

CONSTITUTIONAL PROTECTION OF RELIGIOUS FREEDOM AND BELIEF FOR INDIGENOUS PEOPLES IN INDONESIA

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ABSTRACT

Protection of the constitutional right to religious freedom for the indigeneous people is still weak. Report of the National Commission on Human Rights and the Wahid Institute on cases of violations of religious freedom in 2015 showed an increase in both the complaint and action regarding violations of religious freedom. In fact, freedom of religion and belief is a constitutional right of every citizen that can not be reduced. This study aimed to analyze on the implementation of legal protection against religious freedom for indigenous people in Indonesia; and how the government is responsible for the protection of religious freedom for indigenous peoples. This study uses the juridical-normative research. The results of this study indicate that many laws that give limitation to fulfill the right of religious freedom for indigenous peoples. In addition, government policies that govern the "official religion" and "religious non-official" cause faiths and beliefs of the indigenous people are only considered a cultural heritage that should be preserved. In addition, the government also tend to discriminate in providing facilities to the groups of indigenous people to carry out their religious activities, where only the official religion is given official facilities.

Keywords: constitutional rights, freedom of religion and belief, customary law community, discrimination

INTRODUCTION

Freedom of religion and belief is one of the liberties guaranteed in full in the Indonesian constitution. Article 28 E of paragraph (1) and (2) of the 1945 Constitution specifically reflects the basic right to freedom of religion and to worship according to religion and belief respectively¹. This matter is also regulated in Article 29 paragraph (1) of the 1945 Constitution which states that "the state is based on *Ketuhanan Yang Maha Esa* ", while in paragraph (2) mentioned; "The state guarantees the freedom of each citizen to profess his own religion and to worship according to their religion and belief". The consequences of the guarantee in the constitution, making the right of every citizen to live the teachings of religion, belief and ritual worship has become a constitutional right. As a constitutional right, the state has an obligation to guarantee, protect and fulfill these rights, to realization peace, and harmony within the frame of the life of society, nation and state².

As a pluralistic country, religion and beliefs held by the people of Indonesia should be able to prove that a plural society have coexisted in difference. Unfortunately, in reality many violations to the people in running belief rights. Report of the National Commission on Human Rights on cases of violations of religious freedom in 2015 showed an increase of 74 complaints in 2014 to 87 with 93 violations of freedom of religion and belief. Meanwhile in a statement to *The Wahid Institute*, that during the year 2015 recorded 190 events with 249 actions. This number is up 23 percent from 2014 in which the number of events reported 158 events with 187 violations of freedom of religion and belief³.

Indeed religions in Indonesia reflects the plurality of faith and belief in God. Islam, Protestant, Catholic, Hindu, Buddhist, and Confucian often referred to as the state religion because this is what many religions six receiving facilities in particular by the state. Although all six religions are gaining the attention of the state, but the adherents of other religions, such as Javanese, Kaharingan and other indigenous religions inherited by the ancestors are given the freedom to be embraced and believed by the public. In other words, religious values, customs, and culture is a manifestation of a spiritual view of life and ethos of the society is the crystallization of learning from the interaction and internalization of the values of human beings on the environment from generation to generation.

But in its development, the government no longer recognizes the cult as a stand-alone entity outside the religion, but sees it as a culture. Furthermore, the government invites and even half urged adherents of belief to return to their parent religion⁴. The appeal of this government would lead to new problems is more crucial in the community. The adherents of belief reject returned to the six religions officially recognized by the government, namely Islam, Catholic, Christian, Buddhist, Hindu and Confucian.

¹ Carsi, Ria Asmi.2013. *Inkonsistensi Perlindungan Hukum Bagi Penghayat Kepercayaan Terhadap Tuhan Yang Maha Esa*, artikel dalam Jurnal Keadilan Sosial Edisi III Tahun 2013, page 39-40.

² Saefuddin, Lukman Hakim. 2009. *Indonesia adalah Negara Agamis: Merumuskan Relasi Agama dan Negara dalam Perspektif Pancasila*, Makalah untuk "Kongres Pancasila" hosted by Universitas Gadjah Mada Yogyakarta dan Mahkamah Konstitusi Republik Indonesia, di Yogyakarta, 30 Mei - 1 Juni 2009, page 4.

³ Lihat The Wahid Institue, *Laporan Tahunan Kebebasan Beragama/Berkeyakinan dan Intoleransi Tahun 2014*, Jakarta, 2014, page 21

⁴ Mulia, Siti Musdah. 2006. *Menuju Kebebasan Beragama*, Makalah disampaikan pada Seminar dan Lokakarya Komnas HAM dengan tema Kebebasan Beragama dan Kepercayaan di Indonesia, Palu, 11-12 September 2006, page 51.

According to them how their faith will be restored official religion, because its logic is precisely why religion and their belief that religion deserves to be called the mother in Indonesia. Therefore, the six major religions recognized by the government according to them is nothing but imported religion, not the original religion archipelago, their religion has long existed in the country that when it has not become Indonesia.⁵

Seeing this, the series of acts of intolerance and discrimination from both the government and the public have little shows that the portrait of diversity has been degraded. Although in the era of democracy, Indonesia actually make progress on the issue of religion in the adoption freedom rights of religion and belief. However, there are still many problems to be solved ranging from regulatory issues to violence against freedom of belief and religion is increasing. Problems of religious freedom is not only a state problem, and it is certain that there is no single solution to get out of the problem is so complex.⁶ From here, we can see that the protection of the constitutional rights of Indonesian citizens to religious freedom is still far from expectations.

RESEARCH METHOD

Legal research with socio-juridical approach is a combination of field research, as well as literature with a naturalistic approach.⁷ Sources and types of data is divided into primary, secondary and tertiary. The primary data obtained through documentation study and research library, consisting of primary legal materials (legislation and legal documents related to the topic), secondary law (written references, books and documents public complaints, relevant with a research topic), and tertiary legal materials (dictionary of law, and statistics). Secondary data in the form of statements that contain words or stories from informants study were selected by *snowball sampling* through open ended interviews and depth (*focus group discussion*). The informant, as the main data sources were selected *purposively*. The analysis is descriptive qualitative with models of research-grounded, using cross-checking technique in the examination of the validity of data that is consistent with the reference triangle, then do the tactics that stimulate the chain of evidence, closed with a dialogical interpretation. Analysis of data using interactive models of analysis, including the reduction of data, display data and concluding drawing.⁸

RESULT AND DISCUSSION

1. The constitutional guarantee of freedom of religion and belief in the constitution of the Republic Indonesia 1945 and other Legislation

The constitutional protection of citizens in running various activity in religion and beliefs contained in the constitution and laws, even international covenants. In Constitution of 1945, recognition of religions and beliefs have first existed before the UDHR in 1948, ie on the national principle of Pancasila that mentioned in the first principle "*Ketuhanan Yang Mahaesa*," furthermore mentioned in the preamble of the 1945 Constitution "*on the grace of Allah Yang Maha Kuasa. . . "which is a recognition of the Indonesian people against the power of God, that the nation of Indonesia recognizes the establishment of the nation is due to the grace of God. The implication that the state recognizes the existence of God, then the state must be able to protect, respect and fulfill its citizens to worship God.*

Furthermore, a series of state guarantees on freedom of religion and belief contained in the constitution of Indonesia, namely Article 28E paragraph (1) and (2), Article 28I paragraph (1), Article 28J paragraph (2), and Article 29 paragraph (1) and (2). Article 28E paragraph (1) and (2) generally reflects the basic values of Ketuhanan Yang Maha Esa in a more detailed form of freedom of religion and to worship according to their religion or belief respectively. While Article 29 paragraph (2) set up a special as there are the word "*state guarantees the freedom of each citizen to profess his own religion and to worship according to his religion and belief*".⁹ This means that the state has an obligation to guarantee and meet citizens in worship accordance to their religious and belief. It shows that automatically the freedom of religion and belief is a constitutional right of citizens that should not be reduced no matter how small.

State guarantees the freedom of religion and beliefs of citizens is also present in various law has namely Act No. 39 of 1999 on Human Rights, Article 22 paragraph (1), is mentioned; "*Everyone is free to embrace their religion and to worship according to his religion and belief*". Article 22 paragraph (2), is mentioned; "*The state guarantees freedom of every person to embrace their religion and to worship according to his religion and belief*". Act No. 7 of 2012 on Social Conflict Management also give attention to the possible emergence of problems connected with religion. These laws look at issues of religion as one of the potential conflicts either through enmity between religious communities and/or the Inter-religious. However, this legislation confirms that the handling of the conflict that comes from religious matters should reflect the principle of human rights.¹⁰

⁵ Ibid.

⁶ Mulia, Siti Musdah. *Potret Kebebasan dan Berkeyakinan di Era Reformasi*, makalah yang disajikan dalam Lokakarya Nasional Komnas HAM dengan tema Penegakkan HAM dalam 10 Tahun Reformasi, di Hotel Borobudur, Jakarta, 8-11 Juli 2008, hlm. 32.

⁷ Muhadjir, Noeng. 1998. *Metodologi Penelitian Kualitatif*. Yogyakarta: Rake Sarasin. page 47

⁸ Nazir, Moh. 1988. *Metode Penelitian*. Cet. Ke-3. Jakarta: Ghalia Indonesia. page 235

⁹ In UUD 1945 is known two interchangeably terms: "*kemerdekaan*" dan "*kebebasan*". Foreexample in article 28 I (1) and article 29 (2). The word "merdeka" or "kemerdekaan" can be found in article 28E (1) and (2). The similiar term of "kemerdekaan" in the article 28 I UUD 1945 changed with the "kebebasan" in article 4 Human Rights Law Number 39 year 1999 on Human Rights. See The Wahid Institute, page 5.

¹⁰ See Arif Wahyudi, *Quo Vadis Jaminan Konstitusional Hak Atas Kebebasan Beragama/Berkeyakinan: Menguji Peran Negara*, Jurnal Keadilan, Jakarta, Edisi III, 2013, page 4.

In 2005, the Government of Indonesia Meratification ICCPR (1966) adopted in Act No. 12 in 2005 and the ICESCR (1966) adopted in Act No. 11 in 2005. In each of the ratification of the Covenant, the Indonesian government does not do anything except make a declaration reservation regarding the right to self-determination (Article 1). With the ratification of the Covenant, Indonesia is bound as a State Party to the Treaty of human rights and must adhere to implement the contents of both the Covenant and to submit periodic reports to the UN Human Rights Treaty Body.¹¹ Act No. 12 in 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR) Article 18 paragraph (1), stated: "Everyone has the right to freedom of thought, conscience and religion. This right includes *freedom to adopt or accept a religion or belief of his choice, and freedom, either individually or jointly with others, and either in public place or enclosed, to practice a religion or belief in worship activities, observance, practice and teaching.* "

While Article 18 paragraph (2), is mentioned; "*No one should be forced to interfere with his freedom to adopt or accept a religion or belief of his choice*". The ratification of this convention means that the Indonesian government has insisted that the conception of human rights Indonesia is already universal and international, and the ratification of the product has to have binding legal force.¹²

Freedom of religion and belief as well as well-organized in the UDHR was adopted in 1948 as one of the forms of human rights, namely in Article 18 reads: "*Everyone has the right to freedom of thought, conscience and religion; in this case, including change religion or belief ...* ". in addition, also arranged in a series of articles of the 1981 Universal Declaration on the Elimination of Intolerance and Discrimination Based on Religion. That is; Article 1 (2) states: "*no one can be subjected to coercion which would reduce the freedom to follow a religion or belief according to his choice*". Article 6 (a) *to worship or assemble in connection a religion or belief and establish and manage places for that purpose* ", the letter (c) *acquire, create and use adequate equipment and materials necessary with regard to ceremonies or customs a religion or belief* ", the letter (h) *respecting the days of tradition and celebrate holidays and ceremonies in accordance with the teachings of the religion or beliefs*", and letter (i) *establishing and managing communications with the person and society in matters of religion or belief at the national and international levels* ".

According to *The Wahid Institute*, when viewed provisions of the Indonesian constitution, human rights Act, the Universal Declaration and the ICCPR, then there are two rights of religious freedom, namely freedom of internal and external, namely:

- a. Internal Freedom (***Forum Internum***), ie containing freedom of conscience to believe, embrace and move religion and belief, and the right to maintain or moved embrace of a religion or belief. Freedom rights have been recognized internationally and nationally as one of the elements of human rights that can not be reduced and restricted, even in a state of war and public emergency though, state a must not intervene much less force the forum internum, as regulated in Article 28 paragraph (1), Article 4 paragraph (2) Covenan Civil and Political Rights and Article 74 of the Law of Human Rights
- b. External freedom (***Forum externum***). Namely freedom either alone or together with others, in public or in the private region to manifest religion or belief in the form of teaching, practice, worship and arrangement. This includes the freedom to establish places of worship, freedom to use religious symbols, the right of freedom to observe religious holidays, the right of freedom to establish religious leaders, the right to teach and spread the teachings of religion, the right of parents to educate religion to his son, the right to establish and manage religious organizations.¹³

2. Recognition and Restrictions For Religious Freedom And Being Confident Indigenous Peoples

In various legal provisions regulating the constitutional protection of religious freedom in Indonesia either in the Constitution 1945, the Human Rights Act and other legislation, the government is more concerned about religion than belief/confidence. In fact, the number of cult that is still embraced by the people of Indonesia in quantity exceeds the number of religions officially recognized by the state. Based on the report from the Ministry of Culture and Tourism, in 2011 there were nine million people of trust penghayat in 248 organizations status of the center and the branches status of the organization 980 in 25 provinces in Indonesia. From this report it is known that the government only recognizes the cult as a stand-alone entity outside the religion, and sees it as a culture. Therefore, it is not surprising that the legal umbrella instead of Section 28E (1) and Article 29 but on Article 18B paragraph (2) of the 1945 Constitution, mentioned that "*the state recognizes and respects customary law units and their traditional rights along still alive and in accordance with the development of society and the principles of the Unitary Republic of Indonesia* ".

If so, then there are some requirement which an entity can be classified as a community culture of customary law, namely; (1) all indigenous people there; (2) in accordance with the times; (3) in accordance with the principles of the Republic of Indonesia; and (4) shall be regulated by law. The existence of this requirement led to the existence of indigenous communities are very dependent on strong political will. It can be seen with the funds clause "*regulated by law*". As a result, in case of violation of the constitutional rights pertaining to indigenous peoples' rights including freedom of religion and belief, it will be difficult to get protection from the state.

¹¹ Komnas HAM, *Upaya Negara Menjamin Hak-Hak Kelompok Minoritas di Indonesia : Sebuah Laporan Awal*, Komisi Nasional dan Hak Asasi Manusia, Jakarta, 2016, page 18.

¹² Shanti Rachmadsyah dalam M. Syafi'ie, *Ambiguitas Hak Kebebasan Beragama di Indonesia dan Posisinya Pasca Putusan Mahkamah Konstitusi*, Jurnal Konstitusi, Vol 8 No 5, Oktober 2011, page 683.

¹³ The Wahid Institue, *Op.Cit.*, pages 6-10.

In Article 51 (b) of Act Number 24 in 2003 about the Constitutional Court, customary law community can become a petitioner in constitutional case. However, if it is linked with the prerequisite "*recognition regulated by law*", the customary law community who have not obtained the legality of the state can not defend their constitutional rights. This then lead to new problems, namely when the violations of constitutional rights to religious freedom of indigenous peoples by the government, which can not be resolved through the constitutional court.

In fact, Article 28E paragraph (1) and (2) of the 1945 Constitution affirms that the right of religion or belief and worship according to their religion or belief it was included in human rights. This provision is further stipulated in Article 28 paragraph (1) and (2) of the 1945 Constitution which mention that the rights attaching to the right of religious freedom can not be revoked under any circumstances and the right not to be discriminated against on the freedom of religious and belief. Meanwhile, the Human Rights Act has also recognized that religious freedom as *non-derogable Rights* as defined in Article 4, is mentioned; "*The right to life, freedom from torture, the right to personal freedom, freedom of thought and conscience, freedom of religion,, is a human right that can not be reduced under any circumstances and by anyone*".

From the above limitation provisions can be seen that although unequivocally there is a guarantee that religious freedom can not be reduced by anyone and in any form, but the limitations are also set out in the legislation. It can also be ambiguity for the implementation of the right to religious freedom must be based on the ruling political atmosphere. Article 28J paragraph (2) of the 1945 Constitution which limits rights guarantees, mentioned: "*In exercising their rights and freedoms, everyone shall be subject to the restrictions established by law with the sole purpose of securing due recognition and respect for the rights and freedoms of others and to meet the demands of a fair in accordance with considerations of morality, religious values, security, and public order in a democratic society*".

The same restriction is also stipulated in Article 73 of the Human Rights Act and Article 18 paragraph (3) of the ICCPR. Article 73 The Human Rights Act, mentioned: "*The rights and freedoms set forth in this law can only be limited by and under the laws, merely to ensure recognition and respect for human rights and fundamental freedoms of others, morality, public order, and national interest*". Article 18 paragraph (3) of the ICCPR, mentioned: "*The freedom to practice religion or beliefs may only be restricted by law are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others*".

3. State Intervention Against Religious And Being Confident Kebe Bashan

1945 Constitution, the Human Rights Act, ICCPR and UDHR, putting the government as an actor who assumes the obligation to protect, respect and fulfill the constitutional rights of citizens to freedom of religion and belief. However, based on the report of *the Wahid Institute* in 2015 says that the actor violations of religious freedom is still dominated by government actors. This is not surprising because the government as an actor tolerance violation of religious freedom continues to increase every year. This is quite surprising, because the government is supposed to protect and ensure the public in carrying out religious activities and beliefs, precisely act violations both verbal and non-verbal.

Issues relating to religious freedom in Indonesia actually includes three factors are interrelated to one another, namely *First*, the issue of legislation; *second*, the role of state officials in law enforcement; and *third*, an understanding of the nation-states by the public or citizens faiths, indigenous stakeholders and members of racial or ethnic origin.¹⁴ When the government can not protect the rights of its citizens, the state has failed in organizing the life of the nation and had reneged sublime of the founding fathers. Whereas in accordance with one of the state's goals in the Preamble of 1945 Constitution is "*to protect the entire Indonesian nation and the entire homeland of Indonesia,*". Some products which tend to be discriminatory government laws and lead to intolerance include:

a. Application of Act No. 1/PNPS/1965 about the Prevention of Abuse and/or Blasphemy

The polemic against this regulation primarily on 1965 PNPS Act, which became the main umbrella for various other regulations related to religion and belief. This law is considered in direct conflict with the various human rights instruments related to Freedom of Religion and Belief. These contradictions among others:

- 1) This law limits the main religion in Indonesia to six religious groups: Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucius although too recognize presence confidence apart six mainstream religions. Instrument human right recognize freedom individual for hug religion and conviction any even for not hug religion (atheist).
- 2) This law gives privileges to the six religions with recognized the right to receive assistance and protection of the state, while the human rights instruments prohibit discrimination based on religion and belief; and
- 3) This law is considered formal and substantive defects. Disability is located on the main materials such as religious restrictions set on explanations which later became the reference determining religious beliefs, while the system of law in Indonesia explanation is not an official interpretation of legal norms but rather the formation of legislation. Besides this law also raises the norm for other laws that are considered unusual in the system of legislation. Disability also resulted in a legal battle in the regulation of laws giving rise to legal uncertainty. Meanwhile, human rights instruments require legal certainty in the context of compliance with human rights obligations.¹⁵

¹⁴ M. Amin Abdullah, *Kebabasan Beragama atau Berkeyakinan Dalam Perspektif Kemanusiaan Universal, Agama-agama dan Keindonesiaan*, makalah, disampaikan pada Training HAM Lanjutan Untuk Dosen Hukum dan HAM, kerja sama Pusat Studi HAM Universitas Islam Indonesia dan Norwegian Centre For Human Right, Yogyakarta, 8-10 Juni 2011, page 16.

¹⁵ Arief Wahyudi, Op.Cit., hlm. 10-11.

While derivative of Act No. 1/PNPS/1965, there are a number of laws relating to religion that has legal protection under Act No. 1/PNPS/1965 that restricts the freedom of residents of Indonesia in the matter of religion, including:

- 1) Minister of Religious Affairs Instruction No. 4 in 1978 on Policy regarding the streams of Faith.
- 2) Minister of Religious Affairs Instruction No. 14, 1978 on Follow-up instruction of the Minister of Religion No. 4 in 1978 on Policy regarding the streams of Faith.
- 3) Letter Minister of Religious Affairs to the Governor of East Java No. B1/ 5943178 on Issues Concerning Beliefs.
- 4) Attorney General Decree No. Kep. 089/JA/9/1978 on Circulation Prohibition the use of Marriage Certificate Issued by Center Foundation of Yogyakarta Dharma Sрати.
- 5) Letter of the Minister of Home Affairs to the Gubernurs and the Regent/ Mayor throughout Indonesia, no. 4771286/1980 on Marriage Registration for the seeker of Belief in Tuhan Yang Maha Esa.
- 6) Letter of the Minister of Religious Affairs to Minister of Home Affairs no B.VII/59961/1980 regarding Marriage, Identity Cards and the death of the Belief penghayat in Tuhan Yang Maha Esa.
- 7) Minister of Home Affairs No. 221a 1975 on Registration of Marriage and Divorce.
- 8) Attorney General Decision No. : KEP-108/JA/5/1984 on the establishment of the Coordinating Team for Monitoring Mystical Beliefs in Society.
- 9) Instruction of the Minister of Religious Affairs No. 4 1978 on Policy Regarding the Flow-Beliefs.
- 10) Instruction of the Minister of Religious No. 8 of 1979 on Development, Mentoring and Supervision of the organization and flow within Islam is incompatible with the teachings of Islam.¹⁶

b. Act Number 23 in 2006 concerning Population Administration

This regulation was originally intended to guarantee equality of every citizen in obtaining their rights, including on the belief and trust of minorities. On the other hand, in the settlement documents are mechanisms in the service process and recording in a database of Population against all belief that there is still a distinction between religion "*recognized*" and "*unrecognized*". The provisions of Article 8 paragraph (4) mentioned that the agency Implementing carry out the affairs of the Population Administration with an obligation which includes specific actions with the "*conditions and procedures for Event Logging is important for residents whose religion is not recognized as a religion based on the provisions of legislation or for penghayat trust guided by the legislation*".

The phrase about '*non-recognized religion*' also appears associated with the religion column in Card Family, who formulated that information concerning religion column for residents whose religion is not recognized as a religion based on the provisions of legislation or for penghayat trust is not filled, but still be served and Population recorded in the database.¹⁷ Similarly, the documents associated with the ID card, information about the religion for residents whose religion is not recognized as a religion based on the provisions of legislation or for penghayat trust is not filled, but still be served and recorded in the database population.¹⁸

This is certainly an opportunity discrimination and make it difficult for the marriage service seeker, for example related to the validity of marriages by recording penghayat organizations and leaders. Article 81 Government Regulation 37 of 2007 states: (i) marriages performed in the presence penghayat confidence and leaders trust: (ii) penghayat leaders trust established by the organization penghayat to fill out and sign a marriage; and (iii) the belief penghayat leaders registered in the field ministry and its work are technically foster penghayat organization Belief Against Ketuhanan Yang Maha Esa. This means that marriage is valid only if endorsed by leaders seeker who has registered organization.

4. Government Role In Ensuring Fulfillment of the Rights of Religious Freedom

The 1945 Constitution amendment is believed to be *the strating point* for strengthening of democracy in Indonesian based on human rights protection.¹⁹ Although there is a commitment to the protection of human rights, Freeman never comment on the discrepancy between the concept of human rights with the reality of human rights violations. He said that *human rights violations are facts than can be, and sometimes are, best Expressed in terms of numbers, but there is uneasy relationship between our knowledge of the numbers and our understanding of what they mean.*²⁰ This is due to two fundamental, namely the first, the lack of understanding of the philosophical content of the substantive content of human rights.²¹ Second, the weight of the substance of human rights is also considered to have an understanding of bias due to the sharp socio-political intrigue that surrounded him.²²

Shape mismatch between concept and practice of human rights that occurred in Indonesia is related to the existence of the community in carrying out religious activities and conviction. The 1945 Constitution has guaranteed protection, recognition, and respect for customary law community in Article 18B (2) and Article 28I paragraph (3). Similarly, some other law that guarantees protection, recognition, and respect for customary law community, as in Article 6 of Act No. 39 of 1999 on Human Rights,

¹⁶ Siti Musdah Mulia, *Op.Cit.*, page 54-55.

¹⁷ Lihat Pasal 61 ayat (2) UU No. 23 tahun 2006

¹⁸ Lihat Pasal 64 ayat (2) UU No. 23 tahun 2006

¹⁹ El Muhtaj, *Hak Asasi Manusia dalam Konstitusi Indonesia*, Prenada Media, Jakarta, 2005, page14

²⁰ Michael Freeman, *Human Rights: An Interdisciplinary Approach*, Cambridge Polity Press, Cambrdige, 2004, page 110.

²¹ *Op.Cit.*

²² Majda El Muhtaj, *Op.Cit.*

Regulation of the Minister of Agrarian/Head of National Land Agency Number 5 of 1999 on Communal Land, Regulation of Affair Home Minister No. 37 of 2007 on the Empowerment and Development of Wildlife and customs, customs of Indigenous Peoples and Institutions in the Region. In addition, the government is still trying to formulate Law draft of Indigenous People who have been entered in the National Legislation Program since 2004.²³

The a variety of legal protection, textual discussion of protection, recognition, and respect for customary law community is still very minimal and limited to the clauses in the legislation of certain Law. The regulations still sectorally in certain Law. The majority of the topics raised with regard to communal land. While the rights of indigenous people's others, such as the right to freedom of religion and belief were not supported by the government in a special regulation. The absence of norms regulating religious beliefs, constitutionally has hurt the rights of indigenous peoples. For example, customary law communities of Bedouin in the district of Lebak, Banten, where some of them embrace religious beliefs of Wiwitan Sunda. The religious beliefs should be able to be accommodated by the government.

Specifically to accommodate the religious beliefs, the government should be able to issue a decree between Ministry of Home Affair and Ministry of Religious Affairs to provide confidence in the selection of Religion column religion on the ID card or the Presidential Decree. Thus, the indigenous people's own particular religious beliefs, are not forced to fill it their religion that they profess. The existence of the phrase "trust" as well as increase the number of official religions recognized by the state, but certainly not going to add more number that comes after the official religion. This is because, Religious Belief has covered some of the new religion, which may appear, for example, Jews, Shiites, Ahmadis, kejawen, Sunda Wiwitan and so forth. Consequently the government must provide facilities for the fulfillment of spiritual service to the Religious Belief. The addition and the recognition of this new religion, aimed at minimizing conflicts among people due to racial issues. In addition, as concrete implementation and enforcement function of the state to guarantee the rights of its citizens without exception.

CONCLUSION

Constitutional protection of religious freedom for indigenous peoples have been arranged in a variety of legislation, both nationally and internationally. In 1945 Constitution, the guarantee of religious freedom for indigenous peoples under Article 18B, Article 28 and Article 29. While the legislation, the guarantee of religious freedom for indigenous peoples in the Human Rights Act especially regulated in Article 22 paragraph (1) and (2). In addition, the guarantee is also regulated by international guidelines, namely Article 18 UDHR, Article 18 paragraph (1) and (2) the International Covenant on Civil and Political Rights (ICCPR) and Article 1 (2), Article 6 letter a, c, h and i on 1981 Universal Declaration on the Elimination of intolerance and Discrimination Based on Religion.

However, in practice there is still a lot of discrimination that of indigenous people. Although it is already guaranteed as a human right which can not be reduced in any form and by anyone, but the legislation is that it limits the freedom that eventually give rise to ambiguity implementation of the guarantee of freedom of religion and belief as stipulated in Article 28J paragraph (2) of the 1945 Constitution that limits collateral rights.

The government also involved the most in violation of freedom of religion and belief through its intervention in laws, local regulations and policies such as the Act No. 1/PNPS/ 1965 on the Prevention of Abuse and/or blasphemy and Law No. 23 of 2006 on population administration.

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²³ Saafroedin Bahar dan Ruswiati Suryasaputra, *Arah Politik Hukum Nasional Terhadap Upaya Perlindungan Hukum Bagi Masyarakat [Hukum Adat] Berdasarkan UUD NKRI*, Jurnal HAM, Vol 8, Komnas HAM, 2012, page 14-17

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