

STATE RESPONSIBILITY IN GUARANTEE TO FREEDOM OF RELIGION ACCORDING TO PERSPECTIVE OF HUMAN RIGHTS

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***Abstract**---Guarantees regarding freedom of religion for Indonesian citizens have been included in Constitution of the Republic of Indonesia 1945. The Government of Indonesia has made various legal products in order to fulfill the right to freedom of religion and belief. In recent times, issues regarding intolerance related to religious freedom have increasingly become more frequent in several regions in Indonesia which have caused conflicts between communities. The problem discussed in this research is how the state's responsibility in guaranteeing religious freedom in Indonesia is viewed from the perspective of Human Rights (HAM). This research uses the normative juridical method. The conclusion of this research is that the Indonesian government guarantees that every citizen has the freedom to embrace his religion and carry out his worship in accordance with their respective beliefs. This is indicated by the existence of various legal products issued by the government to guarantee religious freedom in Indonesia. Various kinds of existing laws and regulations, apparently not followed by the implementation of law enforcement, so that in some regions in Indonesia there are still cases of intolerance where a group of minority religious adherents are prohibited from carrying out their worship by adherents of the majority religion.*

***Keywords**---State Responsibility, Human Rights, and Freedom of Religion.*

I. Introduction

Indonesia is a state of law imbued with Pancasila in the management of the life of the nation and state, so that even though Indonesia is not a religious state nor is it a secular state, it is an Indonesian law state, where there is a close relationship between state and religion, so in terms of religious teachings that require state intervention, then it must be regulated in statutory regulations and followed up with various government policies.³

Recognition and protection of Human Rights (HAM) is one of the characteristics of the rule of law. Pursuant to Article 1 of Law No. 39 of 1999 on Human Rights, Human Rights are human rights which are inherent in the nature and existence of human beings as God's creatures, and are His gifts that must be respected, upheld and protected by the state, the law, the government and everyone for the sake of honor and protection of human dignity and dignity.

One of the human rights that must be protected by the state is the right to freedom of religion and worship. Provisions on freedom of religion have actually been clearly regulated in the constitution and legislation in Indonesia, but in reality there are still several cases of human rights violations committed by a community against other people relating to a particular religion by restricting the rights to freedom of religion and belief such as the prohibition to worship and celebrate religious days.

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Related to violations of religious freedom, it can be seen from 2 (two) examples of cases that occurred in several regions in Indonesia. First, the case of the prohibition of celebrating Christmas that occurred in the districts of Dharmasraya and Sijunjung, West Sumatra in early December 2019. Christians and Catholics in the region were only allowed to celebrate Christmas in their respective homes. The ban is based on mutual agreement, but Christians and Catholics inevitably must continue to accept because they are a minority religion in the Region.

Second, the case that occurred in Sari Agung Hamlet, Petalongan, Keritang District, Indragiri Hilir Regency, Riau on August 8, 2019 where the Regent ordered the Civil Service Police Unit to sealing the Church in the region and also requested the termination of worship because they did not have a permit. establishment of the Church. But what is even more concerning is that the act is carried out when the community is holding a worship service so that the community is asked to disperse.

Based on the foregoing, the issue of state responsibility in guaranteeing religious freedom in Indonesia becomes very important and fundamental because it is directly related to Human Rights (HAM). In addition, every citizen has a constitutional right to be able to embrace a particular religion and worship according to his beliefs which have definitely been guaranteed in Constitution of the Republic of Indonesia 1945.

II. Literature Review

The existence of law in society, in fact can not only be interpreted as a means to bring order to the community, but also used as a means that is able to change the mindset and behavior of the community. changes in the increasingly complex social life of society also affect the workings of the law in achieving its goals. Therefore, law making should be able to eliminate any conflicts that are expected to occur in society.⁴

Indonesia is a state of law as stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia 1945. The rule of law is a state that stands on the law that guarantees justice for its citizens.⁵ The development of human rights cannot be separated from the rule of law, because one of the indicators to be called a rule of law is the guarantee of human rights, because if the rule of law does not recognize, respect, or even implement the joints of Human Rights it cannot be said as state law. Indonesia, which is a state of law that upholds human rights, has regulated human rights in its constitution, namely the Constitution of the Republic of Indonesia 1945 as well as the constitutions in other countries.⁶

The principle of legality is one of the main principles that is the basis in the administration of government and state-based law. The principle of legality is the basis of the legitimacy of government actions and guarantees of protection of people's rights. The application of the principle of legality will support the enactment of legal certainty and equality of treatment. The equality of treatment occurs because everyone who is in a situation as specified in the provisions of the law has the right and obligation to act as specified in the law.⁷

Government or State administration is as a legal subject, as a *dragger van de rechten en plichten* or supporter of rights and obligations. As a legal subject, the government as with other legal subjects perform various actions both real actions (*feitelijkhandelingen*) and legal actions (*rechtshandelingen*). Actual actions are actions that have no relevance to the law

⁴ Marwan Mas, *Introduction to Legal Studies*, Ghalia Indonesia, Bogor, 2014, p. 82

⁵ Muntoha, *Indonesia's Law State after the Amendment of the Constitution 1945*, Kaukaba, Yogyakarta, 2013, p. 1

⁶ Osgar S. Matompo, *Limitation on Human Rights in the Emergency Perspective*, Journal of Legal Media Vol. 21 No. June 1, 2014.

⁷ Muhammad Gary Gagarin Akbar, *State Administrative Law*, FBIS Publishing, Karawang, 2018, p.31.

and therefore do not cause legal consequences, whereas legal actions are actions which by nature can cause certain legal consequences (legal actions are those intended to create rights and obligations).⁸

Since the world knows and is confronted with various cultural communities, each of which has a different temperament, different social and cultural standards will be found.⁹ Religion and country are as diverse as the way they influence each other. History and circumstances determine how the relationship between religion and developing countries. the interaction between state and religion is usually liquid, it changes religion/believers and/or changes in state/politics are a response of historical behavior and sometimes, with how this history is interpreted by thinkers.¹⁰

The human rights adopted by Indonesia originate from Pancasila as the philosophy of the nation and state. Conceptually, the human rights contained in Pancasila accommodate human aspects as individual and social beings. Recognition of human rights is principally reflected in the second principle (Pancasila). The basic concept of human rights that is still abstract needs to be elaborated in a more concrete concept, so that it has legal force in its implementation. The exercise of human rights depends very much on the good will of the authorities. The authorities put legal institutions that have the power to force their will on society. He mastered repressive tools. In such conditions sometimes the exercise of human rights is nothing more than seeking the legitimacy of power to establish its government. In addition, an important factor in the implementation of human rights is the official recognition of the State of human rights in concrete form, namely the declaration which is strengthened by the law. The existence of a formal juridical basis for human rights is at least violations of human rights can be eliminated.¹¹

III. Research Method

This type of research is normative juridical research by exploring data through literature studies, legislation, international legal instruments, and documents relating to the object under study to seek answers to the problems under study.

The object of this research is the responsibility of the state in guaranteeing religious freedom in Indonesia. This research uses the technique of gathering legal material through literature study. The approach used is the statutory approach, then the research results are analyzed qualitatively, and presented in a descriptive analytical form

IV. Results and Discussion

Human rights are interpreted universally as "*those rights which are inherent in our nature and without which we cannot live as human beings*" by the world community.¹² Human rights have the same dimensions wherever they are. The nature of human rights is universal, meaning that these rights must not only be granted to all individuals but there is also a universal obligation for all individuals to treat properly individuals who have lost their rights.¹³

⁸ Ridwan HR, *State Administrative Law, Rajawali Pers, Jakarta, 2014, p. 110.*

⁹ Fatmawati, *op.cit.*

¹⁰ Natalie Goldstein, *Global Issues: Religion ad the state, Facts on File, Inc., New York, p. 6-7*

¹¹ Sri Rahayu Wilujeng, *Human Rights.: An Overview of the Historical and Juridical Aspects, Faculty of Cultural Sciences, Diponegoro University.*

¹² Muladi, *Human Rights, Politics and Criminal Justice System, Diponegoro University, Semarang, 1997, p.1*

¹³ Rizky Adi Pinandito, *Implementation of Principles of Freedom of Religion and Belief in Indonesia: Case Study of State Responsibility in the Sampang Madura Conflict, Journal of Legal Reform, Volume IV No. January 1-April 2017.*

Freedom of religion and belief (freedom of religion) is one of the groups in human rights (HAM) as stated in the Universal Declaration of Human Rights (UDHR) and the Covenant on Civil and Political Rights. These freedoms have been recognized internationally and nationally as non-derogable rights.¹⁴

In international legal instruments, human rights are recognized as absolute rights. Absolute rights are rights that cannot be limited by anything, anytime, anywhere. While non-absolute rights are rights that can be given restrictions and restrictions as long as the reasons for the prohibition are in the interests of law enforcement. Absolute rights are also known as non-derogable rights, which means that rights cannot be limited under any conditions even in situations that threaten the integrity of a country.¹⁵

Provisions regarding guarantees of freedom of religion for every citizen are actually guaranteed in the constitution and various laws and regulations in Indonesia. In the Constitution of the Republic of Indonesia 1945 Article 28E paragraphs (1) and (2) state that "everyone is free to embrace religion and worship according to his religion" and "everyone has the right to freedom of belief". Furthermore Article 28I states "... religious rights ... are human rights which cannot be reduced under any circumstances". This provision is in principle a non-derogable rights or rights that cannot be reduced. Then the above is reaffirmed in Article 29 which states that "the state guarantees the independence of each population to embrace their respective religions and to worship according to their religion and beliefs".

In addition, freedom of religion and belief has also been guaranteed in Law Number 39 of 1999 on Human Rights. According to Article 22 paragraph (1) of Law Number 39 of 1999 on Human Rights states that "everyone is free to embrace their respective religions and to worship according to their religion and beliefs". Furthermore paragraph (2) asserts that "the state guarantees the freedom of every person to embrace their respective religions and to worship according to their religion and beliefs".

Although the provisions regarding freedom of religion and belief are clearly regulated in the constitution and legislation in force, in practice cases of human rights violations are still found as a result of restrictions on freedom of religion and belief carried out both by the government and by the population or community in Indonesia. Human rights violations that occurred in Indonesia can be seen from 2 (two) cases, namely first, the case of the prohibition of celebrating Christmas that occurred in the Districts of Dharmasraya and Sijunjung, West Sumatra in early December 2019. Christians and Catholics in the region only allowed to celebrate Christmas in their respective homes. Second, the case that occurred in Sari Agung Hamlet, Petalongan, Keritang District, Indragiri Hilir Regency, Riau on August 8, 2019 where the Regent ordered the Civil Service Police Unit to sealing the Church in the region and also requested the termination of worship because they did not have a permit. establishment of the Church.

If we look at 2 (two) cases that occur above, it is clear that both of them fall into the category of violations of human rights in relation to freedom of religion and belief. In the case of the prohibition of celebrating Christmas in Dharmasraya and Sijunjung districts, West Sumatra actually community leaders there said that the ban was based on the agreement of the parties. But in terms of which of course it should not be done. The thing to remember is that Indonesia is a country with a majority Muslim population, but that does not mean that Indonesia is an Islamic state or a certain religious state. Pancasila as "grundnorm" has explained that Indonesia must respect and respect each other as contained in the 1st Precept "Godhead of the Almighty". Every citizen is given the freedom to choose his religion and to worship according to their respective beliefs.

¹⁴ Suparman Marzuki, *Politics of Human Rights Law About Freedom of Religion Post New Order*, Journal of IUS QUIA IUSTUM No.2 Vol.26 May 2019.

¹⁵ Rachel Ball, *Absolute and Non-Derogable Rights in International Law*, Human Rights Law Center, 2011, p.1

Furthermore, in the case of the Bupati giving orders to the Civil Service Police Unit to sealing the Church in the area and also requesting a halt to worship because it does not have permission to establish a Church. This case includes cases of human rights violations committed by the government. The government should be able to provide protection for the community and be able to carry out the mandate of the constitution and legislation. Whatever the reason, the regent (the government) must not carry out acts of termination and dissolution of worship in the Church. The government must be able to distinguish between constitutional obligations and administrative violations. Churches that do not have permission are not a reason the government may take inhumane actions.

The problems mentioned above should not occur in Indonesia because Indonesia accommodates all religions and provides tolerance in its implementation. In order to fulfill human rights, the government must have the responsibility to provide protection for all citizens without exception. Evidence that the government is serious about guaranteeing the fulfillment of human rights is that human rights provisions have been accommodated in the constitution and legislation previously mentioned above. However, the implementation or implementation in the field is still very weak.

There are still violations of human rights, of course, demanding the government to be responsible for these cases. In international human rights law, the definition of state responsibility is related to state obligations in the fulfillment, protection and respect of internationally recognized human rights. State responsibilities arise as a result of violations of international law by the state, namely:

1. Committing acts of violating human rights (action), and neglecting, not taking any action, or committing (omission) of violations of human rights.
2. Take actions that violate international obligations.

Based on the foregoing, if it is associated with the two cases that occurred in West Sumatra and Riau, it is very clear that the state has committed human rights violations by neglecting, tolerating, and even committing human rights violations. this then raises the responsibility of the state in overcoming and providing protection to citizens whose constitutional rights have been violated.

The form of government responsibility in guaranteeing freedom of religion in Indonesia can be done in several ways, namely:

1. The government must actively promote the importance of maintaining tolerance between religious communities by providing understanding that the rights to religion, belief and worship are the human rights of every citizen who cannot be contested.
2. Law enforcement officials must be present in the midst of society to ensure that minority communities have their constitutional rights guaranteed.
3. The government must make more concrete regulations in an effort to impose sanctions on the public, law enforcement officials, or government officials who commit human rights violations.

These three forms of responsibility will provide answers to problems that have occurred so far. As we know that the weak understanding of the community, law enforcement officers, and government officials regarding human rights, especially those relating to the right to freedom of religion and belief, is one indicator of the violation of human rights. The state must not be silent on these violations, because all are guaranteed by the constitution. The state must dare to act decisively in the effort to fulfill the constitutional obligations of the rights of every citizen.

The fulfillment of human rights by the government through various laws and regulations is not followed by legal protection by the state, so that the problem of lawlessness occurs. In certain parts of the country it seems weak when faced

with mass pressure and fails to provide protection to religious minorities. In other parts of the country the perpetrators become violators (by commission) by prohibiting minority groups from worshiping or establishing places of worship as the case mentioned in this study.

V. Conclusion

Based on the description above, the following conclusions can be drawn:

1. Provisions regarding guarantees of obtaining religious freedom for every citizen have been guaranteed in the constitution (Constitution of Republic Indonesia 1945) and various laws and regulations in Indonesia.
2. The state must be held responsible for human rights violations. Forms of state responsibility can be done in several ways. First, the Government must actively promote the importance of maintaining tolerance among religious communities by providing an understanding that the rights to religion, belief and worship are the human rights of every citizen who cannot be contested. Second, law enforcement officials must be present in the midst of society to ensure that minority communities have their constitutional rights guaranteed. Third, the Government must make more concrete regulations in an effort to impose sanctions on the public, law enforcement officials, or government officials who commit violations of human rights, especially relating to freedom of religion.

VI. Recommendation

1. The state must not be defeated by a group of majority who restrict the right to religious freedom of the minority.
2. The state must provide legal protection to citizens by making some new, more concrete legal regulations that contain strict sanctions so that the public, law enforcement officials, or government elements become afraid and will give a deterrent effect to violators.

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