

# CHAPTER I

## INTRODUCTION

### A. Background

Indonesia is the legal state that places law as the basic of the state, and guarantees justice for all its citizens, the concept of legal state cannot be separated from the idea to provide recognition and protection for human rights. Thus legal state has a core effort to provide protection for civil liberties from citizens. Indonesia basically does not place religion as the basic of the state but still guarantee its citizens to embrace religion according to the beliefs of every citizen, this is stated in the constitution 1945 article 28 point (1) “Every person shall be free to choose and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it” and in article 29 point (2) “The State guarantees all persons the freedom of worship, each according to own religion or belief”.

In the international perspective, there are some legal basis about freedom of religion. It is Universal Declaration of Human Right (art 18) and International Covenant on Civil and Political Right or ICCPR (art 18) which stated that people have right to choose the religion that he believes. In the Universal Declaration of Human Right article 18 stated ”Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either

alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” In article 18 of ICCPR also state:

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

Freedom of religion right is classified in the category of basic human rights, its absolute is a manifested of inner freedom. This right is categorized as non-derogable right. It means that specifically stated in universal declaration on human right as right that cannot be deferred fully by the state on every situation. This non-derogable right regarded as the most important right in the human right, non-derogable right shall be implemented and respected by every state and in every situation. Freedom of religion in the form of implemented or manifested religion or belief, such as build religious place or spread the religion classified as freedom of action. The freedom of religion are allowed to limited, but the limitation in this matter are only allowed by law and

regulation with the reason such as<sup>1</sup> public safety, public order, public health, public morals and protection of rights and freedom of others.

State obligate to ensure and to guarantee freedom of religion including to protect, advance, enforce and fulfill right of freedom of religion. The state obligation, however, does not have authority to interfere religious affairs of the citizen. Otherwise, the state should give protection to their citizen in the terms of carrying out religious activities and religious places. There are some legal products which limit the freedom of its citizen which cause some violation of right to freedom of religion or belief<sup>2</sup>. For instant the phenomenon of violence in the form of expulsion, destruction of places of worship, as well as intimidation and coercion against minorities and some sects.

According to the data that provided by National Human Right Commission<sup>3</sup> in 2016 (January-December) there are 97 complaint (average 8 complaint in a month), this amount increase from 2015 that the total is 87 complaint (average 7 complaint in a month) and this fact shows that intolerance in Indonesia become more increase. Of that amount, west java become the highest complaint (21 complaint) then Jakarta (19 complaint), North Sulawesi (11 complaint), Mid Java (7 complaint), Aceh (6

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<sup>1</sup>Imanulhaq Maman, April, 20 2016, “Kebebasan Beragama-Berkeyakinan sebagai Hak Asasi Manusia yang Mutlak Harus Dipenuhi Negara dalam Keadaan Apapun” Available at : [https://www.kompasiana.com/kang\\_maman72/571705e13a7b6125052c4144/kebebasan-beragamaberkeyakinan-sebagai-hak-asasi-manusia-yang-mutlak-harus-dipenuhi-negara-dalam-keadaan-apapun?page=all](https://www.kompasiana.com/kang_maman72/571705e13a7b6125052c4144/kebebasan-beragamaberkeyakinan-sebagai-hak-asasi-manusia-yang-mutlak-harus-dipenuhi-negara-dalam-keadaan-apapun?page=all) accessed on : July 23, 2019

<sup>2</sup> Ismail Hasani, 2009, *Siding and Acting intolerantly : Intolerance by Society and Restriction by the State in Freedom of Religion/ Belief in Indonesia*, SETARA Institute, Jakarta, p 14

<sup>3</sup> Annual report National Commission Human Right 2016

complaint), Bangka Belitung Island (5 complaint), West Nusa Tenggara (5 complaint), Special Region of Yogyakarta (3 complaint), North Sumatera (2 complaint), West Sumatera (2 complaint), Riau (2 complaint), Bali (2 complaint), East Nusa Tenggara (2 complaint), East Kalimantan (2 complaint), Banten (1 complaint), Papua (1 complaint), West Papua (1 complaint), Arab Saudi (1 complaint), and Unnamed (4 complaint). From the data above we found that the problem of violation and damage religious place became the most complaint case in 2016 (44 complaint) also problem of limitation religious activity.

In this context, it shows that the state is impressed to be weak and ambiguous in the matter of regulation and practice freedom of religion as it should be. This ambiguity is impressed when the state intervenes the personal faith and belief of the citizen or certain community. In the other side, some case of violation and coercion from the certain community to the other community are allowed and ignored by state without any legal action from the state whereas freedom of religion is the non derogable right.

In the other context, according to the human right instrument, there are 2 type of violation of the state<sup>4</sup> (1) with the way actively that cause limitation, differentiation, intervene, and obstruct enjoyment of people in religion (by commission), (2) by the way which allows the violation the right of people, including allowance the violation

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<sup>4</sup> Rohidin, *Konstruksi Baru Kebebasan Beragama*, UII Press, page 100

that doing by people without legal respond from government (by omission)<sup>5</sup>. In other hand, the violation freedom of religion that doing by people against other people are including (1) criminal action such as burning the religious place, intimidate, physical violence and (2) Intolerance action.

Jemaah Ahmadiyah Indonesia (JAI) become the most frequently community that encounter intolerance from other community outside JAI<sup>6</sup>. As it stated, this violation become the worst after Joint Decree from 3 Minister No. 3 of 2008, KEP-033/A/JA6/2008 in 9 June 2008 about the warning and ordering to member or administrator of JAI and people. Due to the issuance of joint decree, JAI are intervened and not being comfort in accordance to doing all religious activity because getting threat from the other people who does not agree with the JAI, because they assume that they have legal basis to intervene JAI.

Actually, as the result of this Joint Decree, the existence of the religious groups and a number of local religions are threatened. As it stated that the number of this group is too much as well as Sunda Wiwitan (Kanekes, Banten), Agama Djawa Sunda (kuningan, West Java), Buhun (West Java), Kejawen (Mid Java dan East Java), Parmalim (North Sumatera), Kaharingan (Kalimantan), Tonaas Walian (Minahasa,

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<sup>5</sup> Syamsul Arif, 2010, "*Diskursus Hak Asasi Manusia di Indonesia : Perspektif Kebebasan Beragama/berkeyakinan*", paper on Annual Conference on Islamic Studies (ACIS), Banjarmasin, page 722

<sup>6</sup> Ihsanuddin, January, 16 2014 "Ahmadiyah Paling Sering Jadi Korban Intoleransi Sepanjang 2013", availableat:<https://nasional.kompas.com/read/2014/01/16/2229377/Ahmadiyah.Paling.Sering.Jadi.Korban.Intoleransi.Sepanjang.2013>. Access on july 32, 2019

North Sulawesi), Tolotang (South Sulawesi), Wetu Telu (Lombok), Marapu (Sumba) Budi Luhur, Purwoduksino, Naurus (Seram Island, Maluku), Pahkampetan, Bolim, Basora, Samawi and so much more<sup>7</sup>

In this case, the cause of intolerance is the discrimination that happen in Indonesia. There were because Indonesia is multiculturalism state that the people have many cultures, customs and religions. Those aspects influence the social order also norm that apply in Indonesia. Sometimes, those aspects become the cause of conflict among races and conflict among religions. It happens because every race and religion has their doctrine which claim that he/she is the best and judges the other as the wrong. The majority religious people afraid if the member of his group decrease because changing to another religion and also afraid if the minority more increase. On the other hand, the minority religious group afraid if the majority religious group dominate all aspect in life, so the minority lack of place and interest<sup>8</sup>. Moreover discrimination arise because of the existance both majority and minority group of religious people that the majority have power to intervene and vice versa<sup>9</sup>.

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<sup>7</sup> Permana, I. S., 2018, Pemerintah dan hak beragama di indonesia (Peran pemerintah dalam memelihara hak beragama di Indonesia), *TEDC Vol. 1 2 No. 2*, p 130

<sup>8</sup> Martinus Sardi, 2015, Membangun Kebebasan Beragama Demi Kehidupan yang Damai (Sebuah Tinjauan Hak Asasi Manusia), *Repository UMY*, p 3

<sup>9</sup> Stev Koresy Rumagit, 2013, kekerasan dan Diskriminasi Antar Umat Beragama di Indonesia, *LexAdministratum, Vol.1/No.2/Jan-Mrt/2013*, P 59

According to H.M. Amin Abdullah, there are 3 problems, at least, in implementation of the religious freedom right in Indonesia:<sup>10</sup>

1. Problem of legislation
2. Role of State apparatus in enforce law
3. Understanding of nation-state by people or religious citizen adat stakeholders and members of race or ethnicity

Those are related each other, starting with the problem of legislation where there are several legislation shows intolerance matter, then the role of state apparatus in the law enforcement and how the understanding of the nation-state by people or religious citizen, adat stakeholder and members of race or ethnicity.

#### **B. Problem of Research**

1. What is the role of Indonesian government to ensure freedom of religion in Indonesia accordance to 1945 Constitution and Pancasila?
2. How to promoting and practicing freedom of religion in Indonesia based on just and civilized humanity value?

#### **C. Objective of Research**

1. To understanding the legal basis of freedom of religion in Indonesia and international law

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<sup>10</sup> H.M. Amin Abdullah, 2011, *Kebebasan Beragama dan Berkeyakinan dalam Prinsip Kemanusiaan Universal, Agama-Agama dan Keindonesiaan*, Yogyakarta, p 16.

2. To analyze the role of Indonesian government in accordance to promote and protection freedom of religion
3. To purpose suggestion that give people freedom to choose their beliefs and limitation according to law, morals and fundamental right of people

#### **D. Benefits of Research**

The benefits of research are:

1. Theoretical Benefits

This research would give understanding of the basic laws governing freedom of religion. This research will give the view of the government and state role about the necessary right freedom of religion

2. Practical Benefits

This research will purpose new specific regulation or legislation concerning freedom of religion in order to ensure religious and civilized life.