



## The Regulation of Religious Freedom in Indonesia And International Law Perspective

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**ABSTRACT:** *In reality, there are still violations of the rights-violations of religious freedom. The system of democratic societies allow for any differences, including religion, culture and ideology to be communicated and consolidated well. Here in lies the importance of setting and restrictions se in a human rights instruments both internationally and nationally. Through its legal instrument, the mission to ensure security for everyone with neutral behavior or nonpartisan. Freedom of thought, conscience and religion is absolute, meaning there is no limitation in its implementation. While the religious freedom can be restricted is freedom in the manifestation of religion (freedom to act). And also, freedom of religion is a basic or fundamental freedom, because religious freedom is a natural right and natural character to appreciation and respect for human dignity.*

**Keywords:** *Freedom of religion, Human rights*

### I. INTRODUCTION

Religion became an integral part of the history of human life, as a way to defend themselves against the chaos that threatens the rule in human life, there is no other way to defend themselves against the negative forces rather than a religious path, then the religion guaranteeing human life. [1]

Because of its existential religious experience that is personal, then there is no compulsion in religion. Thus we are required to religion in a free state, with free people can believe. Karl Jaspers reveal more true liberty of the person, the stronger the certainty of God.[2]

Freedom of religion includes the basic or fundamental freedoms. The reason is because religious freedom is a natural right and natural character. Hereditary, through family and relatives, human embrace a belief which can be called religious. It can also be seen in the description of Pals that from the most primitive man once had a sense of the supernatural in the subsequent discourse can be understood as part of religiosity or religious.[3]

But apart from the explanation of it all, in the field we find portraits of religious life is one hundred eighty degrees different from the expectations should be. Inversely with the spirit of adoption of the Human right values and various regulations in Indonesia, the phenomenon of infringement on religious freedom actually increased. The results of monitoring conducted Equivalents Institute found an increased number of violations of the freedom of religion and belief throughout 2015. Compared to 2014, there is a difference in the number of violations as much as 63 to 56 events and intolerance that accompanied the action. During 2015, there were 197 violations and 236 forms of action. Meanwhile, during 2014, there were 134 events and 177 actions. These numbers show intolerance continue to occur for many years, and even increased. In addition, research Equivalents Institute also stated that of the 236 actions throughout 2015, most violations committed by the district and the city with 31 cases. Police ranks second with 16 cases and Civil Service Police Unit (municipal police) as many as 15 cases. Violations committed local governments such as the prohibition of celebrating the feast, policies and regulations that incite hatred and restrictions on the establishment of houses of worship.[4]

Then, at the international level, there are cases known as "Asia Bibi", he is an anit Christians in Pakistan accused of blasphemy by a Pakistani court and threatened with death by hanging. Bibi was accused of asking the talk against the Prophet Muhammad, where the laws of Pakistan, anyone who is considered "defaming the holy Prophet Muhammad" threatened with life imprisonment or the death penalty.

See the phenomena that occur, there are still many violations of religion, therefore, is regarded as important to be passed in an instrument on Human Rights both internationally and nationally. This is for

instance described in the report of the European Court of Human rights against the European Convention on Human Rights (European Convention on Human Rights).[5]

*"Freedom of thought, conscience and religion, enshrined in Article 9 of the Convention, is one of the foundations of a democratic society within the meaning of the Convention. In its religious dimension it is one of the most vital elements that go to make up the identity of believers and their conception of life, but It is also a precious asset for atheists, agnostics, skeptics and the Unconcerned".[6]*

From this we know that freedom of religion be a pillar of the foundation for the establishment of a democratic society. Because only in a climate of democratic-lah, every belief capable appreciated, respected and protected. The system of democratic societies allow for any differences (religion, including the cultural and ideological) to be communicated and consolidated well. Then how climate efforts for a democratic society is capable maintained on an ongoing basis? Herein lies the importance of the "Settings" and "restriction". European Court further explained:

*"In a democratic society, in the which Several religions or branches of the same religion coexist within one and the same population, it may be Necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and the Ensure that everyone's beliefs are respected. However, in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to Werner as impartial and neutral. What is at stake here is the preservation of pluralism and the proper functioning of democracy".[7]*

Thus, efforts to preserve religious freedom as a pillar of a democratic society, is by presenting the state as the regulator or the regulator. Here, the state through its legal instrument, the mission to ensure security for everyone with besikap neutral or nonpartisan. Then religious freedom does not mean free and wild without control, but with restrictions and arrangements whose purpose should be solely to ensure the preservation of religious freedom for everyone, including those who choose not to be religious.

To provide a clearer understanding, in this paper will explain how the meaning of religious freedom as well as how-intsrumen human rights instruments provide a guarantee of freedom of religion?

## **II. ANALYSIS AND DISCUSSION**

### **1.1 Meaning of Religious Freedom**

Freedom in Greek is called *Eleutheria*. There are several meanings *eleutharia* in the Greek tradition, such freedom is a principle that guarantees to every individual to live in accordance with her wishes.[8] Freedom in this context is closely related to the condition in which individuals are not forced to do or not do that is not in accordance with his will.[9]

Freedom is usually associated with a lack of barrier or barrier or bonding force or obstacle or obligations of any particular thing or to do something.[10] Therefore the meaning of freedom tend to be open, this could lead to the assumption that smoking is related to anarchism: freely, at will , arbitrary, let instinct and unbridled lust identified with freedom as animals or small children.[11]

Ninan Koshy, citing the opinion of Carillo de Albornoz [12] divides religious freedom into four aspects: [13] First, libertyof conscience. Second,liberty of religious expression. Third,liberty of religious association. Fourth, liberty of religious Institutionalization.

The first aspect of these land areas have no absolute or *pure* nature of *religious liberty*. In its application, the so-called *freedom of conscience* also often interpreted as *freedom of religion* Or freedom of conscience is also known as the *sword of the spirit*, while three other aspect is the *sword of steel*.[14]

#### **On freedom of conscience, Michael Novak said:**

This liberty of conscience transcends any and all political orders. Human freedom rooted in God declares that all states and all political orders are under God, limited not omnipotent. States can crush or kill human beings, but they can not alienate them from their responsibility to God and conscience.[15]

While Franklin I. Gamwell in "The Meaning of Religious Freedom" explained that freedom of conscience is what can only be understood clearly if religion is placed in *narrowly defined* categories. According to Gamwell:

*"Religion is the primary form of culture in the comprehensive terms of the which the question is asked and answered the explicitly and further, so that a human answered the authenticity is derived from the character of reality as such. In saying this I mean that the distinction between authentic and inauthentic human activity is identified by the relations of human activity to reality as such or ultimate reality. Whether that ultimate reality is understood as Yahweh, Allah, "emptiness", or in some other way, it is understood to be the ground of human authenticity. The point may Also be Expressed by saying that religion, narrowly understood, so comprehensively addresses the question that ultimate reality is said to authorize human authenticity".[16]*

Back to the linkages between internal and external aspects of religious freedom. Adam Muhshi argued that freedom of religion consists of beliefs and the manifestation of that belief. Confidence called the *forum internum*, whereas the manifestation of confidence called by *the forum eksternum*.<sup>[17]</sup>

Forum *internum* in the context of religious freedom includes the internal realm where freedom of thought, conscience and religion of absolute power. In article 4 of the Convention on Civil and Political Rights also mentioned even in emergency situations of war there can be no derogation (reduction) on freedom of thought, conscience, religion and belief. In any condition. Forum *internum* protected in cases of indoctrination action and dissemination of religious teachings are not worth such manipulation, fraud and coercion.<sup>[18]</sup> At least the following three conditions set *internum freedom*.

1. The state is obliged to intervene in the forum *internum* who uses religious indoctrination, 'brainwashing' or other manipulative way
2. The state has an obligation to prevent a person, non-religious actors including religious groups to conduct religious indoctrination in the form of coercive, manipulative or misleading, as set out in Article 12 (2) of the Convention on Civil and Political Rights
3. This obligation stipulated in Article 18 paragraph (2) of the Convention on Civil and Political Rights that everyone's right not to be subjected to coercion or restrictions as would interfere with or impede the freedom to own, maintain or change his religion or belief

Forward, Forum *eksternum* is the freedom to manifest religion or belief,<sup>[19]</sup> the forum *eksternum* restrictions may be performed for one of five reasons specified, include: a) public safety, b) ordre public, c) public morals, and d) Protection of rights and freedom of others.<sup>[20]</sup>In a democratic situation, such restrictions are made proportional and to respond to a pressing social need. As a general rule, these restrictions will be interpreted narrowly, and certainly should not be discriminatory.

#### **Many studies have concluded social benefits of their religious freedom.<sup>[21]</sup>Might include:**

1. Religious freedom promotes stability in a pluralistic society, but when limited, it correlates to Increased violence and conflict. (Freedom of religion to promote stability in a pluralistic society, but it is limited, it correlates with an increase in violence and conflict.)
2. Wherever religious freedom is high, there is more economic prosperity, better health, lower income inequality and prolonged democracy. (Wherever religious freedom is high, there are economic prosperity, better health, lower income inequality and democracy are preserved.)
3. Directly religious freedom correlates with the protection afforded other civil and human rights (freedom of religion is directly correlated with the protection afforded civil rights and other human;

These are some of the consequences of religious freedom that contribute to a free and fair society, where tension can always be negotiated and people live in peace with the differences between them. In other words it is the essence of democracy.

### **1.2. Instruments on Human Rights (HAM) on Religious Freedom**

#### **1.2.1. International Legal Instruments**

##### **1.2.1.1 Universal Declaration Of Human Rights (UDHR)**

This declaration develop respect for the rights and freedoms through teaching and education as well as through progressive steps nationally and internationally to ensure recognition of and compliance with the universally effective against him, among the peoples of the member countries as well as among nations in the territories under their jurisdiction. Although the declaration is not legally binding, this does not mean that they are unimportant. This declaration contains a lot of moral and political burden within the international community and is an effective tool in pressuring countries that have violated human rights seriously.<sup>[22]</sup>

UDHR mentions the term basic human rights (human rights basis),<sup>[23]</sup> namely the human rights of the most fundamental and categorized as the most important rights to be prioritized in the various laws and policies, both at national and international levels. Human rights is the foundation the set of rights that ensure the needs of primary material and non-material human beings in order to realize the full human human existence, that human value and dignity. Although, explicitly not found a provision or explanation detailing what rights are included in the basic human rights is, however, generally can be mentioned the human rights basis of these include the right to life, the right to food, medical services, freedom from torture and freedom of religion. Those rights, and also the overall human rights based on one fundamental principle, namely the appreciation and respect for human dignity.<sup>[24]</sup>

##### **1.2.1.2. International Covenant on Civil and Political Rights 1976**

Freedom of religion rights guaranteed in Article 18 of *International Covenant on Civil and Political Rights* (ICCPR),<sup>[25]</sup> that:

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to adopt a religion or belief of his choice, and freedom, either individually or jointly with others, either in public or closed, to practice a religion or belief in worship activities, observance, practice and teaching.
2. Nobody can be forced so disturbed liberty to embrace or adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may only be restricted by legal regulations, and are necessary to protect public safety, order, health, or morals or the rights and fundamental freedoms of others.
4. States Parties to the present Covenant undertakes to respect the liberty of parents and, when applicable, legal guardians, to ensure that the religious and moral education for their children in accordance with their own convictions

And to ensure that these guarantees are not neglected by the state party, the United Nations (UN) has also issued a Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, through resolution number A / RES / 36/55 dated 25 November 1981, and the Elimination of All Forms of Religious Intolerance by resolution A / RES / 55/97 dated December 4, 2000.[26]

**Based on the International Covenant on Civil and Political Rights / ICCPR, normative core of the right to freedom of religion or belief can be formulated in the eight elements of :[27]**

1. Internal freedom: everyone is entitled to freedom of thought, belief and religion; this right includes freedom to everyone adheres to, assign, or maintain or move of religion.
2. External freedom: every person has the freedom, either alone or together with others, in public or closed, to practice a religion or belief in teaching activities, practice, worship and observance.
3. Without being forced: no one can be forced so disturbed liberty to embrace or adopt a religion or belief of his choice.
4. Without discrimination: the State is obliged to respect and ensure the right to freedom of religion or belief for all people within its territory and subject to its jurisdiction, the right to freedom of religion or belief without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or other origins, wealth, birth or other status.
5. The rights of parents and guardians: The State is obliged to respect the liberty of parents and, when applicable, legal guardians, to ensure that the religious and moral education for their children is done in accordance with their own beliefs, is limited by the obligation to protect the right to freedom of religion or belief each child in accordance with children's developing abilities.
6. Freedom of corporate and legal position: the religious communities should have legal standing and the right institution to represent their rights and interests as a community.
7. Restrictions are allowed against external freedom: the freedom to practice religion or beliefs may only be restricted by legal regulations, and such restrictions are necessary to protect: security, order, health, morals of society, or the fundamental rights of others.
8. Not be reduced: The state should not diminish the rights of freedom of religion or belief, even in an emergency.

**1.2.2. National Legal Instruments**

**1.2.2.1. Constitution of 1945**

One national objective is to protect the people of Indonesia, of course without any kind of discrimination based on race, language, or religion.[28] Therefore, it becomes one of the state's duty to protect the rights of everyone's freedom of religion and worship.

Constitution of 1945 after a change of a more detailed set of human rights issues. Article 28E Paragraph (1) confirms that everyone is free to embrace religion and to worship according to their religion. Right to religious freedom is guaranteed in Article 29 paragraph (2) of the 1945 Constitution which states "The State guarantees the freedom of each citizen to profess his own religion and to worship according to his religion and belief".

As had been disclosed in the beginning, a person's religion and worship necessarily based on trust that he believes. Belief in a religion, and belief in religious orders that must be implemented also get a guarantee in Article 28E Paragraph (2) which states that everyone has the right to freedom of belief to believe, express thoughts and attitudes, in accordance with his conscience. In fact, freedom of religion is also recognized as a right that can not be reduced under any circumstances.[29]

The consequences of these guarantees, everyone is obliged to respect the religious freedom of others.[30] On the other hand, the state has the responsibility to protect, promote and fulfill religious freedom as a human right.[31] Countries must also ensure that the person is not treated in a discriminatory manner on the basis of religion and worship is believed to be performed.

### **1.2.2.2. Law No. 39 of 1999**

In the era of the Reformation, was born Law 39 of 1999 on Human Rights. Human rights set by law, among others, include: the right to life (Article 9), the right to marry and continue the descent (article 10), the right to develop themselves (chapters 11-16), the rights to justice (Article 17-18), the right to freedom of personal (Article 20-27), the right to security (28-35), the right to welfare (Article 36-42), the right to participate in government (43-44), the rights of women (45-51) and the rights of children (52-66). Besides this law also regulates the fundamental freedoms (Articles 69-70).[32]

Law No.39 / 1999 Article 71 and 72 confirms that guarantees it to be the state's obligation to fulfill. Whole content of Law No. 39/1999 on Human Rights are:

*"The Government shall be responsible to respect, protect, uphold and promote human rights stipulated in this law, other legislation and international law on human rights ratified by the Republic of Indonesia".*[33]

Obligations and responsibilities of government, including the effective implementation measures in the areas of legal, political, economic, social, cultural, defense, state security and other fields.[34]

## **III. CONCLUSION**

As can be inferred from this paper is Freedom of religion basically can be interpreted in two aspects, namely the internal aspects that are absolute or pure religious liberty, which is included in the internal aspects contained in the freedom of thought, conscience and religion or belief. And there are no restrictions on the internal aspect. While the second aspect is the external aspect of the freedom to manifest religion or belief, such as liberty of religious expression, liberty of religious association, and liberty of religious Institutionalization. Freedom belonging to the external aspects can be restricted by the rules that apply, for reasons of public safety, public order, public morals, and protection of rights and freedom of others. Right to religious freedom is categorized as the most important rights to be prioritized in the various laws and policies, both in international instruments and national, for religious freedom as a basic of human rights, as well as an appreciation and respect for human dignity.

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