violation is individual object (47 cases), religious sects (42), Shia (34) and Ahmadiyah with 31 cases (see table 4).

From the point of collective quantity of victims, seems that violation on freedom of religious/ belief significantly afflict minority groups, such as Christian, followers of Jemaat Ahmadiyah, followers of Shia, Buddhist, Confusians (Konghucu) and others. This situation could be interpreted that the binary relation between majority and

minority in the country of Pancasila which “united in diversity”, still littered by constrain that finally put the majority as the ordinate and also potential offender, whereas the minority become the subordinate of *cum vulnerable victims*.

However, the irrespective of number of mathematic problem, from the point of identity (especially socio-religious) the violation on freedom of religious/ belief could involves the followers of certain religion/belief. Almost all of worshipping place of religion has problems (see table 7). Those violations could afflict the Christians, Moslem, Islamic preaching assembly, students, member of *padepokan* (small organization), and another. It shows that violation on freedom of religious/ belief could afflict everyone. This portrait reconfirms that violation on freedom of religious/ belief is a common enemy which can afflict everyone in a country.

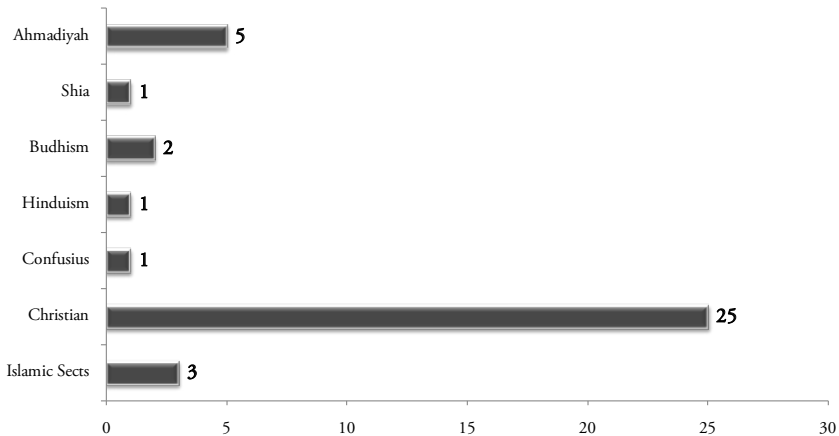
Consequently, in order to protect all of human being, the “presence”, real presence, and rigidity of state strongly needed to protect all of citizens from the offender/violator.

Table 4  
Group of Victims and Violations on them

Group of Victims	Amount
Ahmadiyah	31
Religious Sects	42
Academic	1
Businesses	8
Gafatar	3
Individual	47
Jemaat Babul Maarif	1
Islamic Preaching Community	1
Employees of the company	1
Assembly of Tafsir Al Quran (MTA)	1
Mass Media	2
Padepokan Rabbani	1
Students	7

Human Rights Activist	3
Pluralism Activist	4
Social Activist	2
Civil Official of Purbalingga District (PNS Pemkab Purbalingga)	1
Islamic Boarding School	2
Student of Islamic Boarding School	1
Shia	34
Religion Leader	2
Buddhist	7
Hindu	1
Moslem	3
Confucians (Konghucu)	5
Christian	50
Residents	3
<b>Total</b>	<b>264</b>

Graphic 7  
List of Affected Worshipping Place

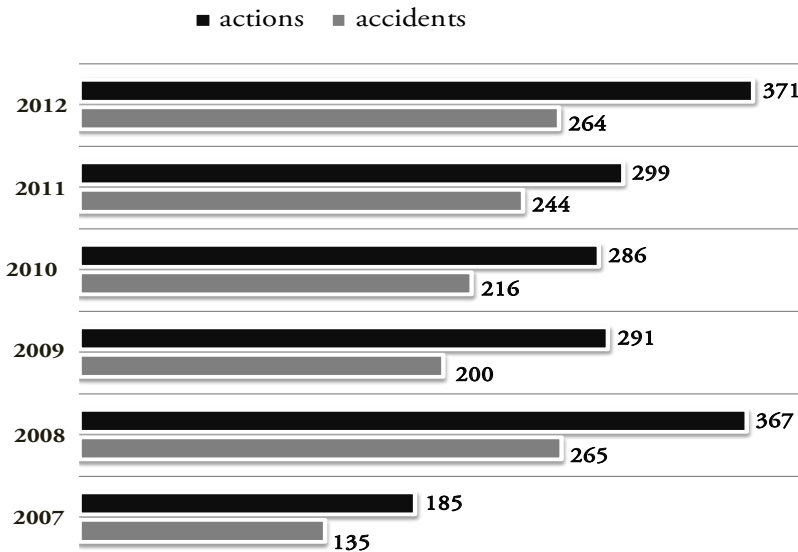


In the last 6 (six) year, SETARA Institute monitors the condition of freedom of religious/ belief in Indonesia, particularly on the specific issues of; violation on freedom of religious/ belief, the actors who

commits violation, and the victims. Since the first time monitoring data was done in 2007 up to now shows escalation numbers. The rate of violation on freedom of religious/ belief could be in graphic 8. The violation which statically increased, describes of main situation; the failure of state's politic to give guaranty and protection on freedom of religious/ belief as the protected and strengthened basic right in the constitution of the state.

The failure of state's politic mainly occurred in 3 points: 1) failure of legislation system (as the joint authority between legislative and executive) in creating regulation which refers to and derived from guaranty of the 1945 Constitutional; 2) failure of regulation system to conform provisions of one regulation and others. And some of regulation that allowed by state to be not aligned are Law 1.PNPS/1965 and Law 39 of 1999; 3) political failure of state law to guarantee of all national regulations from central level up to smallest juridical unit of state must be in line and in same breath with the 1945 Constitution and other derived regulation which already conformed to guarantee the freedom of religious/ belief as the basic right of people and citizen.

Graphic 8  
Incident and Violation Action in 6 years



Those negative situation confirmed by the product of discriminative regulation which still being maintenance, such as Law 1/PNPS/1965, Joint Decree of Minister of Religion and Minister of Internal Affair, and other discriminative local regulations. All of mentioned law products have been factually used as the legitimacy instruments for extreme Islamic organizations and people to do some violations.

Those failures and violations facts boils down to basic questions, what and where is the role of President as the head of government and also head of state? The whole portraits of research result and monitoring shows about the weakness of leadership of President Susilo Bambang Yudhoyono in realizing the constitutional guaranty of freedom of religious/ belief.



Mosque and house belong to Ahmadiyah followers broke by the citizen, Ciranjang Street Cisaat Village RT 01/08 Cipeuyeu Haurwangi District, Cianjur West Java, Friday, February 17th, 2012. (source: vivanews).

There's no initiative and breakthrough action taken by the President in handling some violation afflicted by Christian, Shia, Ahmadiyah, and other minority groups. Ironically, SBY always boasted that there's no gross violations of human rights occurred as long as his leadership period. Factually, the real meaning of freedom of religious/ belief is a basic and fundamental freedom which cannot be diminished or postponed its fulfillment. The perspective of SBY about human rights just restricted on the violation actions which committed by security

apparatus only. That perspective is totally wrong in understanding the concept of human rights. As long his leadership period, the violation on fundamental right on freedom of religious/ belief has been violated.

Similar to the condition in 2011, the leadership of Susilo Bambang Yudhoyono seems to prefer in giving speech about tolerance than working seriously and measurably to build the tolerance by giving the guaranty of freedom to all of his people. Without guaranty of freedom, tolerance would be a speech of president and could not contribute anything for advancement of human rights. During 2012, not less than 15 times, Susilo Bambang Yudhoyono was giving message of tolerance in some events. It was less than 2011 where the President conveyed the message in 19 times.

The data of report of condition on freedom of religious/ belief plus violation of freedom of religious/ belief occurred, at least 6 years, directs to one of macro conclusion that the regime of Susilo Bambang Yudhoyono – after 2011 was clearly selected the path of political discrimination in regulating the religious life. And in 2012, confirmed that Susilo Bambang Yudhoyono becomes the President without an initiative and a leader without leadership in terms of fulfillment and advancement of freedom of religious/ belief. []

# The Potrait of Violation on Freedom of Religious/Belief

In this session, SETARA Institute elaborates some specific cases which objectively presenting the situation of freedom of religious/ belief in Indonesia. There are too many cases which capture the incidents and violation actions on freedom of religious/ belief in 2012. We purposely choose some of cases to be explored and give the public -- which concern to the issue of human rights advancement – which in our perspective very clearly become the specific portraits of real situation reflecting freedom of religious/ belief along 2012. Some of chosen cases are: case of HKBP Filadelfia at Bekasi, case of churches sealing in Aceh Singkil, case of Shia Sampang II, case GKI Yasmin at Bogor, case of Ahmadiyah at Tasikmalaya Jawa Barat, and case of local Syaria Regulation in West Java.

The study on cases of incidents and violations involves some of authors. The case of HKBP Filadelfia in Bekasi written by Amininudin Syarif and M. Irfan and presented in sub-section titled “(The Death of) Law State in Bekasi: Cases HKBP Filadelfia.” Case of Shia Sampang II explored by Akhol Firdaus, presented in an article of sub –section “The Worsen Human Tragedy: Case of Shia Sampang II.” Case of Ahmadiyah in West Java written by Abdul Khoir, presented in an article titled “Recurring Violence on People (without) State: The Tragedy of Ahmadiyah in West Java.” The case of Churches Sealing

in Aceh Singkil, written by Hilal Safary and presented in sub-section, titled “The Plight of Christian in Pancasila Country: The Tragedy in Aceh Singkil”. Halili also explored about local regulation of syaria in West Java which written in sub-section article titled: “The Strong-Willed ‘Champion’: Kepala Batu Sang ‘Juara Bertahan’: about Local Syaria Regulation in West Java”. The last is case of GKI Yasmin in Bogor written by Bahrin dan Agnes Hening Ratri and presented in “The Story of Citizen without Laws: Continued Case of GKI Taman Yasmin.”

All of case descriptions in part III presents some terms. First, from its regional coverage, the violation on freedom of religious/ belief occurred in some areas; inside Java and outside Java. Generally, the distribution of violation on freedom of religious/ belief in Indonesia in 2012, explained in the previous section of this book. The narration of exploration in this section is only a little “snippets” of regional distribution which describe about the violations on freedom of religious/ belief that occurred everywhere in Indonesia, a country with principle of *Bhinneka Tunggal Ika*.

*Second*, from the identity aspect of socio-religious, the violations afflicts some of resident of a state with varied religion/belief, even Christian or Moslem, moreover the faiths/local religion (even the description is not included, but has quite explained enough in report of 2011). One for sure, in the context of the victims is the vulnerable minority group.

*Third*, some of cases describe involvement of various actor particularly the state and apparatus of government inside. The violation by state occurred in various faces, particularly the direct action (by commission) and omission action (omission).

The construction of those cases is already complete to explain about the state that it and its government should be present to prevent the cases of violation run sustainably, protracted, and recurrence on freedom of religious/ belief. The state and three authority and character, such as to push, to monopolize, and includes the whole. The role of state is so important and urgent in the three levels as well: preventive,

curative, and preservative.

It's time to the state serves actively in order to run for two obligations; on the one hand, the state must implement the constitutional provision about guaranty of freedom of religious/ belief. The state must protect the whole nation and entire of country of Indonesia, including the whole nation with their minority religion/belief to embrace a religion/belief and to worship accordance to their religion or belief.

The state (concretely have government apparatus inside, both in central or regional level) should see that the violations occurred in this Republic. Like a puzzle, those mentioned violation is almost getting perfect. The construction of "mal" or main master of those violations is already complete and clear. It clearly means that problems should be handled by the state. Something that we are still waiting for is the solutions of those violations performed by official state.

### **A. Case of HKBP Filadelfia: The Paralysis of Law State in Bekasi**

The constitutional guaranty on freedom of religious/ belief<sup>38</sup> purposed to give enough space for followers of a religion or belief to worship and to do their ritual activities with halcyon and peaceful. Our *founding fathers* when formalize that constitution certainly very aware of Indonesian diversity of religion/belief. They realized about the fact that Indonesia has certain religion which being the majority. However it does not meant that the majority becomes the superior on minority. The assault and privilege of a certain religion or belief must be avoided. Precisely here is the role of state lies as the protector of its citizens. The diversity becomes one of Indonesia common wealth of nation which should be an inspiration and spirit of Indonesia to retaining the Unitary Republic of Indonesia (NKRI), not contrary. Appreciating attitude among fellow of religious adherents, should not just be the mere of

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38 Article 29 (2) the 1945 Constitution confirms that: "The State guarantee the freedom of each people to hold his own religion and to worship accordance to that own religion and belief."

verbal statement. But more than it, tolerance means the appreciation of all values which being the reference in order to establish inter-religion harmony. This value was actually lost from the life of Indonesian.

Some of incidents which showing inter-religious tolerance, by the time seemed to justify that Indonesian become more intolerance. Even the democracy in Indonesia in recent years got praise from world society, the condition actually not directly proportional with the real tolerance condition of the nation.



Under the sun with plastic sheeting, HKBP Filadelfia followers do worship beside the road on February 5th, 2012, (Source: [www.andreasharsono.net](http://www.andreasharsono.net))

The policy which issued by government in central or local should be protecting minority group which frequently afflicts discrimination. When an issued policy by government tends to reduce or grab the rights of minority, so the people must protest and criticize that policy. If there's no courage to criticize the political policy, it means that the people not respect/obey the system anymore. The predicate of democratic state with biggest Moslem majority of the world which dedicated to Indonesia means nothing if there is no protection system for minority groups. Because, the more democratic a country, the more

people getting free.<sup>39</sup>

By understanding the freedom of religion deeply, the tolerance would be established. The tolerance means, accepting the diversity of tribes, ethnics, races, and religions is the constructive attitude. And contrary, the attitude of glorifying the differentials of tribes, ethnics, races and religion which expressed in the form of chaos or violence is the meaning of destructive attitude.<sup>40</sup>

However, the facts of infringement or disapproval on diversity become more increasingly apparent, particularly politization of diversity on religion/belief to be the sensitive issue. Some of real portraits were derived to some regions of Indonesia, the Pancasila country with principle of *Bhinneka Tunggal Ika*. One of the serious negative portraits that would be annotation for all element of the nation is the case of HKBP Filadelfia. This case could be a sample to see the life of inter-religion of Indonesia.

HKBP Filadelfia located in the area of Bekasi regency, West Java. The boundaries Bekasi regency includes the north of Java Sea. The boulder of the south is Bogor regency, and in the west directly adjacent to DKI Jakarta and Bekasi Municipality. The east is directly adjacent to Karawang District. The population of Bekasi is 528.166 KK (Head of Household). The District of Bekasi consists of 23 sub-districts and 187 towns. The amount of towns in every sub-district is around 6-13. The sub-district with the smallest amount of towns is Centre of Cikarang (Cikarang Pusat), Bojongmangu, and Muaragembong. And the sub-district with biggest amount of towns is Pabuaran sub-District.<sup>41</sup>

HKBP Filadelfia Bekasi is actually afflicting the intimidation on

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39 Fareed Zakaria, *Masa Depan Kebebasan, Penyimpangan Demokrasi di Amerika dan Negara Lain*, (terj), Jakarta: Ina Publikatama, 2004, p. 23

40 Nur Achmad, *Pluralitas Agama: Kerukunan dalam Keragaman*, Jakarta: Kompas, 2001, p. 96

41 The Geographical Condition of Bekasi Regency, available at <http://www.bekasikab.go.id/#>; Internet; downloaded on December 18, 2012.

establishing worship of place<sup>42</sup> since 2000. Whereas the verdict law in the court has won the lawsuit of HKBP Filadelfia. The Bandung State Administrative Court (PTUN) states cancellation of the decision letter (SK) of Regent of Bekasi about termination of establishment of worshipping place and worshipping activity, in Gereja Huria Kristen Batak Protestan (HKBP) Filadelfia, RT 01 RW 09 Dusun III, Desa Jejalen Jaya, Sub-district Tambun Utara, Bekasi, Jawa Barat and the regent should revoke that SK, and give a lisenca to establish house of worshipping for HKBP Filadelfia accordance to the applicable regulation.<sup>43</sup>

But the verdict of PTUN cannot give any guaranty for HKBP Filadelfia to practice their religion. Some kinds of intolerance action and discrimination still afflict them as a part of citizens. Some of worshipping activities of HKBP's followers, obstructed, prohibited, and even dissolved, which as occurred on Sunday, March 25, 2012.

In the early morning, the followers of HKBP established the worshipping place for themselves by setting the tent. Some of demonstrators that resist to HKBP also installed the loudspeakers. The worship that scheduled will began on 09.00 WIB.

At 07.15 WIB, some of woman demonstrators came. Then they entered the location of worshipping and occupied that place. And then, finally those demonstrators started to hold religious activity on that place. Around fifteen minutes later, other demonstrators (men and youths) came and block the path of 2 directions.

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42 In the Article 1 of Joint Decree of Minister of Religion and Minister of Internal Affair Number: 9 Year 2006 and Number 8: Year 2006 about Implementation Guidelines of Task of Regional Head/Deputy of Regional Head in Maintenance of Religious Harmony, Empowerment of Religion Harmony Forum, and Construction of Worshipping House 3<sup>rd</sup> point, mentioned: "The House of Worship is a construction which has certain characteristics that particularly used to worship, permanently designated for all of the each religion followers, not including the family's house of worship."

43 Chris Poerba, "Kasus Filadelfia, Kodokpun Dipaksa Intoleran", April 25, 2012, the article is available in <http://icrp-online.org/042012/post-1864.html>; Internet; Downloaded on December 18, 2018

At 08.00 WIB the followers of HKBP Filadelfia came to their worshipping place, but because of blocked ways, they last about 100 meters from the location. The demonstrators were shouting, beating the drum (bedug), carry on the banners, and so on. Their goal is refuse of HKBP Filadelfia. Moreover, the oration and shout impressing discrimination and racist.

After two hours negotiation with police and government representative of Tambun Utara Sub-District, at 10.00 a.m. HKBP Filadelfia finally disband and dismantle their worshipping place after the police asked the woman demonstrators to out from that place with an agreement that the followers of HKBP Filadelfia canceled their worship there. The situation along demonstration was so eerie. The next-week worship, Sunday April 1, 2012, also threatened to be disturbed again by more great number of mass.

The intimidated action recurred again on Sunday, April 22, 2012. Moreover that intimidation leads to the physical violence. It started from when followers of HKBP Filadelfia were intercepted by Public Order Agency (*Satpol PP*), with the reason of not-conducive condition. But the followers of HKBP Filadelfia, which amounts around 100 persons, still wanted to worshipping, and they walked from Villa 2 Tambun to Jejalen Jaya Kampong. Shoving action among the followers with the apparatus occurred. It was very irony. But, at 09.15 the followers still did worshipping even only in front of the entry gate of residence of Villa Bekasi Indah 2.

The intimidation on followers of HKBP Filadelfia at that day was documented in a documenter movie. From that movie, it clearly seen when the worship will be begun, there is a man who stands nearly the crowd. He wore a hat which in that movie named: Ainun's Brother (Adik Ainun). He watched that shoving action, but when the followers started to begin their worship, that man gone by taking on the motorcycle (maybe ojek). The situation seems going to be safe. But at 09.15 a.m., around 500 of intolerance mass came to that place while the worship got finished. They broke the defense of *Satpol PP*, but successfully banished. And when the worshipping activity finished and the followers would go home, a woman appeared and throw seven

frogs that feet are tied each other. Finally, at 11.00 a.m., the police came with a truck of instruments and immediately made the posse to fortify the beleaguered followers. The interesting view of that movie is when those 500 intolerance mass came on the followers, involved one of apparatus, the Chief of the District, his name is Soeharto.<sup>44</sup>

On Thursday, May 17, 2012, the followers held worship activity again at 09.00 a.m. in the morning. The worshipers were coming since 08.30 a.m. But, at that time they were intercepted by mass. The mas considered that the worship is illegal. Because forbidden to practice their worship, the followers of HKBP finally negotiated to the police. Unfortunately, that around 1 hour-negotiation had no good solution. The followers just prayed together for three minutes and then disbanded. That incident occurred at May 6, 2012. The government asked the followers of HKBP Filadelfia found another place to do their religious activities.<sup>45</sup>

Based on the interview of SETARA Institute and HKBP Filadelfia related to that afflicted case, explained that the incident begun in 2008 when the followers of applied of Recommendation to Build House of Worship (Church of HKBP) to the Head Official of Ministry of Religion District of Bekasi, the Inter-Religious Harmony Forum (FKUB) of Bekasi District, and also to the Regent of Bekasi District to get Construction Permit (IMB) for house of worship. That application was proposed accordance to the prevailing conditions which arranged in Joint Decree of Ministry of Religion and Ministry of Internal Affair 9 of 2006, and 8 of 2006.<sup>46</sup> Even that application equipped with the

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44 Chris Poerba, "Kasus Filadelfia, Kodokpun Dipaksa Intoleran", April 25, 2012, the article is available in <http://icrp-online.org/042012/post-1864.html>; Internet; Downloaded on December 18, 2012.

45 "The followers of Filadelfia were blocked when going to worship", *tempo.co* (online news) May 17, 2012, search in <http://www.tempo.co/read/news/2012/05/17/173404466/Jemaat-Filadelfia-Dihadang-Saat-Hendak-Beribadah>; Internet; downloaded on December 18, 2012.

46 In Part IV about Establishing House of Worship Article 14 mentioned:

(1) The establishment of house of worship must be fulfilling the administrative and technical requirements of building construction.

provision which already submitted by the HKBP Filadelfia since April 2008, up to October 2009, the permit which asked has never been published.<sup>47</sup>

Ironically, the lisenca was not given by the Regent, but instead issued a decree (SK) No.300/675/Kesbang Pollinmas/09 about discontinuation the activity of the establishing process and worship activity, Huria Kristen Batak Protestan (HKBP) Filadelfia, located in RT. 01 RW.09 Dusun III, Desa Jejalan Jaya, Tambun Utara Sub-district, Municipality of Bekasi, West Java, which issued on December 31, 2009.<sup>48</sup>

The HKBP Filadelfia assess that the decree of Regent is contrary to the law and justice, so that on March 2010, HKBP Filadelfia submitted the claim on publishment of the decree of Bekasi Regent No. 300/675/KesbangPollinmas/09 through the state administrative court (PTUN) Bandung.

On September 02, 2010, The Bandung State High Court (PTN Bandung) grants verdict of HKBP Filadelfia through declaration Nomor: 42/G/2010/PTUN-BDG which the injunction declared:

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- (2) Besides fulfilling the requirements as stated as in verse (1) establishing the house of worship should be fulfilling some particular requirements, such as:
    - a. List of name and identity cards of users of worshipping house at least 90 (ninety) peoples which was passed by the local official based on the regional level boundary as stated as in Article 13 verse (3);
    - b. Support from surrounding people at least 60 (sixty) which was passed by Kepala Desa/Desa Kepala Desa;
    - c. Written recommendation from Office Head of Ministry of Religion in District/City level; and written recommendation from FKUB of District/City level.
  - (3) In the context of requirements as stated as in verse (2) letter a, is fulfilled, but requirement of letter b is unfulfilled yet, the local government should facilitate the availability of location for house of worship establishing.

47 The Interview of Setara and Judianto Simanjuntak (Advocacy Team and Litigation of HKBP Fildelfia) through the electronic mail dated on December 14, 2012.

48 *Ibid.*

- Grants the claim of all litigants.
- To declare void the decree of Bekasi Regent No: 300/675/KesbangPollinmas/09, Dated December 31, 2009, about: Cessation of Activity of Establishment of House of Worship and Worshipping Activity, Gereja Huria Kristen Batak Protestan (HKBP) Filadelfia, at RT 01 RW 09 Dusun III, Desa Jejalen Jaya, Sub-district Tambun Utara, Regency of Bekasi, West Jawa, which published by the defendant.
- To ordered the Tergugat to repeal the decree of Bekasi Regent No.300/675/KesbangPollinmas/09, dated on Desember 31, 2009, about: Cessation of Activity of Establishment of House of Worship and Worshipping Activity, Gereja Huria Kristen Batak Protestan (HKBP) Filadelfia, at RT 01 RW 09 Dusun III, Desa Jejalen Jaya, Sub-district North Tambun, Regency of Bekasi, West Jawa, which published by defendant.
- To command on the fefendant to processing the defendant's submitted permit and giving the permit to establish the house of worship appropriate with the applicable constitutions.

Because of this verdict, the defendant which contextually is Regent of Bekasi, appealed to The High Court of Administration of State (PT. TUN) in Jakarta. On March 30, 2011, PT.TUN Jakarta through its verdict of No.255/B/2010/PT.TUN.JKT, and won again HKBP Filadelfia and upheld the decision of PTUN Bandung.

On June 28, 2011, PTUN Bandung published the case decision No.42/G/2010/PTUN-BDG Jo No.255/B/2010/PT.TUN.JKT, which establishes:

- Granted the petition of plaintiff.
- Declare the matters of number: 42/G/2010/PTUN-BDG Jo Number: 255/B/2010/PT.TUN.JKT, stated that those do not formally eligible so that its examination cannot be increasingly submitted to the level of Supreme Court of Republic of Indonesia.

The stipulation of PTUN Bandung is a mandate of Article 45A (2) Letter c Law 5 of 2004 on The Alteration on Law 14 of 1985 About Supreme Court<sup>49</sup> jo Law 3 of 2009 on The Alteration of Both Law 14 of 1985 About The Supreme Court which restricts the matter of State Administration that could be proposed its legal remedy of cassation to Supreme Court, because the local official's decision as the object lawsuits, the decision reach is applicable in the regional scope only, so that it exempted in legal remedy of cassation or on the other hand the scope of Decision of State Administration Official that was sued, just locally.<sup>50</sup>

Through the stipulation of PTUN Bandung on the matter No.42/G/2010/PTUN-BDG Jo No. 255/B/2010/PT.TUN.JKT, dated on June 28, 2011, hence therefore, the stipulation of PTUN Bandung No.42/G/2010/PTUN-BDG, dated on September 02, 2010 Jo stipulation of PT.TUN Jakarta No.255/B/2010/PT.TUN.JKT, dated on March 30, 2011 was final. It meant that the stipulation of PTUN Bandung and PT.TUN Jakarta had fixed legally binding (*inchracht*).

Even HKBP Filadelfia won those verdicts which supported by verdict of the court that meant had fixed legal and binding (*inchracht*), but up to now, the Regent of Bekasi has not imply that court verdict. It means that Bekasi Regent has done defiance of law that is the defiance on court verdict which fixed legally binding. This condition is also a form of violation on constitution, Law 39 of 1999 on Human Rights,<sup>51</sup>

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49 Article 45A (2) Letter c is: "the matter of state administration that the object lawsuit is in form of the decision of local official which the legal scope only applicable in related area."

50 Interview of SETARA with Judianto Simanjuntak (Advocacy Team and Ligation of HKBP Fildelfia) through electronic mail dated on December 14, 2012.

51 One of article contained in it, that explicitely mentioned about the freedom of religious/ belief is Article 22 which reads:

- (1) Every humankind are free to choose their own religion and to worship accordance to that their religion and belief.
- (2) The state assurance the freedom of people to choose their own religion and

Law 12 of 2005 on The Ratification on International Covenant of Civil Right and Politics, which concede the right of citizens to have a religion, to worship and to establish house of worship.<sup>52</sup>

### 1. The Trigger Factors, Actor, and Victims

There some supporting factors of incident's occurrence that afflict this Church of Filadelfia. Regardless of the tendency of reason which stated by some who feel have justification to commit violence, but still it violates some rights of certain groups that protected by the state. But, the most basic factor from this sealing of HKBP Filadelfia's Church is a form of disobedience of the local government, in this context is Government of Bekasi Regency, in implying the stipulation of court decision that won HKBP Filadelfia.

Besides that, the absence of pressure from central government to local government with under the pretext of local autonomy, means acts some omission that creating more heats-up situation. The central government necessarily taking part to initiate the enforcement of freedom of religious/ belief in Bekasi, a District which being part of Indonesia. Jakarta cannot dodge the pretext of economic issues, because the issue of religion stipulated in Local Government Law (*Peraturan Daerah*) is not being a part of decentralized affair. Because if that reason, the Central Government should take a minimum step to ensure that the below unite did not do disobedience on judicial decision.

Based on the research done by SETARA Institute, the actor of Church of HKBP Filadelfia consists of some society groups (which reject the existence of Church of HKBP Filadelfia) and government. The government in this context is local government, the Regent of Bekasi District, and Central Government.

In the case of violation on HKBP adherents, besides the adherents

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to worship accordance to that religion and belief.

52 The interview between SETARA and Judianto Simanjuntak (Advocacy Team and Ligation of HKBP Fildelfia) through the electronic mail dated on December 14, 2012.

of HKBP, the others which also become the victims of intolerance action done by those actors are some activists of pluralism. Tantowi Anwari alias Thowik is one of them. This activist and journalist from Journalist Union (Serikat Jurnalis) for Diversity (Sejuk) became the victim of assault and torture from Intolerance group.<sup>53</sup>

On the occurrence day, Sunday, May 6, 2012. Around 09.00 a.m., the way to the location of worshipping house of HKBP's adherent in Desa of Jejalen Jaya, Tambun blocked by approximately 500 intolerance masses. They tried to sweep the adherents. There is a tension happened between the intolerance mass with adherent of HKBP because of *Satpol PP* is joining the intolerance mass to block the adherent. The adherents came, including the Priest Palti Panjaitan. A negotiation occurred between the priest and Agus, the leader of *Satpol PP*, but that negotiation ends deadlock. Finally, some of adherents of HKBP return back home.

But nevertheless, the concentration of the mass was still happened in front of the Clinic of Medika Jejalen Jaya. There was some adherent who still comes to get some information about the possibility owned by adherents to worship. But, they were being chased, insulted, and shouted with rude words.

At around 09.20, the situation was getting heats-up. One of FPI's member, Murhali Barda, drags and interrogates Thowik and asks him to explain about the meaning of "Lawan Tirani Mayoritas" which written on the T-shirt. Thowik tried to explain that SEJUK wants to campaign the issue of Peace Indonesi for all of the communities. But those assumed that the T-shirt means resistance of Islam as majority. The explanation of Thowik was nothing for them, and they still considered Thowik as rival of Islam. Then Thowik was stripped naked and his identity card was confiscated by the leader of that group (FPI Tambun), Murhali Barda. There is even a provocation also from FPI which states Thowik against Islam. Thowik also got racist treatment by

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53 "Kronologi Penyerangan dan Penganiayaan terhadap Tantowi Anwari, aktivis SEJUK (kasus Gereja Filadelfia)," article was accessed from <http://dokumentasi.elsam.or.id/reports/view/71> on December 10, 2012

shouted, “This Bataknese!”

Then around a hundred people get in and some of them tried to hit and to kick Thowik until his arm and back scuffed and bruises. Those mass action blocked by polices and *Satpol PP*. Thowing finally evacuated by a police named Nanang from the location to Police office in Tambun. Thowik arrived in that office without clothes, he did not want to be interviewed. He just being inspected his identity and asked to explain about the chronology.

## 2. The Response of Government

Up to now, the residents still refuses the establishment the Church of Huria Kristen Batak Protestan Filadelfia, Bekasi, West Java. Base on the resident’s explanation, the written regulation about the establishment of construction should be obtaining the permit minimally from 60 people surrounding. Those resident’s arguments refer to the Joint Decree of Two Ministers.<sup>54</sup> On the other hand, the Regent Government of Bekasi doesn’t want to run the court verdict which has legally binding. Even make some excuses to avoid the responsibility by buying time. The Vice Regent of Bekasi, Rohim Mintadireja said that Bekasi District will submit the judicial review (PK) to the Supreme Court (MA), but that judicial review submission has to be waiting the examination results of police over double alleged. That certificate is on behalf of a resident and company.<sup>55</sup>

The narration shows the continuing obstructions for adherents of HKBP Filadelfia to worshipping based on their own religion/belief such as constitutionally guaranteed by the 1945 Constitution. Those obstructions were actually occurred in dozen year without protective action from the government which appropriate with the authority and

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54 “Pendirian Gereja Filadelfia Harus Mendapat Izin Warga”, the article was accessed from <http://www.metrotvnews.com/read/newsvideo/2012/05/21/151389/Pendirian-Gereja-Filadelfia-Harus-Dapat-Izin-Warga/6> on December 8, 2012

55 Arie Nugraha, “Pemkab Bekasi Akan Ajukan PK Gereja Filadelfia,” this article was accessed from <http://www.kbr68h.com/berita/nasional/27725-pemkab-bekasi-akan-ajukan-pk-gereja-filadelfia>, on December 8, 2012

responsibility to protect and to guarantee the basic rights of its residents.

These obstructions have occurred on 2000, since the community of HKBP Filadelfia's adherents was formed in Tambun, Bekasi. The obstructions were not only coming from the certain society, but also systemically supported by the state, especially by the apparatus of government and police.<sup>56</sup> By seeing this reality, it's hard to do not say that there're no serious actions from the government, mainly through the security apparatus which has authority to do some actions that considered necessary. The omission done by the government, gave a justification to the society or group to do unconstitutional action by violating the rights of another groups. That fact is a portrait of lack of initiative from the government to the violations on its citizens.

According the opinion of Eva Kusuma Sundari, the member of House of Representatives of Republic of Indonesia from Indonesian Democratic Party of Struggle (PDIP) faction, the case afflicted HKBP Filadelfia seems like GKI Taman Yasmin. This case could be seen from the verdict Supreme Court on IMB (construction permits) of church of HKBP Filadelfia which cannot supported by the state apparatus. The apparatus precisely joined in disobedience of law insistence of intolerant group as well.<sup>57</sup> For sure, this case is being the ironic fact when the government wants to protect the minority rights, including the adherents of certain religion which being the minority in Indonesia.

Through the attitude of government, HKBP Filadelfia stated that the negligence of state with the constitutions can be proved from few several things:<sup>58</sup> *First*, in the form of policy. The government still

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56 "The State forbids the Follower of HKBP to worship", the article was accessed on <http://www.suarapembaruan.com/nasional/negara-larang-jemaat-hkbp-filadelfia-beribadah/19410>, on December 10, 2012

57 Tegar Arief Fadli, "Incident of Solo, Salihara & HKBP Filadelfia have same pattern" May 7, 2012, the article available on <http://jakarta.okezone.com/read/2012/05/07/500/624903/insiden-solo-salihara-hkbp-filadelfia-berpola-sama>; Internet; downloaded on December 18, 2012

58 An Interview between Setara and Judianto Simanjuntak (Advocacy Team and Ligitation of HKBP Fildelfia), via electronic mail, on December 14, 2012

practicing and performing the discriminative regulation and contrary to the principle of freedom of religion, such as Law 1/PNPS/1965 About the defamation of Religion. This regulation limits the number of religion that consist just 6 religions, they are: Islam, Christian, Catholic, Buddha, Hindu, and Konghucu, in addition to limiting the interpretation of religion. And other thing which discriminative from that regulation is The Joint Decree of Ministry of Religion and Ministry of Internal Affair 9 of 2006, 8 of 2006 on the Establishment of House of Worship, or oftenly mentioned as PBM (Joint Decree) of Establishment of House of Worship.

This PBM is formal legally in addition to have trouble because is not known in regulation hierarchy, also substantially/materially troubled. Because, base on the regulation (Perber Pendirian Rumah Ibadah); factually the provision to build a house of worship is very hard to be fulfilled by the minority group. One of the provision mentions that there are minimally 60 approvals, the user of that house of worship should have at least 90 members, and there is an approval from Inter-Religious Harmony Forum (FKUB), and other provisions which hard to be fulfilled by minority group. So, the questions is, if they who want to establish a house of worship but have no fulfilling the provision of having at least 90 members, how would it be? And how is if they have no at least 60 approvals from people surrounding? Then, what is the necessity of surrounding-people's approval to establish the house of worship, whereas that legally permits is just relating to the administration that approved enoughly between the group and local government only?

*Second*, term of omission. During this, the state often fails to prevent violence in the name of religion that made the intolerant adherent of a particular religion (the minority). This is what experienced by the followers of HKBP Filadelfia, Tambun Bekasi since January until May 2012, the incident of violence from a group of intolerant society on the followers of HKBP Filadelfia, such as disruption, threats, intimidation, and even physical violence (beating/torture).

The violence using name of religion, experienced by the followers of HKBP Filadelfia when they worship/devotion, in front of the gate of

location of the worshipping place at RT. 01 RW. 09 Dusun III, Desa Jejalen Jaya, Sub-district Tambun Utara, Regency of Bekasi, West Jawa, even that intolerant group of people (mob) took an action to stop by force the worship of followers of HKBP Filadelfia. Ironically, the apparatus (police) as the protector and guard of society in normally who came to the location, did not do anything in order to protecting the followers of HKBP Filadelfia from violences from a group of people (mob), even seemed to allow that violence.

Because of violence continued occurs to the followers of HKBP Fialdelfia from intolerant group in doing Sunday worship, on the last of May 2012, the Regent of Bekasi suggested the followers to do not worship temporarily in Desa Jejalen Jaya, Bekasi, and waiting until the situation become calm and better. The advice of that Regent accepted by the followers of HKBP Filadelfia, and finally they did not worship at Desa Jejalen Jaya started from June until October 2012.

Because of no clarity when the situation would be getting calm and better, the follower of HKBP Filadelfia on November 4, 2012 returned back to Jalan Jejalen Jaya, Tambun Bekasi to do worshipping, and continuing their activity in every Sunday, but the follower of HKBP Filadelfia again been rejected and prohibited to do their activity in their worshipping location in Desa Jejalen Jaya. This incident continually happened until November 25, 2012 on every Sunday. But, ironically the police did not do anything to crack down that intolerant group and even seemed ommitting the occurrence.

Starting on December 2 and December 10, 2012, the followers of HKBP Filadelfia did not do activity in their worshipping location in Desa Jejalen Jaya, because there is insistence and appeals from apparatus (police) to do not worship on that location. The reason is because the apparatus worried that the incident would occures, the chaos would be happened again. To avoid the possibility of chaos from intolerant group, that's why the police's statement finally obeyed by followers of HKBP Filadelfia.

### 3. The Pessimism of Victims

The recusal done by Mayor of Bogor about the verdict of Supreme Court to allow the followers of GKI Taman Yasmin Bogor, have been implied on the collapse of the moral and optimism of followers of HKBP Filadelfia. As the victims, the followers become pessimistic with the situation which occurred at that time, when the verdict of the court as the evidence which currently enforceable for followers of HKBP Filadelfia was also not carried out by the Regent of Bekasi. This fact showed the recusal of local government. If the government can do it by do not carrying out and obeying the verdict of court, so it can be imagined what will gonna be to the law enforcement of intolerant actions to the victims in the future.<sup>59</sup>

Generally, HKBP judges that the situation on freedom of religion for minority group, so far have not experienced the significant progress, because the minority group still cannot enjoy their cannot be deferred rights, that is freedom to hold a particular religion, to worship, and to establish the house of worship for themselves as guaranteed and protected as in the 1945 Constitutions, Law 39 of 1999 on Human Rights, Law 12 of 2005 on the Ratification of International Covenant of Civil Rights and Politics.<sup>60</sup>

The HKBP also stated that there are many serious things to be carried out by the Government, including how to be having a certain attitude to intolerant group. Some of steps which could be done are:<sup>61</sup> *First*, do some effort ways to build awareness for people to be more appreciating the diversity/heterogeneity of religion, races, ethnic, groups or differences in interpretation of religion. *Second*, building a dialogue among the groups which different in their religion, races, ethnics, group, and differences in interpretation of certain religious teachings. *Third*, doing an affirmative action through the law enforcement on the intolerant society group that performed violence in the name of religion.

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59 The interview of Setara and Judianto Simanjuntak (The Team of Advocacy and Litigation of HKBP Fildelfia) via email on Desember 14, 2012.

60 *Ibid.*

61 *Ibid.*

## **B. The Severe of Humanitarian Tragedy: Case of Shia Sampang II**

The case of Shia Sampang II which mentioned in this book is a case happened on August 26, 2012. As we know, the assault on to the Shia followers in Sampang Madura had been occurred on December 2011 also. What the writer means as if the Case of Shia Sampang I. The exploration and analysis on the actions of freedom of religious/ belief in Sampang on 2011 have been presented by SETARA Institute in the report of Situation of Freedom of religious/ belief on 2011.<sup>62</sup> The absence of state through the case of Shia Sampang I precisely influenced another tragedy which repeats on the same context, with the almost similar subject and object, but with the escalation and increasing level of horror that more getting worse.

### **1. The Intimidation and Terror before Assault**

The burning of 3 (three) houses of follower of Shia in Sampang which done by the anti-shia people on December 29, 2011 ago. After that action on December 2011, some of intimidation and terror is continually perceived by the followers of Shia in Sampang.

The intimidation and terror is usually given by Sunni as the followers of Roies al-Hukama. The intimidation occurred concurrently with the enactment of Tajul Muluk as the suspect on defamation of religion. Besides that, other figure of Shia Sampang was expelled out of the Nangkrenang desa, Desa Karang Gayam, Sub-District Sampang, by the police apparatus. Ummi Hanni said, "Since Kak Tajul and all of his family leaved Karang Gayam, they (Sunni followers) become more daring to do some intimidation and terror to the followers of Shia."<sup>63</sup>

Haris, the Head of Police Station Sector (Kapolsek) Omben, expelled Ummi Ummah (mother of Tajul Muluk), Ummi Kultsum

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62 See Hasani and Naipospos (Eds.), 2012, *Politik Diskriminasi Rezim Susilo Bambang Yudhoyono: Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia 2011*, (Jakarta: Pustaka Masyarakat Setara), page ....

63 Interview with, on August 31, 2012 at 8 – 9 PM.

(wife of Tajul Muluk), Ummi Hanni (sister of Tajul Muluk), Saipul (husband of Ummi Hanni), and Iklil al-Milal (brother of Tajul Muluk) on January 2, 2012. Haris said that the eviction is caused by the insistence of majority group. The figures of Shia Sampang should be staying in Malang for several months after the incident on December 29, 2011.

Along in the place of exile, those figures of Shia Sampang live in stranded life. In Malang have no income because they don't have job or other economic substitute source. Consequently, they just hope from the donation given by their relatives in Malang for continuing their lives. Once a week, police comes to check their conditions. Apparently, the police treat them such as the house arrests. Ummi Kultsum said, "When we are in the eviction period, we cannot fulfill our daily needs because we cannot work. In Malang, we always had been overseen by the police."<sup>64</sup>



After their houses burned, being terror, intimidated, the vulnerable groups of Shia's consisting of women and children are evacuated from their hiding. (Picture: ANTARA/Saiful Bahr)

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64 Interview with Ummi Kultsum, on September 17, 2012, at 5 – 6 PM

Many threats of violence on Shia followers in Sampang are continually done by the majority. They do it not only at the time of recitation, but also in every occasion. For example, when Shia followers worked together to rebuild their mosque and house of Tajul Muluk which damaged because of burning, Sunni followers threatened them to burning and destroying again what they have built. “Please rebuild your leader’s home, after you finished it, we will burn it again,” said Iklil al-Milal imitating that threat-statement.<sup>65</sup>

The violence also experienced by the Shia women in Sampang. The anti-Shia residents cast aspersions them with impolite words. Some of them liken those women followers as filth, infidels, and Jews.<sup>66</sup> At one day, Zakiyah, one of Shia woman followers has been threatened will be killed from one of anti-Shia group. “The Shia woman told to eat a lot fat though. After Lebaran Day would be slaughtered,” said Zakiyah imitating the threat of one anti-Shia member.<sup>67</sup>

Actually, the followers of Shia Sampang have reported several times about those intimidation and terror to the police apparatuses. The police usually promise to give them guaranty of safety and security. But the promise is just being the promise, it never be realized until the assault incident on August 26, 2012 occurred. The apparatus have powerless to face the pressure came from the majority groups. The intimidator and terror doer have not been arrested and they are still living as usual until this time. “Those threats, we reported it to the police, but they always said it just as a snapping, they would not be brave to do it anymore,” explained Ummi Hanni who usually called as Hanni.<sup>68</sup>

According to Hanni, the plan of the assault on August 26, 2012 was actually being heard long time ago. She and some other Shia followers have reported to the police also about the gossip of that assault. Like the previous incident of assault, the police ignored their reports. They even considered that the followers said about something falsity.

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65 Interview with Ust. Iklil Al Milal, on August 27, 2012, at 6 – 7.30 PM

66 Interview with Ummi Hanni, on August 31, 2012, at 8 – 9 PM

67 The interview with Zakiyah, on September 21, 2012, at 8 – 9 PM

68 The interview with Ummi Hanni, on August 31, 2012, at 8 – 9 PM

The role of Ulema Council in Sampang also should be considered as the supporting factor of that incident on August 26, 2012. Along 2011-2012, the Ulema aggressively deploy the hatred statements (*hate speech*) about the followers of Shia Sampang. They often instigated the society in Sampang to hate the followers of Shia. If that incitement just did for once, perhaps the hatred of Sampang to the Shia followers would be not too deep. But, factually it was done in a high intensity, so the anger of Sampang's society getting higher day by day and it was articulated through the violence.<sup>69</sup>

According to the explanation of Muhammad Zaini, the recitations which containing of hatred statement was done every Tuesday in Dusun Nangkrenang, Desa Karang Gayam, Sub-district of Omben, Sampang Regency. Regularly, KH. Buchori Maksum, The Head of MUI branch Sampang oftenly invited to that routine recitation. In his speech, Buchori Maksum incites the society of Karang Gayam to evict the followers of Shia from their desa. "Yes, for sure, that leader was oftenly said that, if there's follower of Shia in this desa, cast them away," Zaini said while imitating the speech of Buchori Maksum.<sup>70</sup>

## 2. Criminalization of Beliefs

After the assault incident on December 29, 2011 ago, the desire of majority group to do some vielences was not stopping. Now, the Ulema Council, Local Government of Sampang and police apparatures cooperates to jail Ustadz Tajul Muluk with using the accusation through the article about religious defamation. That criminalization scheme was involved Roies al-Hukama, another brother of Tajul Muluk to do as camouflage that the problem Sunni-Shia in Sampang is just about family conflict. But the fact is contrary different, the discourse of "family conflict" which improved by the State. The state actors proved to be directly involved in the scheme of this criminalization of beliefs.

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69 See Press Release titled, "Kekerasan yang Tak Kunjung Padam", published by the Working Team od Advocacy on Freedom of religious/ belief (Pokja AKBB) Jatim, May 14, 2012.

70 The interview with Muhammad Zaini, on August 29, 2012, at 4 – 5 PM

These are some explanations describing of how the process of criminalization of belief to Tajul Muluk systematically and well-planned executed.<sup>71</sup>

The scheme of criminalization of Tajul Muluk begun not long after the incident on December 29, 2011, exactly on Sunday, January 1, 2012, MUI Sampang which led by KH. Bukhori Maksu issued a fatwa of religious misdirection on Tajul Muluk's thought. That fatwa seemed being forced to be issued on week (Sunday). In that fatwa also explained in detail about the points of perverted of Tajul Muluk thought. The content of that fatwa just mentioned about the teaching of Ustadz Tajul Muluk is perverted and mislead, without other further explanation about the points of what being considered as perverted.



The process of criminalization of belief continues. On Tuesday, January 3, 2012, Roies al-Hukama reported Tajul Muluk to the Police Station Resort Sampang (Polres Sampang) on charges of religious defamation. After receiving the report from Roies, the police of Sampang issued Acceptance Report Letter Number: LP/03/I/2012/Polres. Curiously, that report continued to the process of investigation by Polres Sampang, without passing the process of inspection formerly. At the same day,

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71 See the Report written by Akhol Firdaus, "A Research Document: Konspirasi Menyeret Ust. Tajul Muluk ke Penjara", dalam *Syahadah: Newsletter for Religious Freedom*, edition 17/Februari/2012, page. 1-5

Polres Sampang issued a Warrant of Investigation Number: SP-Sidik/05/I/2012/Reskrim. After inspecting some of informer witness and fact witness, Polres Sampang started to arrange the Questioning Dossier (BAP). According to that dossier from police department, there are many gaffs which occurred during the inspecting process.<sup>72</sup>

*First*, the witnesses, Roies Al-Hukama and Ummu Kalsum have a relation as sibling with Tajul Muluk as the defendant. Accordance to Criminal Code (KUHP), if the witness has cognation with the defendant, so the witness should not be sworn in. But, in this inspection process, they were being sworn by the inspector.

*Second*, during the process of investigation, the rapporteur is a first person who should be asked the information related to the reported allegations. But the fact happened during the periode of Notice of Inspection process, Roies Al-Hukama precisely checked after Muhammad Nur Asmawi. The informer witness, Roies Al-Hukama inspected on Tuesday, January 03, 2012; at 5 PM, and the other witness, Muhammad Nur Asmawi inspected on Tuesday, January 03, 2012; at 4 PM.

*Third*, based on the Notice of Inspection of Police, the witness K.H. Faidhol Mubarak has been sworn at 9.15 PM. It means that there is a grace period approximately 1 hour between the time of sworn-taking and the time of inspection-beginning.<sup>73</sup>

Desire of state to justifying the belief of Tajul Muluk seems so high. The proven is, Polres Sampang delegate the investigative file of Tajul Muluk to Polda Jatim. The file delegation due to the inability of Polres Sampang in proving elements criminal of religious defamation as charged to Ust. Tajul Muluk. "They (inspector from Polres Sampang) have a trouble to proving the element of law (article), but they still

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72 See The Report of Johan Avie titled "Kronologi Proses Hukum Ust. Tajul Muluk" dalam *Syahadah: Newsletter for Religious Freedom*, edition 19/April/2012, page. 3-4

73 See Press Conference titled "Keadilan atas Nama Syahwat Mayoritas" which published by *Center for Marginalized Communities Studies (CMARs)* Surabaya, April 13, 2012.

forced themselves to keep arresting Tajul, that's why the file was delegated to Polda jatim," Otman Ralibi said, the lawyer of Ust. Tajul Muluk.<sup>74</sup>

On January 24, 2012, Polres Sampang delegated this case handling to Polda Jatim with Delegation Letter of Case Management Number: B/34/I/2012/Reskrim. Three days after, on January 27, Polda Jatim issued Task Warrant Number: SP. Sidik/47/I/2012/Ditreskrim about the commencement of the investigation process. The witness investigation by Polda Jatim was started on March 9, 2012 until March 31, 2012. In contrast to the investigation that held by Polres Sampang, in Polda Jatim there's none was being sworned.

Thursday, March 15, 2012, Polda Jatim conduct the case title (gelar perkara) related to accusations of religious blasphemy which pointed to Tajul Muluk. In this time, attended some sides, they are the envoy of High Court, member of Polres Sampang, and envoy of State Attorney Sampang. At the same time also, the inspectors from Polda Jatim issued Suspect Determination Letter of Tajul with accusation of article 156a KUHP about religious defamation, and article 335 KUHP about unpleasant act. But, its necessarily be noted that these two articles are fake.

On Thursday, April 5, 2012, the case file of Tajul was delegated by investigators in Polda Jatim to High Court of East Java to be beforehand consulted. The investigator was not really sure with their stacking file, so they should make a conspiracy beforehand with the High Court side of East Java.

Tuesday, April 10, 2012, the case file of Tajul Muluk declared to have eligible the provision (P-21) by High Court of East Java. The fixing case file (P-21) performed by High Court of East Java was controversial. The Common Criminal Case usually takes weeks, or months for just fixing the case file (P-21). But in the context of this case, curiously the High Court of East Java able to establish that this case file have fulfilling the provisions (P-21) only in two days (Thursday

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74 An Interview with Otman Railibi, May 13, 2012

and Monday – because Friday, Saturday, Monday is weekend), since that case be submitted to the High Court of East Java.

Thursday, April 12, 2012, the High Court of East Java delegated the case file of Tajul Muluk to State Attorney Sampang. Simultaneously with devolution of that case file, the State Attorney of Sampang issued Arrest Warrant Number: Print. 293/O.5.36/Ep.1/04/2012 to Ust. Tajul Muluk. In the same day also, Ust. Tajul Muluk be arrested by State Attorney of Sampang. It was so tragic, there is a citizen that being disciminalized just because of having different belief.

Next, on April 16, 2012, the State Attorney of Sampang through the Delegation Letter Case of Ordinary Examination Number: 67/O.5.36/Ep.1/04/2012, submitted the case file of Ust. Tajul Muluk to District Court of Sampang. At the same day, the Judge of District Court of Sampang issued the Determination Letter of Panel Judges on the Session Day Number: 69/Pen.Pid/2012/PN.Spg. The District Court of Sampang established that the proceeding would be begun on Tuesday, April 24, 2012. The legal proceeding of this case seems more faster than usual. Starting from the file validation process (P-21) by State Attorney of Sampang until the trial day which only around 6 days spending days (April 10-April 16, 2012).<sup>75</sup>

The apparatus of law enforcement in Indonesia seems came late (involved) in the pressure of majority group. The Ust. Tajul Muluk finally became the defendant and brought to the trial with the accusation of religious defamation. On Tuesday, April 24, 2012, the panel of Judge opened the first trial of Ust. Tajul Muluk on District court of Sampang with the trial schedule is the indictment reading. In the letter of indictment, the Public Prosecutors (JPU) indicted Ust. Tajul Muluk with indictment of Article 156a KUHP jo. Article 335 KUHP by the threat of punishment 5 years jailed.

The secondly trial held on Tuesday, May 1, 2012. At the first time,

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75 See Johan Avie's report under the title "Kronologi Proses Hukum Ust. Tajul Muluk" din *Syahadah: Newsletter for Religious Freedom*, 19/April/2012 edition, p. 3-4

that day's trial agenda is Exception reading by the head of Lawyers team. The Lawyers Team submitted the petition of trial agenda delay. The reason is the Lawyers Team has just accepted Questioning Dossier (BAP) and Indictment Warrant at that same time. "We asked that the delivery of our exception be postponed because we aren't ready yet," said Otman Ralibi to Purnomo Amin Tjahjo, the head of Judge Panel. That petition was agreed by the Judge. Finally, the trial should be postponed for one (1) week. The next trial agenda is Exception reading by the Lawyers Team of the defendant.

The continuing trial held on May 8, 2012. The agenda of this third trial is the reading of memorandum of objections by lawyer team of Tajul Muluk. The preparation of that memorandum done by the lawyer to argue the Indictment Warrant which red by Public Prosecutor (JPU) on the first time trial. The lawyer team of Ust. Tajul Muluk considered that the Indictment Warrant that submitted by Public Prosecutor was vague and premature.

The fifth trial held on May 22, 2012 with the agenda of interlocutory decision which would be red by panel of judge. The Interlocutory Decision Number: 69/Pid.B/2012/PN.Spg, alternately red by panel of judge. Attending the trial is Junior Attorney (Jaksa Muda) Sucipto, SH. MH and Achmad Fauzan, SH. And the lawyer team of the defendant represented by Otman Ralibi, Asfinawati, and Habib Abdullah. In that interlocutory decision, the panel of judge refused the exception submitted by the lawyer team of Tajul Muluk. "We are so disappointed to the Panel of Judge who heed the imperfection of the indictment warrant given by Public Prosecutor," Asfinawati said, one of lawyer team's members of Ust. Tajul Muluk.

The sixth trial held on May 30, 2012 with the agenda of witness inspection by Public Prosecutor (JPU). JPU submitted seven persons of incriminating witnesses of Tajul Muluk. Those seven witnesses are: Roies Al Hukama, Mohamad Nur Asmawi, Moch Hasyim, Khozairi, Punari, Ummu Kulsum, Sanima. Just as a notice, Roies Al Hukama and Ummu Kulsum are siblings of Tajul Muluk. After that inspection, the testimony of those witnesses was not quite powerful to indict Tajul Muluk convicted.

The proceeding which held on June 13, 2012 with the agenda was same as the previous trial, the witness inspection by Public Prosecutors. JPU submitted two witnesses which incriminating Tajul Muluk. Those two witnesses are: Muna'i and Kyai Halim Toha (The Religion Ministry Apparatus of Sampang). Similar to the witness in the previous trial, in this trial also, those two witnesses morely talking about their opinions than explaining about the facts happened. The seventh trial held on June 15, 2012, with the agenda of hearing the information from experts and another person of Public Prosecutors. If looking back to the Notice of Investigation (Berkas Acara Penyidikan), the Public Prosecutors should presented one of Criminal Expert, but at that trial, the expert Prof. Nur Basuki (Lecturer of Law Faculty of Airlangga University) was disable to come with untalked reason. Besides the witness and criminal experts Public Prosecutors, this agenda also presented two religious experts (ulema): [1] Bukhari Ma'shsum (The Head of MUI Sampang); [2] Abd Halim Soebahar (Lecturer of STAIN and the Head of MUI Jember) to give some information in the proceedings. This eighth trial was also characterized by gaffes. *First*, the head of judge panel acceded addition of religious experts which submitted by Public Prosecutors on five minutes before the trial begun. The additional experts is Abdusshomad Bukhari (Chief of East Java MUI) and the more inelegant is the presiding judge allowed a religious expert named Ahmad Bin Zein Alkaf who just graduated from *Madrasah Tsanawiyah* (MTs) or Junior High School. Those two experts also not listed in BAP.<sup>76</sup>

Continued trial of religion defamation case held on June 20, 2012. This is the ninth trial. The trial agenda was inspection of factual witness that alleviating (*Ade-Charge*). The trial presenting witnesses: Muhyin, Zaini, Iklil Al-Milal, Ummu Hanik, and Ummah. Excepting Ummah (mother of Tajul Muluk), all of presented witnesses are Shia followers. That trial runs for five hours, starting on 10.30 a.m. and finished on 05.00 p.m. According to those informations which given

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76 The whole process of this trial recorded in the report of "Laporan Sidang Kriminalisasi Keyakinan Ust. Tajul Muluk: Potret Konyol Sidang Pidana Penodaan Agama (1)", *Syahadah: Newsletter for Religious Freedom*, edition 21/ June /2012, page. 1-5.

by the witnesses, all of suspicions that indicted by Public Prosecutors could not be proven. In indictment, Tajul Muluk was being indicted to spread the main thoughts, such as: [1] blaming that al-Qur'an today is not original anymore; [2] To add the lafadz of Dua Kalimat Syahadat; [3] to curse the companions and wife of the Prophet; [4] have to be lying (*taqiyah*); [5] about the amount of Islamic tenet/ *Rukun Iman* and the five pillars of Islam/ *Rukun Islam* which is different; [6] the faith of Islamic Leader (imam); [7] suicide is allowed.

The tenth continued trial of religious defamation case was held on June 22, 2012. On this tenth proceeding, the Lawyer team presented twelve witnesses *ade charge* and one of religious experts, namely Zainal Abidin Bagir, Ph.D (Director CRCS UGM Yogyakarta). Those twelve temporary witnesses are: [1] Muhlisin; [2] Jumali; [3] Niton; [4] Mat Surah; [5] Bujadin; [6] Bukaman; [7] Ma'ruf; [8] Sunadi; [9] Busa'I; [10] Mat Siri; [11] Zulhan; [12] Zumaidah. From those twelve witnesses, just Zulhan understands about Sunni. The trial six hours took time, starting on 10.30 a.m. and finished on 05.00 p.m.

The continued trial of that religious defamation case held on June 24, 2012. The trial agenda was hearing the explanation from two (2) religious experts: [1] Prof Zainun Kamal (Lecturer of UIN Syarif Hidayatullah Jakarta); [2] Dr. Umar Shahab, and one (1) Criminal Experts: Dr. Solahudin (Lecturer of Bhayangkara University of Surabaya).

On Wednesday, July 4, 2012, the continued trial of case of Ust. Tajul Muluk was held again. The agenda of the trial on this chance is reading the Warrant by the Public Prosecutors (JPU). It needs around 1 hour for the prosecutors to read 52 sheets of warrant. The prosecutors in his warrant said that the actions performed by Ust. Tajul Muluk have fulfilling the elements of article 156a KUHP. The decision of JPU was based on the informations from the witnesses and the experts during the proceedings. Besides that, JPU also submitted many kinds of evidences, such as: Fatwa MUI of Sampang, the Statement of PCNU Sampang, 1 piece of CD recording Tajul Muluk's voice, and 1 book of Shia thought. Based on those evidences, the prosecutors punished Ust. Tajul Muluk by 4 years jailed. That prosecute seemed imposed because

there's none of facts in front of the proceedings that can proving Ust. Tajul Muluk found guilty to do religious defamation.

On July 9, 2012, the District Court of Sampang held the hearing case of criminalization of belief on Tajul Muluk. The hearing agenda is reading the Pleddoi that was composed by the defendant and his lawyer team. Both of defendant and his lawyer team would read their own pleddoi.

This time trial was being the longest time one during the case process. Starting on 11.00 a.m., this trial was finished on 09.00 p.m. At least the pleddoi which as thick as 239 pages that arranged by the lawyer team, was red on this trial. Coupled with 23 sheets of pleddoi which also also arranged by Ust. Tajul Muluk. The thick pleddoi made the trial spent for so long time.

The destiny of Ust. Tajul Muluk determined in the court on July 12, 2012, when the verdict of the judge about the case of criminalization of belief on Ust. Tajul Muluk was being imposed. The verdict of Judge was composed without Pleddoi consideration which should be submitted by lawyer team of defendant. Proven, the judge just needed 3 days to compose the verdict. Whereas, that pleddoi consisting arounds 250 pages. Through the time allocation that just given 3 days, the judge ignored that pleddoi for sure.<sup>77</sup>

Those third judges red the verdict alternately. Ust. Tajul Muluk with the court spectators was waiting the verdict red patiently. Like usual, the Ust. Tajul Muluk with comes to the court while holding the holy al-Quran. In the verdict, panel of judge considered that the deed of defendant that has been disturbing the surrounding people, especially Moslems in Omben and Karang Penang sub-districts of Sampang.<sup>78</sup> The reason determined by the judges as the aggravating

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77 See report "Laporan Sidang Kriminalisasi Keyakinan Ust. Tajul Muluk: Potret Konyol Sidang Pidana Penodaaan Agama (2)", *Syahadah: Newsletter for Religious Freedom*, 22/July/2012, p. 1-5.

78 See *pers release in the title* "Putusan Tajulu Muluk: Keadilan Mayoritas" oleh Kelompok Kerja Advokasi Kebebasan Beragama/Beryakinan (Pokja AKBB) Jatim, 13 July 2012.

factors on defendant.

Without according the facts on the court, panel of judges mainly said:

- Punishing the defendant, Tajul Muluk alias H. Ali Murtadha was legally proven wrong and convincing have done the criminal “Doing the action that is defamation of Islam.”
- Punishing the defendant by jail for 2 (two) years.
- Determining the period of detention which has been passed by defendant wholly deductible from punishment.
- Determining defendant to keep staying in the jail.
- Commanding that the evidences were staying attached on the case file.
- Imposing the court fee to the defendant of Rp. 5000,- (Five Thousand Rupiahs).

Through that verdict was punished on Ust. Tajul Muluk, the legal adviser team of defendant raise objections. They thought that verdict was ignoring some of truths. Then, the legal adviser team would fill an appeal to High Court of East Java. As though as not to be outdone by a team of legal advisers, the public prosecutor also filled an appeal on that punishment. For the public prosecutors, that verdict considered not too light.

The punishment of Judges of State Court of Sampang in the religious defamation case with defendant is Tajul Muluk, factually was not differ from what have predicted before. The Panel of Judges said that Tajul Muluk guilty on religious defamation and punished him 2 years jailed with jail term cut. This verdict ignores some facts and data told that Tajul Muluk is a victim of conspiracy, speech hatred, and forcing, attacking, house burning and ended with criminalized on himself.

Surprisingly, the judge bravely decides that Tajul Muluk have been proven teaching misdirection al-Quran (not-authentic). In fact all the evidence presented by witnesses incriminating associated with it, all of those evidences feasible to be ignored because the witnesses

themselves have never seen or heard that accusation. The judge dares to beat around 7 witnesses from Tajul Muluk versus 2 witnesses (M. Nur Asmawi and Munai) with 2 not-sworn witnesses brought by Public Prosecutors. The verdict argumentation of judge is totally not logical because choosing 2 witnesses which brought by the prosecutors and rejecting 7 witnesses which brought by Tajul Muluk. That rejection was due to the suspicion of *taqiyah* different.

*Taqiyah*<sup>79</sup> which alleged by Public Prosecutors as meant as oblige to lie. Strangely, the judge in his previous consideration said that *taqiyah* is not an obligation to lie but it just a permissibility to do not say something truth in the condition of threatened live, forced, and public interest. According the verdict to the *taqiyah* also means that the Judge judging the heartstrings of witnesses because there's no indication of lies founded on those witnesses.

Factually, the decision of judge, supporting the majority pressured logics which being a value which should be followed by the minority. In the too openly consideration, the judge said "the defendant taught the unusual/unordinary thought which finally supporting the community unrest". The legal consideration is not only slander, but also legal consideration is clearly trouble. The action of Tajul Muluk is measured by using the society's opinion surrounding him and because of the majority's dislike on that dakwah activity and his thought, so that this argumentation is enough considered to be used as the prove to punish that figur.

### 3. The Chronology of Assault

Sunday, August 26, 2012 became the proof the weakness of State among the majority. The residents of anti-Shia vent their emotions

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79 *Taqiyah* etimologically means pretending. Ibnu Abbas RA. *Taqiyah* means to say (something not true) by the oral, but his heart filled by the faith, and some of ulema interpret that *taqiyah* as to keep live (soul) and property from the rival by showing of the lying things in front of the without convincing it in his heart (white lying). Read <http://www.artikelislami.com/2011/07/taqiyah-antara-ahli-sunnah-dan-Shiah.html#ixzz2KldWGJIC>

to Shia followers. The assault on Shia followers in Sampang exactly occurred one week after Eid (*Lebaran*). Still in the spirit of Eid, hundred of Shia followers in Sampang sorrow because of loosing their homes. They were pelted by stones, beaten, and so should be expelled from their own desa. And, the death of one of their community make them became more sorrow.

The assault on Sunday was never been predicted by Shia followers in Omben, Sampang. Nearly before the assault happened, the followers of Shia even did their regular activities like usual. In that morning, Sunday, August 26, 2012, the Shia followers in desa of Nangkrenang, Karang Gayam, Omben sub-district, Sampang, planned to deliver 20 children of them to go to school in Yayasan Pesantren Islam (YAPI).

They rent 2 minibuses (L-300) to drop their children. Those 20 children should be dropped to two different destinations. The first car (minibus), containing 10 children and some of adults, including Nurcholis (Shia followers of Sampang) headed to Bangil sub-district, Pasuruan on 06.30 a.m., and the second car (minibus) containing 10 children and parents, including Umi Hanni (sister of Tajul Muluk) and Niton (one of Shia follower) headed to Malang on 08.30 a.m.

Around 06.30 a.m., the first car carrying several children Nurcholis and Shia followers headed to Bangil, Pasuruan, unhindered. "When I departed, the mass haven't converge yet, the situation was still quite because too early morning," said Nurcholis.<sup>80</sup>

At 08.30 a.m., before the second car departure, tens of mass converge in house of Roies al-Hukama. At that time, Niton commanded to rent a car (minibus) on highway, Ummi Hanni, the sister of Tajul Muluk, accompanied children of Shia. He together with 10 children went to the rental car's parking place on foot. According to Niton's said, when he wanted to dismiss that rental car, the mass of anti-Shia have started to look around the highway. And when Ummi Hanni with the children of Shia took on the rental car, mass started to come close them.

The mass shouted to ask Niton and Hanni to cancel their departure

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80 Interview with Nurcholis, August 27, 2012 at 09.00 – 10.00 a.m.

to Malang. “Stop! Go back!!!! You are heresy!” said Niton imitating the statement of attackers.<sup>81</sup> And because of the fear to be attacking by mass, Umami Hanni commands the driver to immediately go. The car was finally goes so fast, the romp action occurred at the time. Amid the journey, Umami Hanni saw that around 10 motorcycles run after our car,” she said.<sup>82</sup>

After that car leaved for around 1 km, mass pelting the car until its glass broke out. Besides that, the mass also hit the left side of the car, pursuit and screaming for a stop. The driver was scare at that time and he finally followed what was asked by the mass, he stopped the car suddently. The car was carrying the Shia followers forced to get back to the house of Ust.Tajul Muluk and cancel their departure.

With was being forced, Umami Hanni cancelled her departure and get back to the house of Tajul Muluk. Under the sweltering sun, and without wearing the sandals, Umami Hanni walked to the house of Ust. Tajul Muluk. Along the way home, mass walked behind her and the children guarded with. While walking, they insulting Umami Hanni then shouthing, “misguided woman”, let’s we rape her together!”<sup>83</sup>

When she arrived in the house of Ust.Tajul Muluk, Umami Hanni saw approximately 500 people gathered around her. “The distance of the mass to the house of Tajul Muluk just 15 metres,” Hanni said. Some of them could be known by hanni as the residents of Desa Karang Gayam, but most of them are not the residents of Desa Karang gayam.

Immediately, the attackers started pelting the followers of Shia Sampang with stones. Without any protection from polices, the victims defend themselves by pelting back the stones to the mass. But, because of their numbers was not balanced, the victims tried to avoid the stones by taking cover behind the house of Tajul Muluk. The incident of stone pelting occurred for around 1 hour. “That pelting incident have 3

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81 Interview with Nitor, August 27, 2012, at 10.00 – 12.00 a.m

82 Interview with Umami Hanni, August 31, 2012, at 08.00 – 09.00 p.m.

83 Interview with Umami Hanni, August 31, 2012, at 08.00 – 09.00 p.m.

sessions brother, the first and second session occurred in house of Ust. Tajul Muluk, and the third session occurred in the house of Mr.Nur Halimah,” Mahrus explained.

Consequently, some of women and children were injured because of the stones pelted by the attackers. Even, the head Mrs.Ummah (mother of Tajul Muluk) bleeding because of the throwing stones. She was beaten by some of mass, even she was tried to be covered by Hanni (sister of Tajul Muluk). Mrs.Ummah finally collapses and must be rescued to SDN 4 Karang Gayam.

According to the statements of Mrs.Ummah, the member of polices which seen in the field were just 4 persons. They could not do more, and just asked the Shia followers to step back. Constantly urged by the attackers, the victims finally stepped back and went to house of Nur halimah. When the followers of Shia stepped back to that place, mass started to burn Tajul Muluk’s house.<sup>84</sup>

At 10.45 AM, the mass burnt the house of Tajul Muluk by using Molotov bomb. “Indeed, they threw the gasoline to the back roof of Kyai Tajul’s house,” Mahrus said, one of the victims who directly showed the incident. Because of the throwing stones, some of the victims run to another houses of Shia followers which located in Dusun Gading Laok, Desa Blu’uran, Sub-dictrict of Karang Penang. After arriving in Dusun Gading Laok, they were surprised to see that the houses of their relatives there had burnt by mass. Apparently, the action of burning those two desas was done in the same time.

At 11 a.m., when the pelting incident occurred in front of the house of Nur Halimah, one of the followers of Shia Sampang named Muhammad Hasyim alias Hamamah approached the attackers to make peace. At that time, Hamamh shouted, “peace-peace!”, but poor he was hit by the stone by the attackers. He fell to the ground not far from the position of the anti-Shia mass. While it happened, there were three men come on to Hamamah. One of them was stabbing Hamamah’s stomach using celurit (traditional weapon of Madura). The celurit

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84 Interview with Ummah, September 4, at 05.00 p.m.

swipe wound on his stomach was finally induced him to die.

To see one of the relatives assaulted by mass, Muhammad Thohir runs to the crowd to help Hamamah. But unlucky, he also being the victim of machete slashes of the mass. Thohir was serious injured because of 20 cm wounds on his back. Because of the fear to be killed, thousands of Shia followers hide in the houses of their neighbours, some were running to the top of the mountain, and the others were taking cover in the building of SDN 4 Karang Gayam.

At 11.30 a.m. – 05.00 p.m. the mass begun to burn the houses of Shia followers one by one. They burnt some of cows, motorcycles, and another vehicle. Strangely, when the incident occurred, mass cannot distinguish which is the house of the followers and which is not. Evidently, a resident of Dusun Nangkrenang named Sukri became the guide of the mass to make them not getting misplace. Until now, Sukri includes in the Police Most-Wanted List (DPO).

Based on the explanation of Ust.Iklil al-Millal, the anti-Shia citizen burnt around 48 houses of Shia. Besides the houses, there were burning the cages and house of worship (small mosque). In that August 29, 2012, the followers of Shia burnt the farm of Mr.Thohir. That burnt farm located on the street which passed by the mass to get the house of Ust.Tajul Muluk. “The 100 m<sup>2</sup> farm also was burnt together with the plants inside,” said Moh.Zaini.<sup>85</sup>

#### 4. Victims Refusing Relocation

After the incident on August 26, 2012, the minority groups of Shia in Sampang should lose their homes. There’s no guaranty of the state to the victims, by was forced they had to evacuate themselves into Sports Building (GOR) of Sampang city. The place of refugee was not be called feasible, their needs on eat and drink until now still come

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85 The overall of assault chronology on August 26, 2012 can be seen in the report of Johan Avie and Khoirul Mustamir “Laporan Eksklusif Penyerangan terhadap Jamaah Shiah 26 Agustus 2012: Tragedi Syawal Berdarah” di *Syahadah: Newsletter for Religious Freedom* edition on 24/September/2012.

late. Besides that, they should withstand the sense of longing on their homeland.

Since the minority group in Sampang was in the place of refugee, the issue about relocation sounded again. The District Government insisted to relocate the minority group of Shia from Sampang, Madura. In contrary, the Provincial Government of East Java stated that the minority group of Shia would not be relocated out from their desa. The feud two state institutions are indeed heavily circulated in the media, but none of the victim's sound was reported.

Last week, the writer intervied some of victims in GOR Sampang related to the discourse of relocation. Iklil Al-Milal, brother of Tajul Muluk said that none of the victims wanted to be relocated from their homeland. Their desires and demands of them for todays is just going back to their own homes, rebuilted the new one by the government, and got the security guaranteed by the state. For sure, the relocation which sounded by the state was not right targeted. *First*, the state should be relocating the attackers of Sampang, not the victims which being victimized again. *Second*, relocation will not solve the problems, because the victims could be uprooted from their cultural root. *Third*, the relocation is a form of diability of the state in guaranteeing the security for the minority group of Shia in Sampang. *Fourth*, by relocating, so the country will abdicate responsibility to the incident occurred on August 26, 2012.



Shia refugees in Sampang Madura Sports Building. Overcrowded no lights and clean water, living in bad condition (source: [www.merdeka.com](http://www.merdeka.com))

The completion that should be applied in this case is attempts of reconciliation and law enforcement. Surely those attempts of reconciliation will take a long time, and involved many related stakeholders. But it is not impossible that the reconciliation could be done as the way out of this problem. There are some reasons why the reconciliation and law enforcement can be used to solving way on this case. *First*, the reconciliation will not violate the victim's right to stay in their homeland. *Second*, the reconciliation can strengthen the relation between anti-Shia group and Shia followers which is not facilitated. *Third*, the reconciliation will not uproot the victims from their cultural roots. *Fourth*, the law enforcement through the perpetrators disseminator of hate speech and assault could make people to think before spreading the hate speech on the minority Shia in Sampang. If the state took a serious to solve the problem in Sampang, so the reconciliation and law enforcement become the effective way to be used.

### **C. Violence (Again) Happened on the Ahmadiyah Congregations of West Java**

If traced the case of violation on freedom of religious/ belief in West Java that leads to anarchy such as the assault, burning, eviction and worship banning of Ahmadiyah followers, cannot be separated from the omission which performed by the state likes the previous incident occurred in Parung, Bogor, West Java. The violence which occurred after seemed like the *copypaste* of that incident. It is not excessive to be predicated that Bogor and Bekasi as “the Lighthouse of Intolerant” in West Java. Those discrimination and violence through the minority groups, especially the Ahmadiyah community and Christians opened for the first time in Bogor.

The relation among people and Ahmadiyah community in Bogor run condusively and have nothing problem before. But, after assault of Al-Mubarok campus, Parung, Bogor, on July 9, 2005, the community of Ahmadiyah became “sequestered” from social interaction. They are not only being excommunicated in social interaction, they are loosing their

sense of comfort and safety because of incidents of assault, massacres, and obstruction of them to express their religious belief which could be experienced and occurred anytime. The omission action which shown by the apparatuses, give some opportunities of intolerant people to do some discrimination on Ahmadiyah community. Proven after the attack on Ahmadiyah center on the campus of Al-Mubarak, Parung Bogor, assault, burning action, and other acts of anarchy experienced Ahmadiyah community in Tasikmalaya, Garut, Kuningan, Jakarta, Banjar, Cianjur and other areas in West Java. Even on 2012, the desa of Ahmadiyah in Cisalada Bogor, became the subjected of combustion done by intolerant group.

### **1. Combustion of Kampong Ahmadiyah**

The incident befall the settlement and member of Ahmadiyah in Cisalada, Ciampea Udik, Bogor, happened on Friday, July 13, 2012, when a group of mass attacking by throwing 5 houses of Ahmadiyah congregations. In that incident, 4 followers of Ahmadiyah were injured.

The chronology of this intolerant case on Ahmadiyah congregations in Cisalada, Bogor on July 13, 2012, namely:

*At 09.30 a.m.:*

A group of journalists from Dutch, they are Yulivia (Indonesian), Thimoty Michael Deagle, Michael Gulame M Mass, Marolent, and Patrick went to Cisalada, Desa Ciampea Udik, Kecamatan Ciampea, Kabupaten Bogor. They used two cars wick driven to shoot about the religion and culture reportoar in Cisalada village as a docemnter film. According to their plan, they will stay until Monday, July 16, 2012.<sup>86</sup>

When arrived in kampong Kebon Kopi, which being the entering access to Cisalada, they were interrogated by local residents. "Where

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86 See "Kronologi Penyerangan terhadap Ahmadiyah Cisalada", [http://m. mediaindonesia.com/index.php/read/2012/07/17/333697/38/5/Kronologi\\_Penyerangan\\_Terhadap\\_Ahmadiyah\\_Cisalada](http://mediaindonesia.com/index.php/read/2012/07/17/333697/38/5/Kronologi_Penyerangan_Terhadap_Ahmadiyah_Cisalada), accessed on December 12, 2012.

do you go? What do you wanna do? Do you have a permit?” asked the resident. “We want to go to Cisalada. We have been permitted by Mr. Mubarik,” answered the troupe. That troupe mentioned Mubarik Ahmad, the public relation of Jemaat Ahmadiyah Indonesia (Central Board of JAI). The resident thought that the mentioned name of Mubarik is the leader of Ahmadiyah branch Cisalada. After arriving in Cisalada, they accompanied by Mubarik, the leader of Ahmadiyah Cisalada, to meet the Desa Head to get a permit. Then the Desa Head suggested them to get permit from Tripika (Koramil and Polsek). Mubarik could not accompany because he want to Friday praying. After finishing their pray, that troupe have return back and said that they have asked the permit to Tripika. “We got five permits, they are from: Headan, Sub-district Head, local government, Police of Ciampea and Koramil of Ciampea,” said the testimony of Michael Gulame M Mass.<sup>87</sup>

But, before they have not gotten back to the village head (*Kepala Desa*) in order to inform that they got the permit already, the assault incident. The situation rather heated when the residents asked them about the lisenca that owned by them. They were two polices and soldiers (local military command/ *Koramil*) who know about that condition because they did Friday praying in Kebon Kopi.

*At 01.30 p.m.:*

The attack occurred done by hundreds of mass which known as the residents of surrounding desa, including the residents of Kebon Kopi. They were throwing stones to Ahmadiyah congregations and some of them bringing the beater. The residents of Cisalada said that they attacked the troupe of journalist because they thought that the troupe didn't follow applicable licensing process. To anticipate being the target of mass tantrum, the troupe of journalist leaved the place through the rear access, toward Cimanggu. The attack happened for around half hour. When the assault happened, 2 (two) polices and 2

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87 See [http://www.bbc.co.uk/indonesia/berita\\_indonesia/2012/07/120716\\_ahmadiyah-cisalada.shtml](http://www.bbc.co.uk/indonesia/berita_indonesia/2012/07/120716_ahmadiyah-cisalada.shtml), accessed on December 12, 2012.

(two) local military command/ *Koramil* were on the spot.

The group of assault group blocked by the youngling of Ahmadiyah Cislada who just finished Jumat praying because Mubarik and Engkong Zaenudin who were being the persons, to facing the mass in order to explain about the licensing process of that foreigner journalist have been beaten and pelted by the stones. The mass that was blocked, finally retreat.

When Mubarik will to explain to the person who stays in the Kepala Desa office, the people thought that he wanted to resist. “*Naon sia?! Rek ngalawan??*” (What’s the matter? Do you want to fight me?!) The attitude of the Leader of Ahmadiyah followers, stir the anger of people who were ready and swarm to do anarchist actions.

As the results of the assault, 5 houses are damaged pelted by stones. One of those damaged houses is Euis’ house, so hard damaged because pelted by stones and the furniture with its curtain burnt. 5 of damaged houses located in front of the desa of Cislada. When the people were retreat, there was some of people tried to attack from side access, farm, it’s around 4-6 persons by carrying the pellet gun.

4 of Ahmadiyah congregations were injured because of throwing stones, they are: Aji, Budi, Engkong Zaenudin and Safari. Aji should be evacuated to the Luwiliang hospital to get medical help. At the night, the family asked the police help carrying the victims to the hospital. The police asked 100.000 (one hundreds thousand rupiah) for the reason to buying the gasoline. In the hospital, Aji on the upper of his eyes should be treated because suffering torn injured.<sup>88</sup>

When still in the atmosphere of tense and trauma of intimidation, police thrusts a statement letter of willingness of case termination to Ahmadiyah congregations. “The residents asked to write a statement letter which asking apologize because of Michael Mass inviting and case closed,” said Firdaus Mubarik. One of the points in that letter is

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88 See “Kronologi Penyerangan terhadap Ahmadiyah Cislada,” [http://m. mediaindonesia.com/index.php/read/2012/07/17/333697/38/5/Kronologi\\_Penyerangan\\_Terhadap\\_Ahmadiyah\\_Cislada](http://mediaindonesia.com/index.php/read/2012/07/17/333697/38/5/Kronologi_Penyerangan_Terhadap_Ahmadiyah_Cislada), accessed on December 14, 2012.

if there's a guess or journalist would get in to Cisalada, should have a liscence from local government, from Kepala Desa Ciampea Udik. "Furthermore, every reportoar about Cisalada could be considered as the provocation because of having no permission from local government so that the attack would be considered as the reasonable result," said Firdaus Mubarik, the spokesman of central board of Ahmadiyah congregations, imitate the statement.<sup>89</sup>

Reportedly also, among the attackers there are suffering fracture, Endang (40 years old), the resident of Kampung Pasar Selasa RT 4/1 Ciampea village. Not known for sure due to his leg fracture. According to the information from Cisalada resident that incident is probably dues to the throwing stone. At 8 PM, there are 3 police cars came. Around twelve o'clock, Brimob unit came. And on this afternoon, there were 6 unit Mobile Brigade/ *Brimob* cars and more than 10 police cars.

A half hour since the assault occurrence, Polres Bogor provide the security by putting the personnel to the location in order to keep the house and desa of Ahmadiyah community stay secure and to anticipate the continued attack and defacement. After the assault on the community of Ahmadiyah, the police also provide the security. The situation in the location became conducive again in the late afternoon.<sup>90</sup>

The police also doing the investigation to ask the information of purpose coming of those four foreigner journalists was allegedly become the triggers of eight hours-assault. After being deemed sufficient, the police finally let those journalists go. Besides that, the police also stop the legal proceedings after issued statement letter about the case revocation from Ahmadiyah community.<sup>91</sup>

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89 See [http://www.bbc.co.uk/indonesia/berita\\_indonesia/2012/07/120716\\_ahmadi-cisalada.shtml](http://www.bbc.co.uk/indonesia/berita_indonesia/2012/07/120716_ahmadi-cisalada.shtml), accessed on December 12, 2012.

90 See "Penduduk Sekitar Masjid Ahmadiyah Ketakutan," <http://www.tempo.co/read/news/2012/04/21/058398579/Penduduk-Sekitar-Masjid-Ahmadiyah-Ketakutan>, accessed on December 12, 2012

91 See "Empat Wartawan Peliput Ahmadiyah dari Belanda," <http://www.tempo.co/read/news/2012/07/14/173417041/Empat-Wartawan-Peliput-Ahmadiyah-dari-Belanda> and [http://www.bbc.co.uk/indonesia/berita\\_indonesia/2012/07/120716\\_](http://www.bbc.co.uk/indonesia/berita_indonesia/2012/07/120716_)



High tension. Hundreds of policemen from Bogor Police Resort and Kedunghalang mobile brigade (brimob) just arrived after the intolerant group burned the Ahmadiyah village in Cisalada, Ciampeaudik, Ciampea district, Bogor. (Picture: <http://www.radar-bogor.co.id>)

The Regent of Bogor, Rahmat Yasin, assess that the assault incident in kampong of Ahmadiyah community in Cisalada because of certain individual provocation which deliberately creating the clashes among the residents. Besides that, the regent also ask the Ahmadiyah followers not doing their religious activities which potentially forcing the people's emotions. To anticipate the similar incident, the regent strictly states to all of social element to obey the Joint Decree of Three Ministers and Governor's Regulation (Pergub) of West Java number 12/2011 about the disallowance of Ahmadiyah.<sup>92</sup>

Two days later, Sunday, July 14, 2012, the house of Haji Encep Sukarman was destroyed. He is the member of Ahmadiyah branch Cisalada but his house located in kampong Ciangsana, Desa Tapos I, Sub-district Tenjolaya, approximately 10 km from Cisalada. The

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ahmadicisalada.shtml, both were accessed on December 11, 2012

92 See "Serangan Kampung Ahmadiyah Terkait Jurnalis Asing", <http://www.tempo.co/read/news/2012/07/14/063416960/Serangan-Kampung-Ahmadiyah-Terkait-Jurnalis-Asing>, accessed on December 12, 2012

residents surrounding the kampong Ciangsana said could not identify the attackers. And so do the owner of shop beside the home of Sukarman. He said that he did not know who and where are the attackers coming from because since the afternoon the shop was closed.

## **2. The Virus of Slaughters of Ahmadiyah Ideology; From Bogor to other Regions.**

Along 2012, the graphic of intolerant action which befall the Ahmadiyah congregations, such as the assault, combustion, the removal interaction-access with outsider, disallowance of Haji, forcement to change the religion, neglect the access to make identity card (KTP) and many other intimidation modus in West Java, are still showing high level. The virus of 'ideology slaughters' of Ahmadiyah as if spreads out to all of Regency/City in West Java.

Some kinds of anarchy actions and discrimination which are continually befall on the congregations of Ahmadiyah, concludingly, due to four factors. *First*, the lack of rule issued by the government which is intended to protect the citizen from any various threats. So, this condition then becomes the leeway of intolerant group to show their power. *Second*, the regional government have no enough energy to face the pressure from certain group which forching them to issue the discriminative policy and harming their people by the reason of diversity. *Third*, the political national values disorientation. As it was formulated by founding fathers of this nation and state, the national politics require that the national interest should be positioned more higher that the other interests. But in the case of Ahmadiyah, clearly seems that the exclusive and sectarian interest become the mover. And *fourth*, the utilization of identity politization of promirdial and religion to jack the level of alignments and constituent option and changed to be effective in order to stifle the political rivals.<sup>93</sup>

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93 Ismail Hasani & Bonar Tigor Naipospos (ed), "Ahmadiyah Saudara Sebangsa" in *Ahmadiyah dan Keindonesiaan Kita* (Jakarta: SETARA Institute, 2011), p. 138-139.

### 3. Intimidation, Sealing, and Assault

Intolerant action in *soft and physical violence* in West Java runs massively in several regency/city. Some of incident recorded by SETARA Institute through the utilizing the primary and secondary data, such as:

#### a. Cianjur

In Regency of Cianjur, the Mosque of Nur Hidayah owned by Ahmadiyah in Kampong Cisaat, Desa Cipeuyeum sub-district Haurwangi invaded by around 200 peoples on Friday, February 2012. That invasion triggered by disallowance of surrounding community in accepting the Ahmadiyah community which uses the mosque as the house of worship.

This following motif description, act of vandalism, and response of apparatus related to the intolerant case befalls Ahmadiyah congregations in Cianjur:

*Friday, February 17, 2012:*

The Nur Hidayah mosque which used as the house of worship by Ahmadiyah congregations, located in Jalan Raya Ciranjang kampong Cisaat RT/RW 01/08 Desa Cipeuyem Sub-district Haurwangi Regent Cianjur destroyed a group of mass which around 200 people.

The vandalism action which done by the surrounding community in the mosque complex were triggered by Ahmadiyah congregations' dissatisfaction which using the mosque for performing their religious activities.

“We have repeatedly admonish and give the warning to the leader of Ahmadiyah to do not any religious activities, evnthough Friday praying. But they always violate it,” said Asep, one of residents which justified as the defendant of Ahmadiyah mosque destruction in Cianjur.<sup>94</sup>

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94 See “Warga Cianjur Jadi Tersangka Perusakan Rumah Ibadah”, <http://www.republika.co.id/berita/regional/jawa-barat/12/02/21/lzqouf-20-warga-cianjur-jadi-tersangka-perusakan-rumah-ibadah>, accessed on December 13, 2012

In contrary with the information given by Asep, one of the residents who did the vandalism action has a collective agreement among them to not using that mosque. “It is lying if they stop their religious activities. The latest time, they held a big event last week and they still do Friday praying together,” he said.

The agreement which unfavorable Ahmadiyah and done unilaterally were identified and justified by the police apparatuses. “There is existing collective agreement,” said Kabid Humas Polda Jabar Komisararis Besar Polisi Martinus Sitompul.<sup>95</sup>

*At 08.00 a.m.:*

A group of peoples, who are the local residents, came to complex of Nur Hidayah mosque by carrying out some tools, such as timber and crowbar, and they are not preparing the tools, take and bring the stones and other things which could be used as the weapons. They were urging the dissolution of Ahmadiyah and threatening to ruin the mosque.<sup>96</sup>

*At 09.00 a.m.:*

The coming mass which becomes increase slowly, it's around 200 peoples. Those group moved together to tear down the back of that building. Then, another mass follows by tearing down the windows, door, ceiling, parabolic using the timber and crowbars. The roof is also being the target of that demolition by the people. That incident was occurred for around two hours, before the apparatuses come to reduce the action.<sup>97</sup>

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95 See “Perusakan Masjid Ahmadiyah di Cianjur oleh Warga Setempat”, <http://bisnis-jabar.com/index.php/berita/perusakan-masjid-ahmadiyah-di-cianjur-oleh-warga-setempat>, accessed on December 13, 2012

96 See “Masjid Ahmadiyah di Cianjur Dirusak Massa”, <http://metrotvnews.com/read/newsvideo/2012/02/18/145527/Masjid-Ahmadiyah-di-Cianjur-Dirusak-Massa>, accessed on December 14, 2012

97 See “Masjid Ahmadiyah Dirusak Sebelum Polisi Datang”, <http://www.tempo.co/read/news/2012/02/17/058384661/Masjid-Ahmadiyah-Dirusak-Sebelum-Polisi-Datang>, accessed on December 13, 2012



The condition of Nurhidayah Mosque belong to Ahmadiyah followers after destruction in Cisaar, Cipeuyeu, Cianjur, West Java, on Saturday, February 8th, 2012. (Picture: TEMPO/Prima Mulla).

That demolition action was identified and known by the police. But the apparatuses seems did not care with that incident, and let the intolerant group to destroy that measuring 15x10 meter mosque. “Today we planned to come to that mosque of Ahmadiyah. Besides to meet each other (silaturahmi), we also want to socialize repeatedly about the join decree/ SKB Tiga Menteri. But before we arrived, the mosque was damaged by people,” said Cianjur Police chief officer, Ajun Komisaris Besar Agus Tri Heriyanto.<sup>98</sup>

To anticipate the similar incident happened again, four months later, on June 20, 2012, the Regent of Cianjur, Tjetjep Muchtar Sholeh with the Head of Cult Surveliance Coordinating Agency (BAKORPAKEM), Sholihin socialized that SKB Tiga Menteri (Minister of Religion, Minister of Internal Affairs and Attorney General) year 2008 and Governor Regulation number 12/2011 about Warning, Teacing and Activity Prohibitions of Ahmadiyah. Besides being the Head of BAKORPAKEM, Sholihin also served as the Chairman of Attorney of Cianjur.

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98 *Ibid.*

That socialization done by putting up the banners of that SKB tiga menteri year 2008 and the Governor Regulation number 12/2011 in front of 17 mosques of Ahmadiyah at the same time. One of those mosques is Al-Ghofur located in Jalan Muwardi, Cianjur.<sup>99</sup>

Another incident happened in Cianjur is what occurred on Wednesday, July 25, 2012. A number of people, mass organization (ormas) of FPI did the sweeping action to the night clubs and restaurants in Cianjur City. When passing Jalan Muwardi, the mass besiege one of Ahmadiyah's mosques. They reminded the Ahmadiyah community to not celebrating Idul Adha through that mosque. They also said to not use that mosque for praying or do some religious activities there.

#### **b. Tasikmalaya**

On evening of April 12, 2012, the Baitul Rahim Mosque, the property of Ahmadiyah congregations that located on KH. U. Syarifudin street, kampung Babakan Sindang, Desa Cipakat, Kecamatan Singaparna, Kabupaten Tasikmalaya was sealed after being accused by Islam Defenders Front (FPI) that the community of Ahmadiyah not comply the Governor Regulation (Pergub) of West Java no.12/2011 and SKB tiga menteri, in a dialogue event which attended by Kepala Desa, the representation of Police Department of Tasikmalaya Sector, representation of the Indonesian Military (TNI), local military commad (Koramil) and the district office, in The office of Kepala Desa. That mosque attacked and damaged by around 20 personnels of FPI. By the information from the Leader of Ahmadiyah congregations in Singaparna district, Nanang Ahmad Hidayat, "Demolition of Baitul Rahim mosque yesterday, on Friday, April 20, 2012, around 10.00 a.m. are the fourth times done by personnel of FPI on Ahmadiyah".<sup>100</sup>

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99 See "Rumah Ibadah Ahmadiyah Ditempeli Baliho SKB", <http://nasional.inilah.com/read/detail/1874287/17-rumah-aibadah-ahmadiyah-ditempeli-baliho-skb>, accessed on December 10, 2012.

100 See "Massa Rusak Masjid Ahmadiyah di Singaparna", <http://metrotvnews.com/read/newsvideo/2012/04/20/149478/Massa-Rusak-Masjid-Ahmadiyah-di-Singaparna/6>, and also "Masjid Ahmadiyah dilempar Bom Molotov", di link:



A group of Islamic mass organizations do the destruction on Ahmadiyya's mosque Baiturrahim in Singaperna, Tasikmalaya. (Picture: Antara)

Following the detailed description of intolerant case of Ahmadiyah in kampong Babakan Sindang, Desa Cipakat:

The presence of Ahmadiyah congregations in Tasikmalaya Regency cannot be fully accepted by the local society. The intolerant actions have its momentum when the formal legacy was published by government through the SKB and Pergub of West Java. So, some of action did to get rid and remove the existence of Ahmadiyah teaching in Pasundan Land. Some of efforts to have dialogue in order to gain “awareness”, oftenly stagnated and became not useful. The anarchy actions still occurred as the social phenomenon. This situation befalls on Ahmadiyah congregations which lived in Tasikmalaya Regent. “The residents have warned them, but they (Ahmadiyah) still perform their religious activities here,” Asep said.<sup>101</sup>

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<http://www.inilahjabar.com/read/detail/1853055/masjid-ahmadiyah-tasik-pun-dilempar-bom-molotov> and overall narration of those online news were accessed on December 14, 2012.

101 See “Massa Serang Sampai Rusak Masjid Ahmadiyah di Tasikmalaya” di link: <http://www.merdeka.com/peristiwa/massa-serang-amp-rusak-masjid-ahmadiyah-di-tasikmalaya.html>, also see “Massa Rusak Masjid Ahmadiyah di Tasikmalaya,” <http://www.antaraneews.com/berita/307039/massa-rusak-masjid->

That bad precedent began on Thursday, April 12, 2012. The dialogue between Ahmadiyah congregations and local residents who felt so uncomfortable with the activities of Ahmadiyah surrounding them, was held at that time. That program was held in the public room of local official place of Desa Cipakat. At that moment, some of representations from several elements attend this program, such as from Ahmadiyah congregations, FPI, the Head of Village (Kepala Desa), local police department, muspida element, koramil, and Camat. They came to the official place of Desa Cipakat. But, unfortunately, that dialogue was running not smoothly, because they stayed on their own opposing argumentation.

For Ahmadiyah congregations, their activities are the rights of citizens which should be guaranteed by the constitution which being the joint guidance in the context of national and state. "On that meeting, FPI accused Ahmadiyah have violate the SKB 3 Ministers and regulation of Governor of West Java because we are still doing our worships," said the Leader of Ahmadiyah branch Singaparna, Nanang Ahmad Hidayat.<sup>102</sup>

On that meeting, the debate was occurred, and FPI did not want to hear the reason of Ahmadiyah that explaining the article 29 the 1945 Constitution about the guaranty to do worships. In the afternoon, FPI was sealing Baiturrahim Mosque then locked the fence and tacked the door of the mosque. Then they leaved the location. Next day, Friday, April 13, 2012, the Ahmadiyah congregations wanted to do Friday praying, so

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ahmadiyah-di-tasikmalaya. Sources were accessed on December 14, 2012.

102 See "Kronologi Perusakan Masjid Ahmadiyah Tasik", <http://m.inilah.com/read/detail/1853257/kronologi-perusakan-masjid-ahmadiyah-tasik>, See also "Ahmadiyah Tasikmalaya Dituding Langgar SKB 3 Menteri", <http://www.gatra.com/politik/11505-ahmadiyah-tasikmalaya-dituding-melanggar-skb-3-menteri.html>, those both resources were accessed on December 14, 2012 .

that the seal was broken. “We are not breaking the regulations. We must do our worship today, so we must open this seal,” Nanang Ahmad Hidayat said.<sup>103</sup> The same statement also told by another Ahmadiyah congregation, Budi Badrussalam. He said that their mosque was sealed on Thursday, April 12, 2012, by FPI. “At that time, FPI sealed our mosque, but we open it because we did not harm anyone,” he said.<sup>104</sup>

One week after, on Thursday, April 19, 2012, the police came to them and informed that FPI will return back and sealing the mosque of Baiturrahim, “Ya, that’s true, on Friday (20/4/2012) around 10.00 a.m., they came and put up the banner, doing oration, and read the Stance Statement which saying that they object to the Ahmadiyah’s activities,” he said.<sup>105</sup>

The seal process was continually occurred and getting worst because changing into vandalism actions. The mosque was severe damaged, its windows were broken, and some of facilities such as parabolic, books and other were damaged also. The carpet combustion was occurred at that time, but it was not occurred continually because the police apparatur came and stopped the action.<sup>106</sup>

Another sources informed, there is a certain ormas, suspected FPI, which considered Ahmadiyah congregations still doing their activities in that mosque before it was sealed. “Actually this is just a declaration of closing ceremony of Ahmadiyah Baiturrahim Mosque which

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103 See “Ahmadiyah Tasikmalaya Dituding Langgar SKB 3 Menteri”, <http://www.gatra.com/politik/11505-ahmadiyah-tasikmalaya-dituding-melanggar-skb-3-menteri.html>, those both were accessed on Desember 14, 2012.

104 See “Masjid Ahmadiyah Sempat Disegel”, <http://nasional.inilah.com/read/detail/1852996/masjid-ahmadiyah-di-tasik-sempat-disegel>, was accessed on December 13, 2012.

105 See “Ahmadiyah Tasikmalaya Dituding Langgar SKB 3 Menteri”, *op.cit.*

106 See “Inilah Kronologi Perusakan Masjid Ahmadiyah di Tasik”, tulisan bersumber dari situs: <http://www.mediaindonesia.com/read/2012/04/20/314287/284/1/Inilah-Kronologi-Perusakan-Masjid-Ahmadiyah-di-Tasik>, accessed on December 14, 2012.

initiated by the ulema and witnessed by some local Islamic ormas. At the beginning, this run normally, but surprisingly some people (around 20 persons) coming from back door and starting to damage,” said the correspondent of Metro TV, Hendra Herdiana, when contacted in Jakarta, Friday, April 20, 2012.<sup>107</sup>

As a result, some of facilities of the mosque were damaged so badly. The people were destroying the glass, window, and the door of mosque by using the woods and stones. The mass was also burning the carpet inside the mosque. Luckily, the fire could be extinguished. Tent of people get inside the complex of mosque by ascending the fort. This riot occurred around in 30 minutes. The action was left seem by the local police there. The police did not prohibit or prevent their action.<sup>108</sup>

The police department of Tasikmalaya was actually receiving the info about demonstration to sue the Ahmadiyah’s mosque closure. Achieving that info, they said that they suddently went to the location since 08.00 a.m. to watch. But that action cannot be muted and the demolition by the mass on that mosque also was hard to be prohibited. After the action was stopped, the police did some action to anticipate the worst demolition action. That guarding action held for two days.<sup>109</sup>

One day after the vandalism action on Ahmadiyah’s mosque, two of perpetrator which the initials are A and US surrendered themselves to Polres Tasikmalaya. Those both surrendered themselves confessed that they are not part of FPI. Those persons were just coming from

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107 *Ibid.*

108 See “Masjid Ahmadiyah di Tasikmalaya Dirusak”, <http://www.tempo.co/read/news/2012/04/20/178398492/Masjid-Ahmadiyah-di-Tasikmalaya-Dirusak>, accessed on December 13, 2012. Also see “Ahmadiyah Tasikmalaya Dituding Langgar SKB 3 Menteri. Op.cit.

109 See “Khawatir Terjadi Aksi Penyerangan, Polisi Jaga Ketat Daerah Basis Ahmadiyah”, <http://tianshu.rimanews.com/read/20120422/60543/khawatir-terjadi-aksi-penyerangan-polisi-jaga-ketat-daerah-basis-ahmadiyah-di>, accessed on December 10, 2012.

outside of Cipakat Singaparna to take part in that vandalism action. Polres Tasikmalaya did not detain and assign them to be the defendant to those both perpetrators while waiting the real report of Ahmadiyah Community.<sup>110</sup>

This following anarchy action in Tasikmalaya occurred on Wednesday, May 2, 2012, the mosque of Al-Muhajirin, the property of Ahmadiyah which located in Kampong Babakan Sari, Desa Kutawaringin, Kecamatan Salawu, burnt by hundreds people. Mass was burn that mosque when the residents rest. That incident occurred at 01.00 a.m. in the early morning.

This is the detail of combustion case of Al Muhajirin Mosque:

These unfortunate events which befall the sisters and brothers in Kampong Babakan Sindang, Cipakat Vilalge, *Kecamatan*/district Singaparna also felt by Jemaat Ahmadiyah in Kampong Babakan Sari, Kutawaringin Village, *Kecamatan*/District Salawu, Tasikmalaya. Only two weeks after the previous assault a crowd numbering hundreds of people set fire to the mosque Al Muhajirin.

When the incident happened, the local residents which directly saw it could not do anything to hinder the attackers. As a result, some of mosque's facilities devastated with no leftover. "There's no people die or injured in that assault and combustion incident. But, the local residents there and Ahmadiyah congregations fear to go out of their homes", said Camat Salawu, Rachmat Hidayat.<sup>111</sup>

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110 See "Pelaku Perusakan Masjid Ahmadiyah SerahkanDiri", <http://www.antaraneews.com/berita/308766/pelaku-perusakan-masjid-ahmadiyah-serahkan-diri>, accessed on December 12, 2012.

111 See "Perlengkapan Masjid Jemaat Ahmadiyah Tasikmalaya Dibakar, <http://www.mediaindonesia.com/read/2012/05/02/317049/289/101/Perlengkapan-Masjid-Jemaat-Ahmadiyah-Tasikmalaya-Dibakar>. Info was accessed on December 13, 2012

The assault incident and combustion of Ahmadiyah's mosque happened at 01.00 a.m., Wednesday, May 2, 2012. The local society nearby location which resting at that time, were surprised by the noise that came from mosque. The coming mass was predicted around 100 persons, and among them there was screeches voice which commanding to burn the mosque.

A moment later, after arrived in the yard of Al Muhajirin mosque, mass mass tried to get in by breaking the main door of the mosque and then burning it. And the result was some of facilities of that mosque finally burnt, such as mukena (wordshipping dress), carpet, curtain, wall clock, loud speaker, a book which usually used for Friday khutbah. "When that incident occurred, there's none inside the mosque, that's why no victims die or injured," said Camat Salawu.

According to the witness, among the mass who did the action, mostly wearing the white costumes, turbaned and wearing the masks. From those wore attributes, the attackers and the burners had semblance with the mass who attacked the Baitul Rahim Mosque – namely members of FPI. After that combustion incident, mass dissolve itself.

### **c. Banjar**

On Wednesday, April 25, 2012, Al Istiqomah mosque where located in Kampung Tanjungsukur, Pataruman, Banjar, was sealed by Coordinating Board for Monitoring Public Trust (Bakorpakem) permanently. This was due to running activities by Ahmadiyah congregations that were considered contrary to SKB Tiga Menteri year 2008 and Pergub number 12/2012, and feared would sparking social conflict which probably due to physical violence among society. The gate, main door and windows of the mosque were sealed using the iron

and be welded.<sup>112</sup>

#### d. Bandung

On Thursday night, October 25 2012, An-Nashir mosque is located in Block H. Sapari District Astana Anyar, Bandung, was attacked and damaged by the members of FPI which passing it accidentally while back after sweeping. As a result, the mosque that stood since 1948 have suffered considerable damage. The mass of FPI broke the windows, door and mused the rooms inside mosque. This incident also made the Ahmadiyah community could not do their activities such as Idul Adha praying and slaughtering sacrificial animals.

Below is the chronology detail of anarchy action suffered by Ahmadiyah Followers in Bandung:

Based on the info from MH, one of Ahmadiyah leader, on Thursday evening, around 07.30 p.m., while the pilgrims of Ahmadiyah do their daily activities, such as prayers in congregation in An-Nashir mosque located in Block H. Sapari, *Kelurahan/* Sub-district Cibadak,

*Kecamatan/* District Astana Anyar. That pray was continued together with the other ritual to welcome Idul Adha. At 09.00 p.m., the leader



Dozens of Islamic organization members in Banjar City, West Java, sealed an Ahmadiyah's Mosque on Tuesday, May 3th, 2012. This is the second action since 2009. (Picture: Liputan 6)

112 See "Masjid Ahmadiyah Disegel Pemkot Banjar", <http://news.liputan6.com/read/393230/masjid-ahmadiyah-disegel-pemkot-banjar>, accessed on December 12, 2012.

of Ahmadiyah, Asep Abdurrahman (Utep) is coming. He asked the congregations not do any activity. Unfortunately, the congregations did not understand what the activity meant to by Utep. “We just do our daily activities,” HM said.

A few moments later, Utep went. Ahmadiyah congregations took rest after a while a commotion in the mosque. Then, the group of FPI returned back and forced them to make a statement of will not doing the activity. “We won’t. It’s not fair to forbid us worshipping. But FPI threatened us to make a ryot like in Cikeusik,” he said.

A member of Ahamadiyah, Atep Suyono (42) gave additional information. Around 30 people went to the mosque while shouting, slamming some stuff in mosque, and breaking up the window of the mosque by using the wooden beams. “They rampage here, while destroying stuffs, windows also broken up,” Atep said. People also threatened to burn the mosque if the congregations keep doing on celebration Idul Adha, praying Eid, and slaughtering the sacrificial animals.<sup>113</sup> “Allahu akbar! Allahu akbar! We will burn this mosque if you keep doing praying Eid and slaughtering the sacrificial animals here,” Ayo said, another Ahmadiyah pilgrim, to imitate the threatened statement from one of the attackers.<sup>114</sup>

In that assault, two windows of the mosque was broken hit by the beams, the gate was uprooted, and the stuffs were slamming. *Muballigh* in the An-Nashir mosque, Abdul Wahid Yora, said that in takbiran night of Idul Adha, he and 10 young men came to mosque to preparing all the needs for Eid pray and sacrificial animals slaughter which will be held in tomorrow, on Jumat, October 26, 2012. In that two-story mosque also the mothers gathering inside.<sup>115</sup>

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113 See “Masjid Ahmadiyah di Bandung Dirusak”, <http://regional.kompas.com/read/2012/10/26/12122637/Masjid.Ahmadiyah.di.Bandung.Dirusak>, accessed on December 16, 2012

114 See “Massa Penyerang Ancam Bakar Masjid Ahmadiyah”, <http://regional.kompas.com/read/2012/10/26/18253420/Massa.Penyerang.Ancam.Bakar.Masjid.Ahmadiyah>, accessed on December 16, 2012

115 See “Kronologi Penyerangan Masjid Ahmadiyah di Malam Takbiran”, <http://>

At first 10 men in white robes, begged Yora and comrades to lowering photograph on one of their leaders which affixed on one wall of the mosque. But that demand of that white-robes group did not be fulfilled. Then, by the time, the amount of that group's personnel became increased and clustered around the mosque of An-Nashir. "The situation in the lower ground (first floor of the mosque) become not conducive, some people shouting from secondary floor, so I go upstairs of the mosque because there are some mothers who should be secured," he said.

When Yora was in second floor to soothe the mothers there, he was called by an officer who suspected as an intelligence of the police department. That officer asked Yora to come to Polsek Astana Anyar. Yora firstly refused him by saying that he just being the *mubaligh* in that mosque, he is not the official or the leader. But that man tried to force him to come to Polsek with the reason of his-self security. Lastly, the representation of Ahmadiyah and mass were negotiating in the office of Polsek Astana Anyar, Jalan Astana Anyar, Bandung.

Other information told that assault was occurred spontaneously. At that time, tenth of FPI's members did a sweeping action on alcohol and night club in that area. But, when passing An-Nashir Mosque, around at 11.00 a.m., they saw Ahmadiyah congregations were doing takbir. They argue of each other suddenly. FPI asked the Ahmadiyah congregations to stop their activity. The demand was refused. Then FPI keep on forcing Ahmadiyah to obey the regulation of Governor of West Java which is forbidding any kinds of Ahmadiyah's activities. Because none wants to budge, one of representation came to Mapolsek Astana Anyar which located just around 300 metres of the mosque. But that deadlocked negotiation.<sup>116</sup>

Knowing that negotiation was unuseful, FPI which still staying

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bandung.okezone.com/read/ 2012/10/26/526/709801/kronologi-penyerangan-masjid-ahmadiyah-di-malam-takbiran, accessed on December 16, 2012

116 See "Ahmadiyah Tak Salat Id, Kurban pun Bersembunyi", <http://dutaonline.com/ahmadiyah-tak-salat-id-kurban-pun-bersembunyi/>, accessed on December 12, 2012.

around the mosque, were throwing the windows and damaging the fence of the mosque. The incident occurred on Friday at 01.00 a.m. The Wali Laskar FPI Bandung Raya, Muhammad Asep Abdulrahman or who officially called as Utep, also confessed accidentally attacked the mosque of An-Nashir. FPI just want to sweep the night clubs which are still opened when Moslem celebrates Idul Adha. “We just accidentally walk to home and passing the mosque, and at the time we see an activity there where the symbols of Ahmadiyah inside,” he said in Bandung.<sup>117</sup>

One of Ahmadiyah’s figures in Bandung, MH, said that the destroying action happened after the negotiation finished between their colleagues and FPI have no solution. “We are being asked to sign the statement that we will not do anything while celebrating Idul Adha. We won’t to do that because we are not going to do something which contrary to Islam,” he said.<sup>118</sup>

The leader of FPI, Muhammad Asep Abdulrahman (Utep), confirmed that when he transitted to that mosque, he met with eight men and two women who were doing activities there. FPI was suddently asking them to stop their activities, but Ahmadiyah congregations ignored them all. Then FPI and Ahmadiyah choose to do a negotiation in Malpolsek Astana Anyar. “From our side asking Ahmadiyah to make a statement to stop all of their activities according to the governor’s regulation, but after waiting for some hours, the side of Ahmadiyah does not want to fulfill it,” he said.

Utep explaine, because of the deadlock negotiation, he finally decided to return back to the mosque. “I myself damaged the glass because there’s an Ahmadiyah’s pilgrim said that he wants to use stand *microphone*, that’s why I really angry,” he said. The regulation of

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117 See “Lempar Masjid Ahmadiyah, Ini Penjelasan FPI”, <http://nasional.news.viva.co.id/news/read/362562-lempar-masjid-ahmadiyah--ini-penjelasan-fpi>, accessed on December 13, 2012.

118 See “Kronologi Penyerangan Masjid Ahmadiyah di Bandung”,<http://nasional.news.viva.co.id/news/read/362608-kronologi-penyerangan-masjid-ahmadiyah-di-bandung>, accessed on December 12, 2012

Governor of West Java that intended is Pergub of West Java No 12 Year 2011 about Disallowance of Activity of Ahmadiyah Congregations in West Java which signed by the Governor of Ahmad Heryawan.<sup>119</sup>

Atep Suyono (42), the followers of Ahmadiyah said that when he was in police station, around 10.00 p.m., the attackers asked the deal from Ahadiyah to not doing Idul Adha praying and slaughtering sacrificial animals. At that time also, the representation of Ahmadiyah agreed and promised to fulfill demand of attackers.

After dealing, some of group members of attackers allowed to go home by police. And third persons were being detained to sign the letter on their promises to comply what the attackers wanted. "We comply what they want, it is in order to make them quickly," Atep Suyono said when met in guess room of Ahmadiyah's mosque, Friday (26/10).<sup>120</sup>

After that, the police asked Ahmadiyah signing that attacker's demand. That letter containing that Ahmadiyah promises to will not hold Idul Adha praying and slaughtering sacrificial animals. One of those third persons didn't want to sign that letter. Finally, they arrested by the police, until they picked up by other Ahmadiyah pilgrim from Mapolrestabes Bandung. In the morning, around at 09.00 a.m., those three persons, Yora, Irfan, Mujib allowed to go home by the police because picked up by their friends.

The congregations of Ahmadiyah also stay on their plan to slaughtering sacrificial animals to celebrate Idul Adha. But they hide the location. "We stay on our plan to slaughtering sacrificial animal even we done it by stealth," Atep Suyono said.

Asep said that slaughtering sacrificial animals is a form of their

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119 See "Kronologi Penyerangan Masjid Ahmadiyah di Bandung", <http://www.indonesiamedia.com/2012/10/27/kronologi-penyserangan-masjid-ahmadiyah-di-bandung/>, accessed on December 13, 2012

120 See "Diserang, 3 Jemaat Ahmadiyah 11 Jam Ditahan Polisi", <http://nasional.kompas.com/read/2012/10/26/18091851/Diserang.3.Jemaat.Ahmadiyah.11.Jam.Ditahan.Polisi>, accessed on December 23, 2012

devotion to God. But, Atep did not want to inform where the location of that event. On the same time, some of Ahmadiyah congregations in Bandung had not do Idul Adha praying after that assault action by a group of people on Thursday night. But according to the circulating news, the sacrificial animals had been brought by police. "After the incident (assault by FPI) last night, those sacrificial animals have been brought by the police," said one of the Ahmadiyah congregations. He said that those animals were taken to be slaughtering on the other place. "I don't know about the amount of that animal. I haven't count it yet," he said. Besides that, one of police personnel said that six of cows and two goats which purchased by the congregations had been carried on to Mapolrestabes Bandung. "Those sacrificial animals were slaughtered at Polrestabes Bandung," he said.

The personnel also said that he with the other police personnels were keeping watch after the situation surrounding the mosque until undetermined time. "Temporary, there's no activity here. Even, Friday praying also cannot be held," he said. The monitoring results says that on 8.00 a.m., seen dozens of youths still cleaning up the residual dirt of that event.

The Deputy Chief of Polres Kota Besar Bandung AKBP Dadang Hartanto denied that the police conceded those FPI's action. According him, police have monitoring the sweeping action which done by FPI because they have asked for permission from police institution before. "There are 20 personnels of us that stand guard the location," he said in Bandung yesterday. "At that time we are going to have negotiation from those both groups in Polsek Astana Anyar, both there is some who spontaneously do that destruction on that mosque," he stated.<sup>121</sup>

Until tomorrow Friday, October 26, 2012, the police apparatuses from Polrestabes Bandung and Polsek Astana Anyar still keep watch surrounding the mosque. That Ahmadiyah pilgrim could not do Idul

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121 See "Ahmadiyah Tak Shalat Id, Kurban Pun Bersembunyi" <http://dutaonline.com/ahmadiyah-tak-salat-id-kurban-pun-bersembunyi/>, accessed on December 13, 2012.

Adha praying in that mosque. Some of them came to that mosque in the morning but then return back. Besides that, they also did not doing the slaughtering sacrificial animals.<sup>122</sup>

#### **4. Mukhtar Ahmadiah Canceled**

Besides accepting the anarchy action in the form of sealing, assault, defacement, and combustion of the property, the Ahmadiah congregations forced to cancel their agenda to hold a mukhtar which planned held in Tasikmalaya. The reason is the government doesn't want to issue the permission of the mukhtar event of Ahmadiah in that area.

In the term of handling this case of Ahmadiah which perceived by the local government of Tasikmalaya have a potent to create a social conflict and also socialization effort of enforcement of SKB Tiga Menteri year 2008 and Pergub number 12/2011 about the Disallowance on Ahmadiah, Kepala Desa, polsek, element of muspida, koramil, and camat facilitated a dialogue in Kantor Kepala Desa Cipakat. That dialogue event attended by Ahmadiah congregations and also its contrary group, FPI. But that program had no found the deal. As result, after the dialogue finished, conflict gets worse.

The Chairman of the Office of National Integration and Civil Protection, Iwan Setiawan feels that that Ahmadiah conflict case handlement is not being the responsibility of local government. He also feels that so hard to find a good solution related to this context which presumably due to beliefs diversity.

The Regent of Tasikmalaya as the top leader in that region seemed contraproductively performed. This reflected from his rejection to issue a permit for the event of National Congress (Mukhtar) of Ahmadiah. That event was planned to be held in Kecamatan Salawu Kabupaten Tasikmalaya. Besides not giving the access of public service as part of

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122 See "Eti Menangis Tak Bisa Shalat Id", <http://www.tribunnews.com/2012/10/27/eti-menangis-tak-bisa-salat-id>, accessed on December 13, 2012.

citizens, the Ahmadiyah congregations also will have no protection if they still force to hold their agenda.<sup>123</sup>

## 5. The Citizen (Strange)

The Ahmadiyah congregations in Manis Lor kecamatan Jalaksana Kuningan until today was served as the “strange” people. E-KTP making process is actually being the not-easy obtained rights for them. They should striving long-term process to be served for getting that identity card, and they should to empty the column of religion. The validity identity which is put on that Resident Identity Card or KTP really important to do many administrative purposes and become the media for population and citizen census. In order to integrate the administration system and population database, the Ministry of Internal Affairs (Kemendagri) issued a particular policy to regulate the population database through the new style, which usually called as E-KTP for the citizens.

But that policy is not directly able to be applied for Ahmadiyah community in Manis Lor Village, District Jalaksana, Kuningan. The Local Government of Kuningan cancelled to process that electronic identity card because of religion status and beliefs. But on October, the Ahmadiyah community which totaling were about 5.000 peoples, served to processing E-KTP. The Ahmadiyah congregations still befall a discriminative service from the officials. They were forbidden to write down their religion on the religion column, and its column let to be empty. That provision of emptying the religion column in the format of E-KTP, should be submitted by central government.<sup>124</sup>

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123 See <http://www.sorotnews.com/berita/view/bupati-tasikmalayatolak.3249.html#.UKCOUmcrpkg>, accessed on December 12, 2012.

124 See “Penganut Ahmadiyah diKuninganMembuat-E-KTP,” <http://www.metrotvnews.com/read/newsvideo/2012/10/13/161620/Penganut-Ahmadiyah-di-Kuningan-Membuat-E-KTP/6>, accessed on December 10, 2012.

## 6. Government and MUI Respons

Along 2012, the congregations of Ahmadiyah in West Java were experiencing discriminative action done by stakeholders. Not only closure the access of public service as the citizen, intimidation and terror which “initiated” by the government, but the other similar discrimination done by the surrounding intolerant society. Those incidents were experienced by the Ahmadiyah congregations in Bandung, Tasikmalaya, Bogor, Cianjur, Banjar and Kuningan.

The anrchy actions by FPI, a group of radical organization which attacked and destroyed the mosque Baitul Rahim belongs Ahmadiyah congregations in Singaparna, Tasikmalaya, West Java is the discriminative action which cannot be tolerated. But the minister of religion was contrarily supporting and “justifying” and positioning the victims as the group who blamed. “There’s probably an improper condition there,” Suryadharma Ali said.

Suryadharma Ali assessed that incident is a logic consequence of Ahmadiyah congregations which ignored the regulation. The congregations of Ahmadiyah which still running for their religious activities, finally provoke the emotion of people there. “I asked to Ahmadiyah, please to obeying the applicable local rule and we ask you to stop your religious activities. And we are trying to make a supporting program to straighten the Islamic teaching. That is my warning to Ahmadiyah, please obey all of the applicable regulation,” he said.<sup>125</sup>

After the incident of assault and destruction the Baitul Rahim mosque belongs of Ahmadiyah congregations in Tasikmalaya done by some of members of FPI, Djoko Suyanto, Coordinating Minister for Politics, Legal and Security said that all of anarchy actions form such as the assault and destruction or another discriminative actions cannot be occurred in Indonesia. For that, those vandalism actors should be

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125 See “Menteri Agama Salahkan Jemaat Ahmadiyah”, <http://regional.kompas.com/read/2012/04/20/19255662/Menteri.Agama.Salahkan.Jemaat.Ahmadiyah>, also “Menag Minta Ahmadiyah Hentikan Aktivitas”, <http://news.okezone.com/read/2012/04/20/337/615468/menag-minta-ahmadiyah-hentikan-aktivitas>, both resources were accessed on December 15, 2012.

processed according to the applicable law.

Coordinating Minister for Politics, Legal and Security (Menkopolhukkam), Djoko Suyanto, have instructed the police apparatuses to process the perpetrators of that assault on that mosque.<sup>126</sup>

The governor of West Java, Ahmad Heryawan, regret that incident happened on related to Ahmadiyah community and FPI in Bandung and other regions in West Java. The judgment action which done by FPI Bandung on Ahmadiyah community should not be happened. For that, he asked the law enforcement apparatuses ensnaring involved actors of that violation, both from Ahmadiyah community and FPI's members.<sup>127</sup>

In order to prevent the spread of this incident, he also asked the community of Ahmadiyah to notice and obey the regulation of Pergub number 12/2011 about the disallowance of Ahmadiyah teaching and activity. And, in related to the the case of dissolution of Ahmadiyah teachings, handed over to central government to solve it. The government of West Java will send a letter of reprimand to FPI and eliminate that organization from Organization's name list association in West Java. But unfortunately, even that letter and disallowance on that organization (FPI) which being his obligation, cannot be realized until now.<sup>128</sup>

Related to the assault and destruction action on the mosques belongs to Ahmadiyah congregations in Singaparna Tasikmalaya, The Minister of Internal Affair, Gamawan Fauzi, on April 27, 2012, a week after that occurrence, issued a form letter which pointed to the Regent.

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126 See "Menkopolhukam: Penyerangan Ahmadiyah Ditangani Polda", <http://nasional.kompas.com/read/2012/04/20/19265755/Menkopolhukam.Penyerangan.Ahmadiyah.Ditangani.Polda>, accessed on December 13, 2012.

127 See "Polisi Tetapkan Tersangka Perusakan Masjid An Nur", <http://regional.kompas.com/read/2012/10/29/02291794/Polisi.Tetapkan.Tersangka.Perusakan.Masjid.An.Nasir>, accessed on December 12, 2012.

128 See "Perusak Masjid Ahmadiyah Ditahan", <http://www2.tempo.co/read/news/2012/10/29/058438255/p-Perusak-Masjid-Ahmadiyah-Ditahan>, accessed on December 10, 2012.

There are two points contained in that letter. Firstly, he stated that the assault case and destruction by FPI personnels should be handled through legal mechanism. Secondly, he asked the regent as the Head of local government, inviting witnesses, giving harsh reprimand, and administrative sanction in form of temporary non-active or probably more than it, a dissolution of the organizations which oftenly doing some anarchy actions. The rule of sanction imposing refers to the regulation of no.88/1985 about mass organization.<sup>129</sup>

The respons of MUI seems like pretended not to know. According to MUI, one of obligated function of MUI is to ensure the purity of Islamic teachings through the couching and counseling related to the religious understanding of society. So that the society can be diving the teaching of Islam which spreaded by Prophet Muhammad rightly and avoiding from the deviations of religion which supporting the conflict among people.

The Chairman of MUI Bogor, KH.Ahmad Mukri Aji followed what decided by National Branch of MUI and International Decree of Ulema to perform his idea facing the case of Ahmadiyah which performed concensus about perspective that deals Ahmadiyah is not integrated to the sect of Islam. Because of that accordance, MUI have no responsibility on Ahmadiyah to be protected, moreover to share contribution for Ahmadiyah's teachings development.

After the incident in residence of Ahmadiyah community, MUI waits for President's action to solve this problem in order to create religious harmony among people. This is not excessive, because the local government of West Java and government of Bogor Regency have banned Ahmadiyah with all of its activities.<sup>130</sup>

After the assault and destruction incidents done by some people

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129 See "Penyerangan Ahmadiyah di Tasikmalaya, Mendagri Minta Bupati Ambil Tindakan", <http://www.depdagri.go.id/news/2012/04/27/penyerangan-ahmadiyah-di-tasikmalaya-mendagri-minta-bupati-ambil-tindakan>, accessed on December 10, 2012.

130 See <http://rri.co.id/index.php/detailberita/detail/24159#.UKDor2crpkh>, accessed on December 9, 2012.

of FPI on Ahmadiyah's mosque in Bandung, the Chairman of Central Board of FPI, KH.Ma'ruf Amin disagree to that anarchy actions. He said that all forms of anarchy are not justified in Islamic syaria. For that, the law enforcement apparatuses asked to be strict on against the perpetrators if the supporting data showing that the action of FPI containing the criminal factors.<sup>131</sup>

#### **D. The Stubborn “defending champion”: Syaria Law in West Java**

Supervising the report of Freedom of religious/ belief on 2011 and 2012, the Province of West Java is being the “Champions” as the intolerant province which indicated by the amount of violations on freedom of religious/ beliefs. Quantitatively, the incidents and vandalism actions occurred there, spreadedly in 5 last years lead by politician of Prosperous Justice Party (PKS) more increasing from incidents and violations occurred in other places. And, the data of 2012 showing off the escalation of incident and violation compared to the data of the previous years.<sup>132</sup>

There are too many factors which underlying the minor portrait of freedom of religious/ beliefs in this Pasundan land; sociology, politics, juridical, and economic. In this part, the paper will analyze one of the determinant factors on establishment of some incidents and discriminative-intolerant, namely juridical factor. More specific, the paper will describe about sharia rule (in the term of governor regulation and local regulation) in West Java which enable to triggering the intolerant action and performace, even by the members of society or governmental apparatuses, both in security sector or bureaucracy.

Paper will be not describing about the whole of local regulation

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131 See <http://www.tribunnews.com/2012/10/27/ketua-mui-minta-polisi-tindak-pelaku-perusakan>, accessed on December 11, 2012

132 See Hasani dan Naipospos (Eds.), 2012, *Politik Diskriminasi Rezim SBY: Kondisi Kebebasan Beragama/Berkeyakinan tahun 2011*, (Jakarta: Pustaka Masyarakat Setara). Also see the data of 2012 in the chapter II of this book.

(Perda) with sharia nuanced which existed in jurisdiction and administrative regional of West Java province, even on that provincial level or regent/city level. That perda with sharia nuanced is not slightly, even in provincial level<sup>133</sup> or in the level of city/regent.<sup>134</sup> In this paper, SETARA will pay attention on this Perda with sharia nuanced which relating to the causal connection with all of violation that occurred in West Java on 2012 and others Perda which potentially become a new instrument of juridical justification for the incidents, discriminative and intolerant action in West Java in the future.

### **1. That Anti-Ahmadiyah Pergub**

One of the juridical instruments which oftenly determining the discriminative and intolerant action is Government Regulation (Pergub) No.12 year 2011 about the Disallowance of Ahmadiyah Congregations Activity in West Java. Symbolically, it was so clear that this Pergub “similar” with the Joint Decree of Minister of Religion, General Attorney, and Minister of Internal Affairs Number 3 year 2008 about the Warning and Instruction for Followers, Congregations, Members, and/or the Member of Indonesia Ahmadiyah Congregations (JAI) and Society, which usually called as SKB Tiga Menteri.

Some important parts of that governor regulation will be narated and discussed the unconstitutional logic which contrary to the constitutional guaranty on freedom of religious/ belief.

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133 The Spirit of Sharia formalization through the Perda of 2012 still dominates the public regulation in provincial level. Not only in West Java, but also in East Java through the Pergub no.55/2012 about Religious Guidance and Control Sects Activity (Pembinaan Kegiatan Keagamaan dan Pengawasan Aliran Sesat) issued on July 23, 2012. That Governor Regulation become a response and a follow-up action on the Fatwa No. Kep-01/SKF-MUI/JTM/I/2012 about Misguidance of Shia Teachings after chaos and assault on Shia pilgrims in Sampang, Madura. See <http://antipartai.wordpress.com/2012/09/14/draft-gugatan-melawan-predisen/> accessed on December 12, 2012. In those two regions of West Java and East Java, Pergub implicates the occurrence of discriminative and intolerant actions in every regions.

134 Some of Perda data in Regency/City will be served in other part of this book.

From its considerants, we could see that the Governor Regulation (Pergub) twisting the concept and perspective of human rights to justify “what does the government want” about the disallowance of Ahmadiyah. The first consideration of that Pergub is: “The Rights of Religion is part of Fundamental Human Rights and the State guarantees the freedom of citizen to own their religion and worship as what they believe on.”

This shows that the Pergub maker actually did not understand about the substance of human rights and the responsibility and obligation of a state (in this context is provincial government apparatuses) in fulfilling and protecting human rights. The concept and consideration of human rights as in Pergub’s considerants, just borrowed to pretend as if it can protect human rights, but honestly they just protect the majority group who probably partially not agree with the action of them.

The Legal Basis of Pergub, such as:

- 1) Law 1/PnPs/1965 about Prevention of Misuse and/or Religion Defamation,
- 2) Law 39 of 1999 on Human Rights (State Gazette of Republic of Indonesia of 1999 Number 165, Additional State Gazette Number 3886),
- 3) Law 32 of 2004 on Local Government (State Gazette of Republic of Indonesia of 2004 Number 125, Additional State Gazette of Republic of Indonesia Number 4437) as amended several times, and the latest through the Law 12 of 2008 on The Second Change on Law 32 of 2004 on Local Government (State Gazette of Republic of Indonesia Year 2008 Number 59, Additional State Gazette of



Republic of Indonesia Number 4844);

- 4) Law 12 of 2005 on Legalization of International Covenant on Civil Rights and Politics (State Gazette of Republic of Indonesia of 2005 Number 119, Additional State Gazette Number 4558);
- 5) Joint Decree of Minister of Religion, Attorney General, and Ministri of Internal Affairs 3 of 2008, Number of Decision Kep-033/A/JA/6/2008 and Number 199 Year 2008 about Warning and Command to The Congregations, Members, and /or Board Members of Ahmadiyah Congregations of Indonesia (JAI) and society;

Some of Legal Basis that used in Pergub showing the weakness of this regulation making process in understanding the substance of regulation. Using Law on Human Rights and Law of Covenant Ratification the Sipol Rights as the legal basis of disallowance on certain religion/belief and its expression, is showing the real incomprehension. The spirit, principle and basic regulation which contained in those two regulations, put the freedom of religious/ belief as non derogable rights, so there's no space given to the state government to restrict. That's why, those two regulations become the fundamental disallowance on a religion/belief and its all expression, are a form of serious juridical straying.



Besides those both regulations, Pergub also underlies itself juridically on that dynamic local government's regulation. Several "versions" of local government regulation, in the context of decentralization authority from Central level to the Regional level, none of them put the religion as the domain job or authority of regional level. So, basing on Pergub juridically to the local government regulation to do its function to managing religion, besides become making explicit the violation on law, also showing the incomprehension and principle ignorance of Provincial Government of West Java, particularly the governor.

Should be noted that Law 1/PNPS/ of 1965 on the Prevention on Misuse and/or Religion Defamation is the regulation which stated constitutionally by Attorney General more in absence of other regulation which managing that similar issue. And, SKB 3 Menteri is the defective rule of law according to the legal norm, because it is contrary to the constitutional guaranty on Freedom of religious/ belief which guaranteed by higher constitution, namely 1945 Constitution, Law 39 of 1999, and Law 12 of 2005.

The substance of this Pergub about Ahmadiyah disallowance stipulated in Article 3 which consist of the following two verses:

### **Article 3**

- (1) The congregations, members and/or the Board members of Ahmadiyah is forbidden to do any activity and/or any kinds of actions in the form of anything as long related to the interpretation dissemination activities and others which deviate from the Islamic teachings principles.
- (2) The activity/hustle orally meant in verse (1) including:
  - a. Ahmadiyah teachings deployment orally, in writing, or through the electronical media;
  - b. Installing the organization's nameplate of Ahmadiyah Congregations of Indonesia in public area;
  - c. Installing the nameplate of worshipping house, educational institution and other with showing the

- identity of Ahmadiyah Congregations of Indonesia; and
- d. Using attributes of Ahmadiyah Congregations of Indonesia in any forms.
- (3) The Local Government stopped the activity/actions of Congregations, members and/or the board member of Ahmadiyah Congregations as stipulated in verse (1) and (2), according to the statutory provisions.

In that Article 3, the local government give the authority to himself for doing disallowance on freedom of religion or belief, and even he allow to diminish or eliminate on a group of people and deprive them from their thoughts and faith which is determined by their consciences. That action is surely a violation form of human rights.

Besides that, the governor's regulation also command the society to make report pointed to the police and other related apparatuses (*See article 7*). This is a problem, because police based on the regulation and national legal never have any obligation on personal's beliefs and feelings as long as their expression would not harming someone and damaging the social order.

In the situation when a certain group of society (paramilitary troops) reports to the police about Pergub that Ahmadiyah still doing their activities (even "just" praying in the mosque which they belong to and it does not juridically violate any law), surely make the police dilemma and giddy to crack down. Because they don't satisfy, so they do *eigenrichting*. When the security threats happened, then the apparatuses take the field lately, so the anarchy actions already occurred to Ahmadiyah pilgrim. It felt so useless. This incident befalls on Ahmadiyah congregations on October 25, 2012 in An-Nashir Mosque, Bandung. When the violation on Ahmadiyah congregations occurred, then instead of prosecution the perpetrators through the applicable law, the police just detained the victims of that violence. Pergub in this context surely become the trigger factors of anarchism happened among society.

## Article 7

- (1) People who knowing the activity of Ahmadiyah about spreading their teachings, and others which deviate from the principle teaching of Islam and also the Joint Decree of Three Ministers should report to the Police Apparatures, or other authorized institution.

Other part which substantially exaggerated is the willingness of Local Government to do the fostering in order to give chance of the congregations, member, and/or other board members of Ahmadiyah to mend their action which deviates from the Islamic principles. (*See Article 9*). Paradigmatically, the provisions about this fostering action are confusing on three terms: *First*, relating to thing which deviating and not deviating. The measurement of deviating surely refers to the hegemony interpretation of mainstream or majority interpretation. In this context, the discrimination is occurred for sure.

*Second*, a chance given to people to look back to the “right” teachings means that the government imaging that he has not only the authority to arrange the governance authority, but also presenting the divine authority like usually occurred in theocracy countries in the past. This is completely contradicting to the basic principle and form of government of Indonesia which being the agreement of the founding fathers of Republic and clearly stipulated in the constitution.

*Third*, the intervention of local government on perception of what is allowed and not allowed, have interfering too deeply to the area of *forum internum*<sup>135</sup> and the private area of citizen to expressing their beliefs. And, until the unpredictable time, the instrument of state cannot be touching the “deepest” area of citizens. For that reason, the social order that would not be realized through this over authority

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135 SETARA Institute has discussed about this issue in several books, those are: *Dokumen Kebijakan Penghapusan Diskriminasi Agama/Keyakinan* (2012), *Putusan Mahkamah Konstitusi dalam Uji Materi UU No. 1/PnPs/1965 tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama Disertai Catatan Kritis* (2010), and so on.

policy, but the social conflict that would be occurred among the society which have plural beliefs.

Besides that, the intervene in the matter of this out of coverage, suggests that as if the local government in West Java has no other governmental tasks that should be seized the concentration as their authority, whereas the poverty, mal nutrition, and food shortage in West Java still being the serious problems which need deep intervention from the government through the precise public policy.

### **Article 9**

- (1) The Local Government implements the guidance and supervision in handling Ahmadiyah congregations, by utilizing Indonesian Ulema Council of West Java, Moslem religious leader and local society figures.
- (2) The guidance as referred in verse (1) aims to give opportunity to the Congregations, Members, and/or Board Members of Ahmadiyah Congregations to correct their actions which deviates from Islamic principle teachings.

More, the governor of West Java did not do discrimination only through the governor's regulation (pergub), he also provokes to infect the discrimination to the other apparatuses in district/city of West Java. The Article 12 of governor's regulation give the authority to the regents and mayors to take some operational ways to handling the case of Ahmadiyah congregations in district/city to the Governor and Minister of Internal Affairs through the Director General of National and Political Unity (Direktur Jenderal Kesatuan Bangsa dan Politik).

## **2. West Java is a Syaria Province?**

Not differ from the provincial level, the government of district and city in West Java was also aggressive in initiating the regional regulation to be more Islamic Syaria nuanced (red: Perda Syariah), which applied not only on the issue of Ahmadiyah, but on the other issue which

more comprehensive. Among the city/districts of West Java, the most “aggressive” one to apply this regulation is Tasikmalaya.

Since four years ago, the city of Tasikmalaya have issued the Regional Regulation Number 12 year 2009 about the Values of Life Community Development on Islamic teachings Based and Community Social Norms of Tasikmalaya (*Pembangunan Tata Nilai Kehidupan Kemasyarakatan Yang Berlandaskan pada Ajaran Agama Islam dan Norma-Norma Sosial Masyarakat Kota Tasikmalaya*).

In the main considerants, Perda signed by the Mayor of Syarif Hidayat according itself to the consideration of followers amount of Islam religion in Tasikmalaya. The considerant stated: “The residents of Tasikmalaya is religious society which most of them are Moslem that always uphold the dignity, and glory of religious teachings that serve as guidance in conducting personal life and in the life of society, nation and state, so that local governments need to encourage each community’s efforts to continually call and invite to good and forbid the wrong thing to realize the atmosphere of life harmonious society, at ease, safe, orderly and peaceful”. From the side of the considerant, that regulation contrary to the constitution and principles of Pancasila State, because it basing on itself to a group of people in drafting a legislation. The ideals of Pancasila are being the law state for all of groups.<sup>136</sup>

The alignment of a certain religion, in this context is Islam, stipulated in Perda of the seventh part of education implementing, da’wah islamiyah and syi’ar Islam (*See the Article 10*). Generally in this part, especially the Article 10, arranging some imperatives, namely: *First*, the obligation of regional government and citizen whose are Moslem to develop the education of Islam even in formal, non-formal, and

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136 Sukarno stated in his speech on June 1, 1945—the born day of Pancasila, “Saudara-saudara yang bernama kaum kebangsaan yang di sini, maupun Saudara-saudara yang dinamakan kaum Islam, semuanya telah mufakat, bahwa bukan negara yang demikian itulah kita punya tujuan. kita hendak mendirikan suatu Negara ‘semua buat semua’. Bukan buat satu orang, bukan buat satu golongan, baik golongan bangsawan, maupun golongan yang kaya, tetapi ‘semua buat semua’.”

informal way. *Second*, the education of Islam is formally implemented in the form of the enrichment through the school curriculum. *Third*, the regional government fostering and facilitating the development of Islamic Study in schools, both in government school or private school. *Fourth*, commanding the Moslem to run and develop the activity of da'wah Islamiyah and syi'ar Islam within their respective. di lingkungannya masing-masing. *Fifth*, the government supports the activities of da'wah Islamiyah and syi'ar Islam. *Sixth*, the mayor is given an authority to set the operational techniques of da'wah Islamiyah and syi'ar Islam.

The Perda with Syaria nuanced in Tasikmalaya City have some main problems, such as:

1. This Perda sets about the religious matters which in decentralization design in Indonesia become not its authority. This matter is violation/infringement on national legislation, particularly the legislation about regional government.
2. This Perda is discriminative because unfairly favor to the congregations of certain religion amidst the society. And on the other hand, factually there's no similar perda which sets about the alignment to another religious congregations which in real terms exists amid in society of Tasikmalaya. Teorically, this term is clearly deviate the state authority attribute of *all-embracing and all-encompassing* (to cover and to protect all of citizens).<sup>137</sup>
3. This Perda triggers the social conflict occurrence, especially triggered by the potent of jealousy of certain religion congregations on the other religion. This regulation is failed to construct the legal order which should oriented to establishment of *social order*.
4. This regulation (Perda) arranges the petty and absurd matters. One which can be explained is Article 11 (1) states that "Every Moslems

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137 See Harold J. Laski, *The State in Theory and Practice*, New York, The Viking Press, 1947, p. 8-9. See also Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Jakarta, Gramedia, 1996, p. 40-41

who are in *baligh age* should to wear syaria clothes (clothes that covering the aurat) as appropriate as the Islamic teachings”. This Perda imagines that the interpretation about aurat rules in Islamic teachings is in the only one meaning. Whereas the perspective of Islamic figures are different and plural about this context.<sup>138</sup> The material law which petty and absurd, is impossible to be enforce substantially and procedurally. If the instrument of law enforcement impose themselves to straighten the petty and absurd cases, so the use of power in forcing the maachstaat.

5. The Perda tried to enforce the moral norm by using the law norms. This is surely impossible. If it is forced so the serious violence of human rights would be happened, because it also would imply the legal uncertainty and inequality before law.

### **Article 10**

- (1) The regional government and every Moslems responsible to develop the Islamic teaching, even in formal, non formal or informal ways.
- (2) The Islamic teaching is applied and developed in order to improve the faith and piety and increasing the knowledge of Islam, primarily to the young people (teenagers) and children.
- (3) The education of Islam as stipulated in verse (1) is implemented and improved as the enrichment terms of national educational curriculum in the subject of Islamic Study.
- (4) The Regional Government fostering and facilitating the implementation and improvement of Islamic Study in government schools or private schools which culminated by

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138 As the sample, one of Indonesian mufasssir, Muhammad Quraish Shihab, said that base on the interpretation of al-Qur'am and Sunnah, the rule of Jilbab is not obligatory, and the other ulema said that covering the hair with using jilbab is an obligatory according to the Islamic teachings. The question is, in that different opinions, what is truly meaning of wearing jilbab according the Islamic rule and teaching, base on the opinion of Perda?

Islamic Study's institution in basic or middle educational level through the local-content curriculum development.

- (5) Every Moslem should to implementing and supporting the activities of da'wah Islamiyah and syi'ar Islam in their owned respective community according to the capacity, science competence and ability.
- (6) The activity of da'wah islamiyah and syi'ar Islam as means as in the verse (5) implemented by noticing the provisions of the legislation.
- (7) The regional government supporting the activities of da'wah Islamiyah and syi'ar Islam.
- (8) The technique of implementation the field of educational subject, da'wah Islamiyah and syi'ar Islam further regulated by the mayor.

In the condition of founding the weaknesses in that Perda, particularly because of its unconstitutional and discriminative characters, the government of Tasikmalaya city seems persevere to force the implementation of that Perda through the unconstitutional way, namely by establishing the Polisi Syariah. The government of Tasikmalaya city seems 'persevere' to establish the 'Polisi Syariah,<sup>139</sup> even some of parties<sup>140</sup> rejecting the existence of Polisi Syariah to enforce that "defect law" Perda Syariah.

Base on the information Secretary of Regional Government of Tasikmalay, the employment status of Syariah Police is Civil Servants (PNS). They are recruited to be alerted in entertainment, and even in every corner of the city of Tasikmalaya. One of the tasks of Syariah

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139 "Untuk penegakan Perda 12, nanti akan ada polisi syariah," Demikian Sekretaris Daerah Pemerintah Kota Tasikmalaya, Tio Indra Setiadi. See <http://www.republika.co.id/berita/nasional/jawa-barat-nasional/12/05/25/m4kzn6-tasikmalaya-bentuk-polisi-syariah> accessed on December 12, 2012.

140 Ministry of Internal Affairs, Gamawan Fauzi, stated in many occasions that Syariah Police in Tasikmalaya is unconstitutional. See <http://www.tempo.co/read/news/2012/06/07/063408933/Gamawan-Polisi-Syariah-di-Tasikmalaya-Melanggar>, accessed on December 14, 2012.

Police is monitoring and cracking down on, by giving the sanction that conform the regulation if proven guilty to that Perda. The Syaria Police will crack down on woman who aren't covering her aurat or wearing the sexy and tight dress or the clothes which showing off the woman's aurat.<sup>141</sup>

Not only in Tasikmalaya, Islamic nuanced regulation also founded in others city or regency in West Java. Some of them are:

- 1) The instruction of Sukabumi Regent Number 4 Year 2004 about the Moslem cloth usage for the students in Sukabumi.
- 2) The Perda of Cirebon Regency 77 of 2004 on the Education of Madrasah Diniyah Awaliyah
- 3) Perda of Bandung Regency 9 of 2005 on Zakat, Infaq, and Shadaqoh.
- 4) Perda of Sukabumi Regency 11 of 2005 on Controlling Alcohol Beverages
- 5) The Regional Regulation of Sukabumi Regency 12 of 2005 on Management of Zakat
- 6) The Regulation of Cianjur Regent Cianjur 15 of 2006 on Daily Uniforms of Government Employees of Cianjur.
- 7) Perda of Majalengka Regency of 2009 about Prostitution.

The amounts of Perda or rules in many forms – form letter, regulation of regents, mayors regulations, and so on -- is bad news for the national legal system that makes the Pancasila as the source of all sources of law. With those amounts of regulation with Islamic nuanced, will West Java becomes the Syaria Province? There's no data that could confirm it. But, just the same, since 2010, some of Islamic groups which generally radical, with strong desire supporting Bekasi Regent as Syaria City.<sup>142</sup> This not only means to seed the discrimination

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141 See <http://www.republika.co.id/berita/nasional/jawa-barat-nasional/12/05/25/m4kzn6-tasikmalaya-bentuk-polisi-syariah>, accessed on December 12, 2012.

142 At least the Islamic Congregations Congress in Bekasi declared the willingness

and intolerant – such as occurred in Bekasi and West Java in general, but also contrary to the prototype of Pancasila State.

### 3. Freedom of religious/ belief is Sacrificed

The basic analytical question that should be asked because of the rampant of Perda and other regulations with Syaria nuanced in West Java and also in other places in Indonesia is: what is the motive behind those some Islamic-nuanced regulations? The best answer is politicization – and also the accumulation of political fee, not the promotion of that Syaria itself.

It was at least corroborated by analysis and research Michael Buehler.<sup>143</sup> The research of Buehler talks sharia showing that the politicians which affiliating with the secular party – and have long career in bureaucracy – such as Golkar and PDI Perjuangan, including Indonesian Military (TNI) and Police of Indonesian Republic, which drafting, adopting, and implementing perdas and sharia regulation. In the le level of local representative board (DPRD) in all of provinces, the most industrious adopt syaria perda is faction of Golkar and PDIP – just except in Aceh.<sup>144</sup>

In more detail, Buehler finds a constant relative method in drafting the regulation with sharia nunced in the level of regency/city government. Golkar, which was victorious in 2004, won with majority vote in the discussion of perda sharia draft in 4 (four) regencies won supported by the other factions in 10 (ten) regencies. So did PDIP. It was supported by other factions. PDIP won the election of 1999, fight for syharia perda implementation in 8 (eight) regencies. The two Islamic parties, National Mandate Party (PAN) and United Development

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to make Bekasi becomes the Syaria City. See <http://www.sabili.co.id/indonesia-kita/kongres-umat-islam-bekasi-jadikan-bekasi-kota-syariah>, accessed on December 14, 2012

143 A Professor of Political Science in University of Northern Illinois, he doing a long research about Syaria rule in Indonesia, since 1999 until 2009.

144 Buehler, 2011, “Partainya Sekuler, Aturannya Syariah”, *Majalah Tempo*, Edisi 4 September 2011, page 74-75.

Party (PPP), scooped the most votes in Election of 2004 in 7 (seven) regencies, and in that places, those parties was succeed in drafting some Perda Sharia in the period 2004-2009. Meanwhile, the Prosperous Justice Party, which is considered as the most representing political Islam, did not have majority vote in majority even in one Regional Parliament – which implementing Perda Sharia. The brief said, secular parties also dominate the Regional Parliament of regency/city in issuing Islamic regulations.<sup>145</sup>

How is background and partial affiliation of regional heads that Perda Sharia? From 63 of regional heads which signing and implementing at least one Perda Sharia since 1999 until 2009, 37 of them are bureaucrats which affiliated to Golkar. The 8 others are former officers of TNI and Polri. Another 3 (three) are the members of PPP, and one of them is a member of PAN. So, almost 60 percent of Regional Head which drafting Perda Sharia is bureaucrat that has relation to secular Golkar.

Why do elites in some regions affiliates to secular party in several area (provinces) supporting publishment of like this kind regulation? There are two analysis founded by Buehler.<sup>146</sup> *First*, combination of old fragment and new political dynamic has supported secular politicians to issuing Perda Sharia. Government in the past has stopping rebellion of Darul Islam (also PRRI / Permesta) quickly in the 1950s, but the Islamist networks that are formed during the uprising still awake. The coercive character of Soeharto regime suppressed this network becoming underground movement, for three decades. Political openness since 1998 make-fragments of Islamist network in the area resurfaced and got a space and new political means.

*Second*, implementation of regional heads and legislative elections in the region, have created new imperatives for the elite “old” New Order. The fight to be the head area, for example, requires maintenance of network in the region continuously, making the political process being expensive. Meanwhile the political parties have not enough fund

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145 *Ibid.*

146 *Ibid.*

and means to support the candidate in process. Most of today's political parties have no constituents in the region. They just mobilize the masses during the campaign season. Those parties are impoverished, so it can not help the candidate in fulfilling the financial needs to joining political contestation. In fact, to some extent, they also become "sapi perah" of political parties.

This situation pushed the politicians to find alternative sources towards the power, that is base that capable to supplying political infrastructure, such as campaign team and access to the voters. The "personalization" of politics finally occurred in local level, where the politician relying on the private network influence. That personalization form is completely appearing in the provinces which have strong Islamic network. The politician is expected to accommodate the Islamist group's interests through fighting for the implementation of Perda Sharia as the reward of their political endorsement during the election.

In the province of West Java, the figure of Golkar used the Islamist network which have link to the figure of Darul Islam, Panji Gumilang. It's occurred in every moment of election since 1999. The same happened in South Sulawesi. Some of Golkar figures, including the governor and also the Chairman of DPP Golkar, Syahrul Yasin Limpo, have had persuaded the Implementation Committee of Sharia Islam to be a main organization for the ex-fighters of Darul Islam which established in 2000.

Besides that, Buehler said:

"The implementation of Perda Sharia contributes to open a media for politician to accumulate the needing fund, and open a space of Region's Heads also to spend their time in club for having entertainment. Road to the apparent enjoyment is founded in business world have opening the new paths to be passed by the local officials. Some of Perda Sharia created a de-facto monopoly on alcohol distribution. More than 20 regencies have implementing perda of zakat collecting. The Regions' Heads get a power which

almost unlimited in the context of division of religious “charity”.<sup>147</sup>

The decision, referring to the research of Buehler, most of Perda Sharia was implemented by political adventure which affiliating to secular parties, in the context of new environment of more competitive local politic. Second, Perda Sharia is actually becoming the “transaction tools” of political elites to give political logrolling or to accumulate the new political resources – including the financial resources.

Meantime, those Perda Sharia are already sacrificing the freedom of religious/ belief and discriminating some of religious minority groups, and also gender. Because, the regulations with sharia nuanced gave ocean breeze (also the authority) to the local government to do repression on them. Even, those perda also provoke the “active participation” of Islamist groups, such as FPI, to do intimidation and anarchy on the groups which considered not “syar’i” – as oftenly happened as in some regions in West Java.

#### **4. Remove Immediately: Moderat Ways**

What the government should be done, particularly the central government, on this perda sharia, even in provincial level or level of regency/city? The efforts which should be done, is doing evaluation on those local regulations and do the elimination and cancellation of them. That elimination is done because of several reasons. *First*, the local regulation which connects or involves or arranges the regulations with religious contents that contrary to the regulations about local government which put religion as the matter and authority of central government.

*Second*, the discriminative regulation upon followers group of religion/belief which completely unconstitutionally. Because those regulations contra to the provisions stipulated in state constitution, the 1945 Constitution and legislations which in line with it.

That evaluation and elimination is the middle path that should be

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147 *Ibid.*

taken, and it would be a little victory for appreciation and protection on human rights. Why should middle path? Because unconstitutionality performed by local government is a form of betrayal on Pancasila and state constitution. That argument could be a reason ouster of relevant region. If that ouster can be done, so it would give deterrent effect to the regional heads to take seriously in drafting perda sharia, moreover to relate it to political motives. If it is occurred, in the name of perspective of human rights and freedom of religious/ beliefs, clearly become the great victory that should be noted and celebrated.

Technically, the Government of West Java should do the data inventory on serious implication of those perda in order to support some of discrimination actions, intolerant and even the violence among people. After seeing the mess in some regions, which befall the victims of Ahmadiyah congregations, HKBP Filadelfia, GKI Taman Yasmin, and several others of minority groups, which inflicted by some perda with sharia nuanced, is expected that emerged initiative from Provincial Government of West Java to do adjustment through the national law provisions. If not, so the discrimination would be occurred, like what happened today. Should that situation be allowed? For sure it shouldn't. Because politicians is generally does not have logics and heart.

### **E. The Cristiani Sorrow in Aceh Singkil**

The freedom of religious/ belief is a fundamental right of citizen which guaranteed constitutionally in the 1945 Constitution. This Constitutional guaranty is absolute in the context of Indonesia, the state of Bhineka Tunggal Ika.<sup>148</sup> A spirituality to appreciate and to tolerate the different religion/beliefs<sup>149</sup> is the fundamental actions which should be used to guidance the behavioral etics among the diversity. Those

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148 Some parts of this book elaborate how Constitution took freedom of religious/ belief as one of the fundamental right that should be protected and assured. See the first chapter, especially on sub-title "Under State Constitution Shelter".

149 There is no "religions selvis" in the phrase of the nation-state founding father, Bung Karno. see. Lihat *Risalah Sidang BPUPKI dan PPKI*. Juga Alam, *Bung Karno Menggali Pancasila*. *Op.cit*

spiritualities ideally are growing subjectively in the self of government organizers of republic, from the President, Governor, Regent/Mayor and others.

All of elements of state apparatuses, in that Framework, should become main agents which could protect and guaranty the freedom of religious/ belief. Instead, the Government of Aceh Singkil Regency was showing the contrary behavior, to initiate and to perform intolerant action by sealing the churches/*undung-undung*/chapel house of worship of Christian in that region. The behavior and intolerant action which occurred in Aceh Singkil that initiated by the Government of Aceh Singkil Regency, in that Framework, is a poor performance of state administrator which should be condemned.

The sealing of 20 Christian's house of worship<sup>150</sup> arbitrarily done by Government of Aceh Singkil Regent, add to long list about the disobedience of state administrators on the state constitutions. For Christian in Aceh Singkil, the sealing action which is done by government becomes the culmination of intolerant action which usually befalls on Christian people.

The specific incident and intolerant action such as the closing and sealing the church in Aceh Singkil could be tracked from minor chronic that happened in around 2001.<sup>151</sup> The closing of 10 units of Churches GKPPD in Aceh Singkil occurred on September 15, 2001. At that time, the public figures and religious leaders of Islam sent a letter to Heads of Regent Simpang Kanan, Gunung Meriah and Danau Paris. Those letters contains of their objections on Church's renovation in Kuta Kerangan and establishment of some churches: Siompin, Tuhtuhen,

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150 Number of data from Aliansi Sumut Bersatu. But, media online *WASPADA mention* 17, related news could be see "17 Gereja Disegel", [http://www.waspada.co.id/index.php?option=com\\_content&view=article&id=245319:17-gereja-di-aceh-disegel&catid=13:aceh&Itemid=26](http://www.waspada.co.id/index.php?option=com_content&view=article&id=245319:17-gereja-di-aceh-disegel&catid=13:aceh&Itemid=26), accessed November 12, 2012.

151 See "Catatan Kronologis Penyegelan dan Rencana Pemerintah untuk Melakukan Pembongkaran Terhadap 20 Rumah Ibadah Di Kabupaten Aceh Singkil", <http://www.aliansisumutbersatu.org/2012/06/08/revisi-kronologis-penyegelan-20-rumah-ibadah-di-kabupaten-aceh-singkil/>, accessed on November 14, 2012

Kuta Tinggi, Siatas (Pertabas), Sanggaberru, Keras and others. The Christian at that time was renovating their church because the old one was not worth enough and they never have a permit to rehabilitate it.

According to some of Islamic figures, the action of closing church by Moslem was actually broke the agreement which issued on July 11 and October 1979. This problem is directly handled by Regional Consultative Forum/ *Muspida* Aceh Singkil Regency which led by the Drs Makmur Syahputra Bancin. The Regent invited some of Christian figures on October 9 and October 11, 2011. On that first meeting, the Christian have dialogue to *Muspida* Aceh Singkil about the objection of Islamic Leader in Simpang Kanan and Gunung Meriah District. In that dialogue, the Christian Leader stayed to preserve their willingness to continue renovation on church GKPPD Kuta Kerangan and their activities could be allowed like it should. But, *Muspida* Kabupaten Aceh Singkil made a conclusion in accordance with what they decided in the dialogue with Islamic Leader. That decision was applied by *Muspida* to the Christian in Aceh Singkil.

*Muspida* Aceh Singkil and Islamic Leaders gave a license to the Christian in Aceh Singkil to renovate 1 (one) unit of Church GKPPD di Kuta Kerangan, so the renovation process can be continued. The license also given to 4 (four) units of *undung-undung* (kapel/house of worship) such as the Church in Sub-Districts Lae Gecih, Biskang, Sukamakmur, and Keras.

Whereas the other churches, such as GKPPD Siatas, GKPPD Kuta Tinggi, GKPPD Tuhtuhen, GKPPD Situbuhtubuh, GKPPD Sanggaberru, GKPPD Daling Dangguren, GKPPD Mandumpang, GKPPD Siompin, GKPPD Guha, and GKPPD Uruk Perjejeran must be closed. Besides GKPPD churches, 3 (three) units Catholic church in Napagaluh, and Mbalno Danau Paris District, Catholic church of Gunung Meriah, 3 (tiga) units Charismatic church, and 1 (one) HKI church must be closed also. The total is 17 Churches which must be closed.

On *October 11, 2001*, *Muspida* Aceh Singkil invited Islamic Leaders and Christian Leaders, and asked them to sign the draft was

prepared by *Muspida* Aceh Singkil namely: “Joint Agreement of Islam and Christian in Kristen Kecamatan Simpang Kanan, Gunung Meriah, and Danau Paris Kabupaten Aceh Singkil”. That draft will be signed by the Leader of Moslem and Christians and also *Muspida* Aceh Singkil.

9 (nine) years later, on October 26, 2010, The Regent of Aceh Singkil Makmur Syahputra sent a letter to the Minister of Internal Affair, Minister of Religion, and Minister of Justice and Human Rights of the Republic of Indonesia about the Clarification on Establishment of House of Worship (Church) in Aceh Singkil Regent.

The disallowance of church, sealing, and closing which occurred and threat of demolition of the church was resulted Christians and religious minorities in Aceh Singkil feel pressured and threatened. That reality was completely making the rights on guaranty of freedom of worshipping according to their religions and beliefs cannot be fulfilled, even deprived by the policy maker. The deprivation of that freedom is continuing until today. Since April 2012 the case of freedom of worshipping deprivation still occurred and even raise the culmination because performed massively through the policy and quantitatively become the most of sealing case happened in Aceh Singkil.

This following recent chronology of intolerant action befalls on Christian in Aceh Singkil in 2012 which reported by North Sumatra United Alliance/ *Aliansi Sumut Bersatu*.<sup>152</sup>

*April 28, 2012:*

Widely circulated short message (SMS) among people in Aceh Singkil, which reads: “It is expected to Muslims in Aceh Singkil wherever they are, it may be so pleased to come on Monday, April 30th, 2012 at 08.30 pm, Regent Office of Aceh Singkil to join a peaceful action pointed aimed to Pemda Aceh Singkil to dismantle buildings without permission. The participant required to wear white clothes and carrying

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152 See “Catatan Kronologis Penyegelan dan Rencana Pemerintah untuk Melakukan Pembongkaran Terhadap 20 Rumah Ibadah Di Kabupaten Aceh Singkil”, *op.cit.*

weapons are not allowed (Please to spread this message to Babinsa. Please do not be provoked).”

*April 29, 2012:*

On Sunday night, April 29, 2012, the Church Assembly held a meeting in Gereja Kristen Protestan Pakpak Diari (GKPPD) Kuta Kerangan to discuss about the action which should be taken to face the demonstration that probably occurred as planned as on April 30, 2012. In that meeting, it is emphasized to avoid the anarchy actions if the people protesting their disappointment aimed to the government which did not fulfilling their demand and then tried to damage the churches. What would be done effort is forming a guarding team of the church, by asking one or two personnels to guide it alternately.

*April 30, 2012:*

An entourage people went to Kecamatan Kota Singkil (the Capital of Kabupaten Aceh Singkil) for joining the peaceful action (demonstration).<sup>153</sup> According to some witnesses, their amount is more than 300 peoples. In fact, another witnesses said that the people is almost 1000 people. This consideration depends on the report circulating that people mobilization is approximately 100 personnels per-each district (*kecamatan*).

When arriving in the office of Regent, people giving speeches to sue the government assertiveness of Aceh Singkil to imply the agreement of 1979<sup>154</sup> which allows 1 church and 4 *undung undung* (small mosque) in

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153 Author has noted there is mention that action mass are the members of Front Pembela Islam (FPI) Aceh Singkil. See, J. Anto, *Menanti Wajik dan Kembang Goyang di Aceh Singkil*, [http://www.analisadaily.com/news/read/2012/07/21/64155/menanti\\_wajik\\_dan\\_kembang\\_goyang\\_di\\_aceh\\_singkil/#.UOXipOS6e8U](http://www.analisadaily.com/news/read/2012/07/21/64155/menanti_wajik_dan_kembang_goyang_di_aceh_singkil/#.UOXipOS6e8U), accessed on December 13, 2012

154 1979 Agreement was made at the time to prevent the conflict between Muslims and Christians, cause of the church burning occurred. Ironically the contents of the agreement mention restrict the establishment of churches and ban visits Christian clergy (priest / pastor) to Singkil area to carry out their duties.

Aceh Singkil.<sup>155</sup> They are very disappointed to the institution of FKUB and MPU which have no action to defend of Islam, but let the churches established everywhere.

After giving speeches for 1 hour, AKBP Bambang Syafrianto SiK, Regency Police Chief/ *Kapolres* also performs to suggest: "How about we give a tolerant time for the Christian to dismantle their not-licensed house of worship in 3 x 24 hours, and if they ignored it, so we could forming a team to do that?" That demand directly agreed by the demonstrators. That statement became a decision, with the reason that action is one of the applications of regulation on demolition of illegal buildings, but before that demolition will be done, some of Islamic figures together with *muspida* and district leadership assembly/ *muspika* give the explanation about that plan to the Christian who owned those churches.

At the same day, the Regent of Aceh Singkil then issued a decree number: 451.2/450/2012 which aimed to The Chairman of Developing Committee/Church Leader (*Ketua Panitia Pembangunan/Pimpinan Gereja*) about the information of regarding notice that on May 1, 2012 at 09.00 a.m will be deployed a team of building house of worship in the area of Aceh Singkil Regency to perform demolition/sealing the non-licensed house of worship establishment.

*May 1, 2012, at 11.00 AM:*

The group of *muspida* and *muspika* together with FPI and public

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The 1979 agreement was later confirmed in the Joint Statement of the People of Islam and Christianity in 2001. Based on the information obtained from witnesses living in the Joint Statement, it was revealed that the Christians were forced to sign a joint statement that the government has drafted before being signed. See cronology Aliansi Sumut Bersatu version. *Op.cit.*

155 The Church has existed before the SKB 2 and are now estimated there are 1700 Christian families (10,000 people). Population growth has resulted in the increase of the church, although not recognized and never get permission. *Ibid.*

order agency (*Satpol PP*) move to Simpang Kanan District and get in the yard of Church GKPPD Siatas which was crowded by the congregations since the morning. The team then asked about the Construction Permits (IMB). The team also asked about the donation sources of the building process, is it from inside or outside the country, and the congregations said no. The team suddenly wants to seal that church. Watching the action about the sealing process, around of 60 mothers crying hysterically, even 1 of them is finally comatose.

Relating to that, the Chairman of Developing Committee, Jirus Manik and the Congregations' Teacher of St. Norim Berutu with the Kepala Desa Siatas and Pertabas performs to give a speech. He said: "It would be nice if the church is not being sealed, because where are people going to worship". Then, he also stated that: "If the church is sealed, it means that the GKPPD Siatas and the people surrounding being killed, and it could affect so badly, the people will have not worship and the would be misguided." Those both Kepala Desa also stated that there's no problem happened in that village because the people inside have a good relationship, both Christian and Muslim. The harmony among the people have established since tens years ago. There are another more important problem which should be handled, such as gambling and immorality, not about the church.

To see the strict supervision of that congregations, the chairman of monitoring team asked the Chairman of Developing Committee with the Pilgrim's Teacher and 3 (three) of Head Villages (Siatas, Pertabas and Kuta Kerangan) to meet the Regent tomorrow, on May 2, 2012 at 10.00 a.m. The sealing process happened on that day be cancelled because facing the resistance from the congregations, particularly the mothers of GKPPD Siatas.

In GKPPD Biskang (Danau Paris District) the monitoring team also welcomed by the congregations and their resistance. The Priest Ien bor Sinamo explained that because of the room's capacity which not allow to accommodate the worshipping activity, so that the church should be renovate to be enlarged. The disallowance of the church's activity contradicts to Pancasila and content of the 1945 Constitution.

By hearing the resistance from people and church's officials, the team leaves the church to Sikoran Village and directly sealing the Catholic Church there by saying that the church cannot be used as the house of worship because it is not stipulated in agreement of 2001.

After knowing the information about monitoring on some Churches (GKPPD Siatas, GKPPD Biskang and Catholic Church Si Koran) the Leader of GKPPD Ressort Kuta Kerangan and GKPPD Ressort Kerras invited the pilgrim's teachers and society figures to discuss about solution in facing the monitoring program which done by Muspida, Muspika, Municipal Police and FPI Aceh Singkil. That meeting was held on Monday, April 30, 2012 at 05.00-10.00 p.m, located in GKPPD Kuta Kerangan. That meeting is attended by the congregations, the Catholic Church official, HKI and Jemaat Kristen Indonesia (JKI). Through that meeting, discussed and dealt several things:

- Every congregation should welcome monitoring team with good and friendly, not anarchist, and willing to tell about the story of their churches.
- Every congregation is expected to submit the copy of Identity Card of people and prepare the permit aimed to the Regent. It is purposed to answer the monitoring committee that the building permit is under process.
- In that meeting also agreed that the leaders and congregation's teachers to meet the call of Monitoring Team which asking to come to Regent Office of Aceh Singkil on May 2, 2012. Besides those three Village Chiefs who were called, the priest is also asked to attend that invitation.
- On Wednesday, May 2, 2012, every district was celebrating the National Education Day, so the departure to Singkil forced to wait those three Village Chiefs until finishing that celebration. They finally go Singkil with the priest. They departure at 10.30 a.m and arrive in Regent Office of Aceh Singkil at 11.30 a.m. That meeting is followed by 9 persons from church representation (but 3 Village Chiefs have joined) and led by the regent and accompanied by Kapolres, Kasdim,

Head of MPU, Representation of DPRK Aceh Singkil and the staff of Regency Government Aceh Singkil.

That sealing action was finally done by the government of Aceh Singkil Regency on 15 churches and 1 house of worship of local sect/belief of PAMBI on May 1, 2012 and May 3, 2012. The government's program to dismantle those churches, started by sealing, due to the pressure of Islamic organization's mass which identified them selves as Islam Defenders Front (FPI).

Until tragedy chronology of Aceh Singkil is released North Sumatra United Alliance (*Aliansi Sumut Bersatu*), on June 8, 2012, sealing had been done to the 20 churches. Almost all churches are Christian churches GKPPD. Here are the names of these churches with sealing date:

1. GKPPD Biskang in Nagapaluh, on May 1, 2012.
2. Catholic Church in Napagaluh, on May 1, 2012.<sup>156</sup>
3. Catholic Church in Lae Mbalno, May 1, 2012.
4. GKPPD Siatas, on May 1, 2012.
5. GKPPD Tubuhtubuh, on May 1, 2012.
6. GKPPD Kuta Tinggi, on May 3, 2012.
7. GKPPD Tuhtuhen, on May 3, 2012.
8. GKPPD Sanggabru, on May 3, 2012.
9. JKI Kuta Karangan, on May 3, 2012.<sup>157</sup>
10. GHKI Gunung Meriah, on May 3, 2012.<sup>158</sup>
11. Gereja Katolik Gunung Meriah, on May 3, 2012.
12. GKPPD Mandumpang, on May 3, 2012.
13. GMII Mandumpang, on May 3, 2012.<sup>159</sup>

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156 Additional note: Catholic church different from the other churches because the Catholic religion different from Protestants. Catholics are also minorities in Aceh Singkil.

157 JKI (Jemaat Kristen Indonesia) is one of protestan church. The new church entered on 2003.

158 GHKI (Gereja Huria Kristen Indonesia), included protestan church.

159 GMII (Gereja Missi Injili Indonesia) included protestan church. The church entered into Singkil average over 2000.

14. Gereja Katolik Mandumpang, on May 3, 2012.
15. GKPPD Siompin, on May 3, 2012.
16. GMII Siompon, on May 3, 2012.
17. GKPPD Guha, on May 3, 2012.
18. House of Worship of PAMBI, on May 3, 2012.<sup>160</sup>
19. GMII Ujung Sialit, on May 3, 2012.
20. GKPPD Dangguren, on May, 3 2012.

### 1. Aceh Singkil Regency Demography

Aceh Singkil Regency is one of regencies in the province of Nangroe Aceh Darussalam. The Regency of Aceh Singkil is an expansion region (*wilayah pemekaran*) from South Aceh Regency and part of its region located in National Park of Leuser Mountain. The district also consists of two regions, namely the mainland and islands. Islands that are part of the district of Aceh Singkil is Kepulauan Banyak. Singkil district capital lies at Singkil.

Singkil consists of 11 districts. Here are the names of the districts in Aceh Singkil: 1) Danau Paris, 2) Gunung Meriah, 3) Kota Baharu, 4) Kuala Baru, 5) Pulau Banyak, 6) Pulau Banyak Barat, 7) Simpang Kanan, 8) Singkil, 9) Singkil Utara. 10) Singkohor, and 11) Suro Baru.

Singkil itself locates in track linking western Sumatra Banda Aceh, Medan and Sibolga. Over mountainous track is needed to be much improved road access in order to overcome the remoteness of the region. In the plan, the Port Singkil can be used as a transit port for the line west of Sumatra.<sup>161</sup>

Christianity first came to the area in 1930 Singkil via an evangelist who came from Salak Pakpak Bharat, named Evangelist IW Banurea. In 1932 Evangelist working with Socfindo plantation established the church, and then one by one the villages visited and formed churches.

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160 PAMBI (Persatuan Agama Malim Baringin Batak Indonesia), local religion in Aceh Singkil

161 See “Kabupaten Aceh Singkil”, [http://id.wikipedia.org/wiki/Kabupaten\\_Aceh\\_Singkil](http://id.wikipedia.org/wiki/Kabupaten_Aceh_Singkil), acceses on 14 November 2012

Up to now there are approximately 1,700 households or about 15,000 people who converted to Christianity in the region of Singkil and Subusalam. In the number of Christians is significantly encouraged the church to increase the number of houses of worship in order to answer the needs of his people in doing worship.

Inter-religious life in Singkil runs peacefully since the first time Christianity came to the region Singkil. Over the decades, from generation to generation, relations between the Muslims-who generally are Singkil tribe, and Christians-the majority are ethnic Pakpak, quietly flowing river basin flows through Cinendang which passing Aceh Singkil from Phakpak Barat.

Small frictions due to the cultural differences have occurred, but not to cause the horizontal conflict, let alone social cohesion tore citizens. Just a lot of evidence of cultural integration, and local wisdom of life, and passed down generation predecessors, both indigenous and immigrant reflecting peaceful relations in the midst of differences.

A number of villages' names in Aceh Singkil are taken from Batak language Pakpak. Such as Kampung Kerras which in the language of Pakpak means fruit-pecan crop that was once widely cultivated by citizens there, before switching to palm oil. There is also the village of bamboo reed means. There are many other names that refer to Kampung culture Pakpak tribe. Inhabitants of the village are now not one hundred percent Pakpak tribe, but had mingled with Singkil tribe, and other tribes such as Toba Batak migrants, Nias, Java and Minang.

The vilage's name was derived from Pakpak tribe identity also never provokes protest, objection or appeal. No wonder the few villages in Aceh Singkil is now inhabited by a variety of people of different races and religions, though in every village there is always the dominant tribe.

Several large rivers that cross the area Singkil also use a lot of the names are derived from tribal culture Pakpak. For example Lae Silebuh, or Cinendang Lae, which in light of the Pakpak means. The rivers in Singkil, was tipped at Pakpak Bharat, and empties into the sea of Aceh Singkil and Pulau Banyak.

There are also cultural heritage harmony treated by citizens of Aceh Singkil, that is a tradition to eat together in the traditional market to celebrate the coming Eid or New Year-even after political liberalization began in 1998 this culture are beginning to be forgotten. The meal was organized by interfaith leaders, village heads and community leaders to invite all religious people, not least the followers of faiths.

The event is done by holding the mat in the middle of an existing building in the village market. Interfaith leaders will sit in the middle of the mat, surrounded by people respectively. Before the feast begins, those interfaith leaders were giving a speech. It contained advice to always keep the harmony and unity to promote the common welfare.

In addition to the culture of eating together, there is a tradition of the people who showed the close bond of the relationship between them, the tradition of visiting each other. When citizens are Muslims celebrate Eid-ul-Fitr, their Christian neighbors will visit Muslim homes by bringing black rice and palm sugar. Rice entered the short horns as high as approximately 10 cm. Rice horn is made of woven bamboo. Black rice and sugar is raw material for making diamond-cake usually served in Singkil Muslims celebrates Eid time.

Similarly, when Christians celebrate the New Year, Muslims usually visit their neighbors by bringing flour and cooking oil. Flour and cooking oil are used to make fireworks shake-cake to be one compulsory course during the celebration of the new years. That is a sample of citizen's wisdom which live in different ethnic and religious in Singkil to build brotherhood among them.<sup>162</sup>

However, some of the events and acts of intolerance also happen to Christians in Aceh Singkil. North Sumatra United Alliance noted some events and actions experienced by Christians, among others, as follows:

- 1) In 1961, sprung "the long hair man" (because they had long hair like women) in Christian worship and asked that the church was

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162 See, J. Anto, *Menanti Wajik dan Kembang Goyang di Aceh Singkil*, [http://www.analisadaily.com/news/read/2012/07/21/64155/menanti\\_wajik\\_dan\\_kembang\\_goyang\\_di\\_aceh\\_singkil/#.UOXipOS6e8U](http://www.analisadaily.com/news/read/2012/07/21/64155/menanti_wajik_dan_kembang_goyang_di_aceh_singkil/#.UOXipOS6e8U), accessed on 13 December 2012

closed, because this region is the region of Aceh which leaves no place for the citizens of other faiths. Indeed, their activities until they don't want to continue.

- 2) In 1968 Daud Beureuh came to Lipat Kajang and sub-district Rimo, in his speech said: "For the church closed and discontinued activities Christians. The reason is because this area is an area where the population of Aceh must be a Muslim. Daud Beureuh's speech result, make some Christians had to evacuate themselves to the area of North Sumatra, for fear of forced entry into the Islamic religion.
- 3) In 1979 incident between Muslims and Christians occurred. The incident was triggered by the establishment of the Catholic churches in Mandumpang, and coupled with the arrival of missionaries from the *Gereja Tuhan Indonesia* (GTI) from Medan that aims to establish a church in Mount Meriah. By looking that situation, Muslims in Simpang Right offended and angry. Finally the Catholic Church in Mandumpang development and construction of the church in the village of Gunung Meriah GTI thwarted. GKPPD church in Siatas, GKPPD Sanggaberru, GKPPD Mount Meriah, was also burned. To see the people's anger there and to prevent the things that are not desirable, almost all Christians at the time of Singkil was evacuated to North Sumatra during the 4 months of leaving their fields and houses and livestock have certainly lost during evacuation. At that time thanks to the cooperation of the Government of Aceh and North Sumatra Government incident was reconciled by making a pledge of peace. The pledge signed by 11 Muslim leaders and 11 Christian leaders and was attended by the officials of Level II South Aceh, second level of regional consultative forum/ *muspida* of Central Tapanuli and Dairi, on October 13, 1979 in Kajang Fold. The contents of harmony pledge reads as follows:
  - Muslims and Christians in the District of Simpang Kanan ensure orderliness and security and the establishment of the region and religious harmony.

- Asking the government to crack down all of the perpetrators using the applicable law who become the vandals of orderliness and security even they are Muslim or Christian.
- The establishment/renovation of churches and other cannot be begun until accepting the legacy from Local Government Tk II in Aceh Selatan, accordance to the material of joint decree of Minister of Religion and Minister of Internal Affairs Number: 1 year 1969.
- Those violation and agreement/statement could be punished through the applicable law.
- We do not accept either visit a priest or pastor or clergy who give lectures / bath / baptism / sacraments to his people in the District of Simpang Kanan, except already got permission from the local government.

After the peace process was complete, the Christian go back to their place of refuge. But just the same, the children of the Christian congregations do not accept the Christianity education, but they are learning Islamic education. This is occurred until today, even in Elementary School, Junior High School and Senior High School do not accept that lesson. When the time of receiving report in every semester, the children should grieve because achieving low remark of that lesson, and it supports them to follow the Islamic education to get higher remark. Moreover, at least three subjects which relating to Islam, such as History of Islamic Civilization, Arabic, and Islamic Study. Actually, there are some teachers which placing to teach Christianity Education, but by the Head master, they are required to teach other subjects.

- 4) On Monday, March 27, 1995, around 02.00 a.m, the combustion effort of undung-undung (house of worship) Kristen GKPPD Penanggalen Penanggalen District was happened. But blessing the people, that house of worship can be saved. That incident was reported but the perpetrator never be known.
- 5) On Friday, March 21, 1997 around 02.30 a.m, the combustion

effort also happened to the church of GKPPD Sanggaberru, Gunung Meriah District. But blessing the people, the fire can be extinct.

- 6) On Monday, July 20, 1998 also in the early morning, at 02.30 – 03.30 a.m., the combustion happened of the church GKPPD Siompin, GKPPD Mandumpang and GKPPD Lae Gecih. And, until now the perpetrator has never been known.
- 7) On Tuesday, July 21, 1998 the combustion also happened on the church GKPPD Gunung Meriah desa Suka Makmur. The fire was extinct by itself. The perpetrator also has never been known until now.
- 8) The last incident of combustion happened on September 1, 2003 on a building which established as a house of worship namely Charismatic Church. The incident occurred firstly while the Priest Saragih has a plan to do revival meetings (KKR) in the open space with usical accompaniment, such as *keyboard*. Some days before, the priest distributed invitations to participate in that program, but yet somehow, one of the invitations achieved by a Muslim. It was sparking outrage that person. He accompanied by around 500 people, came to the location when the program run and burning the building and also the stuffs of KKR such as 2 units of motorcycles.

## **2. Mapping the Actors, Victims and the Response of Government**

The sealing of churches in Aceh Singkil massively are done in several days by the local government, in collaboration with another governmental apparatuses (public order agency/ *Satpol PP* and police department), with Islam Defenders Front/ *Front Pembela Islam* (FPI) also. The negative initiative of the the regent was highly visible too striking. That could be seen through the statement of the Regent in the discussion of *stakeholders* in the meeting on May 2, 2012:

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Singkil society that is very tolerant society, proved during decades that various religious communities living in the area, although there are several times as ripples occurred in 1979 and 2001, but that ripple occurs because the Christians violated the agreement made with the agreement made / shared in 1979 and 2001 (the agreement was signed by Muslim and Christian leaders who only tolerate one church that has had a license and 4 undung-undung a level with *musholla* (small mosque).

The privileges of Aceh which recognized by government, making this provinces become different from the others, including in managing the house of worship. It's proved that even there is joint decree between two ministries, but Governor Regulation/ *Pergub* is also established. So, the worshipping house establishment is really arranged not free.

On April 30, 2012, the peaceful action of Muslim, asks the agreement to be enforced again, and the damage the churches without liscence. In relation to it, who violates that agreement will get sanction and you as the Christian should damage the churches, and if they ignored what decided in the colloquy, we will destroy all of it in 2 weeks. This is final decision.

Today, we won't to have a dialogue, but explaining about that plan and schedule of when and which church are going to be destroyed.

That's it.

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Regency police chief/ *Kapolres*, public order agency/ *Satpol PP*, and also the governmental apparatuses in the level of regional consultative forum/ *Muspida* and district leadership assembly/ *Muspika* are the actors which back-upping the violation on freedom of religious/ beliefs in Aceh Singkil. The statement of *Kapolres* even in giving the response on oration of demonstration in April 30, 2012 and in the meeting session on May 2, 2012, shows disobedience of the security apparatuses in the Framework of the Unitary Republic of Indonesia/ *NKRI*. Instead of nurturing and protecting all of citizen, *Kapolres* take its position as

the problem I tragedy of violation on freedom of religious/ beliefs in Aceh Singkil.

The actor which is also important in tragedy of Aceh Singkil is *FPI* of Aceh Singkil. *FPI* is an intolerant society group which provoking the situation, one of their actions is through the mass mobilization on April 30, 2012. Besides that, the involvement of *FPI* as the meeting element related to the sealing and demolition plan which performed by local government, showing how important the role of *FPI*.

*FPI* of Aceh Singkil in this context cannot be or considered as not a representation of Aceh Singkil's society generally. Because essentially, almost all of society in Aceh Singkil do not want to make peace but they don't want the religious conflict occurrence which supported by the sealing action or such, also happened.

Some of Aceh residents want that the sealing case of some Catholic and Protestant churches in Aceh Singkil would not spread everywhere which would finally create the religious conflict hopefully. "The Government should be solving the problems which happened in Singkil. Please help us to keep the image of Aceh to remain well," said Munira, a resident of Banda Aceh. Munira hopes that the sealing action on house of worship in Aceh Singkil could be handled wisely by the government without hurting the pilgrims of a certain religion.<sup>163</sup>

"...don't have that conflict of religion happened in Aceh and all of its problems, extend to other area," said one of the Islamic School's teacher. The same thing also explained by Asnawi. He hopes that all of people could drive themselves and could not aggravate the situation in Aceh Singkil. "Don't have the religious var would be happened there," said one of a native resident from Aceh, Asnawi.<sup>164</sup>

The jurical basic of intolerant action which performed by the

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163 Release news sinarharapan.com.

164 See "Warga Aceh Tak Ingin Konflik Agama Terkait Penyegehan Gereja", <http://indonesia.ucanews.com/2012/05/09/warga-aceh-tak-inginkan-konflik-agama-terkait-penyegehan-gereja/>, accessed on 12 November 2012

actors is problematic and intolerant regulations. The basic which used in sealing practice by the apparatuses is the Joint Decree of Two Minister about House of Worship; Governor Decree No 25/2007 about the Permits of Constructions of House of Worship in Aceh, Qanun Aceh Singkil No 2/2007 about the Construction of House of Worship, and joint agreement between Islamic and Christian Community from three districts in Aceh Singkil (Districts Simpang Kanan, Gunung Meriah, and Danau Paris which signed on October 11, 2001. The entire legal basis of administrative behind that sealing action, significantly contrary to the constitutional guaranty about freedom of religious/ belief which stipulated in the 1945 Constitution and the guaranty in Law 39 of 1999 on Human Rights and Law 12 of 2005 on Ratification of International Covenant of Civil Rights and Politics.

How is the response of Central Government? The Vice Minister of Religious Affairs Ministry, Nazaruddin Umar said that he was so surprised by hearing that sealing. "I am surprised. This incident is rarely occurred in Aceh." The Acehnese, according nazaruddin, is known as very tolerant in interreligious relationships. "Me, as a person and the Vice Minister of Religious Affairs Ministry will be proactive to investigate what was truly occurred there".<sup>165</sup> That surprise and distrust have no meaning to solve the problem in Aceh Singkil and the enforcement on freedom of religious/ beliefs in Indonesia generally.

Seeing the overall construction of this case, there are some notes which taken to be highlight necessarily related to the problems and handlement in Aceh Singkil.

*First*, The Local Government and the apparatuses in Aceh Singkil should put themselves as the guardians and protector of whole of citizen in Aceh Singkil, particularly in order to enforce the guaranty of freedom of religious/ beliefs as the basic rights of Indonesian, which clearly guaranteed by the state constitution.

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165 See "Warga Aceh Tak Ingin Konflik Agama Terkait Penyegehan Gereja", <http://indonesia.ucanews.com/2012/05/09/warga-aceh-tak-inginkan-konflik-agama-terkait-penyegehan-gereja/>, accessed on 12 November 2012

*Second*, the government should take a strict action to enforce the applicable laws to face the intolerant society groups which disrupting the common benefit of people in order to build the orderliness and peace among society. The government should be better than the civilian army which aggressively provoked to do persecution on the religious group/minority beliefs.

*Third*, all of the problems connected to the freedom of religious/belief should be turned back to the 1945 Constitution and the congruent legislation with the constitutional guaranty of 1945 Constitution, such as Human Rights legislation and Ratification Constitution of International Covenant of Civil Rights and Politics. All of technical-administration provisions which deviate or not in line with the 1945 Constitution and Laws which derived from the 1945 Constitution should be considered against the constitution and null of void.<sup>166</sup> Much less than the manuscripts which subjectively forced by the majority on minority religion/beliefs, is completely cannot be used as the baselines for public figures to take some actions in the term of public policy to solve the problems related to the freedom of religious/ belief.

*Fourth*, Central Government should take a proactive step in order to overcome every problem related to the violation on freedom of religious/ belief which occurred in district or province, beause including in decentralization design in Indonesia, the religion is the

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166 In that framework, the taken step of Kanwil Kemenag Aceh to force intolerant PBM and Pergub completely put the regulation of administrative-technic above the UUD and UU. Representing Kepala Kantor Wilayah Kementerian Agama Aceh, Juniazi SAg MPd, said that Religious Harmony Forum of Kanwil Kemenag Aceh offered a solution to solve the problem of House of Worship in Singkil refers to PBM Menag, Mendagri, and Pergub Aceh Number 25 Year 2007 About Worshipping House Establishment. Pemkab Singkil, according to Juniazi, should referring to this rule. Non-Muslim citizens whose their worshipping house was being sealed also should submitting a building permits accordance to PBM and Pergub. "I am sure that if all of the people here obeying this ways, all of them would not be object," Juniazi said. See "Penyegehan Gereja di Singkil harus Merujuk PBM dan Pergub", <http://aceh.tribunnews.com/2012/06/20/penyegehan-gereja-di-singkil-harus-merujuk-pbm-dan-pergub> , accessed on November 13, 2012.

central level affairs, not the local affair or authority in the Framework of local autonomy. On the top of that, in the context of violation on constitutional provisions performed by local government of Aceh Singkil, the central government should take an administrative and politics actions to give a sanction the apparatuses even in just the reason of law enforcement and its constitution.

*Fifth*, in the context of common solution drafting and agreement which related to the raising problem, the civil engagement from all of intolerant civil society elements, with or without local government involvement, is necessary. The tolerant group should give aspiration more actively to the stakeholders. In order to build social order, the stakeholders should involve that group also in every what they take as the policy, and not permissively trigger and worsen the conflict. The stakeholders should engage the intolerant group which moreover known as the group with bad track record in some regional intolerant cases, that completely performed intolerant actions, both softly or hardly.

*Sixth*, political elites now and in the future, should not do the politization on religion/belief which leads to conflictual cleavage to reach their political interests only.<sup>167</sup> The peace and social order in the Framework on freedom of religious/ belief is more important than momentary interests of political elite, let alone in the context of political contestation in local level.

## **F. Citizen (Without) Law: GKI Taman Yasmin Case**

Bogor, called as rainy city. That epithet because of the rainfalls of that city is high. Now, this city has another predicate, namely ‘intolerant

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167 The head of the Catholic Community Advisor, Office of the Ministry of Religious Affairs in Aceh Province, Baron Ferryson Pandiangan, sealing suspect churches occurred in Aceh Singkil also associated with a frenzy where the local elections in Aceh regent candidate elected in the elections and more “friendly” the Christian communities. See “17 Gereja di Aceh Disegel”, [http://www.waspada.co.id/index.php?option=com\\_content&view=article&id=245319:17-gereja-di-aceh-disegel&catid=13:aceh&Itemid=26](http://www.waspada.co.id/index.php?option=com_content&view=article&id=245319:17-gereja-di-aceh-disegel&catid=13:aceh&Itemid=26), diakses pada 12 November 2012

city'. For the minority group which being the victim of violation on freedom of religion and most of human rights activists, Bogor is the 'unfriendly'. The serious report relating to the intolerant practices occurred in Bogor is the case of GKI Taman Yasmin. That intolerant action was not done by part of majority group on the minority one by hindering them to worship, but also 'being worsen' by intolerant actions performed by the apparatuses in forms of defiance of *inkracht van gewijsde* of court's verdict which give juridical basics to worship an to establish the house of worship for the congregation of GKI Taman Yasmin Bogor. The cold Bogor was "hot" in violation on freedom of religious/ beliefs.

The city is situated in the western part of Java island, about 60 km south of the capital Jakarta and 85 km northwest of Bandung, the administrative center of West Java Province. Bogor spreads over a basin near volcanoes Salak, which peaks at about 12 km south, and Mount Gede whose top is 22–25 km south-east of the city. The average elevation is 265 meters, maximum 330 m, and minimum 190 meters above sea level. The terrain is rather uneven: 17.64 km<sup>2</sup> of its area has slopes of 0–2°, 80.9 km<sup>2</sup> from 2° to 15°, 11 km<sup>2</sup> between 15° and 25°, 7.65 km<sup>2</sup> from 25° to 40° and 1.20 km<sup>2</sup> over 40°; the northern part is relatively flat and the southern part is more hilly.



There is no law. Bogor City Government disobedience on Supreme Court verdict and Indonesia Republic Ombudsman recommendation is a real form of discrimination upon GKI Yasmin followers, Bogor. (Picture :<http://genuardis.net>).

The soils are dominated by volcanic sedimentary rocks. Given the proximity of large active volcanoes, the area is considered highly seismic. The total area of green space is 205,000 m<sup>2</sup>, of which 87,000 m<sup>2</sup> are Bogor Botanical Gardens, 19,400 m<sup>2</sup> are taken by 35 parks, 17,200 m<sup>2</sup> by 24 groves and 81,400 m<sup>2</sup> are covered with grass.

According to the population census in 2011, the population of Bogor city was 967.398 people. Men are 493.761 and women are 473.637. These residents of Bogor city which spreads into 6 sub-districts, have growth 2,39 percent per-year in last decade. This population growth is the highest compared to another sub-districts, which just 3,43 percent.

The population census in 2011 also showing the highest residential deployment or distribution of Bogor is Bogor Barat sub-districts, it is same with the census on 2010, 214.862 peoples, and the lowest amount of population is in the sub-district of Bogor Timur with 96.617 jiwa. By the 111.73 kilometer square area and inhabited by 967.398 peoples, so the population average of Bogor is 8.164 people per-kilometre square. The sub-districts with highest population is Bogor Tengah sub-district, 12.564 peoples/km<sup>2</sup>, and the lowest population is Bogor Selatan sub-district, just 5.983 peoples/km<sup>2</sup>.

The religious activities in Bogor City supported by religious facilities, such as 742 units of mosques, 591 units of musholla, 29 units of Protestant churches, 8 units of Catholic churches, 3 units of Hindu's house of worship (pura), and 9 units Buddha's house of worship. The population base on the religion, such as; Muslim 800.926 peoples, Catholic 23.350 peoples, Protestant 33.798 people, Hindu 4.669 peoples, and Buddha's pilgrims 9.933 peoples. And base on the information of Central Bureau of Stastic, there's no Konghucu pilgrims in Bogor.

From the resident's diversity, it could be a beautiful colorful mosaic. Moreover in the context of Indonesia, Pancasila state with slogan *bhinneka tunggal ika* which the meaning substantiation is, even the true Indonesian condition has differential tribes but united in one

name of Indonesia. But the fact is, intolerant on minority group is repeatedly happened in Bogor.

The monitoring of some incidents—including the case befalls GKI Taman Yasmin, which reviewed in this sub-section—is intended to remain the society about the government promise which should be asked. The ‘forgotten disease’ which is suffered by most of Indonesian people, at least should be treated by the documentation and publication of the actual and factual situation of freedom of religious/ belief. Public should give pressure and attention on negligence performed by government in protecting its citizens, especially in allowing the people to worship according to their religion and belief which clearly guaranteed by the state’s constitution.

### 1. The Ban of GKI Taman Yasmin

GKI (*Gereja Kristen Indonesia*) Taman Yasmin is “Prospective Camp”—in the meaning that that church has let to be independent yet by the main church; if in the context of HKBP is called as “Pagaran”, in the context of GPIB called “Prospective Followers”),<sup>168</sup> which build in a plot of land in Taman Yasmin Housing, Bogor. The document of church and information from some informants of GKI, the court decided that their church is no longer able to accommodate the pilgrims who come every Sunday service held. But the extending effort also is impossible to be performed because of the limitation of land. Finally, the pilgrims agreed to build a new church in that location, Taman Yasmin Housing, which locates in Jalan KH Abdullah bin Nuh.<sup>169</sup> Lately, part of people reject the existence of GKI Taman

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168 To establish an Independent Church, GKI Taman Yasmin should be a “Post”, then “Bakal Jemaat” and “Jemaat”. Victor Silaen, *Bertahan di Bumi Pancasila: Belajar dari Kasus GKI Taman Yasmin*, Jakarta: Yayasan Komunikasi Bina Kasih, 2012, p. 33

169 Abdullah bin Nuh is a nationalist writer who involved in Indonesian Independent Struggle, particularly in Japan era, 1943-1946. Abdullah had being Daidanco or komandan batalyon. This batalyon position was held by him while joining the Badan Keamanan Rakyat (BKR) and Tentara Keamanan Rakyat (TKR). He was

Yasmin because locates in the area with Islamic name.<sup>170</sup>

Relating to the construction plan of that new church, the officials of church do some preparation of new church of Taman Yasmin or at that time taking place on Ring Road of Bogor City which today's name of the road is changed to be Jalan KH Abdullah bin Nuh No. 31. Then, the officials of GKI Yasmin look after Building Permits. They finally started to begin the construction planning by discussing and doing the internal survey about the development of the church which analyzing about the community needs on the place of worship in Taman Yasmin Housing and surrounding.

Public facility in Taman Yasmin Housing in Sektor 3 and Sektor 5 which planned to build the church has been changed into house of worship for other religion. The Yasmin Church Development Team got information from PT. Inti Inovaco about the possibility of purchasing the commercial land to stay at a site of 1,720 m<sup>2</sup>. After that phase, the fundraising begins together with another church (GKI Kavling Polri and GKI Suryautama) while making the socialization plan.<sup>171</sup>

Based on the collected data from GKI Taman Yasmin, the process of making (Building Permits) has been done since March 10, 2002. Some people surrounding said that they do not mind if a church will be built there. It was proven by a statement which signed by representation of society. Then, GKI started to begin the church construction which located in Hermina hospital. At the procession symbolic performed in 2006, and the local government of Bogor attended and gave a speech at that event.

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noted as one of member of Komite Nasional Indonesia Pusat (KNIP). See Victor Silaen, *op.cit.*, p. 102

170 The reason of Worshipping House Establishment restriction in a road with Islamic name was blamed by KH Toto Mustofa, the son of KH Abdullah bin Nuh, he said that there's no one of Abdullah's children restricted the establishment of GKI Taman Yasmin, even that statement is not meant that the clan of Abdullah supporting it also. Dalam *Ibid.*

171 Ismail Hasani and Bonar Tigor Naipospos (ed.), *Politik Diskriminasi Rezim Susilo Boambang Yudhoyono; Kondisi Kebebasan Beragama/Berkeyakinan di Indonesia 2011*, Jakarta: Pustaka Masyarakat SETARA, 2012, p. 70

Evidently, in 2008, local government of Bogor repealed the building permit on the grounds of fraud citizens' signatures. One of Community Unit (RW) chief named Munir Karta accused as the perpetrator of fraud signature of building permits for GKI Taman Yasmin.

In every step taken by individual or a group of individual, must have a background motif. Every associations or alliance which built by some persons, should be based on the same interests. That association or alliance can be a business entity, charities or social donation, and also organization. The formed organization could be a society/community organization, or organization which formed because of the same ideology or political view.

Related to the case befalls on GKI Taman Yasmin in Bogor, there are some motives which presumably supports. One of the restriction motives of GKI Taman Yasmin existence is is economics motif. It is expressed by the members of Indonesian Parliament in Commission I, Lily Wahid, which suspected that the area/land of GKI Taman Yasmin that could be relocated by the Regent of Bogor would be converted for business purposes. On further, Lily Wahid said that what was done by the Regent of Bogor was truly a transactional step by utilizing the public interests to take an advantage.<sup>172</sup>

Besides that, intolerant motif cannot be ignored through this case. Pancasila as the basic consensus in this country should be a joint life principle of citizen, but part of peoples have not understand it by overall and true about the teachings contained in those five precepts, moreover some of them refuse it. So, when they should face the diversity in their daily life, they cannot accept it completely. Not exception the presence of liyan (the others) in the context of religion. These groups of "the others" are oftenly achieving the discrimination treatment from the majority, including in the context of doing or building the house of worship.

The diability of almost Indonesian people to live in harmony and together with the other religious group or beliefs, make them cannot

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172 Victor Silaen, *Bertahan di Bumi Pancasila*, p. 74

accept the presence of minority group. In the case of restriction of GKI Taman Yasmin, regardless the other interests, there is a dislike feeling of majority on to minority. The psychological tendency to not accepting this minority can be easily triggered, including by the provocation of certain intolerant group to do persecution on the minority among them.

## 2. The Recent Situation

The case happened to GKI Taman Yasmin is not the truly newest case occurred in two year last. The case of GKI Taman Yasmin tends to recurrent and protracted. According tp the monitoring done by SETARA Institute began on March 10, 2002. At that day the socialization of GKI Taman Yasmin establishment happened. The society was signed the agreement of church establishment on the land area of 1.721 m<sup>2</sup> which located in Sector III, Kavling 31 Jalan Ringroat Barat Kota Bogor, Kelurahan Curug Mekar.<sup>173</sup>

In this report, the observation of SETARA Institute will be focused on the incidents which related to the case of GKI Taman Yasmin that happened in 2012. On January 22, 2012, hundreds people which united in the name of Curug Mekar society, Indonesian Muslim Communication Forum, and Reform (Forum Komunikasi Muslim Indonesia), and Islam Reform Movement (Gerakan Reformasi Islam) held a demonstration to restrict the worshipping of the congregations of GKI in Taman Yasmin, Bogor, West Java.

This group outflanked a house which being the house of worship for the followers of in Jalan Cemara Raya number 9, Taman Yasmin Housing. This group did demonstration and threated the followers who were doing the worship after passing the layered blockade of the security. This chaos was finished after the followers of GKI Taman

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173 To get chronic case narration of GKI Taman Yasmin dari tahun 2002, from March 10, 2002 until March 11, 2011 can be seen on Ismail Hasani and Bonar Tigor Naipospos, *Politik Diskriminasi Rezim Susilo Bambang Yudhoyono*, p. 74-82

Yasmin dissolve itself and did not continue their worship.<sup>174</sup>

The Indonesian Churches Association (PGI) expressed their disappointment to the respons of President (Susilo Bambang Yudhoyono) in handling the conflict of GKI Taman Yasmin. PGI which also accompany with some organization of Christian and Catholic particularly highlight the ambiguity of SBY in doing execution the verdict of Supreme Court (MA).

On Sunday morning, April 8, 2012, tents of followers of GKI Taman Yasmin, Bogor City, Jawa Barat, held the Easter Worship in house of one follower in Bogor Country House, Tanah Sareal, Bogor City. The worship runs well without police cordon. That worshipping place close to within about two kilo metres from the location of the building of GKI Taman Yasmin which sealed by Local Government of Bogor.<sup>175</sup>

### 3. Public Respons

The former First Lady, Shinta Nuriah Wahid supported the steps initiated by National Security Council (DKN) to solve the disputes of GKI Yasmin Bogor, West Jawa. In the assessment of Shinta, the advice of DKN to build the mosque beside the church, is a good idea. She said that the device could be showing of the reflection of Indonesian Diversity. She gave a sample of Istiqlal mosque and Catedral in Jakarta which those building are located facing each other. Shinta Wahid emphasized that she really appreciated what DKN done. She agreed if beside of GKI Taman Yasmin would be built a mosque.<sup>176</sup>

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174 Ananda W. Teresia, "Persekutuan Gereja Kecewa Sikap SBY pada GKI Taman Yasmin", tempo.co (online news), Febryary 12, 2012, from <http://www.tempo.co/read/news/2012/02/16/063384333/Persekutuan-Gereja-Kecewa-Sikap-SBY-pada-GKI-Yasmin>; Internet; downloaded on December 18, 2012.

175 Antony Lee, "Ibadah Paskah GKI Taman Yasmin di Rumah Jemaat," April 8, 2012, from <http://nasional.kompas.com/read/2012/04/08/11501612/Ibadah.Paskah.GKI.Yasmin.di.Rumah.Jemaat>; Internet: downloaded on December 18, 2012.

176 "Tuntaskan Sengketa GKI Taman Yasmin, Sinta Wahid Dukung Langkah

Whilst the Legal Practitioners of Todung Mulya Lubis more emphasized to not disputing the religion case and belief in Indonesia, reduce the ability of diplomacy in international relations. She said, almost three years the followers of GKI Yasmin fight for reaching their rights. She also appreciates the step of DKN and Watimpres which presses the pluralism spirit.

According to her, this step should be done to retreats the tolerant among religious community in Indonesia. The case of GKI Taman Yasmin seems as if the tip of iceberg. If this case could be solved well and fast, so another step forward to overcome the social intolerant in this country could be reached.

Because, the freedom of religion is a constitutional rights which cannot be deprived by any power. Indonesia as a democracy country should protect the rights of minority in reaching their constitutional rights. Further he said that the protection on minority increasingly threatened. And if the minority group is bothered, means the democracy is downgrades itself. Todung expressed that he is disappointed to the Regent of Bogor, Dinai Budiarto which not attends the meeting in the office of Watimpres several times ago. Diani should appreciate that sent invitation because Watimpres is an important institution to give consideration to the President.

The followers of GKI Taman Yasmin (and also HKBP Filadelfia) told the police of Bogor and Bekasi to Ombudsman RI. This was taken because of no responses from the police department on the conflict report of followers and society. On September 10, 2012, the representation of GKI Taman Yasmin and HKBP Filadelfia accepted by the member of Ombudsman, Budi Santoso. GKI Taman Yasmin and HKBP Filadelfia accompanied by Laura, The Official of Indonesian Churches Association (PGI) and Ali Akbar from Human Rights Working Group (HRWG).<sup>177</sup>

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Dewan Ketahanan Nasional” *suara pembaharuan .com* (online news), May 16, 2012, from <http://www.suarapembaruan.com/home/tuntaskan-sengketa-gki-yasmin-sinta-wahid-dukung-langkah-dewan-ketahanan-nasional/20231>, downloaded on December 18, 2012

177 Kristantyo Wisnubroto, “GKI Taman Yasmin dan HKBP Filadelfia Adukan

These are the report which ignored by Polresta Bogor in the case of GKI Taman Yasmin:

1. Relating to the reported party, Ahmad Iman (Coordinator of Forkami) because of his performance to damage the wall of the church. Instead of being legal processed, he even being invited in the meeting of Home Ministry/ *Mendagri*, Mayor and GKI Taman Yasmin in Bogor, September 7, 2012.
2. Relating to the locking and ilegal sealing done by local government of Bogor in 2010. This have never been followed up even the police have issuing SP2HP which stated that the police have found the beginning evidence, namely; the Local Government have done crime to restrict a worshipping activity.
3. Relating to the verbal threat of Bogor Regent, Diani Budiarto which reported by one of daily local newspaper in Bogor. That reporting contains about threat pointed to GKI Taman Yasmin to leave their legal residence in the area of Taman Yasmin.

Because feel so frustrated on the weak handlement from government to the case of GKI Taman Yasmin, the followers decided to do their Suday worship in front of State Palace. In that worship also gathered the followers from church of HKBP Filadelfia Tambun, Bekasi, which has the same experiences. During that procession, there is little different between that worship with another worship. At the time also Indonesia celebrated the Independence Day 67<sup>th</sup>. In that very hot weather, the followers install the posters which containing the demands pointed to the government in order to give the guaranty on religious harmony in daily life.<sup>178</sup>

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Polisi ke Ombudsman”, *beritasatu.com* (berita online), September 10, 2012, from <http://www.beritasatu.com/nasional/70860-gki-yasmin-dan-hkbp-filadelfia-adukan-polisi-ke-ombudsman.html>; Internet; downloaded on December 18, 2012.

178 Pepe Goldman, “Frustrated, GKI Taman Yasmin Holds Another Sunday Mass In Front of State Place”, *the Indonesia today.com* (online news), August 26, 2012, from <http://www.theindonesiatoday.com/news/politic-news/politic-headlines/item/264-frustrated,-gki-yasmin-holds-another-sunday-mass-in-front-of-state-place.html#>. UNtCROSpDm4; Internet; downloaded on December 18, 2012.

This action was not the first time to be done. A month before, around 150 people from those both churches also hold Sunday Worship in the same place. They expressed their disappointment on the handlement of the case which performed by Presiden SBY.

Moreover, foreign government considers that this occur continuously cases befalls GKI Taman Yasmin as something which hard to be understood,<sup>179</sup> because what befalls on GKI Taman Yasmin beyond the reason of democracy and also the Framework of law state. The court is clearly won the GKI Taman Yasmin could be interpreted different by the local government, which in this context is the Regent of Bogor. For them who have a healthy sense, surely hard to accept this reality happened in a Law State.<sup>180</sup>

#### 4. Between Promises and Frustration

Even so, GKI Taman Yasmin feel like get fresh breeze from the government which said that the case befalls on that church will have a good solution from central or local government before Christmas comes. This was like what said by Jayadi Damanik, one of advocacy team member of GKI Yasmin; “*The central government, [the] provincial government, directors general, [the] home affairs minister said they would settle it before Christmas.*”<sup>181</sup> Further he said that the demands from GKI Taman Yasmin is not the maximal one to justify them who di intolerant by sealing and forbids the followers to worship in GKI Taman Yasmin. They just want to see about the law enforcement through the execution

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179 “GKI Taman Yasmin saga confuses outsiders: NGOs” *jakartapost.com* (online news), October 5, 2012, from <http://www.thejakartapost.com/news/2012/10/05/gki-yasmin-saga-confuses-outsiders-ngos.html>; Internet; downloade on December 18, 2012

180 As what stated in Article 1 (3) of the 1945 Constitution mentioned: *Negara Indonesia adalah negara hukum*. The consecuen from this verse is that all action related with the individual and communal life should based on the law.

181 Firdha Novialita, “Still Unable to Worship, GKI Taman Yasmin Church Laments Govt Inaction”, *Jakarta Post* (online news), October 6, 2012, from <http://www.thejakartaglobe.com/home/still-unable-to-worship-gki-yasmin-church-laments-govt-inaction/548485>; Internet; downloaded on December 18, 20112.

of Supreme Courts verdicts which relating to construction of their worshipping house.

In press conference on September 23, 2012, GKI Taman Yasmin, and also HKBP Filadelfia, said that:

“In this heavy situation, GKI Taman Yasmin and HKBP Filadelfia, still experience until now; about the condition where our two churches in its own location, is being closed by Local Government of Bogor and Bekasi even it has building permits. That permit actually legalized strongly by the court’s verdict; we restand here, across the state palace of Istana Merdeka Jakarta, asked to the God and just pray that the discrimination on us would be stopped soon. We also hope that our country could enforce the constitution and law without any discrimination as the truth justice like what we dream of.”

The followers of GKI Taman Yasmin in Bogor hope that the speech of Presiden Susilo Bambang Yudhoyono would be performed by all. In his speech, SBY said that anyone should be complied by the law and everyone who violates the law should be justified if against the law. The spokesman of GKI Taman Yasmin Bona Sigalingging said that, there is a public official in Bogor who against the law over the years, namely the Mayor Diani Budiarti. The action of Diani who forbidding the followers of GKI Taman Yasmin is a tort and ignoring the principle of state law like what emphasized by the President.<sup>182</sup>

Frustration which felt by followers of GKI Taman Yasmin and also HKBP Filadelfia reflected in their pers conference that coincides with Sumpah Pemuda Day on October 28, 2012. In that pers conference, they continued to count down what they have done since two week before. They wanted their church can be opened again for worshipping.

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182 “Pidato Presiden Harus Diterapkan dalam Kasus GKI Taman Yasmin” pgi.com (PGI official site), October 11, 2012, from [http://www.pgi.or.id/index.php?option=com\\_content&view=article&id=488:pidato-presiden-harus-diterapkan-dalam-kasus-gki-yasmin&catid=95:liputan-pgi&Itemid=562](http://www.pgi.or.id/index.php?option=com_content&view=article&id=488:pidato-presiden-harus-diterapkan-dalam-kasus-gki-yasmin&catid=95:liputan-pgi&Itemid=562); Internet; downloaded on December 18, 2012.

Besides that, they also urged the State, especially through the President, SBY, to do some concrete steps which taking time around 58 days started from today, December 25, 2012, Christmas 2012 that would be coming. The constitution and law would be enforced, the legitimated church of GKI Taman Yasmin and HKBP Filadelfia would be restart to opened, so that the followers of GKI Taman Yasmin and HKBP Filadelfia would be able to repeat their activities in worshipping in that church according to their religion and belief.

## 5. The Response of Government

In order to keep the tolerant condition among the religious life and beliefs, the role of government is a necessary. Some of policies which are pro to the minority's existence were completely helping them to protect their basic rights of religion and beliefs. In contrary, sometimes having the government actually helped repressive (repression) the minority group existence, with a range of policy is likely to reduce or even negate the rights of religious minorities.

According to the Chairman of the Constitutional Court, Mahfud MD, the problem of GKI Taman Yasmin actually can be solved through the assertiveness of central government. The Government should explain the followers of GKI Taman Yasmin about the reason why that regulation cannot be implemented. Not allowing the verdict of *inkracht* MA to be violated and raises questions among people.<sup>183</sup>

Meanwhile, the Presidential Advisory Council (Watimpres) will invite the Mayor of Bogor, Diani Budiarto and representation of Gereja Kristen Indonesia (GKI) Taman Yasmin. Watimpres will facilitate the handlement of prolonged dispute of establishment of GKI Taman Yasmin in Bogor, West Java.<sup>184</sup>

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183 Maria Natalia, "Mahfud: Ada Apa di Balik Masalah GKI Taman Yasmin", February, 15, 2012, from <http://nasional.kompas.com/read/2012/02/15/23172371/Mahfud.Ada.Apa.di.Balik.Masalah.GKI.Yasmin.;> Internet; downloaded on December 18, 2012.

184 Ferry Santoso, "Wantimpres akan undang Walikota Bogor," April 11, 2012, from <http://nasional.kompas.com/read/2012/04/11/22114885/Wantimpres.Akan.>

The presiden of Susilo Bambang Yudhoyono instructed that the dispute of GKI Taman Yasmin must be resolved soon. Presiden asked the mayor of Bogor, Diani Budiarto and Governor of West Java, Ahmad Heryawan to help each other in resolving this dispute which occurred since 2002.

The given respons of central government, which contextually is Presiden SBY, is like a mirage. Conclusively, the President said, "I give attention to what happened in GKI Taman Yasmin," Presiden said in the event of silaturahmi in Presidential Palace of Istana Negara, Jakarta, on Monday, February 13, 2012.<sup>185</sup> Even this statement can be categorized as a form of attention from central government in facing this case, but that statement have no meaning if accompanied with the instruction or command which explicately containing the pressure pointed to the lower-level governments. To face this case which experienced by GKI Taman Yasmin, the President cannot just sympathy or give attention only, but more than it.

The alibi on SBY verbally maybe irrational, because the location of GKI Taman Yasmin just 40 kilometer from the state Palace and only 20 kilometer from the resident of President SBY in Cikeas. When this case dragged on because of the verdict of MA cannot be executed by the local executive which is partial matter arranged in the scope of jurisdiction of central government. As the law state, where the law supremacy is being the lofty ideals, so the nation and state life become worse.<sup>186</sup> It could be better if the President SBY becomes more loyal to the mandate of UUD 1945 and Pancasila to protect the basic rights of citizens, instead of submitting this case of GKI Taman Yasmin to the Mayor of Bogor or just dogged by taking refuge behind the UU of Regional Autonomy. The Intervention of this case cannot be a stain in

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Undang. Wali. Kota. Bogor; Internet: downloaded on December 18, 2012.

185 Aditya Revanur, "Wantimpres Mendukung Agar GKI Taman Yasmin Tak Direlokasi", October 24, 2012, from <http://nasional.kompas.com/read/2012/10/24/15273091/Wantimpres.Mendukung.agar.GKI.Yasmin.Tak.Direlokasi>; Internet: downloaded on December 18, 2012.

186 Victor Silaen, *Bertahan di Bumi Pancasila*, p. 216

the story of SBY's leadership, if that could be handling problem.<sup>187</sup>

According to the research of Paramadina Institute relating to the response of local government about the freedom of religion, decided that there are some typicals of local government. *First*, government's support on freedom of religion and establishment of house of worship for Christian (Church). *Second*, the resistance government. *Third*, the government which not rejecting or supporting.<sup>188</sup> The local government of Bogor which in this context, includes in the part of resistance group that supporting the freedom of religious/ belief.

There are some solutions that were offered to GKI Taman Yasmin. The solution that oftenly offered by the Government of Bogor City is relocation. But that offered solution denied by the side of GKI Taman Yasmin. That denial due to two aspects; those are the juridicial reason which said that the verdict of Supreme Court and Mandatory Recommendation of Ombudsman RI haven't give a space on the relocation option. Second, historical aspect through the reflection which was experienced by HKBP Ciketing Bekasi about the promised lisenche which have never be issued.<sup>189</sup>

Until this report written and published, there's no concrete action from central or local government in solving this case of GKI Taman Yasmin. Even, the current situation before this paper was in editor and ready to be published, the followers of Church GKI Taman Yasmin and HKBP Filadelfia invited President of SBY in Christmas mass which held in front of Istana Merdeka. This action done by considering if the President felt about the distance between GKI Taman Yasmin and HKBP Filadelfia are too far to be visited, so the initiative to do a mass in the place where is not too far from President's resident.

In the mass which held on December 24 and 25 in front of Istana Merdeka, the church officials provided VIP places (Very Important Person), as the seat of President. But unfortunately – and this was

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187 *Ibid.*

188 Victor Silaen, *op.cit.*, p. 82

189 Victor Silaen, *op.cit.*, p. 116

predicted before, in that mass execution, the President cannot come to the program which sent by the official. So, the victims of intolerant action of religion/beliefs seemed like the citizens (without) state or citizen without President. []



# Settlement Mode of The Violation Case on Freedom of Religious/Belief

When we look to the past, our founder of the country had realized the plurality of Indonesia. The Youth Pledge (Sumpah Pemuda) in 1928 is the manifest of the early politic to emphasize it. Like the decision of Indonesia to be in republic form is conceptually decree the equality of every citizen to have the same opportunity to contribute and maintain the peace of Indonesia. The republic form is meant to eliminate discrimination among many kinds of believers and also domination of a religion towards others. That commitment is extracted into Pancasila to be a foundation of philosophy of national life in Indonesia.

However, the wisdom *Bhinekha Tunggal Ika* (Unity in diversity), being a common roof of peace of all religion is by the new regime misinterpreted. The regime of authority interpreted that prosperity of nationality and patriarchy can only be achieved with uniformity. Besides, the solitaire governing had become the only interpreter of Pancasila. As a result, the further elaborations are made up merely for the sake of the continuance of their regime.

The new order regime deliberately decreed the uniformity to whole aspects of society including political view, organization, and even to the extent of religious belief which is an innate and absolute right of every

individual and should be under the nation's protection. The social building was used as an excuse by the regime in order to prevent any possible upheaval of diversity that would potentially occur among the society. As a result, the society did not have any chance to freely express their personal political, cultural and religious view. National stability and security was the regime's base of giving policy.

President Soeharto's fallacy (the head of the regime) had become the first step to democratic life. The main idea of democracy is giving special place for the aspiration of the society and determining the result of policy and application to them. Democracy is fully defined as an instrument of solution to answer problems of economy, peace, equality, civilization, tolerance and the determining norm towards other ideals. The structure of democracy which is only based on the vote of the majority is actually a dangerous threat towards the existence of plurality in the country.<sup>190</sup>

Respecting and providing equality of every citizen is an absolute commitment for democracy and republic country. Unequal treatment due to minor quantity of a society is also a dangerous threat for the ideal of democracy. Indonesia, born as a republic country is a fruit from a diversity, then, would this country counted that it exist if its diversity is ignored?

In this part Setara Institue inspected how the government works, both in Capital and in Rular areas, in solving the violence of freedom of religious/ belief by focusing on three aspects which has become public's interest which are: the case of Ahmadiyah in West Nusa Tenggara (NTB), the case of GKI Yasmin in Bogor and the case of Shia in Sampang.

These cases have so far not got any clear solving. The modus offered by the country was only an instant solution just being in order to reduce conflict to spread broader. The country is very poor for innovation of solution. A fixed pattern that the government applied was to accommodate the request that claim themselves majority with the

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190 Robertus Rober, *Demokrasi versus Toleransi dalam Beragama, Berkeyakinan, dan Berkonstitusi*, (Jakarta: SETARA Institute, 2009), p. 1-7.

excuse of maintaining peace and to prevent violence. The country then approached them separately, separate them from each other physically and territorially to prevent social clash. The easiest way to apply this method is by requesting the minor group to give in and to be willing to be relocated.

### **A. The Settlement of Ahmadiyah in NTB**

The problem of Ahmadiyah in West Nusa Tenggara is one of many portraits of cases on Freedom of Religion and Beliefs which have no solution until today. The cases of freedom of religion and belief are not being the priority agenda to be solved soon by the government, even in regional or provincial level in West Nusa Tenggara (NTB). Moreover, those cases have continually occurred in some of regencies and cities in West Nusa Tenggara (NTB).

This is the portraits lack of seriousness of the government to take an initiative in order to prevent the anarchy actions that performed by a group of people or community, which does not like to the thought or belief from other. The emergence of these cases is the inability of the government as a form of state officials to provide a sense of security and freedoms of citizens to worship based on their religion and beliefs, likes stipulated in the 1945 Constitution. This constitution does not become the anvil to give sense of security and freedom to the citizens in actualizing their beliefs.

If seeing some cases about the freedom of religion and belief in NTB over the last few years, so Ahmadiyah is a group which were one of the most likely group to get treated unfairly, discriminated against, intimidated even to the extent of destruction and expulsion from their homes. This discriminatory treatment continues to happen, if not endless and still blurry road completion.

Until now, it has been nearly 7 years, most of Ahmadis who are victims still living in camps, dormitories Transito in Mataram, West Nusa Tenggara. They live in a building that is not feasible and crowded. Assistance from the local government had long stopped. They also do not get an Identity Card (KTP), on the grounds that they are staying

while in these locations. Whereas even having no ID cards, being inhibited their access to public facilities and social security issued by local governments.

### 1. The Settlement Proposed by the Local Government

Despite 7 years Ahmadiyah refugees forced to live in refugee camp, NTB provincial government still has not been able to find a way out of settlement. Initially there are two options that tried to be offered by the NTB provincial government: first, Ahmadiyah will be included in the transmigration program; second, the relocation to a *gili* (island) at the West Lombok regency, in order to avoid clashes with the opposing communities.

Both options ultimately fail to be implemented by the NTB Provincial Government. It is unclear why the migration option is canceled, but there are allegations of obstacles that faced by NTB provincial government in coordination with the Ministry of Manpower and Transmigration and the local government where Ahmadiyah refugee will be placed. While the relocation option, which initially had received a response from the Ahmadiyah. But after they conducted a survey to a predetermined location, apparently in the new location there are no decent facilities for occupancy, such as clean water, electricity, health centers, schools, and other public facilities. In addition they are also found that there are people already occupied the island and the ownership of the gili is not belong to West Lombok regency government but belong to a tourism businessman from Bali. Relocation option now no longer heard. There is no proven that show of West Lombok regency government seriousness to do the follow up.

In June of 2011, the Governor of West Nusa Tenggara, Dr. TGH. Zainul Majdi, MA, formulates third option for the solution: path of “dakwah” and formed a team consisting of representatives from the Religious Affairs Ministry of West Nusa Tenggara and some Tuan Guru (religious scholars) senior to resolve Ahmadiyah case.<sup>191</sup>

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191 Suara NTB, *Gubernur Lebih Memilih Jalur Dakwah*. April 27, 2011

Coordination meeting was initiated by governor policies harmonizing team held in the governorates pavilion. The meeting was chaired by Dr. Zaini, inviting some religious leaders, community organization leader, Kesbangpoldagri, police, NTB Ministry of Religious Affairs, “attorney”, youth organizations and NGOs to formulate policy to be implemented based on NTB governor option of settlement. Other public figure that attend the meeting are; Prof.. Saiful Muslim, TGH. MZ Anwar, TGH. Husnudduad, TGH, Safwan Judge, Husni Tamrin, Rector Mataram Teachers’ Training College, Ridwan Masud, Muharor Iqbal, Chairman of GPI, Chairman ANSOR, KAMMI Chairman, Chief himmah NW.<sup>192</sup>

Since late 2011, the working group (governor policies harmonizing team) which has been formed by the governor, start to apply the “dakwah” approach to the Ahmadiyah follower in Transito Mataram. Dakwah initially every Sunday become every month, by presenting religious leaders and academics as speakers. This program mission is to make Ahmadiyah believers return back to the “true islam” because Ahmadiyah beliefs considered as misguide beliefs.<sup>193</sup>

## 2. The Respons of Ahmadiyah

Ahmadiyah in NTB basically not refusing the program and they are resigned to whatever option is offered by the local government, as long as they can live comfortably and safely. It was proved when there is an offer of relocation to one of *gili* (island), they then conducted a survey to the place to see if the location suitable for them to live, but in fact the place was far from proper place to live in.

Ustadz Ba’asir Ahmadi, one of the Ahmadiyah leaders criticized the plan that seen without any preparation West Lombok government that will relocate them to a remote island in the Sekotong Sub-District to West Lombok District. According to him, the relocation was not a proper solution, because it will strengthen the social discrimination.

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192 *Ibid.*

193 Suara NTB, Jun2 24, 2011

Ba'asir also saw that this policy shows government's inability to resolve the cases of violence against Ahmadiyah. From 8 cases of violence against Ahmadiyah in NTB none of the perpetrators were brought to court.

The Ahmadiyah followers in Transito Mataram dormitory are waiting for the settlement from NTB provincial government and the central government. They live without any certainty. Government's program through "dakwah" by holding regular meetings for religious lectures was definitely not a proper solution. Person's religious preference is private matter and government cannot interfere that matter. For Ahmadiyah, religious lecture by some of religious leaders and intellectuals was not a problem, and they considered it as nothing more than a religious meeting and views exchange. Dakwah option will not change their beliefs.

Regardless the lack of concrete action towards the settlement for Ahmadiyah case in NTB, one thing to be noted is the attention of the NTB Department of Education to the condition of Ahmadiyah children living in refugee camps. Head of Education, Youth and Sports (*Dikpora*) West Nusa Tenggara, Drs. H. L. Shafi, MM. with his staff once visited Transito Mataram dormitory. He said Ahmadiyah follower's children who now live in the Transito Mejeluk Mataram dorms should continue their study. One of the ways is to facilitate Ahmadiyah follower by asking all the schools free them for the school fees whether it's the purchase cost of school uniforms, textbooks and so forth. On the other hand, some children Ahmadiyah follower said that they were still asked to pay for school uniforms and textbooks.<sup>194</sup>

*Dikpora* (Education, Youth and Sports) NTB chief confirms "The school is not allowed to treat Ahmadiyah follower children differently from any other student". His intention to visit the Ahmadiyah children is to confirm whether they still continue their study or not.<sup>195</sup>

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194 Lombok Post: *Dikpora NTB Minta Warga Ahmadiyah Di Bebaskan Dari Biaya Sekolah*, On September 20, 2010

195 *Ibid.*

While head of Ahmadiyah refugees in Transito Mataram, Syahidin, said that there were 30 children who continue their school among refugee, such as in State Elementary School (SDN) 42 Mataram and State Junior High School (SMPN) 16 Mataram. Syahidin then give more detail information that 20 children still in elementary school, junior high and 7 were still 3 high schools. Some number of children forced to move from their previous school because they were badly treated by their friends after school hours such as beating. Syahidin said “In this new school, they feel comfortable to go to school with the same treatment as other student get. But the payment for school fee, purchasing textbooks and school uniforms still become burden for them.”<sup>196</sup>

## **B. Settlement of GKI Yasmin Bogor Case**

GKI Yasmin case received widespread attention, both nationally and internationally, because the problem is not only about freedom of worship and the establishment of worship house but also raising a big question mark for how it could this case happen. The case of legal decision form the highest court the Supreme Court can be easily overlooked and dismissed in a country with written institution.

Both the central government and the local government have repeatedly stated that the GKI Yasmin case is a law case, not a religion matter. If that’s true, then it actually happened in the case of GKI Yasmin is purely a legal dispute. Regardless the argument given, the decision that issued by the Supreme Court (MA) should be immediately obeyed by all the parties. But the fact show that the party who supposed to enforce and implement the law do the contrary by overlooked and dismissed the legal decision.

Struggle through the legal path to get the right that done by GKI Yasmin because they believe that the “konstitusi” guarantee for all citizen to get their right. They believe to democratic state that respects

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196 The Interview result with The Refugee’s Leader of Ahmadiyah in Transito. October 2010

law and rights which later will resolve disputes between individuals or groups through peaceful way. And if there is no way out though the peaceful way, the legal path (law) will be the last options.

The case of GKI Yasmin is almost four years but there is no bright spot for the settlement. Various ways have taken the GKI Yasmin in order to make local government obey Supreme Court decision. They conduct hearings and report their cases to the number of parties, including a number of state institutions, such as the “Ombudsman” and the House of Representatives. Ombudsman strongly supports GKI Yasmin efforts and ombudsman issued a recommendation to the local government to obey the Supreme Court decision. Ombudsman even tried to mediate GKI Yasmin and local government (Bogor local government). But the mediation efforts were failed because the Mayor of Bogor refused to attend the meeting on April 2012.

On the other hand, House of representative has raised the GKI Yasmin issue several times in meetings with relevant government agencies such as the “Kementrian dalam Negeri”, Ministry of Religious Affairs, Police, the Ministry for Politics, and the Bogor Local Government. But there is no result for GKI Yasmin cases even the meeting was held.

### **1. Options for Settlement of the Central and Local Government**

In a meeting between Home Ministry with the House of Representatives on February 8, 2012, the Home Minister Gamawan Fauzi promised to resolve the GKI Yasmin issue within 6 months. The solution offered was the “relocation” and he will also ensure the safety and comfort of the GKI Yasmin.<sup>197</sup>

He said that Home Ministry will help the land acquisition if GKI Yasmin accept to do temporary relocation to the Harmoni Yasmin Centre which only 500 m away from the previous church. The Home Ministry has discussed thi several times with the head of

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197 Detiknews, Mendagri Akan Berusaha Selesaikan Polemik GKI Yasmin dalam 6 Bulan, downloaded on Februari 8, 2012, <http://news.detik.com/read/2012/02/08/172956/1837684/10/>

local government (Bogor Local Government Head) and his staff, GKI Yasmin representatives and interfaith leaders. The process is almost to the final result and hopefully it will be implemented in the near future. GKI Yasmin issue is mere matter of *IMB* (building permit) and according to Law 32 of 2004 on the Regional Government and Government Regulation 38 of 2007 on Governmental Affairs Divisions which this domain is completely the Mayor's authority.<sup>198</sup>

Home Minister's statement is strengthened by the West Java Province government, Ahmad Heryawan. He said that the GKI Yasmin case now handled by Home Ministry. However, he also confirms that West Java Province government is ready to help by giving fund from the 2013 local revenue and expenditure.

West Java Province is ready to help by giving Rp 10 billion for completion in 2013. Heryawan also said that the fund can be used for land acquisition for the new church building. Beside fund from province government, grants will also supplied by the local government for about Rp 2 billion.<sup>199</sup>

Local government also said that they have prepared a location in Kota Paris at Jalan Dr. Sumeru. The local government will give the land for free to GKI Yasmin do that their church can be built there.

## 2. Suggestion from Presidential Advisory Council

Another option of settlement offered by Presidential Advisory Council (Wantimpres), Albert Hasibuan in the meeting with the representatives of GKI Yasmin (10/24/2012), he proposed that the GKI Yasmin dispute could be taken over by President Susilo Bambang Yudhoyono. The proposal was submitted to the president, but the decision still depends on the president. Besides that Albert also deliver solutions for the mosque to be built close to the GKI Yasmin building

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198 <http://www.dpr.go.id/id/berita/pansus/2012/feb/09/3637/dpr-minta-seluruh-elemen-dilibatkan-dalam-penuntasan-kasus-gki-yasmin>

199 <http://www.tempo.co/read/news/2012/12/25/058450264/untuk-gki-yasmin-jawa-barat-siapkan-rp-10-miliar>

in Bogor as a symbol of religious harmony. The Church does not need to be relocated, GKI Yasmin remains in the original location, and then mosque will be built next to it.

After a meeting between the members of the GKI Yasmin and Presidential Advisory Council, President Susilo Bambang Yudhoyono had testified on GKI Yasmin case. He said the case should be resolved. The President said, he was informed that the local government is looking for new land for GKI Yasmin. The President asked head of local government head (bogor) and West Java head to ensure that the GKI Yasmin can do their pray as any other people in Indonesia.

### **3. Respons from GKI Yasmin**

Relocation option submitted by the local government and central government as GKI Yasmin case settlement was rejected by the GKI Yasmin. There are several considerations: first, the GKI Yasmin would not have violated the law. GKI Yasmin struggles through legal path to enforce the ideals of the rule of law, if GKI Yasmin accept the relocation offer it means they betray the law itself. Secondly, their struggle is not only to get their right to worship but also as a symbol of the struggle of other minorities who face similar problems. Third, the GKI Yasmin did not want a similar incident experienced by HKBP Ciketing, Bekasi. Relocation option is just to blow away the issue, especially in the location at Jalan Dr. Sumeru, there is rejection from local residents. Fourth, the GKI Yasmin did not want the fund from expenditure and revenue from Province Government and local government which should be used for public needs not for GKI Yasmin case. GKI Yasmin parties can fund for the construction of houses of worship themselves.

Based on GKI Yasmin rejection to the settlement option we should consider several things in order not repeating the same case happen to HKBP Ciketing. When the HKBP Ciketing raised and become public attention, especially after violence case of stabbing to Lupida Simanjuntak happen, central government and local government (bekasi local government) promise HKBP to give them free land

for their church. Since the land still in proses of land acquisition, HKBP Ciketing been asked to relocate their church to multi-purpose building in the central part of Bekasi. Government promise is to make the multi-purpose building can be used by HKBP as worship house and free of charge. Then, after 3 years using the building, they have been asked to pay for some amount of money by the owners. Moreover, there is no any further information of the Promised Land for their new building till today. The local government of Bekasi does not ever want to see their representatives, and the central government also cannot do anything due to the case. While they already received a notification from the multi-purpose building that they cannot use the building anymore in 2014. It will raise a new problem because they said that if the case is like this, they will go back to their previous disputed worshipping house.

GKI Yasmin has no problem to undertake for the proposal from Presidential Advisory Council Staff, Albert Hasibuan to build mosque next to GKI Yasmin.<sup>200</sup>

#### **4. New Phase: Government Intervention towards GKI case**

Susilo Bambang Yudhoyono's government is well aware that cases of violations of religious freedom continued to increase in recent years is very detrimental to the image of his leadership. Several leading international human rights organizations such as Amnesty International and Human Rights Watch continue to highlight this issue. Even in the Universal Periodic Review session of the UN Human Rights Council held in Geneva, some states provide a number of recommendations in order to improve performance in Indonesia protection of religious freedom.

Some of the "lingkaran dalam" of the president tried to take the initiative to find settlement of violations of religious freedom in order to get public attention. This kind of settlement was unofficial and non-track.

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200 [http://www.perisai.net/berita/watimpres\\_usul\\_gki\\_yasmin\\_dibangun\\_bersebelahan\\_masjid#\\_axzz2LhyRn4O8](http://www.perisai.net/berita/watimpres_usul_gki_yasmin_dibangun_bersebelahan_masjid#_axzz2LhyRn4O8)

For example, the settlement of Ciketing case involve Susilo Bambang Yudoyono close friend in the military retired Lieutenant General, Luhut Panjaitan, who currently also serves a member of the Advisory Board of the Golkar Party. Luhut Panjaitan who then approach HKBP church leaders at its headquarters in Tarutung, North Sumatra, and also approached a number of activists HKBP Ciketing to accept relocation offers promised by the government.

HKBP is the largest church organizations in Southeast Asia. It has layered organizational structure and spread throughout Indonesia. Structure of the organization is divided by region. Small churches as HKBP is a part of higher structures and so forth.

HKBP church in “Orde Baru” era was being torn and dragged into sharp conflict due to intervention by the government at that time. Although the current reconciliation between the two camps have been established but the trauma by the government intervention continues to haunt.

HKBP supreme leader or commonly known as Ephorus accepted an offer for the relocation and because of that Pastor Lupida who reject the idea of relocation move him in order to provide services to another location HKBP.

Now, the same case seems is also happen as GKI Yasmin. Deadlock occurs because GKI Yasmin continues to refuse relocation offered by the government, making one of the “lingkaran dalam” President Susilo Bambang Yudoyono, who is also the member of the Presidential Advisory Council, took the initiative for the completion.

Tempo, January 28, 2013 revealed Tiopan Bernhard Silalahi actions towards the settlements of GKI yasmin. PAN’s former minister approached the board of Indonesian Churches Community (*PGI*) and the Working Committee of the Synod Council of the Indonesian Christian Church (GKI BPMS). TB Silalahi claimed to PGI and Sinode GKI that he came upon private initiative.

GKI as well HKBP also has a number of churches throughout Indonesia. GKI is one of the largest church organizations in Indonesia.

GKI Synod is the "parent" for numbers of GKI church in Indonesia.

TB Silalahi intention is unknown but GKI Synod, without involving the GKI Yasmin church, after it held a meeting with Bogor Local Government head. After the meeting, Bogor local government sent a letter to the GKI Synod 452.1/1845/huk. Its content is relocation offers. The local government provides the land at Jalan Semeru No. 33 as the new location.

Meanwhile, GKI Bogor Court, as the parent of Bapos Yasmin Church terminates GKI Yasmin church staff, and then GKI Yasmin said that they give all the authorities of settlement to GKI Synod. Then, GKI Synod issued a "form letter" to all members whose content is to takeover GKI Yasmin case. GKI synod informs that all publications concerning the GKI Yasmin must be approved by the Synod first.

To the management of PGI, GKI Synod sent a letter banning of worship across the palace since March 2012. GKI Synod will not be responsible if there is still the name of GKI Yasmin worship across the palace. GKI Synod also stated that responsibility for the GKI Yasmin has been taken over by GKI synod. All activities involving the GKI Yasmin that is not from Synod is not under the responsibility of the Synod.

In December 2012, the committee of GKI Synod held a working meeting. Regarding the GKI Yasmin, they make the decision as follows:

1. The Synod asked the head of Bogor local government obey the decision of the Supreme Court and the Ombudsman recommendation stating that the GKI Yasmin does not violate the law;
2. Synod requested to remove the "freezing" Yasmin church building permits.
3. Head of Bogor local government asked to open the church padlock.
4. Relocation will not be done.
5. If the fourth decision is implemented by the head of Bogor local government, the Synod will appreciate by not making the

land where Yasmin church as a place of worship.

To secure this decision, the GKI Synod issued threats to issue sanctions for recalcitrant of Yasmin church pastor.

## **5. GKI Yasmin Fight Back**

Towards the decision of Synod to the GKI, GKI Yasmin church does the rejection. They criticized the attitude of the leaders of the GKI Synod that follow state intervention. Where as previously all of GKI Synod heads have one vision about the establishment of GKI Yasmin.

They rebutt that the opinion of GKI Synod leaders that some church will face several problems, as well as some of the locations where the GKI will be built will also face obstacle. It was just an unprove excuse made by GKI Synod leaders.

GKI Yasmin church would continue the fight for rights to build the house of worship and worship in front of the Presidential Palace to protest towards government, although the GKI Synod and prohibit this action and will not take responsibility for their action.

Meanwhile, the PGI as an organization for churches commnuty in Indonesia also regretted the steps taken by the Synod of the GKI, although they can not do much, because the relationship between the parent organizations of the Synod as the church with the PGI is not instructional. When Gomar Gultom Pastor met GKI Yasmin that were accompanied by a number of interfaith activist, General Secretary of PGI, promised to talk to GKI Synod. He also supports PGI Yasmin effort.

Seeing the reaction of GKI Yasmin supported by a network of interfaith activists and also seeing the attitude of PGI makes GKI Synod feels need to give an explanation of the steps they take. GKI Synod then invites number of institutions that widely known actively promote pluralism and always give support to GKI Yasmin to a dialogue.

The meeting between the members of the Working Committee of the Synod Assembly (BPMS) GKI with human rights activists, and

interfaith takes place in STT Jakarta, Jl. Proclamation No.. 27 Central Jakarta on January 30, 2013.

During the meeting, interfaith network which has been accompanied GKI Yasmin questioning attitude of BPMS since they found some odd things, such as meeting points with interfaith activist has been set previously, which refers to the points that the letter has been sent to the Head of Bogor Local Government.

Activists questioned BPMS for treating case of GKI Yasmin as only a church problem, not referred to the violation of human rights, the constitution and freedom of religion.

GKI Yasmin struggle mainly supported by publication media has become an icon of the fight for freedom of religion in Indonesia and inspire other groups who experienced the same thing to fight for their rights.

Violations of religious freedom are not only happen to the Christians but also people of other religions, including Islam also experiencing the same thing. Stop GKI Yasmin church struggle and accept the offer of relocation as well as change the function of the place for GKI Yasmin church would be a bad precedent for law enforcement struggles and religious tolerance in Indonesia.

BPMS GKI Synod at this the meeting was not giving much response to number interfaith activists and human rights comments. They just said they will consider all the comments and suggestion. But, GKI Synod officially also never revises or revokes the policy that has been issued. And settlement option that has been agreed by Synod and GKI previously is also left unclear.

### **C. Government Solution for Shia Sampang**

The second attack towards Shia follower in Nangkrenang sub-village, Karang Gayam Omben, Sampang, on August 26, 2012 not only cause loss of life and loss of property owned by citizens of Islam Shia but also cause long-lasting trauma, especially for women and children. Hundreds of Shia follower were pushed away from their social and

cultural life and also forced to become refugees in GOR Sampang.

As of this report written they still survive in GOR Sampang with inadequate facilities. Food served always late, inadequate clean water supplies and many other problems. The volunteer from Non Governmental Organization (NGO) help them by providing social and psychological services to them, especially the children make them a little bit feel released.

Seven months living in refugee camps without any certainty of their fate lead to endless frustration. The desire of the majority Syaih followers were returning to their previous homes but District of Sampang continuously rejected the idea. Initially there was hope on the newly elected district head, KH Fannan Fadilah Hasib and his deputy Boediono. But this new district head are also unwilling to grant the wishes of Shia follower, because he thinks there are many local religious leaders who reject the return of Shia follower. Apart from that, he promised to continue to find the best solution.

Strong option to settle the case that choosed by district government of Sampang and East Java Province government is relocation. They continuously said that this is only temporary location while waiting for the case to calm down so that there will be no rejection anymore from the local community. That is why the East Java Province government initially offered temporary relocation to housing in Sidoarjo.

The question is, if the temporary relocation, how long they will be in the relocation camp? Moreover, if the reason claimed is there will be no rejection anymore from local society. Is Shia follower not considered as local community? Since Shia Sampang I cases till today there is no effort from the government to have them meet and reconcile between the two sides. Though, it is important to build understanding between the two parties in the future. It is seen that government has no strong intention to reconcile and choose the strategy to avoid clashes.

Now, there are efforts made by the National Human Rights Commission initiated the idea *huntar* (temporary shelter) which location is not far from the area where Shia follower had been residing. By staying slightly outside the Nangkrenang village, Islam Shia followers

are expected to return to farming in their fields. This idea, according to one commissioner of National Human Rights Commission, Imdadun Grace, has been discussed with several local dignitaries as well as with one of the NGOs assisting Shia follower.

Unfortunately this idea is rejected. Head of Sampang district who initially had considered the existence of the temporary shelter remain forbid Islam Shia to return back to their place of origin, the reason is that it could provoke clashes. He rejected the idea because there still local religious leaders opposed the idea.

### **Shia Follower Respons**

Even in a very hard situation Shia follower strongly reject the idea of relocation and also for the idea of transmigration. Their demands were immediately being returned to their village in order to start a livelihood, evethough from zero.

According to one of the Shia representative, Iklil Milal, the most urgent now is revocation of MUI Sampang Fatwa that declared Shia is a misguide teachings. According to him, this fatwa is the cause of violence against Muslim Shia citizens. As long as the fatwa is not revoke the safety of Shia Islam are not guaranteed. Wherever they may will get violence action, because they are considered as a problem.

Nobody knows how long Islam Shia people will continue to live as refugee in GOR Sampang. The central government has stated that the settlement of Shia is East Java Provincial Government and the Government of Sampang responsibility. Yet seeing the government action, it seems that there will be no solution for the settlement in the near future. Even it seem that the settlement of Shia case will be postpone in very long period of time as Ahmadiyah case that still live as refugee in Transito, Mataram, NTB. As long as the government is hiding by using the majority point of view, it will be always no way out for settlement. []



## CHAPTER 5

# Conclusion and Recommendation

## A. Conclusion

1. In macro level, the condition of freedom of religion / belief in Indonesia is not progressing due to continued maintenance of a variety products of legislation which is discriminatory, such as UU No.1/PNPS/1965, The Joint Decree of Minister of Religious Affairs and Ministry of Internal Affairs, SKB Ahmadiyah restrictions, and other discriminatory local regulations. All products in the law have become a tool of legitimacy for Islamic organizations and communities hardline to violence, which is increasing in 2012.
2. On this year, the SETARA Institute noted about 264 violations of freedom of religion / belief with 371 forms of action, which is spread in 28 propinsi. There are 5 provinces with the highest offense level they are West Java (76), East Java (42), Aceh (36), Central Java (30), and South Sulawesi (17). Should be noted, the province of West Java is the “champion” of 2011 by having 57 cases.
3. The most important occurred in October (40) and May (38) incidents. Then, consecutively occurred: August (28) incidents, September (25) incidents, November (24) incidents, April (23) incidents, March and June, severally (22) incidents, January (21) incidents, July (11) incidents, February (8) incidents and December

- (2) incidents. The small number of incidents on December, it was ver possible because the monitoring was just done within December 15, 2012.
4. From 371 of violations on freedom of religious/ beliefs, there are 145 (39%) of state actions which involved the apparatuses to become the actors. From 145 of state actions, 117 of them are *by commission* actions and 28 of them are *by omission* actions. The actions which included as the state active actions are the provocatiive statements of public figures and triggering the condoning or being the justification of violations.
  5. To the violations which involving the state as the actors, the legal Framework to account it is human rights law which pressing the state to obey the ratification of international covenant and convention of human rights. The institution of state which doing the violation mostly are: police department (40 cases), Regent Governrment (28), City Government (10), Ministry of Religion and Camat, severally (8), and Attorney (6 cases).
  6. From 371 the violations on freedom of religious/ beliefs, there are 226 (61%) incidents which done by the citizens, even in the form of criminal actions (169) cases, *condoning* which done by the public figure (15) incidents, and intolerant (42) cases. The catagory of crime, the legal Framework that could be used to justifying it is Criminal Law. And for the catagory of condoning and intolerant even legally has not the solution, ethically could be questionable as the *hate speech* (hatred statements), which in the certain chances can be questioned by using the criminal law.
  7. The perpetrator of violation in this category is an individual citizen or individual who joining an organization. Some group with most violation cases did consecutively: Society/residents (76) incidents, Indonesian Ulema Council/ *MUI* (25) incidents, Front Pembela Islam-FPI (24) incidents, Gabungan Ormas Islam (10) incidents, and educational institution (9) incidents. The high number of

actions done by the citizens explained at least two things: *First*, the high number of intolerant rate in the midst of public. This phenomenon also intimates the weakness of basic capital of peaceful *co-existence*. For that, the state should be present as the strong tolerant agent. *Second*, the amount of space given by state to the intolerant actors such as a certain religious organization. For example, *FPI* which oftenly performs “exceed” than the state apparatuses. In this context, including *MUI* which oftenly “provokes” intolerant action throught issued fatwa, but when violent excesses from that fatwa, they “give up” – such as what happened to some violent cases on Ahmadiyah in West Java.

8. The documented incidents in 2012 leads to main groups: Christian followers (50) incidents, Minority Religious Sects (42) incidents, Shia (34) and Ahmadiyah (31) incidents. As much as (42) individuals experienced the violations on freedom of religion/beliefs. Generally, the victims accepted the fair rights as guaranteed in the Framework of human rights, such as compensation, rehabilitation, and restitution. But what was happened oftenly, the state “further complicate the situation on them”, like criminalization as well (court verdict and detention), accusation, and omission in facing the attackers.
9. In 2012, SETARA Institute coted 38 house of worship which experiences the disruption in some forms, they are: assault, sealing, restriction, construction and others. From 59 of those house of worship, majority befalls the Christian (25) worshipping houses, Ahmadiyah (5) worshipping houses, Islamic Religious Sects (3) worshipping houses, Buddhist (2) worshipping houses, Shia (1) worshipping houses, and Konghucu (1) worshipping house.
10. Besides being the result of the intolerant and discriminative regulations which contrary to the state constitution, the violations also caused by lack of sensitivity and alignments of Minister of Religion, Minister of Internal Affairs, Minister of Law and Human Rights, and also the President of Republic of Indonesia

who are completely not supporting or even tend to perform contraproductively to the guaranty promotion of freedom of religious/ belief. Besides the Minister of Religion who denies all of the violences, the President, Susilo Bambang Yudhoyono also seem like doesn't care to the violations on freedom of religious/ beliefs.

11. There are no meaningful initiatives and breakthroughs in overcoming violence experienced by various Christian congregations, Shia, Ahmadiyah and other minority groups. SBY even always boast that during his leadership no gross human rights violations occurring. Though violations of freedom of religion / belief is a basic and fundamental freedoms can not be delayed the fulfillment. SBY perspective on human rights is limited to the acts of violence committed by the security forces alone is a fundamental mistake to understand the concept of human rights. During his leadership is precisely the fundamental rights to freedom of religion / belief has been violated.
12. Political party as the political element (along with the political elite in it) has absolutely no contribution to the advancement of freedom of religion / belief. Sporadic response of political parties leaders, are not tested in the form of work in parliament which questioning the government's performance in the promotion of freedom of religion / belief. Political parties fail to perform the regeneration diversity in the party that is conducive to the promotion of tolerance. Political parties also failed to carry out the functions of aggregation and articulation of the aspirations of the public who threatened civil liberties. In fact, in a pragmatic discrimination against minority-at least in the form of condoning-politicized as an instrument to gain votes (vote getter) of the majority of the regional political contestation.
13. Under these conditions, the freedom of religion / belief in Indonesia has not experienced significant progress. For six consecutive years violations of freedom of religion / belief remains stagnant even tends to increase to the worrying point due to the accumulation of state actor's failures.

14. Just as in 2011, President Susilo Bambang Yudhoyono in 2012 showed more verbal speech leadership—he prefers to give speech about tolerance than working seriously and scalable to create tolerance by providing freedom guarantees of its citizens. Without *political will* and seriousness of Head of State to give freedom guaranty, so the tolerance just being the words from a President which has no contribution to the human rights. Along 2012, not less than 15 times Presiden Susilo Bambang Yudhoyono gave messages of tolerance in every moments—lebih sedikit dari tahun 2011, di mana Presiden Susilo Bambang Yudhoyono menyampaikan pesan toleransi sebanyak 19 kali.
15. In addition to current events throughout 2012, the political strength of words over religion / belief is also demonstrated by the completion of handling a number of cases of violations freedom of religious/ belief to a protracted, repetitive, and continuously producing and reproducing public anxiety. In 2012, 20 Christian places of worship sealed in Aceh, the case of GKI Taman Yasmin Bogor unresolved, Shia Sampang repeated attacks which even cause 2 fatalities, Hamamah (50) and Husin (45), neglect of Shia Sampang refugees, displaced Ahmadiyah in Transito Mataram, and the heinous murder on Tgk. Aiyub Syahkubat (47) leader of the religious sect considered heretical, and Muntasir (26) followers Aiyub, in Bireun, Aceh. Religious tensions have also been a number of victims from the perpetrators of such attacks occurred in attacks against Teungku Aiyub in Bireun who also claimed one casualty, namely Mansur. Whilst in Sukabumi, Ustadz Endin Jainudin, activists of Islamic Reformist Movement (LINE) who disagreed with the religious sect that taught by Sumarna, also allegedly killed by a follower of Sumarna.
16. No progress can be noted in the Report on the Conditions of Freedom of Religion / Belief 2012. The rest of the leadership of Susilo Bambang Yudhoyono is less than 2 years is enough to make a real breakthrough that not only will be a legacy for his leadership,

but also hasten the elimination of discrimination on religion / belief. Forming the Regulation of Religious Discrimination, action against perpetrators of violence and discrimination is fair by courts, take action against ministers and local government acts and policies issued discriminatory and intolerant, providing holistic recovery for victims, are a number of steps that can be taken by the President, as head of government as well as the Head of State. However, it was evident all along that President Susilo Bambang Yudhoyono did not have a concern and are reluctant to take the initiative in resolving apparent violation of freedom of religion / belief.

17. Various reports of the condition of freedom of religious/ belief, plus the facts of violations religious freedom occurring at least 6 years tapers to the conclusion that the regime Susilo Bambang Yudhoyono, after the year 2011 has chosen the way of real political discrimination in regulating the life of religion / belief, minor situations freedom of religion / belief in 2012 also indicate that president Susilo Bambang Yudhoyono is a leader without initiative and leadership in promoting freedom of religious/ belief.
18. Political discrimination manifests itself in the formation of policies of discriminative politic, omission of discriminatory practices, maintain the state apparatus which failed to eliminate discrimination, and denied that there had been discrimination, including denying the facts of human rights violations. While predicate 'The President without Initiatives' refers to the absence of affirmative action from the president to address the violations of freedom of religious/ belief. Even on a bright and events are repeated. Leader without leadership seen from the absence of clear directives and instructions and be guided by local government officials to overcome the violations of freedom of religion / belief. The local government was allowed to apply a politicization of religious identity for political self-interest and group and work under the pressures of majority.

## B. Recommendation

1. President Susilo Bambang Yudhoyono, as the head of state should take advantage of the rest of the political leadership that is less than 2 years to: 1) complete a variety of violations of freedom of religion / belief in particular: related incidents of Ahmadiyah pilgrims, incidents related to the place of worship demolition, with a firm action against the perpetrators of violence, both individual and organization, 2) overcome neglect Shia Sampang and Ahmadiyah refugees in Transito Mataram, 3) take action to menanganan discriminatory policies in various areas, and 4) taking policy as head of state to stop the criminalization of victims of violations freedom of religious/ belief.
2. The Government and Parliament should initiate the establishment of Law on the Elimination of Discrimination religion/belief that principles was derived from the constitutional guarantees in the 1945 Constitution as well as by adopting human rights principles in a holistic manner.
3. The Supreme Court should create a policy framework (eg in the form of Supreme Court Circular Letter) to be guided judicial institutions under it to use the article of the 1945 Constitution which guarantees freedom of religion / belief, along with the Act in accordance with the 1945 Constitution (ie Act No. 39 of 1999 on Human Rights and Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights) as the legal basis for equitably decide matters relating to freedom / religious institutions at the level of public justice, appeal, and cassation .
4. House of Representative (*DPR RI*) gives serious attention and exercises the supervision for the constitutional implementation rights of citizens to be independence in actualizing their rights of freedom of religious/belief with the parliamentary caucus for the freedom of religious/ belief and set the supervision agenda and legislation conducive to the freedom of religious/ belief.

5. The Police of Indonesian Republic drafting internal policy which conducive for developing the guaranty freedom of religious/ beliefs by holding particular training for police apparatuses about pluralism and freedom of religious/ belief, including the conflict solvement steps and/or violation through the religion's name.
6. The government and House of Representative (DPR RI) follow-up some recommendation given by Human Right Council of UN in *Universal Periodic Review* (UPR) on May 2012.
7. The government should invites Special Rapporteurs from UN which concern on Freedom of religious/ beliefs and give the widest access to investigate every violations of freedom of religious/ beliefs.

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