

Freedom from Religion and Its Legal Impact in Indonesia

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Abstract--- *The population of Indonesia is made up of several ethnicities and cultures. It is therefore not surprising that they also have different kinds of religions and beliefs. Some of them have no religion at all. The aim of this study is to examine whether Indonesian law allows people to have no faith or not. In addition, this study outlines the legal impact of anti-religion in Indonesia. For these purposes this analysis is intended to be qualitative and to use normative legal research methods. Research has shown that there are religious freedom laws in Indonesia. People are entitled to follow whatever religion they want, especially the six official religions, namely Islam, Christianity, Catholicism, Buddhism, Hinduism, and Confucianism. They also have the right to worship in accordance with the teachings of their faith. Nevertheless, according to a strong opinion, the right to recognize any religion does not mean the freedom not to be religious. Thus, Indonesia prohibited atheism based on several arguments. Indigenous belief, though not a religion, is not atheism. Indigenous belief is justified and has legal protection in Indonesia since it has been there for a long time. The legal consequence for those who do not have a religion is that they will face difficulties in obtaining their rights, on example in the case of education marriage and finance.*

Keywords--- *Freedom of Religion, Atheism, Indigenous Believe, Indonesia*

I. INTRODUCTION

Until now, the issue of religious freedom is still a complicated and complex issue in Indonesia. Starting with the notion of religious freedom and its limitations, the formulation of regulations and the implementation of those regulations still pose serious problems in the field. As a result, there are often disagreements between adherents of different religions and even intra-religious followers. These conflicts arise in a variety of ways, such as the incorrect decisions of a particular religious group, the destruction of places of worship, the discriminatory treatment of officials against spiritual or religious adherents, the exclusion of religious or community members, and the loss of many lives due to differences in perceptions of religious freedom.

Many scholars identify religious freedom as the right to accept the religion they love and practice the teachings of their faith. Many researchers include, including in it, the right to form a belief (1). Some others have added including being free to move from religion to another religion (2). They agreed however, that the desecration of faith did not fall within the scope of religious freedom (3).

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While in Indonesia there are only six officially recognized religions, namely Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism, based on the 1965 Decree of the President of the Republic of Indonesia No. 1/PNPS (4), the population is still justified in practicing religious freedom, believing in beliefs, voicing conscientious thoughts and attitudes. Thus, besides the six official religions above, they can have whatever religion they wish.

Residents that, in so far as they are for themselves, make interpretations and religious practices that deviate from the teachings of a religion. Nevertheless, if he recounts, supports or seeks general approval for interpreting and religious practices which deviate from the points of his religious teachings, then it is forbidden because it has harmed the religion's basic teachings.

Freedom of religion, in general, can be viewed from two angles: First, internal dimensions. Second, external dimensions. Included in the inner aspect is liberty of conscience, which is the freedom of the heart to choose and embrace a religion that is preferred. This freedom is absolute, must not be restricted while those who enter the external dimension are freedom to express religious teachings, freedom to form religious associations, and freedom to institutionalize spiritual lessons. This external dimension is relative, in the sense that the right to express religious beliefs, the right to systematize religious teachings and the right to form religious associations are closely related to other social institutions such as law and politics (5). Thus, it can be said that religion is a personal choice, but the actualization, expression, and practice of faith in the public space is an integral part of social life. The state must be present in the public sphere, not as a form of State intervention in the freedom to believe and carry out religious teachings, but is needed to maintain an orderly, safe and peaceful society.

How about the freedom to have no religion in Indonesia? Is the Indonesian population justified in not having a religion or following atheism which does not believe in God? What about the indigenous belief whose followers believe in the Almighty God, but the indigenous belief is considered not including religion in Indonesia? And what is the legal impact of people who have no faith? These things will be the object of the following study.

II. METHOD

The research method used is the normative legal analysis tool. Normative legal research was carried out to examine and review legislation on freedom of faith and belief and thus provided grounds for religious freedom in Indonesia. The research used a qualitative approach. The method of collecting data used in the research of the library. The data for this study was secondary in the form of primary legal material, secondary legal material, and tertiary legal materials. The analysis of the data used is descriptive, qualitative and explanatory. The results of the study will be presented in a narrative that describes and explains the object under study.

III. RESULT AND DISCUSSION

There is a distinction between freedom of religion and freedom from religion. With respect to religious freedom, Indonesia has a set of laws and regulations governing religious freedom. The rules and regulations are 1. The 1945 Constitution, 2. Law No. 39 of 1999, 3. Law No. 12 of 2005, 4. Determination of the President of the Republic of Indonesia Number 1/PNPS of 1965, and 5. Joint Regulations of Religion Minister and Home Affairs Minister No. 9

of 2006, No. 8 of 2006. Whereas in terms of freedom to have no religion, there are no strict laws and regulations that regulate it.

The first and foremost legislation governing religious freedom is the 1945 Constitution (6). Article 28E Paragraph1 it reads: *"Everyone is free to embrace religion and worship according to his religion ..."* And Paragraph2 reads: *"Everyone has the right to freedom of belief, express their thoughts and attitudes according to their conscience."* These Articles affirm that every person in Indonesia is entitled to follow the religion he likes and to worship as a human right in accordance with his religious teachings.

The above Articles on the right to religion and worship are then supported by other Articles that affirm that religious freedom requires freedoms that can not in any circumstances be diminished and that there is no prejudice against the compliance of those freedoms. Article 28I Paragraph1 reads: *"The right to life, the right not to be tortured, the right to freedom of thought and conscience, religious rights, the right not to be enslaved, the right to be treated as a citizen before the law and the right not to be punished under retroactive legislation are human rights which can not in any circumstances be curtailed."* Then Paragraph2 reads: *"Everybody has the right to be free of discrimination on every basis and to be protected from such discriminatory treatment."*

Other than that, the State must guarantee and safeguard the right of the population to faith and worship. Article 29 Paragraph2 reads: *"The State guarantees the independence of each resident to embrace his religion and to worship according to his religion and belief."*

The other legislation is ⁴ Law No. 39 of 1999 concerning Human Rights (7). Article 22 Paragraph1 of this Law reads: *"Everybody is free to follow his religion and worship in accordance with his religion and beliefs."* Furthermore, Paragraph 2 reads: *"The State guarantees every person's right to follow his religion and worship according to his or her religion and beliefs."* Paragraph 1 above states that the right to freedom of religion and worship in accordance with their faith is a human right, while Paragraph 2 stresses that the State must guarantee the protection, dignity and fulfillment of those rights for all those in Indonesia.

Another Article also stated that everyone has the right to be respected for their ⁶ human rights including the right to faith and ⁴ belief without discrimination. Article 3 Paragraph3 reads: *"Everybody has the right to uphold civil rights and fundamental human freedoms, without prejudice."* Therefore, the next Article stresses that the right to freedom of faith is a right that cannot be diminished in any circumstances. Article 4 reads: *"The right to life, the right not to be imprisoned, the right to personal freedom, mind and conscience, religious rights, the right not to be enslaved, the right to be respected as a individual and equality before the law and the right not to be punished retroactively on a legal basis are human rights which can not in any circumstances be diminished by anyone."*

Furthermore, the third legislation governing religious freedom is Law No. 12 of 2005 concerning Civil and Political Rights (8). The right to freedom of faith and religion and religious belief and practice is guaranteed, and no coercion is required. Article 18 Paragraph1 which reads: *"Everybody has the right to freedom of thought, conscience and religion, including the freedom to embrace or accept a religion or belief in his or her own choice, and freedom to practice his or her religion or belief in religious activities, obedience, practice and teaching, both individually*

and together with others, whether in a public or closed place." In Paragraph 2 it reads: "No one should be forced to interfere with his right to adhere to or accept a religion or belief as he wants."

⁸ The right to freedom of faith and belief is the right of every citizen according to Article of Law No. 12 of 2005 above. States parties, including the Indonesian government, must guarantee the protection, respect, and fulfilment of these rights. States Parties must also ban all racist acts and all acts encouraging discrimination in the name of religion-by legislation. Article 20 Paragraph 2 reads: "Any action that promotes hatred based on nationality, race or religion which is an incitement to discrimination, hostility or violence must be prohibited by law."

⁶ Due to the importance of religious freedom, this Statute puts the right to freedom of faith and worship based on religious convictions in freedoms that must not be removed and that should not be discriminated against under any circumstances. Article 4 Paragraph 1 reads: "In public emergencies that threaten the life of the nation and the existence of such an emergency has been officially announced, States Parties to the Covenant can take derogate of their obligations under this Covenant, insofar as it is demanded by the emergency, provided that these efforts do not conflict with the obligations of the States Parties under international law, and do not involve discrimination based on race, color, sex, language, religion and social origin."

² The fourth legislation is the Determination of the President of the Republic of Indonesia Number 1/PNPS of 1965 concerning the Prevention of Abuse and or Blasphemy of Religion (9). The explanation of Article 1 stated that the religion embraced by almost all the population in Indonesia is six, namely Islam, Christianity, Hinduism, Buddhism, and Confucianism. Indonesia does not prohibit other religions, such as Jews, Zoroastrian, Shinto, Taoism, and they get full protections as provided for in Article 29, Paragraph 2, of the 1945 Constitution, so that they do not contravene the provisions of this Legislation or other laws and regulations. And the Government tries to channel the indigenous belief towards the Almighty Godhead.

⁷ The fifth legislation is the Joint Regulation of the Minister of Religion and the Minister of Home Affairs No 9 of 2006, No 8 of 2006 on Guidelines for the Implementation of Duties of Regional Heads / Deputy Regional Heads in the Maintenance of Religious Harmony, Empowerment of the Religious People's Forum and Establishment of Houses of Worship (10). As the name implies, this Joint Regulation provides for the establishment for each adherent in places of worship. This Joint Regulation supersedes the Joint Decree of the Minister of Religion and Minister of Home Affairs No. 1/BER/MDN-MAG in 1969 concerning the Establishment of Houses of Worship which were deemed not to have regulated in detail the procedures for establishing places of worship so as to cause many closures, destruction and attacks on places of worship.

⁸ Of the five regulations above found that freedom of religion and belief in Indonesia is not absolute. While it is specified in some of the above laws that freedom of religion, faith and the practice of religious teachings and beliefs are freedoms which cannot be restricted in any circumstances, but it is clearly stated from the other side that the law limited freedom. The aim of restricting these freedoms is to guarantee the rights and freedoms of other citizens, and to provide justice, security and public order.

¹² Article 28J Paragraph 2 of the 1945 Constitution states: "In exercising their rights and freedoms, each person must submit to the restrictions stipulated by law with the sole purpose of guaranteeing, recognition, and respect for

the rights and freedoms of others and fulfil demands fair in accordance with moral considerations, religious values, security, and public order in a democratic society"(11).

Article 73 of Law No. 39 of 1999 concerning Human Rights also limits religious freedom by stating: *"The rights and freedoms outlined in this law can be restricted only by and on the basis of law, solely in order to guarantee the recognition and respect of human rights and fundamental freedoms of others, morality, public order and national interests"* (12).

The freedom to practice religion and belief is also limited in Article 18 Paragraph 3 of Law No. 12 of 2005 which reads: *"The freedom to practice one's religion or belief can only be limited by legal provisions, which are needed to protect the security, order, health or morals of the people or the fundamental rights and freedoms of others"*(13).

Another proof of the restrictions on freedom of religion and belief is that the Government only recognizes six official religions in Indonesia, although Indonesia permitted other religions as stated in the explanation of the Determination of the President of the Republic of Indonesia Number 1/PNPS of 1965.

The restriction makes M. Syafi'ie asks how is religious freedom restricted by law, which is a right that cannot be curtailed under any circumstances? (14). This limitation is not something strange because what is limited is freedom of expression that is closely related to public life so that there is no friction and security is created. Moreover, the international community also recognizes restrictions on religious freedom by law as stated in Article 18 of the International Covenant on Civil and Political Rights or the International Covenant on Civil and Political Rights (ICCPR) which reads (15): *1. All are entitled to freedom of expression, conscience and religion. This right shall include the freedom to have or to follow a religion or belief of his choice, and the freedom to express his religion or belief in worship, observance, practice and teaching, either individually or in association with others and in public or private. 2. No one shall be subject to coercion that would hinder his freedom of choice to have a religion or belief or to practice it. 3. The freedom to manifest one's faith or beliefs should only be subject to such limitations as are required by law and are appropriate for protecting the fundamental rights and freedoms of public safety, order, health or morality or others. 4. States Parties to this Covenant agree to protect the liberty of parents and, where appropriate, legal guardians to ensure their children's religious and moral education in conformity with their convictions.*

According to the abovementioned Article 18 Paragraph 3 of the Covenant, freedom of faith and religious instruction must be restricted by law only with the purpose of protecting: 1. Public safety, 2. Public order, 3. Public health, 4. Public morals, and 5. Others human rights and freedoms.

According to logic and in practice, religious freedom - including in Indonesia - it is impossible to do in absolute terms. Because when it comes to the level of expression, religious freedom will be relative. This relativism is not because religious freedom is betrayed, but because of the need to harmonize the rights of all citizens (16). If freedom is exercised in such a way that it damages others or makes others not free, then this means doing tyranny in the name of freedom and can ignite what is called 'blasphemy' (17).

Of the five laws and regulations above also found that voluntarily exchanging a religion with another religion was justified in Indonesia. Including apostasy or leaving Islam to embrace another faith. Apostasy is also justified in Indonesia if it is carried out without coercion or lure, while it is a criminal whose sentence is substantial according to Islamic criminal law (18). According to Zainuddin, religious freedom means free to embrace a recognized religion in Indonesia (Hinduism, Buddhism, Christianity, Catholicism, and Confucianism), free to move from one religion to another, and free to express and express the teachings of the faith that he embraces" (19).

What about the right not to have a religion in Indonesia, is that justified? None of the laws and regulations concerning religious freedom above mentions the prohibition on non-religion at all explicitly. Because there is no firmness, at least there are two opinions regarding whether atheism in Indonesia is allowed as follows:

In the 1965 President's Determination of the Republic of Indonesia Number 1/PNPS Article 4(20) which is entered into Article 156A of the Criminal Code states: "*Sentenced to imprisonment for a maximum of five years whoever intentionally gives feelings and/or acts; a. which is basically aggression, violence or profanation of the status of religion embraced in Indonesia; b. with the intention that citizens do not adhere to any religion based on the One Godhead.*" If the above mentioned letter b of Article 156A KUHP it will be found that what is prohibited is to invite other people not to adhere to any religion. Thus, if a person adheres not to any religion or does not encourage others to do the same thing, then he is allowed and not subject to criminal activity.

Abu Hafsin (21) corroborates this by quoting Koshy who details religious freedom into four main aspects: liberty of conscience, freedom to express religious beliefs, freedom of religious association and freedom to institutionalizing sovereignty of religious institutionalization. Freedom of conscience is the most fundamental and absolute right in a person. That is, not inalienable from someone. Because freedom of conscience is the absolute right, everyone must have the freedom to choose and not choose a religion.

Besides, personal beliefs are an excellent value. Therefore, if there is someone who believes that God does not exist, then the state must guarantee, recognize, and protect its right to godlessness. At the level of religious conscience, no one - including the State - can hinder this freedom of conscience. *Pancasila* only limits religious freedom at expressional levels (22).

Meanwhile, according to Zainuddin (23), religious freedom in the Indonesian context has been regulated in the law as "free to choose and embrace a certain religion," not free from non-religion. Thus, Indonesia prohibited atheism or not believing in God or having no religion at all. It is because Indonesia is a country based on *Pancasila*. In the first principle of *Pancasila*, it is stated: Godhead the One. This principle emphasized that belief in God Almighty is the prime base of Indonesia. Also, in Article 29 Paragraph 1 of the 1945 Constitution, it is expressly stated: "*The State is based on the One Godhead.*" Although Indonesia is not a religious State, religious life, and worship according to each religion and belief over there are protected by law (24).

On the other hand, atheism is very close to communism / Marxist-Leninism which since 1966 until now Indonesia still bans it. The prohibition was found in the Republic of Indonesia MPRS TAP Number XXV/MPRS/1966 of 1966 concerning the Dissolution of the Indonesian Communist Party, Statement as a Prohibited Organization in the Entire Territory of the Republic of Indonesia for the Indonesian Communist Party

and Prohibition of Any Activities to Distribute or Develop Communism/Marxism-Leninism(25). As understood and truly happened in Indonesian history, communism is a doctrine that does not care about religion and even hates religion and alienates religion in all their activities and movements. In the explanation of the TAP MPRS above it is stated that the notions or teachings of Communism/Marxism-Leninism are contrary to the principles and joints of the life of the Indonesian people who are godly and religious.

According to Muhammad TahirAzhary, Professor of Faculty of Law Universitas Indonesia in his book "Negara Hukum," Indonesia has a concept called the Concept of the State of *Pancasila* law. Its characteristics are: 1. The Religion-State close partnership 2. Rests upon the One Godhead, 3. Religious freedom in a positive sense, 4. Atheism and communism are prohibited, and 5. The principle of kinship and harmony (26). The purpose of the third characteristic of religious freedom in the positive sense is the freedom to choose the liked religion and carry out its teachings, not the freedom to choose not to have faith at all. The fourth characteristic then confirms this that atheism or not believing in God and communism are prohibited, and Indonesia does not give the right to live because they are contrary to the *Pancasila*.

In line with the above thoughts, according to Khotimah (27), religion has a significant role in Indonesia. It is because Indonesia is a "religion" country, in the sense that the State-based Pancasila maintains that no religious people can exist in Indonesia.

If Indonesia banned atheism, then what about the indigenous belief? Didn't the followers of the indigenous belief have no religion? The indigenous belief has existed in Indonesia since the beginning of the 20th century. For example, the Hardosuporo sect was founded by Kusumowidjito in 1913 in Purworejo, and the Sumarah faith line was founded by Sukinohartono who claimed to have received Sumarah's revelation in 1935 (28).

The existence of the indigenous belief is on and off from time to time. It is because the community and the State still does not fully recognize the indigenous belief until now. There are still tensions or conflicts between religious people, which in this case are Muslims like most of the population with adherents of indigenous belief which amounts to around 8 million people spread throughout Indonesia (29).

In its development, the followers of the various indigenous belief tried hard to get official recognition from the State. Finally, after the 1973 General Assembly of the People's Consultative Assembly and improved at the 1978 MPR General Assembly of the People's Consultative Assembly (30), they succeeded in obtaining the legalization of the State so that it has an official name: "Belief in the One and Only God."

The Director-General of Culture defines "Belief in the One and Only God" as: "Spiritual culture that consists of great guidance in the form of behavior, law and sacred knowledge, which is shared by its adherents with a conscience in the awareness and belief in God Almighty, by cultivating perseverance and inner vigilance and refining character in the social order towards mental cleanliness and spiritual maturity, in order to achieve prosperity and perfection of life in this world and in the eternal realm" (31).

The indigenous belief is unique. The state does not recognize it as a religion, based on the Indonesian Minister of Religion Instruction Number 4 of 1978 concerning Policy on Beliefs(32), but only as "spiritual culture," because it

does not have religious characteristics such as scriptures, prophets, laws, and others (33). The followers also do not want people to categorize the indigenous belieflike religion. However, that does not mean they do not believe in God. So, they were not religious, and at the same time, they were not atheists who did not believe in God at all. However, because they were already in Indonesia long before independence, they were placed in the guidance of the Ministry of Education and Culture, not the Ministry of Religion like the other six official religions.

The latest development, the Constitutional Court has made Decision Number 97/PUU-XVI/2016 concerning Testing Law No. 23 of 2006 concerning Population Administration as amended by Law No. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration against the 1945 Constitution (34), which states that the provisions of Article 61 Paragraph 1 and Paragraph 2 and Article 64 Paragraph 1 and Paragraph 5 are related to the emptying of religious columns in the Family Card and electronic Identity Card contrary to the Constitution. The consequence of this Constitutional Court Decision is that the followers of indigenous belief can list their beliefs in the religious column both on the Family Card and the electronic Identity Card.

As such, there should be no more legal problems for the followers of indigenous belief in Indonesia. If they get a legal issue, then it is not because of the laws and regulations, but because the community and individual officers are not ready to implement the Constitutional Court Decision.

From the discussion above, it shows that the State's treatment of atheists is different from the treatment of followers of indigenous belief. Atheists in Indonesia will face several legal impacts and difficulties (35).

Among the effects of the law is that if an atheist wants to make a Family Card and electronic Identity Card, then the religious column in the two population documents must be vacated. It is in accordance with Article 64 Paragraph 5 Law No. 24 of 2013 which reads (36): "*Population data elements relating to religion as referred to in Paragraph (1) shall not be filled in for residents whose faith was not recognized as a religion based on the provisions of the legislation or for trustees, but shall still be served and registered in the population database.*"

As a result, he will face difficulties in managing other documents such as driving licenses, passports, marriage certificates, police records, and others. It causes the loss of his rights as citizens in the fields of education, marriage, welfare, health, politics, and others.

For example, in the case of education, an atheist whose school ranks primary, middle and high school must take a religious subject from one of the government-recognized religions, whether he likes it or not, because the topic of atheism is not taught in Indonesia. In the matter of marriage, an atheist cannot be legally married in Indonesia, because Article 2 Paragraph 1 of the Marriage Law of 1974 (37) states that marriage is legal if it is carried out according to the laws of each religion and its beliefs. In economic matters, an atheist will have difficulty when applying for a job because many employers will ask about his faith. In political issues, an atheist must not be a President or Minister or Regional Head because one of the conditions for holding a public office is to fear the Almighty God, and they will swear according to their religion.

Therefore, if an atheist wants to get his rights as an Indonesian citizen, he must be religious with one of the official religions or pretend to embrace one of these official religions. So that their religions are written in the

religion column of the Family Card and electronic Identity Card, as which had been experienced by followers of the indigenous belief before the issuance of the Constitutional Court Decision Number 97 of 2016.

IV. CONCLUSION

Indonesia has laws and regulations relating to religious freedom and belief. While the law specifies that the right to religion and faith is a right that can not in any circumstances be diminished but also upholds and protects the rights of others and maintains protection and public order, the law limits religious freedom.

Freedom of religion is in a positive sense in Indonesia. That is, all people can choose the kind of faith and belief they want. They can even move from one religion to another. Freedom of religion, however, does not mean freedom not to follow any religion, since *Pancasila*, which believes in God the Almighty, is the base of the State. Atheists or people who have no faith will face many difficulties and will not have the right to exercise their rights as Indonesian citizens because Indonesia does not recognize the ideology that they adhere to.

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