

Implementation of Religious and Belief Rights in Surabaya For Creating the Collectability in Religious Life

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Abstract--The existence of the right to religious freedom in Indonesia requires protection of the right to freedom of religion and belief from a conflict between religious communities, as many cases occur including blasphemy, physical and non-physical violence committed by the majority, especially conflicts between religious communities in Indonesia. This is a challenge for every region in Indonesia to make an effort to maintain the harmony of religious life, especially in Surabaya. Surabaya, is one of the areas that carries victims from conflicts between religious communities and believers in order to create harmony in religious life. The results of the research and study conclude that there is no religious freedom which is implemented fully and successfully in Indonesia, especially the city of Surabaya on religious freedom and has not yet succeeded in carrying it out because there are still many deficiencies that must be addressed for the achievement of religious freedom in Surabaya. As a recommendation, for the Central and Regional Governments should make regulations to calmly protect and fulfill the right to religious freedom. Participation of informal leaders are also important to help the community support the harmony of religious life.

Keywords- Religious freedom; Government Obligations; Harmonization

I. INTRODUCTION

Indonesia is a country that recognizes human rights, One of which is giving their people the right to embrace religion and beliefs where religion becomes a state affair is not a personal affair. It is listed in article 29 of Constitution 1945 of the country providing a guarantee of religious freedom for the people of Indonesia, article 29 constitution 1945 Reads:

- (1) *The nation is based on the almighty Godhead.*
- (2) *The State guarantees the independence of each poeple to embrace their own religion*

and to worship according to their religion and belief.

Under the provisions of article 29 paragraphs (1) of the Constitution 1945 said Indonesia is not a secular country and not a religious state, But the State of God, and their divinity is only 1 commonly called "monotheist".[1] The provisions of paragraph (2) further state that the state "warrants" the rights of its inhabitants to be free for embrace religion and worship according to their respective religions and beliefs, This provision called the "religious rights" guaranteed by the Constitution.[2] Not only the Constitutes, there are some laws that guarantee the rights of freedom of religion and belief in Indonesia, Among others is governed in article 4 and article 22 paragraph (1) of Act Number 39 Year 1999 of Human Rights mentioning the right of religion where everyone is free to embrace their own religion and to worship according to their respective religions and beliefs and the State guarantees such rights, Even some international provisions such as the International Declaration of Human Right and ICCPR that have been ratified by Indonesia corroborate the assurance of these rights.

Noted, that religious freedom is a human rights divided into 2 categories: First, Freedom of religion is included in Non-derogable Rights, in the conception and theoretical human rights since it began to postulate human rights as an inalienable or eliminated.[3] At the implementation still need the similarity of perception, common view and openness and tolerance among religion, Especially among religious people. *Non-derogable Rights* set in statutes of the people's deliberative assembly Number XVII/MPR/1998 article 7 which mentions: "The Right

to life, the right not to be tortured, the right to freedom of mind and conscience, religious rights, the right not to be enslaved, the right to be recognized as a person in the presence of the (*non-derogable*)". Second, Freedom to gather, doing worship activities and up to the establishment of a religious life worship house is Derogable Rights means it can be limited but in certain situations and conditions that could harm the public interest. It can be said that religious freedom and belief guaranteed by the State is not absolute freedom, It is also contained in the Constitution through article 28J paragraph (2) giving the limitation that everyone is subject to the restrictions imposed by the constitution.

Indonesia as an archipelago that is full of cultural diversity, ethnic origin, race, ethnicity, religion, and local language, religious freedom becomes a human right guaranteed by Indonesian law to be a beautiful thing when the right is aligned and in tune with the principle of mutual tolerance that ultimately creates harmony in the life of Indonesian people especially in religious affairs and beliefs.

In the reality is not like as imagined. The guarantee of the right of religious freedom in Indonesia cannot completely avoid the conflict between religious people, such as many cases of religious blasphemy, physical and non-physical violence and discrimination. Can be seen from the data the national human rights commission recorded the number of complaints of infringement of rights to freedom of religion and belief in 2015, amounting to 87 complaints. This amount is increased compared to 2014 which amounted to 74 complaints (average 6 complaints/ month).[4]

Religious issues are a challenge for each region in Indonesia to make an effort to maintain a harmony in the religious life in their region. The city of Surabaya, is one of the areas that became the evacuation place of victims of religious freedom and belief from Sampang. Surabaya as the most populated city in East Java, as data from the central Statistic agency Surabaya has a population of 2.5 million.[5] More and more population is increasingly difficult to control the action of the Community especially the rights of freedom of religion and belief, so as to make efforts to create harmony in the life among religious

people better to avoid the violation of the rights of freedom of religion and belief.

II. PROBLEM

Based on the above background, in researching and reviewing an implementation of religious freedom in Surabaya about its implementation. It can therefore be formulated with a problem that is: First, What is the benchmark in assessing the existence or absence of the implementation of freedom of religion in an regional? Second, How is the implementation of freedom of religion and belief in the creation of harmony in religious life to exercise the right of freedom of religion in the city of Surabaya?

III. RESEARCH METHOD

This research is to answer the problems in problem formulation, using the method of normative empirical research with a qualitative approach, i.e. legal research on the enforcement or implementation of normative legal provisions in action at any particular legal event occurring in the community.[6] The specification of the research is descriptively analytical by describing the implementation of rights of freedom of religion and belief in the form of actions conducted by the city government of Surabaya and describing the phenomenon of social culture in the form of religious conflicts, how to finish from the informant that has been determined. Thus giving commentary on the phenomenon seen and can give input to the implementation of the right of freedom of religion and belief.

The source of this research data is the primary data taken by interviews and observations of course related to the problems discussed in this study. After the study and assessment, the right to discuss and assess the rights of freedom of religion and belief in the city of Surabaya is not.

IV. DISCUSSION

The benchmark for freedom of religion

The right of freedom of religion is a fundamental human right of both non-derogable rights, as well as derogable rights that must be secured, protected and fulfilled by the State because it is the core obligation of the country.[7] There are three core obligations of the country for the right of religious freedom,:[8] First, The country has a duty to respect human rights. In other words, the state must admit that everyone has the right attached to it, and the jurisdiction of the State should not limit this right. Secondly, the State is obliged to protect human rights.

Technically, these obligations can be fulfilled for example by ratifying the international treaties of human rights into the positive Law. On the other hand, the country may also remove discriminatory rules as a manifestation of State protection against human rights. Thirdly, the State has an obligation to fulfill human rights. Fulfillment is the following step after the formal rule attendance. The State is obliged to administer this fulfillment through its assumed responsibilities as stipulated in the Act to the guarantee of religious freedom in Indonesia affirmed in article 29 paragraph (2) Constitution 1945 Jo Article 28E paragraph (1) and paragraph (2) of 1945 Jo Article 22 paragraph (1) Act Number 39 The year 1999 on Human rights has provided a guarantee of the independence of each resident to embrace religion and free from discriminatory treatment (article 28I Verse (2)).

The collateral provided or not of course can be seen from an area meeting a specific benchmark. The benchmark in fulfilling the freedom of religious rights include two things, the people can enjoy the belief in religious and enjoy worship according to their beliefs and religion calmly.[9]

Based on the benchmark can be said that a region can be said to implement the right of freedom of religion and to believe well that if there is no intimidation, physical or verbal violence and discrimination in enjoying the right of religious freedom. It is also objectively already a state obligation of Indonesia which is contained in the

Constitution 1945 article 29, constitution on human rights and some international instruments that have been ratified.

In reality, state and local governments (such as governors and Mayors/Regents) as a formal leader to fulfill the core obligations to the right of religious freedom in every region cannot walk alone, but it is indispensable for the assistance of non-formal leaders to assist in carrying out the core obligations on the right of religious freedom in each region. The role of a formal and non-formal leader plays an important role, where the formal leader of their authority makes a policy/regulation or direct action aimed at respecting, protecting and fulfilling the rights of religious freedom in an area, And no less important also the role of a non-formal leader in strengthening the understanding of tolerance, multiculturalism, and pluralistic religion to the public to prevent a conflict or violation of the rights of freedom of religion so that the creation of a harmony in religious life.

Implementation freedom of religion and belief in Surabaya

Surabaya as part of the country is highly upholding human rights and the freedom of its people in embracing and enjoying its own religion and enjoying worship according to their own religion. Based on the commitment to ensure the right of religious freedom, it raises a core obligation to appreciate, protect and fulfill the right of religious freedom in the city of Surabaya. Protection of freedom of religion begins protection in terms of embracing and enjoying religion in accordance with belief. In general, the city of Surabaya is the region that has the most inhabitants of East Java and the multicultural and plurality. However, Surabaya is an area that can be said to be conducive in exercising the right to freedom of religion, but also not to be able to not escape problems about the rights of freedom of religion and belief although not exaggerated regarding the problem of the establishment of the House of worship. There is a house of worship that will be established but there are people who disagree, while completing the establishment file. Then there are problems when the establishment of a private house but used as a house of worship.

The city government that represented the religious harmony Forum directly make a dialogue and a forum to complete a protest, in the end it is known that there is a misunderstanding among religious people. Since the rights of society can enjoy the belief in religious and enjoy worship according to their beliefs and religion calmly and it is a right to be protected therefore the local government immediately intervened to deal with the protest before it becomes a conflict.

Religious issues in Surabaya are not only limited to the establishment of the House, but the use of house of worship, there is a problem in the Ahmadiyah community that proposes the establishment of a worship house in the area of Bubutan. Over time the community felt restant because every praying in the mosque was immediately cleaned and then when the general public wanted to follow the study activities in the mosque is forbidden. On the basis of the unrest surrounding society objected to the city government. Until the permission on the land is depleted Ahmadiyah community would like to extend but rejected by the city government because it has been troubling people.

No less interesting from the conflict, where there are interesting findings in the field that there is a community that has a religion other than 6 religions recognized by the Indonesian state, the Syi'ah community. The city of Surabaya, the Syi'ah community feels safe and able to enjoy its rights in the area without any protest, intimidation, physical/ verbal violence or up to the expulsion such as in the Sampang area of Madura.

Broadly, the protection of freedom of religious rights in the city of Surabaya on the right to embrace and enjoy the religion in accordance with its belief, but this is not followed about the right to enjoy in the worship activities in this case the establishment of a house of worship. Arrangements regarding the establishment of house worship using Joint of the Minister of Religious Affairs and Minister of Interior Number 8/9 year 2006 on the Guidelines on the implementation of regional head duty/regional deputy head in the maintenance of religious harmony,

empowerment of religious harmony Forum, and the establishment of the synagogue.

There is a joint regulation of 2 ministers which one of them regulates the establishment of the House of worship as if it is a mechanism that is able to protect and fulfill the right of religious freedom, but when studied critically, based on the problem that seems to be a barrier to society in enjoying the rights of religious freedom and can lead to an act that is against the law that eventually raises the conflict. Noted, that the right to enjoy worship in accordance with their religion including the establishment of a house of worship is a human right in the derogable right category, where such rights can be limited. Restrictions on human rights in the derogable right category can only be applied to certain situations or conditions that may be deemed to harm the public interest or emergency of a country that is harmful to the state's citizens or sovereign.[10] However, in fact the rule is as if minorities must respect the majority, and the majority can accept minorities. So the minority should follow what the wishes of the majority will be. Based on this, the rules are actually beneficial to the majority.

The benefits of the majority can be seen from the rules in article 18 of the Joint regulation of the Minister of Religious Affairs and the Minister of Interior Number 8/9 year 2006 on the implementation guidelines of regional head duty/regional deputy head in the maintenance of religious harmony, empowerment Forum of religious harmony, and the establishment of the synagogue that requires a minimum of 90 followers and there must be approval 60 of citizens around The provisions are discriminatory, because it is not a difficult thing for the majority to establish a house of worship and vice versa, it is difficult for minorities to gather as many as 90 followers and 60 people around.

Starting from the licensing is possible a dispensation and or gaps that can be utilized such as the thing found is to make a false signature or until the establishment of a house will be used for worship. On the basis of this condition or the gaps used can trigger tension between religious people.

Implementation of the freedom and belief of the government of Surabaya, still not able to protect and fulfill the right to enjoy worship activities in the House of worship because of the ongoing licensing rules of the establishment of a house of worship. Based on the licensing affairs of the establishment of the House of worship should be based on an objective situation and suitable for the needs of the area that requires the house of worship. The provisions governing the licensing of the establishment of the House of worship become proportionate and objective when the licensing of house of worship is adjusted to the area, the number of people, the number of religious majority and minority, And or place of worship that has been constructed so that it can be seen whether the establishment of the House of worship becomes a necessity in the right of worship activities, when the establishment becomes not a necessity then no need to be given a permit, but when it becomes a necessity even though the minority, must be protected and fulfilled in real because it is an objective to be respected.

On the other side is not separated from the right of religious freedom itself to create a harmony in the life of religious harmony in the life of religious people in a harmonious and dynamic and serene and peaceful among fellow religious people in Indonesia.[11] It is necessary to start from the correct thinking/understanding in addressing religious freedom and manner of delivery in a manner that is good and does not cause debate with other faiths.

The notion of tolerance to religious interfaith can be applied and implemented and disseminated with the activity of Da'wah. Explaining that the importance of tolerance among religious people, not only interfaith among Muslims but also the internal religious people, so that the role of non-formal leaders are very dominant in conducting da'wah activities to the internal religion (their people) to understand the harmonization of religious people in a life together. The notion of tolerance to religious interfaith can be applied and implemented and disseminated with the activity of Da'wah. Explaining that the importance of tolerance among religious people, not only interfaith among Muslims but also the internal religious people,

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The effort to dispense the tolerance is also done not only on religious elites but carried out at the bottom of the level. Basically, any religious intellectuals understand the importance of tolerance among religious people, but if the understanding is not spread then the creation of religious harmony will only be limited to wishful.

V. CONCLUSION

There is or whether the implementation is measured by measuring the right of religious freedom as a means to assess whether or not the right of freedom of religion in an area. There are 2 benchmarks to know whether or not the implementation is when people can enjoy the belief in religion and enjoy worship according to the belief and religion calmly means without any intimidation, physical and verbal violence and discrimination in enjoying the right of religious freedom. It is a State responsibility to respect, to protect and to fulfill the right of freedom of religion. When it is all in an area, then the area can be said to have implemented the rights of freedom of religion, and vice versa when it is all not there, then there is no right to freedom of religion in the area.

Implementation of freedom of religious rights in the city of Surabaya, normatively the government of Surabaya, appreciates the freedom of religion in article 29 paragraph (2) Constitution 1945 Jo Article 28E paragraph (1) and paragraph (2) Constitution 1945 Jo Article 22 paragraph (1) Act Number 39 years 1999 on human rights, the right to

freedom of religion and the belief of the people of Surabaya City (embracing and enjoying their religion according to their belief and enjoy worship according to their religion and beliefs) that must be appreciated, protected and fulfilled. However, the implementation of Surabaya city government is still not able to commit the commitment in full and overall. This is because the right to enjoy worship according to the religion that manifested in the establishment of a house of worship, Surabaya city government has not been able to protect and fulfill these rights. Due to the Joint regulation 2 Minister of Interior and Minister of Religious Affairs Number 8/9 Year 2006 which if studied critically, the regulation on the establishment of a house of worship is very beneficial to the majority rather than minorities that are not based on a proportional and objective in providing licensing of the establishment of a house of worship.

VI. SUGGESTION

Based on the discussion and conclusion, the author has several suggestions to improve the implementation of freedom of religion and belief in the achievement of religious life. For the central government of Seyogianya to renew Regulation 2 Minister of Interior and Minister of Religious Affairs Number 8/9 year 2006 which can be said to be discriminatory by replacing the content of the rights of religious freedom in the context of the establishment of a house of worship that is anti-discriminatory with the change made in depth research base of worship house in the location.

For religious leaders, religious leaders of religion as a non-formal leader are able to provide a scheduled understanding of inter-religious tolerance thinking to achieve harmony in religious life. The provision of understanding and thought of tolerance is done by preaching activities that to internal religious and external/inter-religious people with an understanding of agree in disagreement in a good way, wise and polite so as not to happen.

For the community should be better understand about the tolerance between the religious

people correctly, and must be more thorough and intelligent in action, so as not to be victims of provocation that will eventually lead to a prolonged conflict or to commit violations of religious freedom.

REFERENCE

- [1] Nella Sumika Putri, “Pelaksanaan Kebebasan Beragama di Indonesia (*External Freedom*) dihubungkan Ijin Pembangunan Rumah Ibadah”, *Jurnal Dinamika Hukum*, Vol. 11 No. 2, May 2011.
- [2] Rini Fidiyani, “Kerukunan Umat Beragama di Indonesia (Belajar Keharmonisan dan Toleransi Umat Beragama di Desa Cikakak Kec.Wangon Kab. Banyumas), *Jurnal Dinamika Hukum*, Vol. 13 No. 3, September 2013.
- [3] Michael J. Johanis, “Perlindungan Kebebasan Beragama Dalam Menjalankan Ibadahnya Menurut Perspektif Hak Asasi Manusia”, *Lex et Societatis*, Vol. 2 No. 1, January 2014.
- [4] Komnas HAM, *Laporan Akhir Tahun, Pelapor Khusus Kebebasan Beragama dan Berkeyakinan*, Jakarta: Komnas HAM, 2015.
- [5] Badan Pusat Statistik, Kota Surabaya Miliki Penduduk Terbanyak di Jawa Timur, <https://databoks.katadata.co.id/datapublish/2019/09/19/kota-surabaya-miliki-penduduk-terbanyak-di-jawa-timur>, accessed on date July, 18 2020.
- [6] Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum*, Bandung: Citra Aditya Bakti, 2004.
- [7] Frans Sayogi, “Perlindungan Negara Terhadap Hak Kebebasan Beragama: Perspektif Islam dan Hak Asasi Manusia Universal”, *Jurnal Prioris*, Vol. 3 No. 3, 2013.
- [8] Tedi Kholiludin, *Kuasa Negara atas Agama: Politik Pengakuan, Diskursus “Agama Resmi” dan Diskriminasi Hak Sipil*, Semarang: RaSAIL Media Group, 2009.
- [9] Suyogi Imam Fauzi, Ingepustipa Ningtyas dan Deslaz Rannu Handicha, “Implementasi Peraturan Daerah Wonosobo dalam Kebebasan Beragama Demi Tercapainya Kerukunan dalam Kehidupan Antar Umat Beragama”, *Karya Tulis Ilmiah Muslim Law Fair*, 2016.
- [10] Osgar S Matopo, “Pembatasan Terhadap Hak Asasi Manusia dalam Perspektif Keadaan Darurat”, *Jurnal Media Hukum*, Vol. 21 No. 1, Page 61, Juny 2014.

- [11] Yustiani, “Kerukunan Antar Umat Beragama Kristen dan Islam di Soe”, *Jurnal Analisa*, Vol. 15 No. 2, May-August 2008.
- [12] Y. Saefudin, Implementasi Pemberian Bantuan Hukum Bagi Rakyat Miskin Di Jawa Tengah Berdasarkan Undang-Undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum. *Jurnal Idea Hukum* 1 (1), 2015.