THE INDONESIAN STRUGGLE to freely stand on its own feet – to borrow Bung Karno’s words – as a democratic country is still a long way off. At the centre of this issue are the rights of all citizens to be treated fairly and equally in the face of the Indonesian constitution and law. In enforcing legislation in Indonesia there should be no differentiation between citizens based on their wealth, skin colour, ethnicity, religion and so on. Yet this is precisely what is happening.

Rights have been quite explicitly regulated in the 1945 Indonesian constitution, which states who has authority and elects the government as enforcer. These rights include the right to form alliances/associations, economic rights, cultural rights, rights concerning religion and belief etc. One of the most important rights for all nations including Indonesia is the right to religion and belief. This right, besides being guaranteed in the 1945 constitution is also expressed in international laws ratified by the Indonesian government such as the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, as well as in religious teachings.

Thus, reformation and democratisation should demand that the government implement initiatives that strengthen equality and fairness for the rights of all citizens. Yet reality
shows that this is far from where it should be at, and indeed there are many obstacles hindering such initiatives. For instance, there is still an incomplete paradigm or lack of understanding about the state amongst citizens themselves, let alone amongst state apparatus and leaders. This lack of understanding concerning citizenship and human rights then spreads into newly compiled legislation and other regulations, and is very apparent in their implementation.

The Wahid Institute is honoured to present an in-depth examination of this issue, which is based on aspirations and a commitment to enforce and guarantee one important right of Indonesians without exception and thus to realise the aspirations of the Indonesian nation and state as imagined by the Indonesian people and founding fathers – namely the right to freedom of religion or belief.

Jakarta, May 2009

The Wahid Institute Editorial Team
LIST OF ABBREVIATIONS

AGAP : Aliansi Gerakan Anti-Pemurtadan/Anti-Apostasy Movement Alliance
AKKBB : Aliansi Kebangsaan untuk Kebebasan Beragama dan Berkeyakinan/National Alliance for Freedom of Religion or Belief
Bakor Pakem : Badan Koordinasi Pengawas Aliran Kepercayaan Masyarakat/Coordinating Board for Monitoring Mystical Beliefs in Society
Banser : Barisan Ansor Serbaguna/Multi-function Helpers Front
BAP : Barisan Anti-Pemurtadan/Anti-Apostasy Front
BAP : Berita Acara Pemeriksaan/Police Investigative Report
BIN : Badan Intelijen Negara/State Intelligence Agency
BPD : Bintang Pelopor Demokrasi/Democratic Pioneer Star Party
Brimob : Brigade Mobil/Mobile Brigade
CAT : Convention Against Torture
CEDAW : Convention on the Elimination of All Forms of Discrimination Against Women
CERD : Committee on the Elimination of Racial Discrimination
CRC : Convention on the Rights of Children
Dalmas : Pengendali Massa/Riot Control Troops
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>Dandim</td>
<td>Komandan Komando Wilayah Distrik/District Military Commander</td>
</tr>
<tr>
<td>Danlanud</td>
<td>Komandan Pangkalan Udara/Air Force Commander</td>
</tr>
<tr>
<td>Danramil</td>
<td>Komandan Rayon Militer/District Military Commander</td>
</tr>
<tr>
<td>Depag</td>
<td>Departemen Agama/Department of Religious Affairs</td>
</tr>
<tr>
<td>Depdagri</td>
<td>Departemen Dalam Negeri/Department of Internal Affairs</td>
</tr>
<tr>
<td>Deplu</td>
<td>Departemen Luar Negeri/Department of Foreign Affairs</td>
</tr>
<tr>
<td>DPR</td>
<td>Dewan Republik Indonesia/Indonesian House of Representatives</td>
</tr>
<tr>
<td>DPRD</td>
<td>DPR Daerah/Regional Parliament</td>
</tr>
<tr>
<td>DUHAM</td>
<td>Deklarasi HAM Universal/Universal Declaration on Human Rights</td>
</tr>
<tr>
<td>FKUB</td>
<td>Forum Kerukunan Umat Beragam/Forum for Religious Harmony</td>
</tr>
<tr>
<td>FPI</td>
<td>Front Pembela Islam/Islamic Defenders Front</td>
</tr>
<tr>
<td>FPKS</td>
<td>Fraksi Partai Keadilan Sejahtera/Prosperous Justice Party Fraction</td>
</tr>
<tr>
<td>FRM</td>
<td>Forum Rakyat Madani/Civil Society Forum</td>
</tr>
<tr>
<td>FUI</td>
<td>Forum Umat Islam/Muslim Forum</td>
</tr>
<tr>
<td>FUUI</td>
<td>Forum Ulama Umat Islam/Islamic Community and Ulama Forum</td>
</tr>
<tr>
<td>Gemas</td>
<td>Gerakan Masyarakat Anti Aliran Sesat/Social Movement Against Deviant Sects</td>
</tr>
<tr>
<td>GERAH</td>
<td>Gerakan Anti Ahmadiyah/Anti-Ahmadiyah Movement</td>
</tr>
<tr>
<td>GP Ansor</td>
<td>Gerakan Pemuda Ansor/Ansor Youth Movement</td>
</tr>
<tr>
<td>GPdI</td>
<td>Gereja Pentakosta di Indonesia/Indonesian Pentecostal Church</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
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</tr>
<tr>
<td>GUI</td>
<td>Gerakan Umat Islam/Muslim Movement</td>
</tr>
<tr>
<td>GUII</td>
<td>Gerakan Umat Islam Indonesia/Indonesian Muslim Movement</td>
</tr>
<tr>
<td>GUPPI</td>
<td>Gabungan Usaha Perbaikan Pendidikan Islam/Joint Effort for the Development of Islamic Education</td>
</tr>
<tr>
<td>HAM</td>
<td>Hak Asasi Manusia/Human Rights</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICERD</td>
<td>International Convention on Elimination of All Forms of Racial Discrimination</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social, and Cultural Rights</td>
</tr>
<tr>
<td>ICIP</td>
<td>International Conference on Islam and Pluralism</td>
</tr>
<tr>
<td>IMB</td>
<td>Izin Mendirikan Bangunan/Building Permit</td>
</tr>
<tr>
<td>IPBS</td>
<td>Ikatan Pencak Silat Bima Suci/Holy Water Pencak Silat Association</td>
</tr>
<tr>
<td>JAI</td>
<td>Jemaat Ahmadiyah Indonesia/Indonesian Ahmadiyah Group</td>
</tr>
<tr>
<td>JPU</td>
<td>Jaksa Penuntut Umum/Public Prosecutor</td>
</tr>
<tr>
<td>Kakandepag</td>
<td>Kepala Kantor Depag/Head of the Department of Religious Affairs' Office</td>
</tr>
<tr>
<td>Kapolda</td>
<td>Kepala Kepolisian Daerah/Regional Police Chief</td>
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<tr>
<td>Kapolri</td>
<td>Kepala Kepolisian RI/Indonesian Police Chief</td>
</tr>
<tr>
<td>Kapolsek</td>
<td>Kepala Kepolisian Sektor/Sectoral Police Chief</td>
</tr>
<tr>
<td>Kapolwil</td>
<td>Kepala Kepolisian Wilayah/District Police Chief</td>
</tr>
<tr>
<td>Kejari</td>
<td>Kejaksaan Negeri/State Prosecutor</td>
</tr>
<tr>
<td>KLI</td>
<td>Komando Laskar Islam/Islam Troop Command</td>
</tr>
<tr>
<td>Komnas HAM</td>
<td>Komisi Nasional HAM/National Commission on Human Rights</td>
</tr>
<tr>
<td>KOMPAK</td>
<td>Komponen Muslim Kab. Kuningan/Kuningan</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>KTP</td>
<td>Kartu Tanda Penduduk/National ID Card</td>
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<tr>
<td>KUA</td>
<td>Kantor Urusan Agama/Religious Affairs Office</td>
</tr>
<tr>
<td>KUHP</td>
<td>Kitab Undang-Undang Hukum Pidana/Criminal Code</td>
</tr>
<tr>
<td>KWI</td>
<td>Konferensi Waligereja Indonesia/Indonesian Church Fellowship</td>
</tr>
<tr>
<td>LBH</td>
<td>Lembaga Bantuan Hukum/Legal Aid Foundation</td>
</tr>
<tr>
<td>LP</td>
<td>Lembaga Pemasyarakatan/Correction Center/Prison</td>
</tr>
<tr>
<td>LPI</td>
<td>Laskar Pembela Islam-Islamic Defenders Force</td>
</tr>
<tr>
<td>LPPI</td>
<td>Lembaga Penelitian dan Pengkajian Islam/Institute for Islamic Studies and Research</td>
</tr>
<tr>
<td>LSAF</td>
<td>Lembaga Studi Agama dan Filsafat/Institute for Philosophy and Religious Studies</td>
</tr>
<tr>
<td>Mabes Polri</td>
<td>Markas Besar Kepolisian Republik Indonesia/Indonesian Police Headquarters</td>
</tr>
<tr>
<td>Mapolres</td>
<td>Markas Polisi Resort/Regency Police Headquarters</td>
</tr>
<tr>
<td>Menkopolhukam</td>
<td>Menteri Koordinator Politik, Hukum, dan Keamanan/Coordinating Ministry for Political, Legal and Security Affairs</td>
</tr>
<tr>
<td>MJGKI-JI</td>
<td>Majelis Jemaat GKI Jatibening Indah/Jatibening Indah Church Board</td>
</tr>
<tr>
<td>MPR</td>
<td>MajelisPermusyaratan Rakyat/People’s Consultative Assembly</td>
</tr>
<tr>
<td>MRORI</td>
<td>Monthly Report on Religious Issues</td>
</tr>
<tr>
<td>MTA</td>
<td>Moslem Television Ahmadiyah</td>
</tr>
<tr>
<td>MUI</td>
<td>Majelis Ulama Indonesia/Indonesian Council of Ulama</td>
</tr>
<tr>
<td>Munas</td>
<td>Musyawarah Nasional/National Meeting</td>
</tr>
<tr>
<td>Muspida</td>
<td>Musyawarah Pimpinan Daerah/Council for Provincial Officers</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Name</td>
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<td>--------------</td>
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</tr>
<tr>
<td>Muspika</td>
<td>Musyawarah Pimpinan Kabupaten/Council for Government District Officers</td>
</tr>
<tr>
<td>NKRI</td>
<td>Negara Kesatuan Republik Indonesia/United States of the Republic of Indonesia</td>
</tr>
<tr>
<td>NTB</td>
<td>Nusa Tenggara Barat/West Nusa Tenggara</td>
</tr>
<tr>
<td>NU</td>
<td>Nahdlatul Ulama</td>
</tr>
<tr>
<td>OKI</td>
<td>Organisasi Konferensi Islam/Organisation of the Islamic Conference</td>
</tr>
<tr>
<td>Pakem</td>
<td>Pengawas Aliran Kepercayaan Masyarakat/Team for Monitoring Mystical Beliefs in Society</td>
</tr>
<tr>
<td>Pansus RUU Pilpres</td>
<td>Panitia Khusus Rancangan Undang-Undang Pemilihan Presiden/Special Committee for the Presidential Election Bill</td>
</tr>
<tr>
<td>PBB</td>
<td>Perserikatan Bangsa-Bangsa/United Nations</td>
</tr>
<tr>
<td>PDM</td>
<td>Pimpinan Daerah Muhammadiyah/Muhammadiyah Regional Leadership</td>
</tr>
<tr>
<td>Pelindo</td>
<td>PT Pelabuhan Indonesia/State Owned Seaport company</td>
</tr>
<tr>
<td>Pemda</td>
<td>Pemerintah Daerah/Regional Government</td>
</tr>
<tr>
<td>Perber</td>
<td>Peraturan Bersama/Joint Regulation</td>
</tr>
<tr>
<td>Perpres RI</td>
<td>Peraturan Presiden RI/Indonesian Presidential Regulation</td>
</tr>
<tr>
<td>PGI</td>
<td>Persekutuan Gereja Indonesia/Alliance of Indonesian Churches</td>
</tr>
<tr>
<td>PKB</td>
<td>Partai Kebangkitan Bangsa/National Awakening Party</td>
</tr>
<tr>
<td>PN</td>
<td>Pengadilan Negeri/State Court</td>
</tr>
<tr>
<td>PNS</td>
<td>Pegawai Negeri Sipil/Civil Servant</td>
</tr>
<tr>
<td>Polda</td>
<td>Kepolisian Daerah/Regional Police</td>
</tr>
<tr>
<td>PPS</td>
<td>Perguruan Pencak Silat/Pencak Silat Institute</td>
</tr>
<tr>
<td>PTUN</td>
<td>Pengadilan Tata Usaha Negara/State Administrative Court</td>
</tr>
<tr>
<td>PUI</td>
<td>Persatuan Umat Islam/Indonesian Muslim Union</td>
</tr>
<tr>
<td>RAN-HAM</td>
<td>Rancangan Aksi Nasional HAM/Human</td>
</tr>
</tbody>
</table>
Rights National Action Plan

RI : *Republik Indonesia/Republic of Indonesia*

RT : *Rukun Tetangga/Neighbourhood Association Unit*

RUDAL : *Remaja Masjid al-Huda Manis Lor/Manis Lor al-Huda Mosque Youth Group*

RW : *Rukun Warga/Community Association Unit*

satpol PP : *Satuan Polisi Pamong Praja/Municipal Police*

SBY : *Susilo Bambang Yudhoyono*

SKB : *Surat Keputusan Bersama/Joint Decree*

ST : *Setara Institute*

TPM : *Tim Pengacara Muslim/Muslim Legal Team*

UIDHR : *Universal Islamic Declaration of Human Rights*

UU : *Undang-Undang/Legislation*

UUD 1945 : *Undang-Undang Dasar 1945/1945 Constitution*

UUD RIS 1950 : *Undang-Undang Republik Indonesia Serikat 1950/United Republic of Indonesia 1950 Constitution*

UUDS : *Undang-Undang Dasar Sementara/Interim Constitution*

Wantimpres : *Dewan Pertimbangan Presiden/Presidential Advisory Council*

WI : *The WAHID Institute*

YKNCA : *Yayasan Kanker dan Narkoba Cahaya Alam/ Cahaya Alam Cancer and Drug Rehabilitation Foundation*
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CHAPTER I
INTRODUCTION

INDONESIA’S RATIFICATION of the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12/2005 is witness to the democratic progression Indonesia has undergone since the fall of the New Order regime. This human rights covenant complements other pre-existing international human rights covenants such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ratified through Law No. 7/1984, the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified through Law No. 11/2005, and the 1965 International Convention on The Elimination of All Forms of Racial Discrimination (ICERD) ratified through Law No. 29/1999. It also complements other Indonesian regulations enforcing human rights, including Law No. 39/1999 on Human Rights and Law No. 26/2000 on the Human Rights Court. Of all legislation, the most important is the amended 1945 constitution, particularly article 28 which explicitly guarantees the human rights of all citizens.

That Indonesia has ratified these covenants and has a significant number of national laws addressing human rights should indicate a stronger guarantee of citizens’ rights, both in the constitution and other regulations. In this
sense, Indonesia has shown significant progression. Recent amendments to the 1945 constitution, which essentially allowed for increased social participation, have directly addressed human rights. Similar guarantees have also been accommodated in derivative legislation such as Law No. 40/2008 on Eradication of Racial and Ethnic Discrimination.

Yet it is pertinent to note that these seemingly impressive formal legal achievements on paper are not so easily implemented in practice. What is ideal and what is real do not always match, in fact, sometimes they are totally contradictory. For instance, despite the facts mentioned above, there has been an increase in anti-religious freedom movements throughout the reformation era, and the government has become visibly weaker in protecting minority groups, both inter-religious and intra-religious minorities.

Several reports, more specifically annual reports of the kind issued by the Setara Institute (2007-2008) and the Wahid Institute (2008) as well as the Wahid Institute’s monthly publication (the Monthly Report on Religious Issues, MRORI), indicate a positive correlation between instances of intolerance, discrimination, intimidation and violence against the right to religious freedom of minority groups in Indonesia. This phenomenon contradicts the progress achieved on paper - the amended 1945 constitution, the variety of laws and the ratification of international human rights covenants. If these kind of threats against freedom of religion and belief continue, they will diminish the quality of Indonesian democracy, undermining any state guarantee to protect Indonesian citizens.

While on the one hand citizens’ freedom of religion or belief is threatened, on the other, it is not impossible that these seeds of discrimination slowly work their way into other legislation and regulations. This is a valid concern in light of
the increasingly apparent trend concerning the inclusion of exclusive and primordial elements (from religious or certain other exclusive groups) in legislation or legal regulations. It is thus important to look more closely at developments in the implementation of article 18, verse 2 of the ICCPR.

Upholding human rights in Indonesia is not only difficult because of government inability and lack of interest (for a variety of reasons, including political), but rather because there is still a discrepancy between human rights and local values and culture. There still remains a significant discrepancy of ideas at three levels: (1) Islam; (2) Indonesia; and (3) human rights. At each level there are discrepancies that are not easily overcome: discrepancies between the Islamic context and the Indonesian context; the Indonesian context and human rights concepts; the Islamic context and human rights concepts, and so on. This automatically calls for any discussion of implementation of human rights in Indonesia to address all three levels, especially the Islamic context, in Indonesia.

The discursive and conceptual tensions mentioned above have also weakened the Indonesian government’s ability to stand firm in the face of pressure from conservative and fundamental anti-religious freedom groups. This inability has been more than apparent in that the Indonesian government, which, _nota bene_, is a constitutional state, has under pressure sided with the religious mainstream and, due to the legitimacy of certain religious institutions or figures, has at all levels (local and central) been forced to follow this mainstream, though it meant not only sacrificing the civil and political rights of minority groups, but also disregarding the 1945 constitution and Pancasila, and violating human rights. It is thus important to examine this aspect when analyzing developments in Indonesia’s implementation of the ICCPR,
especially article 18, verse 2 on the guarantee of freedom of religion or belief.

In considering this reality, this report does not intend to see the difficulties, the human rights violations and the government’s failure to uphold the human rights of its citizens as something that only the government must address, but also intends to evaluate the intellectual and ideological struggle of the state and government itself; what the practical tendencies are and the regulations that accompany them in relation to implementation of the ICCPR, particularly article 28.

The Indonesian government’s 2007 report to the United Nations (UN) addressing developments made in Indonesia’s implementation of the ICCPR, which was published by the Department of Foreign Affairs with the title “Indonesia’s Initial Report on Implementation of the International Covenant on Civil and Political Rights (ICCPR)”, indicated progress had been made in guaranteeing citizens’ rights through various laws. For instance, the inclusion of the state philosophy of Pancasila in article 29 of the 1945 constitution; the joint regulations of the Minister for Religious Affairs No. 9 and the Minister for Internal Affairs No. 8 of 2006 on An Executive Guide for Regional Heads/Vice Heads on Cultivating Religious Harmony, and Empowerment of the Forum for Religious Harmony and Establishment of Houses of Worship; the involvement of other religious leaders – not only Muslim – in shaping these regulations; as well as facilitation of the international conference for interfaith dialogue on September 2, 2006 in Bali.¹

¹ Indonesian Department of Foreign Affairs, Laporan Awal Republik Indonesia tentang Implementasi dari Kovenan Internasional tentang Hak-Hak Sipil dan Polik (ICCPR)/Indonesia’s Initial Report on Implementation of the International Covenant on Civil and Political Rights (ICCPR), (Jakarta: Deplu RI, 2007), pp. 98-100.
Yet the government report contained several fundamental flaws, amongst others: (1) it did not address problems in implementation, nor central and local government involvement in limiting the activities of and outlawing certain minority sects; (2) it did not mention the violence that law enforcement officers have been unsuccessful in containing; (3) it did not analyse the discriminative behaviour of local governments and courts against minority groups, which, due to the mass pressure advocating the outlawing of these minority groups, choose not to uphold the constitution and law but rather to prosecute those accused of religious defamation or deviance.

To date, the UN Commission on Human Rights has yet to respond to “Indonesia’s Initial Report on Implementation of the International Covenant on Civil and Political Rights (ICCPR)” because of the Indonesian government’s delay in submitting the initial report. However, the UN Commission on Human Rights has made some important recommendations that must be followed up in relation to other conventions, such as the Convention Against Torture (CAT), the Convention on the Rights of the Child (CRC); the Committee on the Elimination of Racial Discrimination (CERD); and the CEDAW.

It is thus necessary to briefly refer to the UN Anti-Torture Commission’s response and recommendations to the report on the Indonesian government’s implementation of article 19 of the Anti-Torture Convention. While the response and the recommendations given are concerned more with anti-violence, several aspects are relevant to a number of articles in the ICCPR. In its response, the UN Anti-Torture Commission expressed concern over the provocation and outlawing of members of minority groups, particularly Ahmadiyah and other religious minorities. The committee also took note of the government’s failure in facilitating unbiased, fast and
independent investigations into the outlawing of minority groups, and touched upon the inability of the police to guarantee that citizens would be protected.

The committee also raised concern over the plan—which was actualised on July 9, 2008—to announce the three ministers’ joint decree which effectively criminalized Ahmadiyah’s activities. The committee was concerned with the behaviour of those state officers and institutions which had been given authority to issue decrees affecting the rights of Ahmadiyah members. Their neglect placed Ahmadiyah members in a situation where they were in danger of ill-treatment and physical torture. The committee also condemned the Indonesian government for giving the impression that Ahmadiyah members had to restrain themselves from responding to provocation, which effectively placed blame on the Ahmadiyah community itself, leaving them in a very vulnerable position.

The committee issued the following three general recommendations to address these concerns: (1) State Parties must guarantee immediate, unbiased and effective investigation into the above mentioned acts of discrimination; (2) State Parties must openly criticise criminal actions based on discriminative hatred and violence and any related violence; (3) State Parties must give immediate consideration to recruiting individuals from ethnic groups and religious minorities.

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3 Indonesian Department of Foreign Affairs, *Kompilasi Rekomendasi/Compilation of Recommendations*, p. 144.
The commentary and recommendations of the UN Committee on the Elimination of Racial Discrimination are quite similar. As is usual for any regime, reports on the implementation of international conventions are sure to focus more on positive aspects, avoiding any negative ones.\(^4\) In response however, although praising the positive steps the Indonesian government made in eliminating racial discrimination – such as the Human Rights National Action Plan (RANHAM) for 2004-2009, the legislation of Law No. 24/2003 on the Constitutional Court, Law No. 12/2006 on Citizenship which removed the categories “*pribumi*/indigene or native” and “*non-pribumi*/non-native” and so on – the committee also voiced a number of concerns.

One concern worthy of mention is the issue of “formal” and “informal” religions. Although the Indonesian delegation disputed the dichotomy, the committee noted that in practice there was a fundamental distinction – apparent in a number of regulations and legislation – between the “formal” Islamic, Protestant, Catholic, Hindu, Buddhist, and Confucian religions and all other religions and faiths. The committee was concerned that this distinction could bear negative implications for the rights to freedom of thought and freedom of religion and belief, particularly for ethnic groups and/or indigenous peoples.\(^5\)

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\(^4\) This has prompted a coalition of a number of civil society organizations in Indonesia to produce an alterative report on the implementation of the Convention for Elimination of Racial Discrimination. For further information see The Human Rights Working Group, *Menguak Tabir Diskriminasi Racial dan Impunity di Indonesia/Uncovering Racial Discrimination and Impunity in Indonesia*, (Jakarta: HRWG, 2008).

\(^5\) A number of international reports concerning religious freedom in Indonesia always address this issue of why religious adherence has always been a source for discrimination against citizens. See for instance, the 2008 Annual Report released by the *United States Commission on International
on was the obligation for all individuals to record their belief on their national identity cards (KTP) and birth certificates, in accordance with Law No. 12/2006.

The committee recommended that State Parties treat all religions and faiths equally, and respect the freedom of thought, religion and belief of all ethnic minorities and/or indigenous peoples. The committee also recommended that the category for religion on national identity cards and birth certificates be removed.6

In addition, the UN Human Rights Council in Geneva released the “Report of the Special Rapporteur on Freedom of Religion or Belief” on February 16, 2009 which featured a commentary by Asma Jahangir entitled “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development.” Asma Jahangir reemphasised the Indonesian state’s obligation to protect and guarantee the safety of all minority groups that live within the state’s jurisdiction. She recalled the words of article 18, verse 2 of the ICCPR which read: “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”

This is closely related with the decline in guaranteeing citizen’s rights to religious freedom in Indonesia, particularly after the Monas tragedy on June 1, 2008 and the release of the three ministers’ joint decree on Ahmadiyah (KEP-033/A/ JA/6/2008 and SKB No. 3/2008) on June 9. Since the release of the joint decree, Asma Jahangir has been concerned with

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Religious Freedom, p. 56. These are by no means new comments. In the same reports from 1999-2007, religious discrimination has always been seen as a black mark against freedom of religion and belief in Indonesia, for which a satisfactory resolution is still being sought.

6 Indonesian Department of Foreign Affairs, Kompilasi Rekomendasi/Compilation of Recommendations, pp. 239-240.
the discriminative behaviour and attitudes against religions and beliefs, even though these religions and beliefs are newly formed sects or religious minorities.\footnote{Asma Jahangir, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development,” \textit{Report of the Special Rapporteur on freedom of religion or belief by Asma Jahangir}, Human Rights Council, Tenth session Agenda item 3, 16 February 2009, pp. 18-19.}

This book is not directly concerned with the UN Human Rights Council’s recommendations or with Asma Jahangir’s \textit{(special rapporteur)} commentary, but rather intends to offer a comparison or response to these recommendations by presenting a report on developments in the implementation of article 18, verse 2 of the ICCPR. This is a voluntary report that intends to uphold human rights and raise the quality of democracy in Indonesia.

This book is one initiative in a series of monitoring activities run by the Wahid Institute to observe religious life in Indonesia. The Wahid Institute regularly publishes the results of its monitoring activities in the \textit{Monthly Report on Religious Issues} (MRORI), the data from which is then summarised in the annual report on religious life in Indonesia. The process involves cooperating with networks and correspondents in a number of regions throughout Indonesia. They help mine data from media reports, hold interviews or run direct field investigations. The Wahid Institute has analysed and refined this data, making additions and omissions where necessary, in composing this book.

This book will be arranged as follows: After the Introduction (Chapter I), Chapter II discusses the ICCPR, particularly article 18, verse 2 and the context and problems behind its ratification in Indonesia. Chapter III discusses the relationship between article 18, verse 2 of the ICCPR with...
Islam, human rights and the Indonesian context, and includes a discussion of future challenges and opportunities. Chapter IV examines several anti-religious freedom incidences for which the government, as protector of its citizens, should take responsibility. Chapter V contains an analysis, and some reflections and recommendations.
CHAPTER II

THE ICCPR AND THE GUARANTEE OF RELIGIOUS FREEDOM IN INDONESIA

A. INTRODUCTION

The International Covenant on Civil and Political Rights (ICCPR) is one of three conventions that constitute the International Bill of Human Rights (IBHR), the other two being the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration on Human Rights (UDHR). Both the ICCPR and the ICESCR were based on the UDHR, which was adopted by the United Nations General Assembly on December 10, 1948. The UDHR is a general reference for the universal and effective recognition of and respect for the fundamental rights and freedoms of all people and nations, within UN member nations and the territory under their jurisdiction. Being only a general reference, it was necessary that the content and meaning of the UDHR be adopted into legally binding international instruments.¹

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The ICCPR reinforces the civil and political rights detailed in the UDHR, to the extent that they become legally binding stipulations and their clarification incorporates other related principles. The covenant consists of a preamble and six parts containing a total of 53 articles.2

Civil and political rights are those rights that have their roots in human dignity and apply to all humans whose existence the state guarantees and respects, so that they are free to enjoy their rights and freedoms in the civil and political realms.3 The basis and significance of this convention is stated in the first paragraph of the ICCPR’s preamble: “...in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”4 This declaration was designed to give a philosophical basis to the covenant, inspired by past experience and contemporary needs, and to integrate it into international law based on the intentions and principles of the Charter of the United Nations.

This declaration brings together several important concepts. First, the human rights detailed in the covenant are legal rights, and as such the covenant is not just some kind of moral proposition with no legal ramifications. These rights are also universal because they are based on recognition of the equality of all humans without discrimination. Further, these

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2 Explanation of Law No. 12/2005 on Ratification of the ICCPR, number 3.
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rights are international rights because they are an element in international relations and are part of the basic structure of modern world peace. Consequently, all people must respect these rights and various international institutions are tasked with enforcing them. In short, it is only fitting that international law addresses human rights.5

The ICCPR essentially stipulates restriction of state authority should a state act repressively, especially if they are a State Party to the covenant (have ratified the ICCPR). The rights and freedoms involved here are often referred to as negative rights (the right to be left alone), in the sense that they are still guaranteed and protected even when the state’s function is restricted or minimal. The state violates these rights and freedoms when it acts as an intervening force.6 Of course, the primary objective is that all citizens are justly granted their rights, and the state functions to ensure this.7

1. HISTORICAL BACKGROUND

In January and February of 1947, in its first session the United Nations Commission on Human Rights focused on preparing an international declaration on human rights. The biggest difficulty at the time for the commission was in deciding upon the type of mechanism


to be designed. On the one hand some members felt that the Declaration of the General Assembly was sufficient and need not be followed up with anything more than a simple declaration, while others demanded a new convention to make the declaration more effective. The later group felt that the declaration was insufficient without an accompanying convention, and that without this convention, the UN would fail to transform one of its primary objectives into a legal product. As a result, the UN had to ensure that the legal product produced would not be rejected by the executive or legislative institutions of any state. Eventually a compromise was reached by combining both ideas, producing a more desirable outcome. A commission was formed to work on designing a declaration and covenant simultaneously. By selecting the term “covenant” to refer to the international convention on human rights, the commission called attention to its status as a legal obligation that no one could question or oppose in those states that accepted and implemented it.\(^8\)

The fundamental difference between the covenant signed and ratified by states and the UN General Assembly's declaration, is that the covenant is an agreement between State Parties concerning their tasks and obligations, and the most effective ways of fulfilling them, while the UDHR was considered legally ineffective. In addition, while the passages in the covenant raised no legal doubts, the declaration was often seen only as a compilation of moral rules. Based on the principle of *pacta sunt servanda* (agreements must be kept), State

\(^8\) Pechota, “Kovenan Hak Sipil dan Politik: Sejarah dan Perkembangannya”, p. 4.
Parties who signed the convention are not only obliged to implement it, but also have the right to summon other State Parties who fail to give full effect to the provisions of the covenant, so long as those states have a strong basis on which to make such a claim.9

One influential factor in the formulation of the civil rights covenant was the emerging awareness about the need to guarantee economic, social and cultural rights as inseparable from human rights. The distinction caused intense political debate between the Socialist Bloc and the Capitalist Bloc who were, at the time, fighting the Cold War. This situation influenced the legislation of the international covenant on human rights, which the UN Commission on Human Rights began working on in 1949.

Capitalist Bloc countries like America, England, and Canada supported the separation of these two categories in the covenant, emphasizing the necessary differences in their implementation. Civil and political rights could be implemented immediately, while economic, social and cultural rights required progressive implementation. The first group of rights protected individuals from illegal and unjust authoritarianism. The second had to be advanced through positive actions on the state’s behalf. Both required different international implementation. Only a handful of countries opposed the differentiation, including the Soviet Union, Poland, Mexico and Egypt. They argued quite convincingly that human rights could not be so easily divided, nor could they be compared or classified on the basis of their value.10 In the end, however, it was decided to split the two categories, forming two

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9 Ibid., p. 7.
10 Ibid., p. 23.
different international conventions for civil and political rights and economic, social and cultural rights.\textsuperscript{11}

In the eighth session (April-June 1952), the UN Commission on Human Rights decided to compile the two covenants together. The commission continued to revise several previous drafts, formulating an article on self-determination and finally agreeing on the wording of the preamble. Formulation of the draft was concluded in the tenth session (February-April 1954).\textsuperscript{12} The twin covenants were produced in a less than conducive situation, which was to have various implications for the implementation for both categories of human rights.

In 1950, the UN General Assembly passed a resolution stating that civil and political rights as well as basic freedoms on the one hand, and economic, social and cultural rights on the other were interrelated and interdependent. After long debate, on December 16, 1966, the UN General Assembly legalised the ICCPR and its operational protocol, as well as the International Covenant on Economic, Social, and Culture Rights (ICESCR) and its Operational Protocol in resolution 2200A (XXI). They entered into force on March 23, 1976, and January 3, 1976 respectively.

After legislation, these covenants not only asked that states sign and ratify them, but that the secretary general urge member states to periodically report on their progression and to allow governments, non-government organisations and the secretary general to publicise the covenant as widely as possible.

\textsuperscript{11} Husendro, “Implementasi Hak Sipil Dan Politik di Indonesia” (http://husendro.blogspot.com)

\textsuperscript{12} Pechota, “Kovenan Hak Sipil dan Politik: Sejarah dan Perkembangannya”, p. 17.
Currently, more than 95% of the 192 UN member states have ratified the ICCPR. If measured in terms of the number of signatories, this covenant is more universal than other international legislation on human rights. It is only appropriate that it be part of the International Bill of Human Rights.\(^\text{13}\)

2. **Citizens’ Rights in the ICCPR and State Obligations**

There are two kinds of rights detailed in the ICCPR: rights which may not be derogated (non-derogable rights) and rights which may be derogated (derogable rights). Non-derogable rights consist of (a) the right to life; (b) the right to be free from torture; (c) the right to be free from slavery; (d) the right to be free from imprisonment merely on the ground of inability to fulfil a contractual obligation; (e) the right not to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed; (f) rights as legal subjects; (g) and the right to freedom of thought, conscience and religion. Derogable rights then, include (a) the right of peaceful assembly; (b) the right to freedom of association, including the right to form or join trade unions; and (c) the right to freedom of opinion and expression; including freedom to search for, receive and give information and all manner of ideas without constraint (through both spoken or written language). These rights may only be derogated without discrimination in order (a) to protect public safety, order, public morals, or health; and (b) to respect the rights and freedoms of others.\(^\text{14}\)

\(^{13}\) Kasim, “Konvensi Hak Sipil dan Politik, Sebuah Pengantar”, p. 1.
Non-derogable rights firmly stress that there are some rights that the state cannot derogate or suspend, even in emergencies. Meanwhile derogable rights refer to those rights that the state may derogate or suspend under certain conditions. Even when an emergency calls for a derogation of rights, this may only occur if the state fulfils the conditions specified in the covenant. These conditions include that (1) there is a public emergency which threatens the life of the nation and which has officially been declared; (2) the derogation or suspension does not discriminate along the lines of race, colour, sex, language, religion or social origin, and (3) the derogation or suspension is reported to the United Nations.15

States, especially State Parties to the ICCPR, are fully responsible for fulfilling all rights detailed in the covenant. As explained in article 2 verse 1, “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant”.16 If the rights and freedoms mentioned in the covenant are to be guaranteed within a state, then that state is obliged to take legislative and other necessary measures in order to protect those rights.17

The state has three obligations in regards to implementation of the ICCPR: to protect, to respect and to fulfil.18 If a State Party has not yet regulated this in

16 Ibid., article 2 verse 1.
17 Ibid., article 2 verse 2.
18 Ifdhal Kasim, “Kewajiban Negara Pihak terhadap Pelaksanaan Instrumen-Instrumen HAM Internasional/State Parties’ Obligations in Implementation of International Human Rights Instruments”, paper presented in the seminar Perlindungan HAM melalui Hukum Pidana/Protection of Hu-
legislation or other legal policies, then it is obliged to take the necessary steps in accordance with its constitution and the contents of the ICCPR to introduce the required legislation or regulations.

In the General Commentary on this article, the UN Human Rights Committee made the following observation in 1981:

*The Committee notes that article 2 of the Covenant generally leaves it to the States parties concerned to choose their method of implementation in their territories within the framework set out in that article. It recognizes, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not per se sufficient. The Committee considers it necessary to draw the attention of States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights.*

In line with this, the UN Human Rights Committee stressed,

*In this connection, it is very important that individuals should know what their rights under the*


*19 Human Rights Committee, General Comment No. 03: Implementation at the national level (Art. 2)”, ICCPR General Comment No. 3, Office of the High Commissioner for Human Rights, 1981, [www.unhchr.ch/](http://www.unhchr.ch/).*
Covenant (and the Optional Protocol, as the case may be) are and also that all administrative and judicial authorities should be aware of the obligations which the State party has assumed under the Covenant. To this end, the Covenant should be published in all official languages of the State and steps should be taken to familiarize the authorities concerned with its contents as part of their training. It is desirable also to give publicity to the State Party’s cooperation with the Committee.\(^\text{20}\)

In relation to this commentary, the primary actions State Parties must take as underlined in article 2 are:

a. Actions to respect (a negative obligation or the obligation to not undertake intervening action) and actions to ensure the fulfilment of these rights without discrimination.

b. Legislative action.

c. Taking the necessary steps in accordance with constitutional processes which help fulfil these rights.

d. Effective remedy.

e. Ensuring anyone who demands remedy will have his right to this determined by competent judicial, administrative or legislative institutions.

f. Development of possibilities for judicial remedy.

g. Ensuring that there are competent authorities to enforce the remedy once it is granted.\(^\text{21}\)

\(^{20}\) Ibid.

3. FREEDOM OF RELIGION OR BELIEF IN THE ICCPR

The right to freedom of religion or belief is one of the rights guaranteed in the UDHR, on which the ICCPR is based. In the ICCPR itself, regulations concerning freedom of religion or belief are specifically addressed in article 18, article 20 (verse 2) and article 27.

Article 18 verse 1 states:

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.22

This verse basically follows the regulations stated in the UDHR, guaranteeing three rights – freedom of thought, freedom of conscience and freedom of religion. While in article 18 of the UDHR freedom of belief was not addressed, in the article above it is considered equivalent to freedom of religion. It must thus be regulated. These three rights (freedom of thought, conscience, and religion) are recognised in the ICCPR as rights that cannot be reduced (derogated), even during public emergencies as noted in article 4 (verse 2) of the covenant.

Equating these three rights also indicates that this verse protects both theistic and non-theistic faiths, even atheism. The terms “belief” and “religion” must be broadly construed.23 This verse also recognises the freedom of

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22 ICCPR, article 18 verse 1.
an individual to choose a religion, to change religions or to accept a religion of their own choice, as stated in the sentence “This right shall include freedom to have or to adopt a religion or belief of his choice”. This right must also be guaranteed without exception.

Religious freedom is reinforced in article 18, verse 2, which states:

No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.\(^{24}\)

This verse states that force is not to be used against anyone to make them follow a certain religion or belief. This verse does not define what is intended by the term “force”, but it must be interpreted so that it does not only include use of violence or threats, but also more subtle illegal methods, including family pressure, social pressure and social relations.\(^{25}\)

Article 18 differentiates between the freedom to have a religion or belief and the freedom to practice that religion or belief. While the first is a freedom that cannot be derogated in any situation, the latter may be.

Verse 3 addresses the latter freedom, stating:

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.

\(^{24}\) ICCPR, article 18 verse 2.

order, health, or morals or the fundamental rights and freedoms of others.\textsuperscript{26}

This verse regulates derogation of various manifestations of religious freedom. It is pertinent to note that freedom of religion is considered an absolute right, a freedom that the state cannot take away and consequently derogations of this right are very limited and legally regulated. The ICCPR only allows derogation of religious practice in order to protect public safety, law and order, health, morals or others’ fundamental rights and freedoms. According to the Human Rights Committee, this verse must be interpreted strictly, as there is no possible interpretation other than that stated in the article. These rights must not, for instance, be derogated to protect national security.\textsuperscript{27}

Verse 4 reads:

\textit{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.}\textsuperscript{28}

This verse addresses religious education, guaranteeing that the state allow all parents the freedom to decide what moral and religious education they give their children, in accordance with their own beliefs.\textsuperscript{29} According

\textsuperscript{26} ICCPR, article 18 verse 3.
\textsuperscript{27} Frishka, “Hak Kebebasan Beragama di dalam Hukum Internasional” ...
\textsuperscript{28} ICCPR, article 18 verse 4.
\textsuperscript{29} Karl Josef Partsch, “Kebebasan Beragama, Berekspresi dan Kebebasan Berpolitik/Freedom of Religion, Expression and Freedom of Politics”, in Iftdhal Kasim (ed.) Hak Sipil dan Politik Esai-Esai Pilihan/Civil and Political
to the Human Rights Committee, the rights guaranteed in this verse are related to the teaching rights regulated in verse 1 of the article. Yet the committee also noted that this verse was only valid in private schools. Thus public schools may hold neutral and objective religious lessons. Lessons must not just address one particular religion, unless provisions are made for non-discriminative exceptions.\textsuperscript{30}

The regulation on religious freedom in article 20 verse 2 states:

\begin{quote}
Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.\textsuperscript{31}
\end{quote}

This verse prohibits spreading of religious hatred. State Parties are obliged to adopt the necessary legislative steps to prevent actions that incite or spread religious hatred which could lead to acts of discrimination, hostility or violence.

Meanwhile, article 27 states:

\begin{quote}
In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.\textsuperscript{32}
\end{quote}


\textsuperscript{30} Human Rights Committee, \textit{General Comment No. 22}.

\textsuperscript{31} ICCPR, article 20 verse 2.

\textsuperscript{32} Ibid., article 27.
This article stresses the state’s responsibility to protect minority groups within its jurisdiction, including religious minorities. The verses of the ICCPR addressing the right to freedom of religion and belief act to inaugurate the ICCPR as the most powerful instrument because it represents a legally binding treaty already ratified by many states, including those in the Middle East, Africa and Asia. This suggests that the principles contained in the convention are accepted as universal principles.33

Although there is no controversy over the basic principle that “all people have the right to freedom of thought, conscience and religion”, this does not mean that the Commission on Human Rights sessions devoted to drafting the articles on religious freedom were free of debate. In fact, several compromises were necessary. The main compromise was in drafting the clause on freedom to change religion or belief. Several efforts were made to remove this clause, primarily by Muslim countries such as Egypt, Saudi Arabia, Yemen and Afghanistan. Several states also claimed that the clause could be wrongly interpreted, especially when it came to private religious conversion not based on conscious choice. Others felt that the clause may be seen as motivation for missionary activities and religious conversion. This eventually resulted in a compromise to change the phrase to “to have or to adopt a religion or belief of his choice”, which implicitly acknowledges the right to convert religion.34

33 Frishka, “Hak Kebebasan Beragama di dalam Hukum Internasional”.
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B. RATIFICATION OF THE ICCPR AND ITS CONSEQUENCES FOR INDONESIA

Indonesian law addressed a number of principle rights long before the ICCPR was introduced. This is apparent in various articles of the 1945 constitution, and more explicitly in the provisional constitution. However, during the Old and New Orders, human rights issues were neglected. Since the reformation era human rights awareness and enforcement in Indonesia has begun to improve, as signified by the People’s Consultative Assembly’s (MPR) regulation Number XVII/MPR/1998 on Human Rights, followed by Law Number 39/1999 on Human Rights, and later Law Number 26/2000 on the Human Rights Court.35

The Indonesian government’s commitment to enforcing human rights was made even more apparent with the release of Presidential Decision Number 129/1998 on the Human Rights National Action Plan (RANHAM) for 1998-2003, which was later revised through Presidential Decision Number 61/2003 and Presidential Decision Number 40/2004. This last regulation clarified that, in order to implement the Indonesian RANHAM, the government would form a National Committee under and directly responsible to the President. Their task would be to coordinate implementation of the Indonesian RANHAM which would include:

a. Establishment and strengthening of institutions implementing the RANHAM;
b. Preparation for the ratification of international human rights instruments;
c. Preparation to harmonise all forms of legislation;
d. Dissemination of and education about human rights;

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e. Implementation of human rights norms and standards; and

f. Monitoring, evaluating and reporting.\textsuperscript{36}

Even more substantial progression concerning ratification of international human rights instruments was apparent when on October 28, 2005 Indonesia formally became a State Party to the two primary human rights covenants – the ICCPR and the ICESCR. Both covenants entered into force in Indonesia after the House of Representatives (DPR) legalised the covenants in two separate laws – Law Number 11/2005 (ICESCR) and Law Number 12/2005 (ICCPR). Indonesia was the 161\textsuperscript{st} nation to ratify the ICCPR and the 156\textsuperscript{th} to ratify the ICESCR\textsuperscript{37} of a total of 192 UN member nations.\textsuperscript{38}

The reasoning given for ratification of the ICCPR as stated in the explanation to Law Number 12/2005 was that Indonesia, as a sovereign state, has, ever since its birth in 1945, always highly respected human rights. This is clearly shown by the fact that although produced before the UDHR, the Indonesian 1945 constitution contains a number of regulations about the utmost respect and value in which to hold human rights. There has been continuity in Indonesia’s stance in promoting and protecting human rights despite changes in state structure, from a republic to a federation and back again to the Republic of Indonesia (December 27, 1949-


August 15, 1950). Eventually, Indonesia became aware that a nation and state that did not promote and protect human rights would always cause large spread social injustice and would not provide healthy foundations for long term economic, political, social and cultural development.

It was also recognized that post-reformation there was an increasingly stronger commitment to promote and protect human rights. MPR’s regulation Number XVII/MPR/1998 on human rights was considered a vital decision in this regard. Then, in the period from 1999 to 2002 MPR revised the 1945 constitution four times. And finally, in accordance with the 1945 constitution which mandates the promotion and protection of human rights in social, state and national life as well as Indonesia’s commitment to promote and protect human rights as a part of the international society, Indonesia found it necessary to ratify the major international human rights instruments, in particular the ICCPR and the ICESCR. 39

Although the Indonesian government is seen as being relatively accommodative in its ratification of these covenants, one must examine how it is actually viewed by the relevant UN treaty bodies. 40 The Indonesian position is apparent in Indonesia’s declaration of and reservations about the covenants it is ratifying. The Indonesian government gave the following declaration/reservation for article 1 on the right of self-determination:

39 “General” section of the explanation of Law No. 12/2005 on Ratification of the International Covenant on Civil and Political Rights.

40 “Treaty Bodies” are independent bodies which monitor State Parties’ implementation of the UN Covenants on human rights. The Human Rights Committee is the treaty body monitoring the implementation of the International Covenant on Civil and Political Rights, and the Committee on Economic, Social and Cultural Rights monitors implementation of the International Covenant on Economic, Social and Cultural Rights.
With reference to Article 1 of the International Covenant on Civil and Political Rights, the Government of the Republic of Indonesia declares that, consistent with the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States, and the relevant paragraph of the Vienna Declaration and Program of Action of 1993, the words “the right of self-determination” appearing in this article do not apply to a section of people within a sovereign independent state and can not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.41

This declaration may be understood as the government’s attempt to remove any opportunity for separatist groups to advance their agendas on the international level. Prior to this DPR had strongly resisted the Indonesian government’s Helsinki Memorandum of Understanding. This declaration is an attempt to guarantee that the international community and international mechanisms cannot interfere with the Indonesian agenda.42

Nevertheless, ratification of the ICCPR was a step forward in the government effort to improve performance in upholding human rights. However, there has been no immediately apparent visible progress in the human rights situa-


tion. Ratification is yet to prove sufficient in strengthening the legal system, guaranteeing protection of civil and political rights, and ensuring implementation of the principles contained in the covenant.

The Indonesian government’s ratification was not simply an adoption of international principles on civil and political rights into national law, but it also placed Indonesia in a particular position with set obligations. In ratifying the ICCPR, the Indonesian government elected to become involved in international monitoring, particularly of civil and political rights. Indonesia was and is obliged to produce periodic reports on its implementation of the covenant, as stated in article 40: “The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights.” The first report was to be written and submitted within a year of the covenant’s entry into force date. Others may be required if and when the UN Human Rights Committee requests them.

This article also clarifies that all reports must be submitted to the UN Secretary General, who will forward it on to the Committee for consideration. The reports are to detail factors and difficulties, if there are any, which have influenced implementation of the covenant. After a report is submitted, the Committee studies it and then submits a report, and general comments if deemed necessary, to the State Party.

After ratifying the ICCPR in 2005, Indonesia, now a State Party to the covenant, was bound by the first obligation

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44 ICCPR, article 40, verse 1.
to produce these periodic reports, the first, one year after ratification, and others upon request. In addition, Indonesia also agreed to accept the other responsibilities detailed above – to respect, to protect and to fulfil civil and political rights (both positive and negative). The obligation to fulfil incorporates legislative, administrative, judicial and practical action to ensure that the rights within the covenant are implemented.

The two general comments Number 3/13 of 1991 and 29/3 of 2004 address some of these methods that State Parties must adopt to reflect their ratification of the convention, including:

a. Complete or partial incorporation.
b. Altering or correcting existing legislation so that is consistent with the convention.
c. Linking all government branches —legislative, judicative and executive— at all levels of governance, to address both regulations concerning the legal system and those concerning fundamental freedoms, protection of vulnerable minority groups, and particularly discrimination.
d. Procedures that guarantee fair justice, and equality before the law, in marriage, in families and in political rights.
e. Actions that guarantee prevention of violations of humanity, in relation to slavery, and racial and religious hatred.
f. Any action that has direct effect for fulfilment of these rights.
g. Development of an administrative mechanism, particularly one that directly impacts on the obligation to investigate violations fast, effectively and in detail through independent institutions. If this is deemed possible, then national human rights institutions deserve to be given
sufficient authority to help implement the covenant.
h. Establishment of an institute to help people whose rights and freedoms detailed in the covenant are violated (effective remedy).
i. Implementation is not useful without actions that prevent repeat violations of the covenant.
j. Assurance that those responsible for violating the convention will be brought to court.
k. Follow up steps to prevent future violations.\textsuperscript{45}

Another of the Indonesian government’s responsibilities is to adjust legislation so that it accords with the covenant. This is emphasised in article 2, verse 2 of the covenant and does not only require improving laws but also involves legislative action to ensure protection of civil and political rights is guaranteed.

As explained above, the state’s responsibility in fulfilling its obligations as stated in the covenant is unconditional and must be realised immediately. In short, the rights detailed in the ICCPR are justiciable. This differs from the state’s responsibility to fulfil economic, social and cultural rights, which must also be completely realised, but, being non-justiciable rights, they may be granted progressively.\textsuperscript{46}

C. THE ICCPR’S LEGAL STATUS AND PROBLEMS OF FREEDOM OF RELIGION AND BELIEF IN INDONESIA

After legally examining the ICCPR and the legal and political consequences of Indonesia being a State Party, we

\textsuperscript{45} Putri, “Implementasi Konvensi Hak Sipil Politik dalam Hukum Nasional,” (Jakarta, 5/12/2007).
\textsuperscript{46} Kasim, “Konvensi Hak Sipil dan Politik, Sebuah Pengantar”, p. xiv.
now turn to one of the rights regulated in the covenant – the right to freedom of religion or belief. This right is addressed in article 2 on state obligations, article 4 on the proscription of discriminative practices, article 18 on religious freedom, article 20 on proscription of spreading hatred, article 24 on children’s rights, article 26 on equality before the law, and article 27 on minority rights.

The right to religious freedom is one of those rights that cannot be derogated in any situation (non-derogable). Article 18 verse 1 states that every individual has the right to freedom of thought, belief and religion. This includes freedom to determine one’s own choice of religion or belief, and the freedom to, both individually or collectively, in public or private, perform that religion or belief through worship, observance, practice and education.

Meanwhile, the freedom to practice religion is a right that can be derogated, because it concerns the rights of others. Addressed in article 18 verse 3, freedom to practice and determine one’s religion or belief can only be derogated by legal regulations in order to preserve public safety, law and order, health, morals or the fundamental freedoms of others.

In the development of the Indonesian nation-state, guarantees of religious freedom in the national constitution have been much debated. In fact, when the founding fathers were formulating the basis of the state, deciding whether it would be a religious or secular state, religion and the guarantee of religious freedom became the primary consideration in the process. The final product, the 1945 constitution, omitted the seven words of the Jakarta Charter in a compromise between the two options (religious or secular). On the one hand it removed the possibility of applying one religious legal system (Islam), on the other hand the religious freedom it guaranteed had quite firm boundaries.
The particular of this compromise took did not mean that no efforts were ever made to completely guarantee religious freedom. On the contrary, at the very least, in two of Indonesia’s constitutions (the 1950 United Republic of Indonesia’s interim constitution and the provisional constitution) guarantees of religious freedom for citizens adopted universal human rights principles. In fact, the interim constitution was the most advanced constitution in its guarantee of religious freedom in Indonesia. That is, in article 18 it stated that freedom of religion and belief included the freedom to convert religion as a right of every individual.

Every individual shall have the right to freedom of religious and spiritual thought and realization; this also incorporates the freedom to convert religion or belief, and similarly the freedom to manifest that religion or belief, both individually or in community with others, in public or private, in teaching, practice, worship, observance, and educating children in the convictions and beliefs of their parents.

The examination below will reveal just how far religious freedom has been implemented in Indonesian legislation to date, examining its legal status and problems in its implementation.

1. **LEGAL STATUS**

The constitutional guarantee of freedom of religion or belief in Indonesia has progressed significantly in the post-reformation period, especially after the amendments to the 1945 constitution which marked the official insertion of universal human rights into the constitution. In the second amendment, the People’s Consultative Assembly (MPR) inserted one chapter which specifically
lay out the basis for guaranteeing every citizen’s rights. This chapter, Chapter XA, consisted of 10 articles on human rights, almost all of which adopted ICCPR and UDHR principles. One of the basic rights addressed in the chapter was the right and freedom of religion and belief for all citizens.

Article 28E of the 1945 constitution states:

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.

2) Every person shall have the right to the freedom to believe in his/her faith, to express his/her views and thoughts, in accordance with his/her conscience.47

This article clarifies what is incorporated in the right to freedom of religion or belief, namely the right to embrace a religion, the right to embrace a belief and the right to worship according to that religion or belief. Every citizen has the same rights to each of these three aspects. If interpreted freely, this law reflects several principles of the right to religious freedom, namely: the right to belief and the right to express one’s innermost thoughts and beliefs. Emphasisement on the right to hold a belief in accordance with one’s conscience also means that citizens do not have to embrace any religion at all.

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– so long as their belief is based on their conscience then the constitution guarantees their rights.

This article – especially the freedom to embrace a religion or belief – emphasises personal or private religious freedoms. This involves the freedom of individuals to follow or to choose their own religion or belief, including converting religion or beliefs, as a non-derogable right, and includes being free from any kind of pressure that reduces one’s freedom to have or adopt the religion or belief of his choice.

This is reinforced in article 28I verse 1 of the 1945 constitution which reads as follows:

_The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances._

As a non-derogable right, freedom of religion or belief also guarantees that there may be no discrimination based on race, colour, sex, language, religion or belief, politics or opinion, citizenship (native or immigrant), or social origin, as stated in article 28I verse 2:

_Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment._

The constitutional guarantee of these rights is reinforced by several laws based on the national consti-

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48 Ibid.
49 Ibid.
tion, including Law No. 39/1999 on Human Rights, in particular articles 4, 12, and 22. Article 4, for instance, states that the right to life, the right to be free from torture, the right of individual freedoms, of thought and of conscience, the right to freedom of religion, the right to be free from slavery, the right to be recognised as a person and to be treated equally before the law, and the right not to be prosecuted on the basis of a law not valid at the time of the offence, are all human rights which cannot be derogated in any situation or by any one.

This guarantee reemphasises the presence of an internal dimension to religion and religiosity, in which no one can intervene, not even the state. If the state intervenes in this private realm, it immediately derogates the right to religious freedom. On the other hand, being religious and worshiping under pressure or because one is forced, will only result in a loss of religious meaning as the individual is worshiping without faith and belief.50 This guarantee of no force is also intended for children not yet able to make an informed and mature decision about their religion.

Law No. 23/2002 on child protection states that all children have the right to worship in accordance with their religion, to thought, and expression in accordance with their level of intelligence and age, under parental guidance (article 6). In addition, the state, the government, society, family, parents, guardians and social

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institutes must protect the rights of children to embrace their religion (article 43 verse 1).

Law No. 12/2005 on ratification of the Covenant on Civil and Political Rights itself is a very strong guarantee for freedom of religion and belief. It reinforced and reemphasised previous regulations on religious freedom as stated in the constitution and the two laws above. As previously mentioned, religious freedom is regulated in articles 18, 20 and 27 of the ICCPR, and is thus also regulated in this law.

The covenant became national law its ratification, with the explanation of article 1 verse 2 of Law No. 12/2005 stating that, “the copy of the original ICCPR and the Declaration of Article 1 in English and the attached Indonesian translation are integral parts of this Law”. Thus all declarations in the ICCPR are legally binding for Indonesia, including article 18 on religious freedom.

Consequently, freedom of religion or belief, particularly in relation to internal religious freedom, has quite a strong legal basis in the Indonesian legal system. Current regulations mutually reinforce one another, from the constitution down to individual laws, especially Law No. 39/1999 on Human Rights, Law No. 23/2002 on Child Protection and Law No. 12/2005 on Ratification of the Covenant on Civil and Political Rights.

2. PROBLEMS

2.1. LEGISLATIVE DISCREPANCIES

Besides focusing on the freedom to embrace a religion or belief, article 28E of the 1945 constitution also addresses the freedom to worship according to that
religion or belief. This article resembles article 29 verse 2, which states that the state must guarantee the freedom of all citizens to embrace their own religion and to worship according to that religion or belief.

Freedom of worship is an external religious freedom, a category which includes the freedom to manifest one’s religion or belief in public teachings and worship. It also incorporates legal status and institutional freedoms, which are vital aspects that allow religious communities to organize or to unite as a community. For human rights principles, this external aspect is derogable: “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”.

This principle was adopted in the Second Amendment to the 1945 constitution in article 28J:

1. Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation and state.
2. In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

In relation to this, M Atho Mudzhar firmly believes that all religious freedoms, as addressed in this article

51 ICCPR article 18 verse 3.
and article 29, are derogable. He argues that guaranteeing human rights concerning religion and other matters is not equivalent to allowing citizens to act as they please or in accordance with their common sense. Rather, such guarantees will always be limited by the obligation to respect the rights of others. As such, all aspects of religious freedom may be limited by law.53 The Minister for Internal Affairs, Mardiyanto, similarly expressed his opinion that implementation of human rights concerning religious freedom was not without limits.54

To reinforce their opinions they referred to similar articles in Law No. 39/1999. Both articles 70 and 73 state that “The rights and freedoms regulated in this law may only be limited by and based on law, for the sole purpose to guarantee recognition and respect of the fundamental human rights and freedoms of others, morals, public order and national interests”.

However, the explanation to article 73 gives the following clarification:

_The restrictions established in this article do not apply to non-derogable human rights in consideration of the explanations to article 4 and article 9. What is intended by “national interests” is national unity, not the interests of those in power._


This explanation quite firmly differentiates between that which can be derogated and that which cannot, yet Atho and Mardiyanto seem to have ignored this. For both, article 28J of the 1945 constitution and article 73 of Law No. 39 clearly restrict the right to freedom of religion and belief, and as such, are a strong basis on which the state can derogate from their obligation to guarantee religious freedom as established in article 28E of the constitution and article 4 of Law No. 39/1999 on Human Rights. These articles are not absolute for Atho and Mardiyanto. For instance, in connection with derogation via law, Atho states that Law No. 1 PNPS/1965 is a manifestation of restrictions to religious freedom through law. Previously, this law was a Presidential Declaration in 1965 during Soekarno’s presidency, which under the New Order was declared a Law (Law No. 5/1969). It remains in effect today. This law is thus a manifestation of one of the articles in the 1945 constitution. 55

Article 1 states:

*Every person is forbidden from intentionally and in public, discussing, recommending or mobilizing public support to interpret a religion followed in Indonesia or to facilitate activities that resemble the religious activities of that religion, where these interpretations or activities deviate from the primary teachings of that religion.*

This article details the restrictions placed on religious freedom. However the restrictions are very broad, not only limiting external freedoms but also internal ones. Such a regulation clearly contradicts articles 28E and 28I

55 Mudzhar, “Kebebasan Beragama dan Beribadah di Indonesia”.
of the 1945 constitution, article 4 of Law No. 39/1999 and article 18 of the ICCPR, all of which differentiate between internal freedoms and external freedoms. Yet for Atho, as long as Law No. 1 PNPS/1965 and the Criminal Code remain unchanged or are not withdrawn, they remain valid.

It is here that we find the fundamental problem concerning religious freedom – discrepancy between different regulations which only leads to uncertainty and confusion for citizens. The state may, on the one hand, restrict religious freedom, but there are still no clear answers as to how far or for what aspects.

The same ambiguity surrounds the basis on which freedom of religion and belief may be limited. The constitution is not in harmony with the law on civil and political rights in this regard. The constitution considers many more aspects as valid bases on which to limit religious freedom than does the law on civil and political rights or even the UDHR itself.

Article 28J of the constitution states that restrictions may be applied to guarantee recognition and respect of the rights and freedoms of others and to satisfy just demands based upon considerations of morality, religious values, security and public order in a democratic society. This article also states that restrictions must be established by law. “Religious values” is an addition taken from the two international human rights instruments (the ICCPR and the UDHR).

The consideration to protect the rights and freedoms of others is understandable because it means that the state must protect its citizens from practices that interfere with their religious freedom (such as proselytising by
missionaries), or to protect them from religions or beliefs which endanger the fundamental rights of others (such as the right to live, to freedom, rights of privacy, marriage, ownership, education, health, equality, freedom from slavery and cruelty, and minority rights).\textsuperscript{56}

Similarly, the consideration to protect security and public order can be understood because it means that the state must enforce regulations which guarantee that all religious activities concerning the public do not disturb public law and order. This includes the obligation to register the corporate bodies of all social religious organisations, to obtain authorisation to hold public meetings, to establish public houses of worship and so on.\textsuperscript{57}

However, the consideration to protect religious values is controversial because the religious values referred to here are vague. Although based on the belief in one supreme God, the state does not recognise one religion as the state ideology, but rather allows several religions the freedom to exist in Indonesia. What this means is that “religious values” here cannot refer to the values of just one religion. Confusion thus arises as to which religion’s values will be used. In considering religious values as a basis for restricting religious freedom, it seems the compilers of the constitution were trying to insert something they felt reflected the religious essence of the Indonesian people, unaware of its potential to boomerang.


\textsuperscript{57} Ibid., p. 6.
2.2. OFFICIAL AND UNOFFICIAL RELIGIONS

Another problem with Law No. 1 PNPS/1965 is that the state only recognises six official religions – Islam, Christianity (Protestantism), Catholicism, Hinduism, Buddhism and Confucianism. While there are no legal regulations acknowledging these six religions as official religions, the mention they are given in article 1 of this law has led to legal confusion over the status of all other religions besides these six. In fact, the establishment of Law No. 23/2006 on Civil Administration which referred to the existence of recognised religions (article 18) clearly revealed that the state only recognises some of the religions present in Indonesia.

The argument that state recognition of these six religions is because they are the major religions in Indonesia is unacceptable. No matter how few adherents a religion has, its existence must be recognised. Although 90% of Indonesia’s population adhere to one of these six religions, the remaining 10% also have the right to recognition because the constitution does not reject their existence. On the contrary, their existence is constitutionally legal. Consequently, the category of “recognised religions” violates the constitution, and has led to a violation of human rights due to state discrimination.

2.3 CRIMINALISATION OF CITIZENS BASED ON RELIGION

Besides the problems inherent within Law No. 1 PNPS/1965, it has been the source of a much larger problem – the criminalisation of citizens on the basis of religion. Article 4 of this law states:
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The Criminal Code contains a new article as follows:

Article 156a

Liable to a sentence of five years imprisonment for whosoever in public intentionally express their views or engage in actions:
   a. that in principle incite hostilities, abuse or defame a religion embraced in Indonesia;
   b. for the purpose of discouraging others from embracing a religion based on the belief in the one and only God.

This article, added to the Criminal Code in 1965, became known as the religious offence article because it was intended to protect religion, and not religious adherents. There are two main activities this regulation prohibits: religious defamation and encouraging others to become atheist.

Before its addition, the Criminal Code was not familiar with the terms ‘criminal act’/’religious offence’, or offence which, according to Barda Nawai Arief, was intended to protect religion. In inserting this offence, religion became a legal object to be protected by the state through legislation.58

However, Oemar Senoaji suggests that placing this article in Chapter V on public order indicates that it was really intended to protect public order, more specifically to maintain the peace between religious adherents. He argues religion, an sich, is not the object being protected.

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Barda Nawawi rejects this, arguing that textually, according to article 156a, religious defamation can be condemned without disturbing the peace between people of different religions or religious interpretations and without disturbing or endangering public order, even if done so in public in front of atheists.\(^{59}\) Thus every statement or action that contains hostility, abuse or religious defamation is a criminal act.

This article is only made more ambiguous by the fact that the term “religious defamation” is not clearly defined for either statements or actions. This lack of clarity is dangerous in that the term can be interpreted in many ways, and the state can stretch the definition in order to criminalize anyone it wants. Majority religious groups can also use the term as a weapon to prosecute anyone who holds a different view or anyone that they feel has strayed from mainstream religious interpretation.\(^{60}\)

2.4 **Bakor Pakem**

Besides article 156a of the Criminal Code, Law No. 1 PNPS/1965 contains another problem pertaining to the form of government. Specifically, this refers to the establishment of the government institute authorised to monitor the faith of citizens, otherwise known as the Coordinating Board for Monitoring Mystical Beliefs in Society (Bakor Pakem). The board was established on the

\(^{59}\) Arief, *Delik Agama/Religious Offense*, p. 5.

\(^{60}\) More information on criminalisation of citizens may be found in: Rumadi, *Delik Penodaan Agama dan Kehidupan Beragama dalam RUU KUHP/ The Offense of Religious Defamation and Religious Life in the Criminal Code Draft* (Jakarta: The Wahid Institute, 2007).
basis of Law No. 1 PNPS/1965, articles 1 and 2.\textsuperscript{61}

\textbf{Article 1}

Every person is forbidden from intentionally and in public, discussing, recommending or mobilizing public support to interpret a religion followed in Indonesia or to facilitate activities that resemble the religious activities of that religion, where these interpretations or activities deviate from the primary teachings of that religion.

\textbf{Article 2}

Whosoever violates the regulation in article 1 will be given a firm warning and will be ordered to stop their actions in a joint declaration by the Minister for Religious Affairs, the Attorney General and the Minister for Internal Affairs. If an organisation or sect is responsible for violation of article 1, the President of the Republic of Indonesia may disband that organisation and label it banned, after consulting with the Minister for Religious Affairs, the Attorney General and the Minister for Internal Affairs.

These articles provided a normative basis for the establishment of Bakor Pakem, which was tasked with preventing and resolving instances of religious interpretation or activities resembling the activities of a particular religion but that were seen to deviate from the main teachings of that religion. This has meant that an individual’s interpretation or activities, should they be considered deviant, become not only an affair of the con-

\textsuperscript{61} This regulation was reinforced by the Preamble to the Attorney General’s Decree No. Kep-004/J.A/01/1994 which referred to the UU No. 1 PNPS / 1965 as a normative base.
cerned religion but also of the state, as represented by Bakor Pakem.

The above law also clearly mentions the institutional powers with the authority to handle violations of article 1. The three powers, the Minister for Religious Affairs, the Attorney General and the Minister for Internal Affairs, can collectively warn and order individuals or groups to stop acting in a way that is proscribed by this article, and can recommend to the president to ban any organisation or group they judge as being deviant. The mention of these three powers together was interpreted as a mandate to form one institute incorporating all three. Thus Bakor Pakem was established, and in its development it eventually incorporated the Department of Education, Army (TNI) Headquarters, Police Headquarters and the State Intelligence Coordinating Agency (Bakin).  

The main problem with the establishment of an institute with such broad authority and power has been the increasing strength of state intervention in the internal problems of religion. The state has, through Bakor Pakem, frequently violated human rights, in particular the right to freedom of religion or belief. Bakor Pakem is authorised to investigate sects within society, to judge whether or not they are deviant, and finally to recommend to the president whether or not to ban them.

In this sense, Bakor Pakem clearly contradicts the constitution, which stresses that religious freedom is not an absolute right without limits, but may be limited by the obligation and responsibility to respect and value fellow humans regardless of their religion. Restrictions

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must only apply to religious manifestations which fall into the category concerning freedom to act. The freedom of religion or belief, under the category of the freedom to be, must not be limited. Even restrictions against the freedom to act out religious teachings may only be applied through the law.63 In practice, however, not only does Bakor Pakem restrict religious manifestations but it also limits the right to freedom of religion and belief.

At a glance, this indicates that the state does not actually guarantee freedom of religion and belief for its citizens. The current guarantee stops at the normative level and does not yet address legal-political aspects or more organic state regulation. In fact, the state’s guarantee of religious freedom seems to have decreased when one considers government policy as it is applied on the ground, as will be discussed in the following chapter.

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CHAPTER III

THE DILEMMA BETWEEN ISLAM AND THE RIGHT TO FREEDOM OF RELIGION OR BELIEF IN THE INDONESIAN CONTEXT

A. INTRODUCTION

Several passages of the Universal Declaration of Human Rights (UDHR) have raised much controversy since the declaration’s adoption by the UN General Assembly in 1948. During the Cold War, there was much disagreement between the Communist Bloc led by the Soviet Union and the Capitalist Bloc under the United States. This influenced legalisation of the international agreement for human rights on which the UN Commission on Human Rights was working, and resulted in two separate covenants, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which were previously to be integrated in just one covenant.

Debate, receiving much less attention, also occurred between the Islamic Bloc and other Blocs over article 18 of the UDHR concerning freedom of religion or belief.\(^1\) The Islamic

\(^1\) For detailed discussion on Islamic states’ attitudes to this article in the UN forum, see Abdulaziz A Sachadena et. al., (trans.) Kebebasan Beragama dan Hak-Hak Asasi Manusia/Religious Freedom and Human Rights, (Yogyakarta: Pustaka Pelajar-Academia, 1997).
Bloc was initially opposed to the article because it contained the clause “freedom to convert religion” which contradicts Islamic doctrine on apostasy (*murtad*). In the end it was only Saudi Arabia who strongly opposed the article.

However in later developments, Saudi Arabia, with its economic domination of the Muslim world, was able to influence the opinion of Islamic governments, particularly those members to the OIC (Organisation of the Islamic Conference) which is based in Jeddah, Saudi Arabia. The Muslim response to the UDHR was developed through several declarations. In 1982 a number of Islamic thinkers from various countries produced the *Universal Islamic Declaration of Human Rights*. 1990 saw the birth of the Cairo Declaration by member nations of the OIC. Then in 1994 member nations of the Arab League produced the Arab Declaration. The essence of these declarations was largely the same: that although Islam accepts human rights principles it has its own limits and interpretations for specific matters, one of which concerns religious freedom, more specifically the freedom to convert religion.

There was a similar response in Indonesia. Although Indonesia had ratified the ICCPR in Law No. 12/2005, it became clear that implementation was not simply a matter of officially compiling legislation. There was much debate over doctrine, discourse, language and the possibility of backing out of implementing the ICCPR, especially in relation to article 18 on freedom of religion or belief. This chapter examines the struggles and tensions in doctrine, discourse and practice. It will also attempt to find a meeting point between Islam and religious freedom. Further, it shows the importance of continually seeking a viable solution so that human rights concepts, particularly those concerning religious freedom, can be upheld.
Freedom of religion or belief is one of the oldest and most controversial rights in the history of human rights. It is no surprise that it has only recently been given attention in international law. There is still much debate over religious matters in relation to several aspects of human rights. Nevertheless, the international world, through the UN, has successfully formulated a number of principles concerning freedom of religion or belief.

The ICCPR is, as noted previously, one of the international agreements addressing these principles of religious freedom. Article 18 states: (1) “Everyone shall have the right to freedom of thought, conscience and religion.” “This right shall include


3 United Nations, International Covenant on Civil and Political Rights (IC-CPR), Office of the High Commissioner for Human Rights, article 18 verse 1, 16 December 1966, http://www2.ohchr.org/english/law/ccpr.htm. Henceforth referred to as ICCPR. The covenant differentiates between the terms conscience and religion. The first refers to faith as a form of internal awareness and the latter refers to religious institutes. General Comment No. 22 of the UN Human Rights Committee, which represents the “official interpretation” of the ICCPR, states:

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The term “belief” and “religion” are to broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.

The UN Human Rights Committee was clearly concerned about possible tendencies for discrimination against religion or faith on any basis, including religion or faith. Human Rights Committee, General Comment No. 22, Article 18, Verse 2, 1993, http://www2.ohchr.org/english/issues/religion/III1.htm
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.” Article 18 also states that: (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.”

4 This verse on restrictions was recently adopted into the 1945 constitution (second amendment) in article 28: Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation and state. In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society. The 1945 Constitution of the Republic of Indonesia, as amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002, http://www.themissing.icrc.org/ihl-nat.nsf/0/3a69554e629a07f8c125708c004898aa/$FILE/Constitution%20-%20Indonesia%20-%20EN.pdf. All these considerations are the same as those found in the ICCPR, except for the term “religious values”, which was added by the Indonesian People’s Consultative Council (MPR). ICCPR, article 18 verse 1.

5 ICCPR, article 18, verse 2, http://www2.ohchr.org/english/law/ccpr.htm

6 ICCPR, article 18, verse 3, http://www2.ohchr.org/english/law/ccpr.htm

7 ICCPR, article 18, verse 4, http://www2.ohchr.org/english/law/ccpr.htm
There was conflict and tension between Islam and international law over this particular article. At times, it has been possible to find viable solutions, but at others it has proven an almost impossible feat without placing one above the other. However, before further discussing this matter, it is necessary to look first at the purposes and functions of international law.

The purposes and functions of modern international law are to regulate relations between all members of the international community in accordance with principles of equality and justice based on the law, in order to realise peaceful coexistence, and to increase the security and wellbeing of states and individual citizens. The targets of international law are states, because the state is the primary entity with international rights and obligations. Consequently, the test of legitimacy for international law must be the same as that for national law, namely the ability to pacify the interests of the individual (read: state) in attaining freedom (read: national interests), and the tendency for the community to obtain social justice for all. Thus, the fundamental purpose of both international and national must be the same. Only the fields in which they operate differ. Moreover, there are instances where international law deals with people on an individual basis through the state, and finds it cannot separate the interests of individuals from its fundamental purpose.\(^8\)

The United Nation Charter is the most authoritative source on the origins and principles of international law. The UN Charter is a legally binding agreement for almost all states in the world, including modern Islamic states. Article 1

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pronounces the purposes of international law as follows:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.9

There are several principles to which the UN Organisation and its members must adhere, amongst them:

1. The Organisation is based on the principle of the sovereign equality of all its Members.

2. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

3. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in

any other manner inconsistent with the purposes of the United Nations.

4. The Organisation shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

5. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII (which addresses action with respect to threats to the peace, breaches of the peace, and acts of aggression).10

Besides addressing UN purposes and principles, article 1.3 of the Charter requires all UN members to cooperate in promoting and striving for human rights without distinction as to race, sex, language or religion. However, the charter did not define what was meant by human rights or fundamental freedoms. This was left to the series of declarations, conventions and agreements on human rights, beginning in 1948 with the Universal Declaration of Human Rights.

The UDHR recognises three categories of human rights, although they are not stated explicitly. They include: (1) civil and political rights; (2) economic social and cultural rights; and (3) the right to development.11 Although the focus here is on civil and political rights, more specifically the freedom

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Chapter III The Dilemma between Islam and the Right to Freedom.....

of religion or belief, these three categories are interrelated. However, the main issue with which this book is concerned does not lie in their interrelatedness, but rather in the claim of human rights to be “universal”. The question is, how are universal human rights applied in the culturally, religiously, and historically diverse nations who are party to the UDHR?

B. UNIVERSALISM VERSUS PARTICULARISM IN HUMAN RIGHTS

Before discussing human rights, specifically those concerning freedom of religion or belief, it is necessary to first touch on the universality and particularism of human rights. The main question is, are human rights principles generally valid in all states, or is it possible to recognise different human rights principles in certain states which have distinct cultural, religious or historical traditions? This is important as one of the main problems with the implementation of human rights is tension over this question.

There are several universal principles for human rights that are legally binding in accordance with international law. The main problem in creating a universal standard that crosses cultural, especially religious, boundaries is that each state has their own internal framework. Each tradition legitimizes their teachings and norms based on their own sources.₁²

The human rights declaration of 1948 endeavoured not to use any religion to justify its fundamental ideas in order

to give it the same basis for those who were religious as for those who were not. Yet this does not mean that human rights can only be justified using secular arguments alone, as this provides no answer as to how to legitimise and legislate human rights in the more religious parts of the world. The logic behind the declaration was to give the opportunity to religious adherents to develop their own commitment to the declaration using the norms present in their own religion or faith. The same applied to those adhering to secular philosophies. While all people have the right to recognition of their equal rights by others, they may not determine the reasoning or philosophical basis behind why other people choose to give such recognition.\(^\text{13}\)

Recognition of universal human rights principles is more a result of global consensus than any kind of force, including lethal force. This is largely because all societies hold to the normative systems that shape their experiences and present situations, and thus the same universal concept cannot be forced on each in an identical manner. Where ever we happen to be, our awareness, values and behaviour are shaped by the religious and cultural traditions of that place. The question then becomes how to obtain, increase and protect consensus to universal human rights principles in the context of the particular.

The most problematic issue is when these different standards must be unified and each individual is required to make known their stance. If a cultural tradition, particularly religious, is interrelated with other traditions, then several possibilities may occur. First, a positive relationship may

emerge where the various traditions are able to mutually learn from one another and apply their understandings together. This may occur if each shares an equal relationship with the other and one does not attempt to eliminate the other. Second, a negative relationship may occur, marked by hostilities and subjugation. This is the case when the relationship between the traditions is not equal, and one subjugates the other. The “universalised” values are considered to be the “larger tradition”, capable of subjugating the particular values (of the smaller tradition), which are considered out of line with, even contradictory to, the universal values. This relationship pattern always produces tension, even more so when concerned with religion. Religion, being a belief system, has quite rigid doctrines often not open to new values, particularly when those values do not originate from within the religion itself. Consequently, in order to strengthen the loyalty and faithfulness of members, the cultural traditions of religion usually emphasise in a normative manner their own superiority over other traditions.\textsuperscript{14}

It is within this context that the UDHR must be discussed with religious (Islamic) values, which, for the Muslim community, are considered to be universal. The issue of cultural universalism and relativism in the context of human rights has long been debated and studied. In relation to this, Mashood A Baderin makes note of two important terms in the discourse of human rights, namely the “universality of” human rights and “universalism in” human rights. Although the two concepts are related, both refer to distinct aspects in the universalisation of human rights.

Mashood A Baderin states that: ‘\textit{Universality of} human rights refer to the universal quality or global acceptance of the

\textsuperscript{14} Ahmed an-Naim, \textit{Dekonstruksi Syariah}..., pp. 309-310.
human rights idea, while ‘universalism in’ human rights relates to the interpretation and application of the human rights idea.\textsuperscript{15} Universal human rights concepts were formulated in the UDHR, which is now accepted by almost all states, evidence to the ‘universality of’ those human rights concepts.

However, one must acknowledge that a crucial issue lies in the confrontation between human rights universalism and cultural relativism. The universalism of human rights in the international world is still considered by Asian, African and Muslim states as a “Western-centric” perspective that intends to force itself onto non-Western cultures. The relativity of human rights, largely followed by developing countries, is based on the presence of various sociological structures and cultural diversity that differ from nation to nation. Sociological structures and cultural diversity here refer to history, economic development, life philosophy, level of intelligence, social participation in political development and so on. These factors form the foundation on which Eastern or Southern states reject the Western or Northern versions of human rights universality.

Those advocating relativism state that denying sociological structures or cultural diversity is equivalent to violating human rights themselves, because it indicates expropriation of the sociological and cultural rights of a state. Consequently, they argue that enforcing the universalism of human rights, as seen in the form of economic aid with certain political conditions attached, contradicts the principle of humanism and is a disaster for implementation of human rights.

The above discussion indicates that there are two major perspectives in relation to human rights implementation

and characteristics. The first group sees human rights as universal to the extent that they must be implemented uniformly based on specific standards. They feel that the more powerful countries must protect global peace and order, and if necessary become involved in oppression of other countries using a range of methods, from diplomatic pressure, economic embargos, to military threat. As a result this group’s reasoning is considered somewhat hegemonic. Meanwhile, the second group considers human rights to be relative and highly influenced by the subjective conditions of each individual state. This group’s static reasoning stresses that a state has no right to interfere in the affairs of any other state.

In addition to these two major perspectives, there are two smaller but strongly opposed views that have a high potential for conflict. These two views, often present in developing states, are on the one hand the view of the proletariat and their sympathisers who demand maximum fulfilment of individual rights, and on the other, the government view that tends to promote collective rights, based on the logical reasoning that the general good must come before individual or group interests.

The interesting thing with discussions about the universalism of human rights is that even in states that adhere to universalism, there are many contradictions in its implementation. For instance, American soldiers may have won medals of bravery for killing masses of Vietcong soldiers, yet when an American soldier went missing in action, the White House would, without knowing the circumstances behind his disappearance, blame the Vietnamese government for violating human rights. Other examples were presented by the Singaporean Foreign Affairs Minister in the World Conference on Human Rights in Vienna, and include
differences in interpretation in the various states of America concerning the death sentence, rights to education, and continued opposition to the United States Supreme Court decision to legalise abortion. These contradictions are not seen as deviations from the universalism of human rights, but are considered a product of democratic freedom. Based on this attitude, America should regard core differences in local and national values, as well as differences in ‘Third World’ interpretations of human rights in a similar manner.

These kinds of contradiction always colour international debate. For debate over the universal and the particular, there are at least three theories that can be used as analytical frameworks, namely realistic theory, cultural relativism theory, and radical universalism theory.

Realistic theory is based on the assumption that it is a characteristic of humans to emphasise self interest and egoism. Anarchy is a reflection of this belief. In an anarchic situation each individual prioritises his own interests, causing destruction and inhumane behaviour between individuals struggling for their own egoism and self interests. In this context, universality of the morals each individual posses does not function. In order to resolve such situations, the state is allowed to take action based on the power and security it possesses to protect national interests and social harmony.

Cultural relativism theory argues that moral and cultural values are particular. This means that human rights moral principles are local and specific, and thus it is possible to have human rights principles that are specific to certain states. There are three models for human rights implementation: 1) implementation of human rights that emphasise civil rights, political rights and individual property rights; 2) implementation of human rights that emphasise economic and social rights; and 3) implementation of human rights
that emphasise the right to self-determination and economic development. The first model is often implemented in developed countries, the second in the developing world, and the third most often applied in the underdeveloped world.

Radical universalism theory states that human rights principles are universal and can not be modified to adjust to cultural, religious or historical differences of a nation. It assumes that those local values that do not accord with human rights principles must be changed or modified. This theory argues that there is only one understanding or interpretation of human rights, that human rights principles are equally valid in all places, times and can be equally applied in societies with diverse backgrounds.16

Too much emphasis on any of these three theories can be dangerous and must be regarded with caution. Excessive adherence to the absolute universalism of human rights can cause one to fall into the trap of adopting a narrow minded attitude that assumes there is only one truth, namely universal human rights. This attitude also denies recognition of cultural and religious pluralism, even though such pluralism is an integral part of humanity that we have no choice but to accept.

In addition, blind adherence to cultural relativism can also be dangerous, as it is often used as justification for human rights violations. Under the pretext of religious belief, people often justify violence and threaten others.

It is not completely impossible to unite differences in visions, perceptions and interpretations of human rights. It is achievable if those of differing opinions have good intentions.

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and prioritise the common good. There must also be collective agreement on the criteria of those right considered universal and those considered relative. For instance, both arbitrary killing and the use of torture to gain confessions must be seen as violations of universal human rights. However, rights concerned with health services are relative human rights and thus depend on the economic situation and health care facilities of each individual state.

Indications that an effort was underway to bring together and dissolve the tension between these different perspectives became apparent during the World Conference on Human Rights II in Vienna, Austria, 15-25 June 1993. At the conference Indonesia expressed that it accepted the principle of universal human rights, but argued that the principles of diversity and pluralism, the political system, stages of development, as well as the cultural and historical conditions of a state also had to be taken into consideration. Indonesia did not want to hide behind cultural relativism and particularism, rather what was more important was equilibrium between politics and the economy. When differences between the two major perspectives begin to be resolved, attempts must also be made to unite the smaller differences between more minor perspectives. As with the two major perspectives, any efforts must be made with determination and good intentions from all parties.

In light of this, the fundamental nature of the human rights principles contained in the UDHR cannot be denied. It contains basic universal principles that are much larger than particular interests. Although in many cases the UDHR was based on Western experiences, it is by no means a Western monopoly. The UDHR was formulated specifically not to represent a certain theological or metaphysical framework as it was formulated without specific religious justification. This
has enabled adherents of any religion to be committed to the declaration based on the specific norms they follow. And so, the human rights declaration was intended to provide protection of human rights all over the world, including in those states whose constitutions ignore such rights. Human rights can be well protected if there is state agency, even though the state has its own potential to violate human rights.\textsuperscript{17}

Based on the discussion above, human rights must be integrated with the culture of all societies. Difference in background, culture and history does not equate to differences in fundamental human rights principles and values. No matter the background of a society, individual rights will always need protecting. The human rights declaration addresses that all humans are born free and equal in rights (article 1), the principle of equality (article 2), the right to life (article 3), the prohibition of slavery or servitude (article 4), equality before the law (article 6), the right to property ownership (article 17), freedom of thought and religion (article 18), freedom of opinion, of peaceful assembly and association, and so on.\textsuperscript{18}

This declaration is often considered to be the first generation of human rights. The second includes civil and political rights, while the third generation concerns economic, social and cultural rights, and the fourth incorporates the right to development of a nation.\textsuperscript{19} In this sense, human rights


\textsuperscript{19} For further information, see Vrastilav Pechota, “Kovenan Hak Sipil dan Politik” in Ifdhal Kasin (ed.), Hak Sipil dan Politik, Esai-esai Pilihan, (Ja-
awareness and thinking was not something that occurred instantaneously, rather it has struggled through several stages over a period of time.

An important issue that even today has not been resolved is religion. Indeed, embracing a specific religion or belief is a fundamental right of all individuals that must not be interfered with. However, insofar as this freedom can be tolerated, it still contains many problems. Islamic state members of the Organisation of the Islamic Conference (OIC) proposed ‘syariah’ principles as a standard for human rights. In response to the UDHR, they formulated The Cairo Declaration on Human Rights in 1990 as a “challenge” to the declaration.

Muslims all over the world took issue with several important aspects of the UDHR, particularly in regards to the freedom to convert religion as stated in article 16 of the ICCPR. Before the 1990 Cairo Declaration, they had responded by formulating their own Islamic human rights, known as the Universal Islamic Declaration (UID) which was announced at the International Conference on the Prophet Muhammad and His Message in London, 12-15 April 1980. The main elements of the UID were then developed into the Universal Islamic Declaration of Human Rights (UIDHR). It was formulated on 19 September 1981 in Paris by Islamic thinkers and legal experts.\textsuperscript{20} It was this compilation that was then developed in 1990 into the Cairo Declaration, which was signed on 5 August in Cairo by 54 OKI member nations.

It is a general fact that the Cairo Declaration reflects the Muslim world’s view of the UDHR, which is seen as

\textsuperscript{20} The authors have as yet been unsuccessful in discovering the names of these Islamic thinkers and legal experts.
contradictory to Islamic teachings. In other words, the Cairo Declaration rejects the universalism of human rights, which requires that they also be applied in Islamic states, and emphasises the particularism of human rights. This is made apparent, for instance, in article 24 of the Cairo Declaration which states “all the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah”. Similarly, article 25 emphasises: “The Islamic Shari’ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration”. Such a declaration seems to place Islamic Syariah above human rights.

As a result, several articles of the Cairo Declaration are different to those of the UDHR. Take the concept of marriage, for example. Article 16 of the UDHR states: “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.” Meanwhile, the Cairo Declaration says of marriage in article 5: “The family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marry, and no restrictions stemming from race, colour or nationality shall prevent them from enjoying this right.” The omission of religion in the Cairo Declaration means the article is often used as a reason to reject inter-religious marriage. Likewise with freedom of thought, while it is guaranteed in the UDHR, in the Cairo Declaration it is only guaranteed insofar as it complies with syariah regulations.

It is thus fair to say that two articles of the Cairo

Declaration (24 and 25) play a crucial role in protecting a number of Islamic “doctrines” such as permitting stoning as a form of punishment, forbidding religious conversion, forbidding usury/interest, forbidding inter-religious marriage, not endorsing equal inheritance rights for both men and women, dividing the world into Muslims and infidels (*kafir*), and considering Muslims as the best people, tasked with the duty to guide others to Islam.\(^\text{22}\) Although such an analysis is not entirely correct, these kind of assumptions circulate strongly in non-Muslim circles, especially in the West.\(^\text{23}\)

This is understandable given the number of differing perspectives on human rights. Imparting understanding to others remains vital, but more important is to prove that Islam is able to adapt to a variety of situations without losing its authenticity. In fact, several Muslim states, including Indonesia, are fully committed to human rights principles but do not neglect *syariah* as a legal source, many aspects of which have been integrated into national law.\(^\text{24}\)


\(^{23}\) This is not entirely correct as not all Islamic legal doctrine was restated in the Cairo Declaration. Only a few aspects such as usury (article 15e), and less explicitly the punishment of stoning (article 2b), were mentioned. The Cairo Declaration does not address the issues of religious conversion, differentiating between the rights of men and women, division of the world into Muslims and infidels, or the view of Muslims as the best people. This impression often emerges out of suspicion of Islamic law, some aspects of which are regarded incompatible with the concept of universal human rights.

The important issues surrounding Islam and human rights will be discussed later. However, it is important to stress here that the concept of human rights universalism will be in tension with concepts like those above that fall under “cultural relativism”. There will always be contest over which interpretation of “syariah” is used as the standard. One group interprets it strictly and conservatively in a way that easily accuses people of violating it, while others apply it much more flexibly, allowing people to “manoeuvre” within syariah.

Ideas about human rights universalism, according to An-Na'im, must not be used to strengthen or justify the claims of some governments or state leaders that their people need not implement human rights standards. These kinds of claims are usually put forward by elite rulers who perceive human rights to be a “Western product”, foreign to Africa and Asia. It is fitting to take issue with, or outright reject, such a view, by emphasising that all societies are currently attempting to achieve and maintain a commitment to the universalism of human rights and to implementation of the rule of law in international relations. Yet at the same time, the idea that the only valid model of universal human rights must be formulated by the West is also problematic.25

Thus, if human rights are indeed universal, are indeed rights that all humans must have no matter their location, then they must be integral to the culture and experiences of all societies, and not purely a Western product which is then transplanted into other societies. It is important to consider An-Na'im’s proposition here.26 First, formalisation of international human rights standards did indeed reflect

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Western experience and political philosophy. In fact, many articles in the human rights declaration imitate the language of the United States’ *Bill of Rights*. Yet this is not to say that human rights norms as stated in the declaration represent a foreign product that is not compatible with Asian and African societies, who in fact equally need protection of human rights. Second, activists for international human rights law must promote the UDHR as an essential foundation for civilised societies, and not neglect it just because some governments have failed to enforce its principles. Human rights and international law principles must be upheld and promoted in the face of all demands, because these principles are a collective effort of all of humankind.

C. THE CONCEPT OF FREEDOM OF RELIGION AND BELIEF

As noted above, freedom of religion or belief is a non-derogable fundamental right of all people. Yet the concept is still debated, especially when it comes to religious sects that differ from mainstream religions. This calls for a more detailed examination.

From a human rights perspective, freedom of religion and belief consists of eight components:

1. Internal Freedom

   Freedom at this level emphasises that all individuals have the right to freedom of thought, belief or religion. This right incorporates the freedom to follow or adopt a religion or belief according to one’s own choice, including the right to convert religion or belief.

2. External Freedom

   This freedom emphasises that all individuals have the freedom, both as individuals and in community with
others, both publicly and privately, to manifest their religion or belief in teaching, observance and worship.

3. No Force
   
   No individual can be made subject to force that decreases their freedom to have or adopt a religion or belief of their choice.

4. Non-Discriminative
   
   The state is obliged to respect and guarantee freedom of religion and belief for all individuals within its jurisdiction without discrimination on the grounds of ethnicity, religion, belief, race, sex, language, politics, opinion or social origin.

5. Rights of Parents and Guardians
   
   The state is obliged to respect the freedom of parents and legal guardians to guarantee that the religious and moral education of their children is in accordance with the parents’/guardians’ own beliefs.

6. Freedom of Institutes and Legal Status
   
   A vital aspect of freedom of religion and belief is for religious communities to organise or form alliances as a community. Thus, religious communities have freedom in religion and belief, particularly in terms of the right to independence in regulating their organisations.

7. Permitted Restrictions to External Freedoms
   
   Freedom to manifest one’s religion or belief may only be restricted by law and in the interest of protecting public order and safety, health, morals, or the fundamental rights of others.
Chapter III The Dilemma between Islam and The Right to Freedom......

8. Non-Derogability

The state may not restrict freedom of religion or belief under any circumstances.\(^{27}\)

These eight components can be identified in the various codified human rights documents and norms. However, when implemented in a particular context, these norms still require interpretation and elaboration. One problem with this is relating freedom of religion or belief in the individual context with the collective beliefs of a religious community. Theoretically, when freedom of religion or belief is applied to protect an individual, at the same time it should also protect the interests of the community and intergenerational relations.\(^{28}\)

A crucial point to make, however, is that in practice protection of internal religious freedoms often contradicts community interests. This is evident in cases of religious deviance or where a sect is accused of deviance because it interprets or observes religious teachings differently to the interpretation and practices of the mainstream or majority within a community.

This leads us to a discussion about restricting and regulating external expressions of freedom of religion and belief. Here, human rights discourse notes that there may be restrictions and regulations in the following instances:

1. Restriction for the protection of public safety. The government may restrict public manifestations of religion such as religious meetings or conferences, location


or standardisation of houses of worship, religious processions and funeral ceremonies, in order to protect the individual freedoms or ownership rights.

2. Restriction for the protection of public order. This kind of restriction is apparent in the requirement to register the corporate body of religious community organisations, and to obtain authorisation to hold public meetings and establish houses of worship intended for public use.

3. Restriction for the protection of public health. This restriction is intended to give the government the opportunity to intervene where necessary to prevent the spread of epidemics or other illness. The government is obliged to facilitate vaccination, and may for instance require farmers working on a daily basis to become medical care card holders in order to prevent the spread of Tuberculosis. This may become quite a challenge, supposing a specific religious teaching forbade blood transfusions or the use of helmets/head protection.

4. Restriction for the protection of morals. Restricting religious manifestation on the justification that it protects morals is potentially quite controversial. Moral concepts are present and have been passed down in many religious, philosophical and social traditions. As a result, the moral principles on which such a restriction is based must not be drawn from just one religion or tradition. The government may restrict religious freedoms in this sense, for instance, if an endangered species is protected by law. In this case the animal may not be allowed to be slaughtered even for the sake of religious ritual.

5. Restriction for the protection of the (fundamental) rights and freedom of others. This restriction is regulated in several policies such as the law against proselytising or
forcing others to follow a specific belief. The government’s anti-proselytising policy intervenes with the freedom to manifest religion through missionary activities within the framework of protecting the religious freedom of others not to be converted. The government may also restrict religious manifestations that endanger the fundamental rights of others, particularly the right to life, freedom, freedom from violence, freedom from slavery and so on.29

In connection to this, Dawam Rahardjo30 formulated ten principles for freedom of religion and belief, in relation to national and state life in Indonesia. They include:

First, the freedom to choose or determine the religion or faith one embraces, including the freedom to follow any religious sect, and the freedom to worship in accordance with one’s own religion or belief. This kind of freedom is very well understood, often featuring in official speeches, yet its implementation is still plagued by many problems. The issue over “deviant sects” in various religions is just one manifestation of such problems.

Second, freedom of religion also means freedom not to have a religion. This is explicitly acknowledged in the ICCPR, where not only theists and non-theists have their rights guaranteed, but also atheists. In the Indonesian context, although the 1945 constitution states that “the state is based on Belief in One Supreme God” as the first principle

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of Pancasila, freedom of religion must also mean freedom not to believe in God. The important thing is that atheists do not interfere with others, for instance in displaying an anti-religious attitude, insulting religious adherents or defaming God in public.

Third, religious freedom also means freedom to convert religion. In Islam, religious conversion is a serious issue, with the person converting being stamped ‘murtad’, an apostate. Being ‘murtad’ in Islam carries the threat of death, divorce from one’s husband or wife, and forfeiting of one’s inheritance rights. However, religious conversion must be accepted as a consequence of religious freedom.

Fourth, religious freedom includes the freedom to propagate one’s religion, so long as it is without direct or indirect violence or force. Religious activities aimed at finding new converts by distributing food, free medicine, and scholarships for underprivileged children with the condition that one convert to the religion, are not ethical because they insult human dignity by “buying” the faith of a person.

Fifth, propagation of atheism as an understanding, which is anti-religious and anti-God, can be proscribed by the Indonesian government because it contradicts Pancasila, especially its principle of the Belief in One Supreme God. In connection to this, it is forbidden to criticise or insult a religion, something which is permitted in secular states. Yet this does not mean banning people from studying or reading the works of atheists such as Karl Marx, Freud or Feurbach, especially when they are studied in an academic context.

Sixth, the state must treat all religions and beliefs equally on the basis of religious freedom and pluralism. Government regulations that repress religious proselytising or restrict religious worship contradict the principle of religious freedom.
Seventh, there is no justification for the state to proscribe inter-religious marriage, if it is a private and family decision made after mature consideration. The only responsibility of the state is to ensure that the marriage is registered. This is a difficult and serious issue in Indonesian marriage law. Although inter-religious marriage occurs frequently in Indonesia, to date Indonesian marriage law is not receptive to the principle.

Eighth, in their education, students must be given the right to determine the religion they wish to choose and study. The role of parents in influencing this decision is significant, but must also depend on the level of maturity of the child. The greater their maturity, the greater the independence a child should have in determining the religious studies they wish to pursue.

Ninth, in pursuing a religious life, all citizens have the right to form a religious sect, or even a new religion, so long as it does not interfere with public order or contain practices that violate the law, morality, or involve deception under the guise of religion. This freedom is also valid for those who wish to facilitate gatherings for health or emotional and spiritual intelligence that are based on a range of religious teachings, so long as participation in such gatherings does not require one to adhere to a particular religious belief.

Tenth, the state or a religious authority, if present, may not make legal decisions which determine whether a religious sect is “deviant or misleading” unless that sect’s practices violate the law or public morals as proven through fair and just legal process.

These ten principles are still open to debate, yet the important thing to stress here is that guaranteeing freedom of religion and belief requires strong political commitment. Guaranteeing citizens’ rights to freedom of religion and belief
lies entirely in the hands of the political elite. As a result, a clear political vision is crucial. Indeed, communities may threaten freedom of religion and belief, but if the political elite and its entire apparatus have a clear vision for civil and political rights then they must take action to prevent persecution of those beliefs considered deviant.

D. A CRUCIAL ISSUE IN ISLAM: FREEDOM OF RELIGION OR BELIEF

Generally speaking, Islam supports the principle of freedom of religion or belief. Islam has never advocated forcing people to embrace religion. This is evident in the following verses from the Qur’an:

“Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things.” (QS. al-Baqarah [The Cow]: 256)

“Therefore do thou give admonition, for thou art one to admonish. Thou art not one to manage (men’s) affairs.” (QS. al-Ghasyiah [The Overwhelming, The Pall]: 21-22)

“If then they run away, We have not sent thee as a guard over them. Thy duty is but to convey (the Message)…” (as-Syura [Council, Consultation]: 48)

“If it had been thy Lord’s will, they would all have believed,- all who are on earth! wilt thou then compel mankind, against their will, to believe! No soul can believe, except by the will of Allah.” (QS. Yunus [Johan]: 99-100)
“To you be your Way (religion), and to me mine” (QS. al-Kafirun [The Disbelievers, Atheists]: 6).

Although a number of verses quite strongly emphasise the principle of religious freedom, there are still a number of important issues to consider. Before discussing this in more depth, it must first be noted that although syariah principles were rarely applied firmly and systematically in the past, let alone today. Their presence is nevertheless often a cause for fundamental conflict with the idea of universal human rights, and is often used to justify violating religious freedoms. Consequently, any discussion of this issue calls for patience.

By far the most crucial issue in Islam in relation to freedom of religion and belief is the issue of murtad (apostasy) or religious conversion. In Islamic fiqh (study of laws pertaining to ritual obligations), murtad falls under the category of criminal actions that carry quite serious punishment, anything from removal of civil rights to the death sentence.31

Discourse over religious conversion is not particular to Islam. The Jewish and Christian traditions are also familiar with it. Leaving a religion (apostasy or riddah) in the Catholic Encyclopedia, as cited in Nazila Ghanea,32 is defined

31 In fiqih jinâyah (Islamic Criminal Law), criminal acts are divided into three categories, hudûd, jinâyah dan taʿzir. Hudûd refers to those violations whose punishment has been determined in the Qur’an. This includes sariqa (theft), hirâbah (rioting and looting), zina (adultery), qadzaf (accusations against others of adultery), sukr (drunkness) and riddah (leaving Islam). Jinâyah refers to criminal acts related to murder or bodily harm. Perpetrators of this kind of crime are threatened with qisâs (equal punishment) or with diyat (monetary or an equivalent fine) for the victim or the victim’s family. And taʿzir refers to those criminal acts whose punishment is determined by the policies of those in power. For further reading see Abdullahi Ahmed an-Na’im, Dekonstruksi Syariah, pp. 199-205.
as “the desertion of a post, the giving up of a state of life”. Here apostasy is defined as “desertion of a post”, a term well known in military circles. Those who desert must face several consequences, including the threat of death. That is, they must be willing to give up their life. In the *Encyclopaedia of the Qur’an*, apostasy is defined as “turning away from or rejecting one’s religion”.

In traditional Islamic law, *riddah* refers to the turning away of a person who has been a Muslim, to become *kufur* (a heretic), either intentionally or due to certain circumstances.

According to experts in *fiqh*, *riddah* may occur in a variety of forms, such as denying the existence of God or rejecting God’s characteristics, rejecting one of God’s Messengers or rejecting a Messenger’s status as prophet, rejecting a religious principle such as praying five times a day or fasting during Ramadan, or embracing what is forbidden and proscribing what is allowed.

In the Qur’an, the concept of leaving Islam is represented by two main concepts, *irtidâd* and all its derivations, and *kufr* (*al-kufru ba’d al-îmân* [becoming an infidel by leaving Islam]). The term *riddah* is used to refer to Muslims who have left Islam to become non-believers with no faith or to embrace another religion. The term *riddah* is present in two forms in the Qur’an, in *lafaz* (text) form, and in meaning.

*Freedom of Religion or Belief*, p. 669. There are two near identical terms here but that have different meanings, namely “apostasy” and “heresy”. Heresy is usually used to refer to rejection of a part of religious doctrine, while apostasy rejects the entire religion, and is often expressed by conversion out of the religion.

Those verses that discuss *riddah* textually include al-Baqarah: 217 and al-Maidah 54. Those which discuss its meaning/interpretation include Ali Imran: 72, 86-90, 106, 177, 207; an-Nisa’: 89, 137; at-Taubah 66, 74; an-Nahl: 106; al-Hajj: 11; and Muhammad: 25.37

In all these verses, *murtad* is not an action that Allah permits. Allah also warned that non-believers would never stop pursuing efforts to turn Muslims into non-believers. At the same time, Allah also threatened Muslims who return to apostasy with the annulment of all their good deeds so that they would live for all eternity in hell. However, these verses do not mention in detail the boundaries for calling a person an apostate, the characteristics of apostates or the factors that cause people to become apostate. It can thus be concluded that apostasy and religious conversion are private affairs between humans and Allah.

The threats levelled at apostates are reinforced in several hadith narratives. As-Samira’i in *Ahkâm al-Murtad fi al-Syarîah al-Islâmiyah*, as cited in Tri Wahyu Hidayati38 describes five examples of the term *riddah* (and all its derivations) in the hadith:

1. Conversion from being faithful to being a non-believer (*al-kufru ba’d al-îmân*)

   Anas said: a group of people from the ‘Ukul tribe met the Prophet and converted to Islam. They then became ill because they were not used to the weather in Medina. So the Prophet ordered them to go to an alms-given camel to drink its urine and milk. They did so until they recovered.

They then left Islam (irtaddû) and killed the owner of the camel and stole the camel. The Prophet ordered that they be found and caught. The Prophet cut off the hands and feet of the thieves and gouged out their eyes. The Prophet did not mutilate them to kill them, but let them die from their wounds.39

2. Return (rujû and ‘âda).

Abdullah said: as the Prophet had stated, those who knowingly charge, manage or record interest; tattoo artists and their clients; those who refuse to give alms; and Arabs (Bedouin) who became apostate after moving to Medina are cursed.40

Ibnu Hajar said, when the Prophet ordered Muaz bin Jabal to go to Yemen, he decreed: for a man who leaves Islam, invite him to return if he wants to. If he refuses, then hit the back of his neck. For a woman who leaves Islam, invite her back, if she wants to return. If she refuses, hit the back of her neck.41

3. Infidelity (al-kufru)

From Ibnu Umar, the Prophet once decreed: When a man calls out to his brother: “Hey kafir”, then one of

39 Imam Bukhari, Shahîh Bukhârî, chapter Hudûd no. 6304 (CD Rom al-Mausû`ah li Hadîts al-Syarîf). This hadith is considered genuine because all compilers are trusted (tsiqah) and there is no break in the chain of narrators. This hadith can be found in many places in Shahih Bukhari with different wording and narrative paths and different placement in chapters. In hadith no. 226 it is found in the chapter wudhu. Other narratives are found in hadith no. 6307 in the chapter hudûd.


the two is (surely) an infidel. If the man called a *kafir* is indeed a *kafir*, then he is a *kafir*. But if not, then he who calls the man a *kafir* becomes the *kafir*.

4. Replacement (*at-tabdil*)

Ikrimah ibn Khalid ibn 'Ash said: Ali was approached by several heretics, and he burnt them. News of this reached Ibnu Abbas. He then said: If it had have been me, I would not have burnt them because there is a proscription from the Prophet which says, do not impose on others Allah’s punishment. I would certainly have killed them based on the Prophet’s decree which says, for whosoever converts religion, kill him.

5. Leaving Islam and disengaging from the community (*târikan lidînihi mufâriqan lijamâ’atihi*)

Abdullah said, the Prophet decreed: the blood of a Muslim who witnesses that there is no God but Allah, and I am His messenger is not *halal* (can not be spilled), unless that Muslim is one of three people, namely: a person who takes another’s life (a murderer), an adulterous husband/wife, or a person who has left Islam and has disengaged from the Muslim community.

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43 Imam Bukhari, *Shahih Bukhari*, section VIII, p. 50. Abu Dawud also narrates this hadith with different wording. “Ikrimah said: Ali burnt several people who stepped away from Islam, When Ibnu Abbas received information about the incident, he said: if it were me, I would not have burnt them, because the Prophet said, do not impose Allah’s law on anyone, but I would have killed them based on the Prophet’s words: “kill those who are apostate but do not burn them. Burning is Allah’s way of punishing sinners in the hereafter”.
The most popular hadith that threatens apostasy is “man baddala dinahu faqtulûlu (whosoever converts religion, kill him)” and it is often used by fiqh experts as justification when determining the death sentence for apostates, even though it is not a mutâwatir (reported by a large number of people) hadith, but is only an ahad hadith (reported by one narrator only). In fact, experts have discovered weaknesses in the transmission of this hadith to the extent it can no longer be used as justification for imposing the death sentence on apostates. According to Ibnu Hajar al-Asqalani in Tahzîb al-Tahzîb, as quoted by Tri Wahyu, the compilers of this hadith were known for their questionable ability to memorise (dhâbith) and for their lack of personal integrity (‘âdil). The two compilers were Muhammad Ibn al-Fadhl as-Sanusi who became quite senile towards the end of his life, and Ikrimah Ibn Khalid Ibn ’As whose ability to memorise hadith was highly doubted. Thus, while this hadith’s narrative is unbroken (ittishâl al-sanad), the inadequacies of its two compilers raise questions about its quality.

Putting this aside, history has shown that the Prophet did, on occasion, sentence apostates to death, but on other occasions chose not to do so. However the death sentence

46 Tri Wahyu Hidayati, Apakah Kebebasan Beragama..., p. 95.
47 Compare with Abd. Moqsith Ghazali, Argumen Pluralisme Agama, Membangun Toleransi Berbasis al-Qur’an/The Argument of Religious Pluralism, Creating Tolerance Based on the Qur’an, (Jakarta: Katakita, 2009), pp. 235-237. Here Abd. Moqsith speculates that the Prophet never ordered the death sentence for apostates. Although with some uncertainty, Moqsith argues that: 1) maybe during the Prophet’s time, precisely in Medina, no one converted religion; 2) or maybe during the Prophet’s time some Muslims converted, but that the Prophet did not wish to punish them because in the Qur’an there is no clear threat against apostates.
Chapter III The Dilemma between Islam and The Right to Freedom.....

was not chosen just because they were apostates, but because of other factors. This idea was proposed by Ibrahim an-Nakha’i (c. 98 H) and Sufyan as-Tsauri (c. 161 H). It is supported by several historical factors that indicate that the death sentence was handed down due to apostates’ affiliation with the enemies of Islam and their intentions to make war on Muslims. Subhi Mahmassasi also argued that the death sentence for apostates was influenced by the political situation. Similarly, Mahmud Syaltut proposed that infidelity alone was not enough to justify taking blood, but that hostility and opposition to Islam was. These hadith relating to riddah originated during the era of war against infidels. Frequently, those people who had left Islam conspired with infidels to wage war on Muslims. It can thus be concluded that the threat of death for apostates is more strongly linked to their conspiring with infidels, rather than purely because of their leaving Islam.

Much historical data supports this conclusion. For instance, after the fathu makkah (Conquest of Mecca by Muslims in 630 CE/8 H), the Prophet gave amnesty to all the infidels from the Quraisy tribe, bar 17. These 17 people had to be killed because of their crimes against the Muslim community. Amongst them were apostates and enemies of Islam. The incident described above involving the group of apostates from the Ukul tribe further strengthens this conclusion. They were threatened with death not because of

their apostasy, but because of their theft at the well where the camels drank and their killing of the camel owner. Imam Bukhari also quotes a story of Badui apostates, where the Prophet did not punish them but let them leave. What happened was that the Badui people had, after converting to Islam, suffered an illness known as *wa’ak* (fever), which led them to approach the Prophet to retract the oath they had pledged. The Prophet did not punish them, rather he allowed them to leave.\(^{52}\) From these cases it seems that the death sentences given to some apostates were more related to their hostility towards Islam, than simply because of their apostasy.

The above mentioned hadith must be understood within context. They originated in a situation of intense hostility, and frequent infiltration and intimidation. From the available narratives, it is clear that the Prophet wanted to create a safe, peaceful and strong society in Medina. As a result, murderers, adulterers and apostates were threatened with the death sentence. The addition of the words *at-târik min al-jamâ’ah* (and who disengage from the Muslim community) to the already present *al-mâriq lidînihi* (those who leave one’s religion) suggests that leaving Islam, but not disengaging from the Muslim community and collaborating with Islam’s enemies, that is remaining faithful to the Muslim community, would not be punished with the death sentence.

Thus, the assumption that apostates were threatened with the death sentence is not absolute. Those narratives that seem to justify or confirm the death sentence for apostates must be balanced with the general principles of the Qur’an which value freedom of religion and belief. In fact, the development of the concept of apostasy was very much

\(^{52}\) Imam Bukhari, *Shahih Bukhari*, section VIII, pp. 18-19.
related to the political perspective of the Muslim community. Al-Qurthubi, for example, believed that apostates could be divided into two kinds: first, those apostates who denied Islamic law and declared that they had left Islam; and second, those who only followed a handful of Islamic laws and ignored the rest.\(^{53}\) The second kind of apostate emerged during Abu Bakar’s Caliphate, with the rebellion of the Baduwi Arab tribe who refused to pay zakat (tax) to the caliphate after the death of the Prophet even though they continued to pray. Using this framework, the Shiite Rafidhah group believe that Abu Bakar ash-Shiddiq and his followers belong to the second category of apostates because they usurped the power (the caliphate) that really belonged to Ali bin Abi Thalib.\(^{54}\)

According to An-Na’im,\(^{55}\) there are at least two problematic aspects with the concept of apostasy in the Islamic legal tradition, namely the conceptual lack of clarity and weakness, and the lack of clarity in legal basis of those consequences that apostates must accept for their apparently serious crime. One source of this lack of clarity is related to the legal consequences and their definitions, and the similarities between the concept of apostasy with other concepts such as kufr (infidelity), sabb al-rasûl (blasphemy), zindiq (heresy) and nifâq (hypocrisy).

The vagueness surrounding these concepts can be seen in the Sunni tradition. In Sunni fiqh, apostasy is classified into three categories: belief, actions and expressions. These three categories are then further divided into several groups which are highly problematic. For example, apostasy in the form of

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faith may take the form of doubting the existence or the eternity of God; doubting the messages of the Prophet Muhammed or other prophets; doubting the Qur’an, Judgement Day, the existence of paradise (heaven) and hell; or doubting those things that Muslims have already come to agreement on, such as God’s attributes. In this sense apostasy does not apply to those things that the community has not reached consensus (ijmâ’) on. This concept of consensus has been debated separately amongst Islamic law experts. Certainly, not many issues are agreed upon in the Muslim community. If the concept of apostasy is too broadly construed, the risk may be that the label is applied too easily and readily. Thus, an unclear scope for the term apostate increasingly erodes the legal basis of the crime and its subsequent legal consequences.

Because murtad means turning away from believing in Islam, as the religion previously embraced, this means that the concept is related to the concept of kufur (infidelity) in the sense of open rejection of Islam’s teachings. Although the Qur’an frequently mentions belief and non-belief, it gives no clear directions as to the meaning of the two terms except in relation to acknowledging belief by giving witness that “There is no God but Allah and Muhammad is His messenger”. The Qur’an frequently connects this concept of belief with praying, fasting and doing good deeds, but does not mention any punishment for those who do not meet these obligations besides Allah’s punishment on Judgement Day.

The Qur’an does not explicitly detail the consequences that will befall the Muslim community should they question this declaration of faith. The debate between experts on the Qur’anic text over the relationship between faith and action is relevant here. Some Muslims accept an oral declaration of faith as proof of a person’s adherence to Islam, but for others
oral declaration is not sufficient; rather it must be proven through subsequent deeds. For those who require “action” as proof of one’s faith, the questions then arise: what is the status of a person who has recited the syahadat (confession of faith) but does not perform their obligations as a Muslim? Who has the authority to judge whether a person has performed his/her obligations, and what are the consequences of such a judgment? Debate over this issue has manifested itself in a variety of forms since the time of the Kharijites during the war between Ali bin Abi Thalib and Muawiyah bin Abu Sufyan, right up to the current issues over Ahmadiyah’s status.

A similar level of obscurity also surrounds the sabb al-nabi proscription. According to traditional doctrines of fiqh ulama (religious experts), people who violate such a proscription must be sentenced to death. This proscription was then widened to incorporate sabb al-shahabah (blasphemy against the Prophet’s friends), which was punished in the same manner as apostasy. A number of Muslims felt that those who behaved in this manner could still be called Muslim, but should be punished appropriately. Yet others believed that such behaviour meant a person was no longer fit to be Muslim. If a non-Muslim behaved in this

56 Sabb al-nabi is the use of blasphemous language aimed at the Prophet Muhammad, God or the Angels.
58 See for instance, Abdullah bin Husain bin Thahir Ba’lawi, Sullam al-Taufiq, (Semarang: Toha Putera, not dated), pp. 9-12.
59 Debate over whether those who have committed “grave sins” (al-kabair) are still Muslim or have already left Islam has always been theological. The theological discourse first emerged during the Fitnat al-Kubrâ incident (the war between Ali bin Abi Thalib [c. 661 CE] and Muawiyah bin Abu Sufyan [680 CE]) between the Kharijites and the Murji’ites, over belief and non-belief. The issue of debate concerned the status of men who had
manner, he/she would not be considered an apostate, but would be sentenced to death. In the Qur’an itself there are no clear instructions on this. In fact, although the Qur’an uses the term sabb (QS. al-An’am [6]: 108), it is only in instructing Muslims not to verbally abuse the deities or objects worshiped by non-Muslims because they may respond by abusing those worshiped by Muslims. The Qur’an does not mention what punishment accompanies violations of this. Ulama refer to several incidents in the early history of Islam to support their decision that those guilty of blasphemy should receive the death sentence, even though in both the Qur’an and hadith there is no explanation of sabb al-nabi and the subsequent punishment for those who chose to violate it.

committed grave sins, whether he was an infidel or whether he remained a Muslim.

According to the Khawarij, those guilty of grave sin became infidels and left Islam (became apostate), and consequently had to be killed. In later developments of this line of thought, infidels were not only those who had committed grave sins, but also those who did not agree with the Khawarij and those who did not see non-Khawarij as infidels. Even more extreme, those Khawarij who did not live within the area that the Khawarij called dâr al-Islâm were also considered infidels. The Khawarij called the areas they lived in dâr al-harb and consequently war against them was justified. As a result, those involved in the arbitration - Ali bin Abi Talib, Mu’awiyah bin Abu Sufyan, and the two delegates, ’Amr bin ‘As and Abu Musa al-Asy’ari - were infidels because they were seen as having committed a serious sin by not making a decision based on Allah’s law (QS. 5: 44). They quoted from this verse the slogan lâ hukma illâ lillâh (there is no law but Allah’s law).

In a similar manner, those involved in the Jamal war between Ali and Aisyah were also considered infidel.

On the other hand, for the Murji’ah, those guilty of grave sins remained Muslim and punishment was handed over to God on Judgement Day. They held such an opinion because those who sinned still acknowledged that “There is no God but Allah and Muhammad is His messenger”, and because humans could not determine whether or not someone had sinned as that was Allah’s right. See Ali Mustafa al-Gurabi, Târîkh al-Firaq al-Islâmiyah wa Nasy’at ‘ilmu al-Kalâm ‘inda al-Muslimîn, (Mesir: Maktabah wa Matba’ah Muhammad Ali Sabîh, 1959), pp. 277-282.
Similar problems have occurred with the concept of *zindiq* (heresy). The term *zindiq* does not appear in the Qur’an, but is used in the Islamic tradition. Heretics, whose teachings endangered the Muslim community, were fit to be sentenced to death according to Islamic law. This term was first used in connection with the execution of Ja’d bin Dirham in 742 CE. In this context, a *zindiq* was understood to be a person who claimed to be Muslim but whose religiosity was not very convincing, in fact his behaviour was seen to endanger the Muslim community. However, there is no agreement over definitions, most especially over heretical behaviour. For instance, some believe heretics are people who claim to be Muslim but follow the religious teachings of the religion they adhered to before converting to Islam. Others say that heretics are those who claim to be Muslim but act in ways that are forbidden in Islam, such as by being adulterous or drinking liquor.\(^{60}\)

### E. ISLAM, CITIZENSHIP AND ITS CHALLENGES IN INDONESIA

Separate from the conceptual intricacies above, Islam is indeed familiar with the concept of apostasy. The problem lies in how the concept is situated within the context of life within a nation which guarantees religious freedom, including the freedom of religious conversion. Further, what happens to the right to embrace and believe in sects within a religion when such a belief is considered misleading, even deviant, by others? This is the very core of the issue.

In the larger context of religious conversion, the issues are often not so complicated because converting to and following a new religion is part of the *forum internum* which

is free from outside interference. The question is, is there still the guarantee of a *forum internum* in the micro-context, namely the freedom to believe in a religious sect. It is likely this conflict with the understandings of the majority and their accusations of religious deviance.

The most important aspect in discussing this issue is the principle of citizenship. In the Indonesian context, citizenship is related to equal treatment and status of citizens before the law and government. Citizens are not to be discriminated against on any basis whatsoever, including gender, religion or belief, skin colour or ethnicity.\(^61\) Although conceptually there is still confusion as to whether Indonesia is a religious or secular country, the principles of equality for all citizens as well as freedom of religion and belief are quite clearly guaranteed. Consequently, religious conversion in Indonesia is not considered a criminal act that needs to be punished with the death sentence.

Abdullah Saeed\(^62\) is of the opinion that there is a historical, not just doctrinal, reason why the apostasy issue became so central in Islam and invited firm consensus from *ulama* for a heavy sanction for violators, namely the removal of all civil rights and imposing of the death sentence. Saeed argued that in pre-modern society, individual rights were defined on the basis of an exclusive community which was then transformed into a political identity. This, for instance, can be seen in the definition of states which were divided on the basis of religion into Islamic states (*dar al-Islam*) and states or regions of war (*dar al-harb*). *Dar al-Islam* is

\(^{61}\) This is stated in article 27 of the 1945 constitution, the Anti Discrimination and Racism Law and Law No. 12/2006 on Indonesian Citizens, http://www.indonesia-ottawa.org/indonesia/constitution/fourth_amendment_const.pdf

\(^{62}\) Abdullah Saeed and Hassan Saeed, *Freedom of Religion*, pp. 36-37.
the region in which the Muslim community has control over and defines their political identity. Individual rights and the limitations placed on authority were determined by the community itself. Although the right to life of non-Muslims (ahl dzimmah) was not ignored, it was very limited so long as they did not interfere with the rights and authority of the majority. They were, in effect, second class citizens without the same rights as the majority. The religious decrees, or fatwa, of Muslim scholars of the time were, not surprisingly, generally shaped by this patembayan (segregated, formal and impersonal) community system and political identity.

On the contrary, in modern society and states, the state is no longer limited to such narrow community or religious based identities, but is rather based on the state constitution to which all citizens abide. The individual rights of citizens, therefore, are no longer based on specific religious communities but on the state constitution. The principle of citizenship of any nation-state is based on a modern constitution which gives full rights to citizens in regards to religion and treats all citizens equally before the law. Thus the pre-modern view of sanctioning apostates is no longer automatically valid in the reality of nation-states, except if those sanctions are legislated as positive laws.

The reason, Saeed continues, is that in the modern era, social mobility is high. Large numbers of people can migrate for various reasons including education, work, business and recreation. This means a community can no longer shut itself off from others, and thus pluralism and multiculturalism is an unavoidable reality for all nations, which means that perspectives based purely on the uniformity of a community are difficult to maintain. Such a condition demands that there be a guarantee for all individuals to live peacefully side by side all over the world. This guarantee is also needed in the
Muslim community, considering that Muslims are now spread all over the world, including in non-Muslim majority nations, and live in highly diverse societies. Many are minorities in the nations in which they reside. The reality in Islamic states themselves is one of diversity and multiculturalism.

In reality, a number of modern Muslim states do not only apply modern constitutions that guarantee civil rights and treat all citizens equally before the law, but they have also ratified the ICCPR which strongly guarantees the religious rights of all citizens. According to Saeed, the reason why the majority of Muslim states still apply sanctions that strip apostates of their civil rights and sentence them to death is not for the sake of law enforcement, but more often for short term political interests and to maintain political domination of a certain party. This is possible because on the one hand the legal definition of apostasy in those states is so flexible that it can be applied widely, including for accusations of bid’ah (hersesy) and atheism. On the other hand, a large number of Muslim states are still under authoritarian or semi-authoritarian governments and therefore the law applied tends to be shaped by the interests of the regime in power. In this manner accusations of apostasy are often aimed at those of different religious sects or political perspectives to the regime, even though they may be of the same religion.63

One consequence of the introduction of citizenship concepts has been not effecting the concept of fiqh as-siyâsah (political fiqh). One problem in fiqh as-siyâsah concerns the status of non-Muslims and females. Non-Muslims are seen as second class citizens whose status and rights differ from Muslims. The concept of fiqh as-siyâsah does not guarantee a permanent place of residence for non-Muslims in Islamic

states, except if they want to submit and pay *jizyah* (tax) as a *dzimmi* (person of the book). As *ahl adz-dzimmah*, the safety of their possessions and person are indeed guaranteed, but they do not have full civil and political rights. It is these kinds of principles which are criticised as being discriminative and in violation of the principle of equality before the law.\(^{64}\)

The *dzimmi* concept was originally developed by *ulama* as a part of the view which determined that political affiliation was based on religious affiliation, and not on the nation-state as is now the case. This was intended to shift political loyalty from ethnic ties to Islam, so that anyone who accepted the religion had access to the political community.\(^{65}\)

The different treatment of non-Muslims and females also applied in other areas including in *diyat* (paying compensation money for families who were victims of murder) for female or *dzimmi* victims, which was not equal to that for male Muslims. The price for a *dzimmi* was lower than that for a Muslim. Similarly with the conditions for enforcing *hadd* (a punishment quite explicitly regulated) on those accused of unproven adultery. Those accused of adultery had to be Muslim.

Also in giving evidence, testimonies given by female Muslims and *dzimmis* were not accepted in serious violations such as theft (*hudûd*) and murder (*qisas*). In civil cases, female Muslims’ testimonies were accepted but two females were required for one witness. There were no restrictions whatsoever for male Muslims, so that they were always seen as being in the right, unless they themselves admitted their guilt.\(^{66}\)

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\(^{64}\) Abdullah Ahmed an-Na’im, *Dekonstruksi Syariah*, pp. 170-172.


\(^{66}\) These examples are endless, especially in relation to family law, such as the issues of poligamy, distribution of inheritance, males holding the
Although from the *fiqh* perspective these issues are rather problematic, Indonesia has conceptually speaking been able to avoid these issues. Indonesian Muslims do not strictly apply Islamic law, although this does not lessen their authenticity as Muslims. For instance, while they do not apply *jinâyah* (adultery) law this does not make them less Muslim. Rather this happens to be the reality in Indonesia because Muslim intellectual advances have given legitimacy to the idea that nationalism and democracy are not *haram* (forbidden) and thus may be a reference for Muslims. It was within such a framework that legal reformation involving *syariah* principles was made possible, for both public and private law.

In connection to this, understanding of *syariah* must be situated within the context of the nation-state and all the diversity within it. The principle of citizenship has nothing to do with religious adherence but is completely dependent on citizenry ties based on respect of human rights. The concept of citizenship based on human rights means that essential norms, procedures and status must originate from – and accord with – universal human rights standards, which aim to guarantee effective protection of citizen’s fundamental rights, both through the legislative system and other means.

For Muslims and Muslim states, the principle of citizenship based on human rights can be implemented through a combination of three processes. Firstly is through an actual transition from the *dzimmi* concept to the concept of the citizenship. Consequently the terms *dâr al-harbi* (land whose inhabitants are at war with Muslims) and *dâr al-Islâm* (the land of Islam where *syariah* is in effect) would become no longer relevant. In many Muslim states, including Indonesia,
this understanding was successfully transformed into a democratic state, where all citizens are equal before the law and government. In fact, to escape from the dichotomous concept of dâr al-harbi and dâr al-Islâm Nahdlatul Ulama (NU) ulama introduced the new term dâr as-salâm (the land of peace).

Secondly is by finding a way to protect and develop this transition through a methodologically sound and politically constant reformation of Islam so as to firmly root universal human rights principles in Islamic doctrine. Third, although these two processes have several limitations and weaknesses, they are the most realistic solution and consequently efforts to consolidate these two elements must be pursued.67

The next question is then, what about the Indonesian context? Do Indonesia and its legislative structures already treat its citizens equally and not compartmentalise them on the basis of their religion or belief? As mentioned in chapter I and the beginning of this chapter, a number of articles in the Indonesian constitution quite strongly protect the freedom of citizens to embrace a religion or belief.

Right from its beginning, the Republic of Indonesia, which was proclaimed on August 17, 1945, had issues with the relationship between religion and the state. Although the founding fathers eventually found a way out of the debate over the form and foundation of the state, the issue has remained unresolved. The adage “Indonesia is not a religious state, nor a secular state” seems at a glance to be a convenient way to escape from the debate over the position of religion in

67 Abdullahi Ahmed an-Na’im, Islam dan Negara Sekuler, p. 203. According to an-Na’im, the combination of these elements can be seen in the transition experiences of India and Turkey. However, even today the transformation of the concept of citizenship in these two states is ambivalent, problematic and is still vulnerable to deterioration. For further examination of this issue see pp. 204-208.
relation to the state. Yet in practice it is not quite as easy as this adage would suggest. Freedom of religion or belief, one part of the construction of the relationship between religion and the state in Indonesia, is still problematic.

Various articles of the Indonesian constitution guarantee freedom of religion or belief. The amended article 28 (e) verses 1 and 2 UUD 1945 states: 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”; 2) “Every person shall have the right to the freedom to believe his/her faith (kepercayaan), and to express his/her views and thoughts, in accordance with his/her conscience”.68 Article 28I also states: “The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.”69 These constitutional articles firmly guarantee freedom of religion and belief as part of the fundamental rights of citizens. In fact article 28 further stresses: “The protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government”.70

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However, this article is tied with article 28J (2) which states: “In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society”.71

This article is often used to justify restrictions against religion or belief, not only at the level of expression but also against the substance of religious teachings themselves. In short, this article allows religious belief to be blamed if another group feels that their fundamental rights in religion and belief are degraded by the presence of that religion or belief.

Therefore, the Indonesian constitution does not regard freedom of religion or belief as an absolute, but rather leaves the opportunity open for restriction by the law. These restrictions are not limited to religious expression and implementation, but can also apply to the belief itself. This opens up room for criminalisation of religious belief, which over time becomes a familiar face in the legal system, as it has in Indonesia.

A matter worth emphasising is that article 28 is situated in Chapter XA on Human Rights. Thus, the compilers of the constitution were completely aware that religion or belief fall under the category of human rights. However, the notes on freedom of religion or belief that are stated in the chapter on human rights were considered insufficient, and thus it was deemed necessary to have a separate chapter on religious issues, Chapter XI. This chapter contains only one article (article 29), consisting of two verses which state: (1)

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“The State shall be based upon the belief in the One and Only God; and (2) “The State guarantees all persons the freedom of worship, each according to his/her own religion or belief”.”\(^72\)

The contents of this article are not much different from that of article 28, except that verse 1 of article 29 places more stress on the fact that the state must be based on belief in one supreme God.

This article is another way of emphasising that Indonesia is not a secular state, but can also not be considered a religious state. Nevertheless, religion holds quite a high position in matters pertaining to the Indonesian state. And herein lies the problem. Confusion over Indonesia not being a secular nor religious state has been a source of much religious conflict and tension. How can the state believe in God? Is it not the state’s citizens who must believe in God, and not the state itself?

Those who have not followed the history of this nation may have difficulty understanding this. Confusion over the nature of the Indonesian state has been the result of the compromise the founding fathers had to make. Although the seven words of the Jakarta Charter (...*dan kewajiban menjalankan syariat Islam bagi pemeluk-pemeluk*/with the obligation for Muslims to adhere to Islamic law) were removed from the constitution, this has not meant Islamic law has had no influence in Indonesia. Recently, even without the Jakarta Charter, several Islamic dictums have become important elements in Indonesian legislation. As it is, aspirations to implement Islamic law are slowly being realised without the Jakarta Charter.

Although these articles are the highest possible guarantee of freedom of religion and belief, including the freedom

to worship and practice one’s religion, they are clearly still problematic. In what form does the state guarantee the rights of its citizens to practice their religion or belief? Does the state have authority to provide facilities for citizens to practice their religion or belief? Is there a point at which “practicing religion and belief” must be fulfilled by the state? These problems still plague the nation today. The more serious problems concerning religion and belief occur in implementation of laws below the constitution. A number of laws and regulations address crucial problems such as the politics of recognising and providing services for different religions, the law on religious defamation, the inclusion of a column for religion on the national identity card and so on. However, the Indonesian government has yet to sincerely accept freedom of conscience in religion and belief.

Indonesia has a long history with this issue, both in relation to religion, ethnicity, and a combination of the two.73 Several cases of discrimination have been solved, particularly those concerning discrimination against ethnic Chinese and Confucianism. However, ethnicity and other local beliefs are still often a basis for discrimination. Political recognition of religion by the state can be seen as a root of this discrimination. As a consequence, those who adhere to local beliefs not only have their very existence questioned, but have some of their rights as citizens removed.

In recent years discrimination and threats to freedom of religion and belief have only increased. The growth of new religious groups in Indonesia signifies an era where newly

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73 For further reading see M. Subhi Azhari, “Menelusuri Akar-Akar Diskriminasi di Indonesia/Examining the Roots of Discrimination in Indonesia”, paper presented in the presentation of research findings on Questioning the State’s Commitment to Guarantee Religious Freedom in Indonesia, 31 July 2007.
emerging actors instigate discrimination. In relation to this, the 10 guidelines on how to detect deviant sects that MUI issued in the MUI National Work Meeting in November of 2007, have only reinforced the actions of these new groups and actors. These guidelines function as a parameter for society to judge whether a sect or faith can be categorised as deviating from Islam or not. A person or group could be categorised as deviant if they ignore just one of the 10 guidelines. MUI argued that the 10 guidelines for judging deviance was urgently needed by society who could potentially become the victim of deviant groups or the unrest they cause. Yet for several groups, the move to issue these 10 guidelines was cause for concern, as it was feared it might trigger anarchic action as had occurred with previous cases after the release of similar *fatwa* or decrees. Such concern was not without basis, because MUI’s *fatwa* are often used as legitimation for society to act violently. So it is hardly surprising that, since the 10 guidelines to judge deviance were issued, community groups have became increasingly active in controlling and restricting groups that they considered to be deviant.  

Discrimination and threats against freedom of religion or belief in Indonesia can therefore come from two directions: from the state through government regulations, and from society through action and intimidation. The next chapter will examine several important cases that potentially violate the principle of religious freedom. These cases show the ambiguity in the position of the state, between protecting freedom of religion/belief and bowing to mass pressure.  

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74 For more information see the Wahid Institute’s 2008 Annual Report on Pluralism and Religion or Belief in Indonesia.
CHAPTER IV

FREEDOM OF RELIGION OR BELIEF
AFTER INDONESIAN RATIFICATION OF
THE ICCPR

I. INTRODUCTION

The previous two chapters discussed the contents of the ICCPR, in particular the articles concerning freedom of religion or belief, and the conceptual challenges they have posed to Islam. This chapter examines the problems with guaranteeing freedom of religion or belief, especially for minority groups, that have emerged since Indonesia’s ratification of the ICCPR. It is necessary to stress once again, that freedom of religion or belief is a non-derogable right, except in aspects of expression that affect other members of society. It is the government’s responsibility to regulate these aspects of religious expression, such as construction of houses of worship, and to protect all citizens fairly and without bias when religious expression leads to one group interfering with or using violence against another.

This chapter will discuss several cases that have emerged or escalated since the 2005 ratification of the ICCPR, in which the government pledged to protect minority
groups, both minorities within the one religion (Islam) as well as non-Muslim minorities. As there are many religiously-nuanced cases of violence in Indonesia, it is impossible to describe them all here, hence the following cases represent only a select few.

In the following discussion, the problems inherent in protecting minority groups are grouped into two categories. The first concerns minority sects or beliefs within the one religion (internal minorities). There is a trend whereby leaders of these minority groups are unfairly tried and jailed, as was the case with Ishak Suhendra, Lia Eden, and Ardi Husein. Another trend is seen in the frequent restriction/banning of minority communities, as with the Ahmadiyah communities in each of Parung, Manis Lor, and West Nusa Tenggara (WNT). One significant element of this trend was the release of the Joint Ministers’ Decree on the Indonesian Ahmadiyah Group. The second category addressed concerns non-Muslim minorities (external minorities), looking at the cases of the Sukapura Immanuel GPdI congregation, the Jatibening Indah GKI Church, the Dayeuh Kolot Pasundan Christian Church, and the Cimahi Complex Church.

II. PROBLEMS INHERENT IN PROTECTING MINORITIES WITHIN THE SAME RELIGION

A. IMPRISONMENT TREND

1. The Case of Ishak Suhendra Bin Shamad

On October 28, 2008, the Tasikmalaya State Court sentenced Ishak Suhendra (head of the Panca Daya Pencak Silat Institute (PPS) in Karangmukti village, Salawu, Tasikmalaya) to four years in prison for religious defamation. He was proven in a court of law and beyond
reasonable doubt to have violated article 156a of the Criminal Code, Law Number 8/1981 and Presidential Regulation 1965 Number 1, article 4 which carried a maximum penalty of five years imprisonment. The sentence was recorded in the written verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, headed by judge Hanung Iskandar.¹

The court’s verdict marked the end of a long series of hearings, which began with the prosecution presenting their Letter of Indictment No. Reg. Perk.PDM: 1260/Tasik/06.2008 on June 17, 2008. In announcing the verdict, the panel of judges mentioned mitigating and aggravating factors for and against Ishak Suhendra. The latter included that: (1) Ishak Suhendra was considered to have insulted the Muslim community, especially in Tasikmalaya which has a very strong Islamic culture and is known as a *santri* city; (2) Ishak Suhendra was considered impolite during hearings; and (3) Ishak Suhendra did not feel that he had done wrong and expressed not the slightest regret or remorse. There were several mitigating factors, including his old age and no prior criminal record.²

Ishak Suhendra’s lawyer, Abdul Hakim, immediately appealed the decision on the basis that the judges’ decision was only based on evaluation of expert witnesses and MUI’s *fatwa* (religious decree), and not on general legal practice.³

¹ Written Verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, pp. 37-41
² Written Verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, p. 39
The incident began on January 6, 2008, when during the Panca Daya PPS anniversary at about 11.00 at the volleyball courts of Tagog village, Karangmukti, Salawu, Tasikmalaya, Ishak distributed his 30 page book *Agama dalam Realitas/Religion in Reality* to Panca Daya PPS members. 150 copies were printed of the book, which displayed the Panca Daya logo on its cover.

Initial reaction emerged in the middle of February, when the Selawu branch of the Anshar Youth Movement was running a routine study group, to which one of the members had brought Ishak Suhendra’s book. Harso Warsono, head of the Anshar Youth Movement at the regency level, immediately studied the book to assess reports that it contained many indecent and unusual teachings. The book stated that there were four theological foundations of Islam: *Iman* (faith), *Tauhid* (belief in one God), *Makrifat* (understanding of God), and *Islam*. However, mainstream Islam teaches that there are only three: *Iman*, *Islam* and *Ihsan* (faith and devotion as a Muslim). This, according to Harso, was indicative of religious defamation. After studying the book, he claimed to have found 19 points that deviated from Islam and endangered the faith.

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4 Panca Daya PPS has more than 1,500 members spread over Indonesia.


6 Written Verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, pp. 10-15

7 Written Verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, p. 10
Based on these findings, Harso Warsono reported the case to the Selawu Office of Religious Affairs. Then on the second week of March the report was handed on to H Syahbahan Hilal, member of Selawu MUI. The report concerning Panca Daya’s teachings, as evidenced in the book *Agama dalam Realita*, was immediately investigated and the book analysed. Several Tasikmalaya MUI members began to accuse Ishak Suhendra’s teachings of being deviant and misleading.\(^8\)

Before being brought before the court, several religious leaders of Selawu tried to invite Ishak Suhendra to discuss his beliefs. The Selawu district head fully supported an approach that emphasised dialogue, and was prepared to act as mediator. However, Ishak chose not to attend any meetings and thus the case could not be solved out of court.\(^9\) Due to pressure from a number of Muslim social organisations and *ulama* in Selawu, police compiled an investigation report based on information from witnesses including Harso Warsono, Aj Jenal Abidin Bin Enoh and several representatives from Islamic organisations. After police submitted this report, Ishak Suhendra’s case was brought before the Tasikmalaya State Court.\(^10\)

Some of his teachings considered deviant included: first, his interpretation of *basmalah*. Ishak interpreted it


\(^9\) Witness’ confession during court. See Written Verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, p. 11.

\(^10\) Based on testimony given by Harso Warsono and other witnesses throughout the hearings. See Written Verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, p. 7
to mean *bis* = live, *mil* = heart, *lahi* = feeling, *rahman* = intellect and *rahim* = wisdom. The second is his teaching that all religions are true. The third relates to the pillars of faith. MUI believes belief must first be placed in Allah's holy books, and then in Allah's Prophet, while Ishak believes the opposite. Fourth, the teaching that Allah needs the creatures he created. Fifth, Ishak advocates that religion is not based on *shariah* principles or theories. The sixth is his encouragement to implement 50 obligatory prayers in 24 hours. And the seventh is his argument that there are four theological foundations in Islam, namely *Iman*, *Tauhid*, *Makrifat* and Islam.¹¹

Tasikmalaya MUI then officially declared that the belief of the Panca Daya PPS leader, Ishak Suhendra, was deviant.¹² Elsewhere other MUI branches also asked police and the district attorney to immediately withdraw the book *Agama dalam Realita* which had spread quite rapidly, and to confront Ishak Suhendra and his followers and give them direction. However, Ishak himself disputed MUI's position, which he argued gave the impression of being one sided as he was never invited to discuss with MUI its conclusion about the deviance of his book.¹³

¹¹ This interpretation was reinforced by the statements of several witnesses during Ishak Suhendra’s trial, including Jenal Abidin Bin Enoh, Harso Warsono, Zenal Mutaqin bin Enjeh, Ikin Sodikin, Ujang Ruhimat, Dadi Wahyudin, Syarif Hidayat, Atang Suryana, Syahbahan Hilal. See Written verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, pp. 7-22. See also, “GP Anshar Salawu Tasikmalaya Sinyalir Ajaran Panca Daya Sesat”. www.gp-ansor.org/berita/gp-ansor-ansor-salawu-tasikmalaya-sinyalir-ajaran-Panca Daya-sesat.html.


Spreading debate and controversy eventually provoked a number of Selawu residents to hatch a plan to attack Panca Daya PPS facilities, which was however, intercepted by the Salawu regional council. Ishak was summoned to the Tasikmalaya State Court to respond to accusations.\(^{14}\) The trial of Ishak Suhendra bin Shomad then began on July 17, 2008 with the reading of the prosecution’s Letter of Indictment No.Reg.Perk.PDM: 1260/Tasik/06.2008.\(^{15}\)

The prosecutor, Musthopa, argued that the deliberate act of deviating from Islamic teachings by publishing the book *Agama dalam Realitas* endangered the faith of the Muslim community whose Islamic understanding was still rather basic. The accused was then charged with violating article 156a of the Criminal Code, a charge that carries a maximum sentence of five years imprisonment.\(^{16}\)

Ishak Suhendra rejected the allegations and said so quite explicitly to the panel of judges. According to Ishak, the prosecution’s accusations were unfounded. The head of the panel of judges, Hanung Iskandar asked Ishak Suhendra about his willingness to prepare a defence. The accused asked for two weeks to do so, but the judge rejected this, and eventually gave only one week in an attempt to fast track the trial.\(^{17}\) One week later, on June 22, the


\(^{15}\) Written Verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, p. 15.


\(^{17}\) “Sidang Panca Daya Mulai Digelar, H. Ishak Didakwa Bahayakan
following hearing was held to hear the accused’s defence, in which Ishak Suhendra expressed his opposition to the prosecution’s accusations and to all other accusations aimed at him.\textsuperscript{18}

Subsequent hearings were held to hear the testimonies of eight witnesses and two expert witnesses, including: Jenal Abidin Bin Enoh (member of Selawu Anshar), Harso Warsono (head of Selawu Anshar), Zenal Mutaqin bin Enjeh (Selawu resident), Ikin Sodikin (member of Selawu Anshar), Ujang Ruhimat (member of Selawu Anshar), Dadi Wahyudin (member of Panca Daya PPS), Syarif Hidayat (Secretary II of Panca Daya PPS), Atang Suryana (member of Panca Daya PPS), Syahbahan Hilal (an \textit{ulama} of Selawu), and Asep Saepuloh bin H Najmuddin (member of Selawu MUI). Generally speaking, most witnesses gave testimonies that implicated the accused, especially the two expert witnesses, one, an \textit{ulama} and the other a member of Selawu MUI.\textsuperscript{19}

In the next session on July 24, the panel of judges handed down interim measures after hearing Ishak Suhendra’s defence and the prosecution’s response. Their decision (1) rejected the defence of the accused; (2) declared the prosecution’s Letter of Indictment No.Reg. Perk.PDM: 1260/Tasik/06.2008 as legally valid; (3) ordered the prosecution to continue investigating Ishak Suhendra’s case; and (4) postponed payment of court

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\textit{Akidah Ummat Islam/Panca Daya Trial Underway, Ishak Accused of Endangering the Faith of Muslims"}, \url{www.prianganonline.com/index.php?act=berita&aksi=lihat&id=962}.
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\textsuperscript{18} Written Verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm.
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\textsuperscript{19} Written Verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, pp. 7-24.
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fees until a final decision was made.20

Throughout the six court sessions, Ishak claimed he was pressured by the taunting and obscene language of masses sporting various attributes that marked them as members of NU Islamic organisations, Anshar, Banser, FPI and others. They constantly cornered him when he was speaking in court. Eventually their provocation pushed him over the edge, and he told the court he would not attend the following session if the atmosphere was not conducive or was still susceptible to conflict.21

Ishak’s threat was more than just an emotional outburst. In the next hearing, scheduled for Thursday August 28 at 10.00, the reading of the judge’s indictment had to be postponed due to Ishak’s absence. According to Ishak, besides not feeling safe during the hearings, police had also asked him to not attend for security reasons and because the hearing coincided with FPI’s anniversary. However, masses of people had come to witness Ishak’s trial and were disappointed by his absence. They quickly became angry, and took to burning dozens of his so-called deviant books. Pressure from radical Islamic groups forced the judges to take action, and because they felt Ishak’s absence had no rational explanation, they ordered court officials to go to Ishak Suhendra’s house and summon him to court by force. The masses followed the court officials, but were unable to approach Ishak’s house to burn it, as they had intended, due to a tight police cordon.22

20 Written Verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, pp. 6-7.
21 Isa Nurujaman, “Menggugat Buku Sesat, Massa Bertindak Anarkis”, http://www.freedomreligion.org/id/index.php?option=com_content@task=view@id=95@Itemid=6.
22 Isa Nur Zaman, “Penjemputan Paksa Sang Tertuduh ‘Penoda Agama’/
In the forced evacuation and arrest of Ishak, court and police officials entered his house without pausing to remove their shoes, even though Ishak was at the time entertaining guests. Officials identified themselves and explained their intentions, presenting Ishak with their complete orders and the warrant for his arrest. Dwi Harto, head of the execution team, explained that they were there to evacuate and arrest Ishak by force because he had an appointment in court. With only the slightest amount of force, the execution team asked Ishak to dress in neat clothes and slacks, as at the time he was wearing a sarong. The arrest was in part due to the mass of people from various Islamic organisations, who were headed towards Salawu with the intention to attack Ishak’s house and the Panca Daya PPS facilities.\footnote{23}

According to information from police and court officials, at precisely 11.55 and accompanied by the sound of the noon prayer call, close to 100 men dressed in white, wearing slacks or sarongs, some sporting ninja style turbans, approached Ishak’s house in three vehicles. While some gave speeches, others destroyed two Panca Daya billboards, breaking them in half before throwing them into the Panca Daya swimming pool. Groups involved in the attack included FRM (Civil Society Forum), FPI (Islamic Defenders Front), Brigade Taliban (Taliban Brigade) and several NU groups.\footnote{24}

\footnote{23} Isa Nurujaman, “Menggugat Buku Sesat, Massa Bertindak Anarkis”, http://www.freedomreligion.org/id/index.php?option=com_content@task=view&id=95@Itemid=6.

At 13.15, Ishak was evacuated to a police car under tight police escort. The yelling masses tried to fight their way towards the head of Panca Daya PPS but officials were able to fend them off and avoid an incident. Ishak was then put in the police car to be taken to the Tasikmalaya police station.25

Dwi Harso, head of the execution team and section head of Intelligence of the Tasikmalaya Public Prosecutor’s Office, added that the arrest and forced evacuation was necessary because members of the team for Monitoring Mystical Beliefs in Society (Pakem) had invited Ishak Suhendra several times to discuss and clarify things, but Ishak had continued to maintain that he had done no wrong and was not propagating a deviant teaching.26 On a separate occasion Ishak himself had admitted that the Tasikmalaya Public Prosecutor had sent him an invitation to which he declined.27

On September 8, Ishak Suhendra gave his legal advisor Halim Friyatna, power of attorney over his case. While in previous hearings Ishak Suhendra had not used a lawyer.28 Two days later on September 10, while Ishak


25 Isa Nurujaman, “Menggugat Buku Sesat, Massa Bertindak Anarkis”, http://www.freedomreligion.org/id/index.php?option=com_content@task=view@id=95@Itemid=6.


28 Written Verdict of the Tasikmalaya State Court No.: 281/Pid.B/2008/PN.Tsm, p. 1.
was being detained in the Tasikmalaya holding cells, his lawyer sent an invitation to MUI, asking for the chance to engage in open dialogue with MUI and several Islamic organisations to straighten out the misunderstandings between MUI and Panca Daya PPS. Yet for some unknown reason the Tasikmalaya branch of MUI and the various Islamic organisations who came to Ishak’s holding cell were of the opinion that the invitation to dialogue that they had accepted was to witness Ishak repent and read the Islamic profession of faith as an indication of his return to true Islamic teachings. Halim clearly stressed that the invitation was not an invitation to Ishak’s recital of the profession of faith as MUI and the other Islamic organisations believed, but an invitation to dialogue and to straighten out the misunderstandings held by society about the lessons taught in Ishak’s institute.29

This, of course, provoked immediate reaction from FPI, Gemas (Social Movement Against Deviant Sects), and FRM, who were present to witness Ishak’s repentance. They argued that if Ishak Suhendra was not prepared to repent it meant that he did not respect the Muslim community and had lied to MUI and the Islamic organisations present. Dozens of those present started shouting and several tried to fight their way towards Ishak. Fortunately members from the Tasikmalaya branch of MUI and several figures from the Salawu branch of NU were able to pacify the masses, who immediately left the Tasikmalaya holding cells as a sign of their disappointment.30

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30 “Pemimpin PPS Tak Jadi Taubat/Leader of PPS Will Not Repent”,
The spokesperson for Tasikmalaya MUI, Dudu Rohman admitted that he was very disappointed with Ishak Suhendra’s attitude. He had arrived at the holding cells intending to lead the ceremony in which Ishak would recite the profession of faith as proof of his return to the true Islam. Yet when asked for confirmation, Ishak denied this and explained that he would not withdraw nor destroy his book, *Agama dalam Realita*.31

The following hearing on September 11 was held to hear the prosecutions’ case. Mustopa and Suharja argued that their accusations had been legally proven beyond reasonable doubt that Ishak Suhendra bin Shamad was guilty of the criminal act of “misuse of and defamation against Islam”. The prosecution also presented proof in the form of seven original and two photocopies of the Panca Daya PPS book, *Agama dalam Realita*. Mustopa reemphasised that the book taught readers to pray 50 times a day, that God needed the creatures He had created, that there were four pillars of Islam, that all religions were true, and to take and apply only easy religious teachings.32

This hearing was attended not only by Ishak’s family and about 20 members of Panca Daya PPS, but also by hundreds of members from Islamic organisations in Tasikmalaya, including FPI, KAMPU (The United Action of Society for Muslims), FRM, Brigade Taliban, and the

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Indonesian Mujahideen Council (MMI). The hearing was tense, with the masses shouting out, insulting and taunting Ishak Suhendra. On seeing the very unconducive conditions and Ishak’s tense psychological condition, Ishak’s lawyer, Abdul Halim, declared that he was not yet prepared to defend his client and asked for the hearing to be adjourned.33

In the next hearing on October 14, Ishak Suhendra’s lawyer read out his defence, based on the facts presented during the trial and jurisdictional/constitutional considerations which: (1) stated that the accused, Ishak Suhendra, had not been proven legally and without doubt to have acted in a criminal manner as the prosecution had accused; (2) demanded that the accused be freed from all accusations, or at the very least have all legal indictments removed; (3) demanded that the state pay all legal fees; and (4) demanded that the rights of the accused be restored (ability, position, status, dignity).34

On October 21, the Tasikmalaya State Court panel of judges met to decide upon the sentencing of Ishak Suhendra.35 Eventually, in the public hearing of October 28, the head of the panel of judges, Hanung Iskandar, read out the final verdict.

There are several aspects worthy of analysis in this chronology of events. First, Ishak Suhendra’s trial progressed in an atmosphere of high duress, much pressure,
threats, intimidation and terror. In every hearing the masses, clearly belonging to various Islamic organisations, incessantly shouted out insults and coarse expressions.

Second, the verdict was largely based on non-jurisdictional considerations. This is apparent in the transcript of the Tasikmalaya State Court’s verdict, which shows that almost all legal considerations and arguments of the panel of judges and prosecution were based on highly subjective and theological religious interpretation. This was further reinforced by several other aspects of the trial, such as the witnesses that were produced.

Third, the verdict against Ishak was flawed because: (a) the considerations of the panel of judges were identical to those of MUI, which issued a fatwa of deviance against Panca Daya PPS before the verdict was given; (b) no joint decree was issued, as it should have been according to legislation, by the Minister of Religious Affairs, the Attorney General and the Minister for Internal Affairs that warned against, ordered, banned, restricted or even outright stopped Ishak Suhendra’s interpretation of his faith and his activities with Panca Daya PPS; (c) there was no Presidential order to disband Panca Daya PPS for its violation of the above mentioned joint decree, even though Presidential Decree 1965 Number 1, article 4 (State Document 1965 Number 3) was added to article 156a of the Criminal Code some time ago, stating that if after a warning and order was given for activities to be stopped (in the form of a joint decree), and the organisation continued to violate these orders, only then could people/members or managers of the organisation be jailed for a maximum of five years. Neither of these two conditions were met.
Fourth, since October 2005, the Indonesian government as a State Party to the ICCPR has been obliged to implement all clauses of the covenant, including article 18a, as they are legally binding. However, in this case the government was still unable to show any significant development in fair, independent and unbiased handling of cases concerning religious freedom. In fact, it showed quite the opposite.

Fifth, the forced evacuation and arrest of Ishak Suhendra indicates that state institutions, such as the judges of the Tasikmalaya State Court, particularly in relation to cases of religious freedom, give in to pressure from the majority and neglect the rights of the minority, to the extent that the minority is always victimised.

Sixth, the police were weak and tended to turn a blind eye to all kinds of discriminative action taken against Ishak Suhendra, both when the Panca Daya PPS facilities were attacked and during the trial. The right to freedom of religion and belief was, in this case, clearly not upheld.

2. The Case of Lia Eden

On December 15, 2008, at about 05.30, more than 50 police officers rearrested Lia Aminuddin alias Lia Eden at her home and headquarters in Jalan Mahoni, 36 Lia Aminuddin alias Lia Eden, was born in Surabaya on 21 August, 1947. She is the leader of the religious group known as Kaum Eden. At 19 years of age, before Lia became the leader of the controversial Kaum Eden, she was a florist with TVRI. In 1974, Lia says, she saw a shining ball of yellow light hovering in the sky, which vanished as soon as it was directly above her head. This, she believes, was the first miracle she witnessed. On October 27, 1995 an event occurred that changed her life forever. She said she felt the presence of “her spiritual leader” Habib Al-Huda, who proclaimed to be the Archangel Gabriel. Lia has since claimed that she has received guidance
using one patrol truck and one ambulance. The second arrest came precisely 1.5 years after she was released from jail.

The second arrest was quite different from the first. After arriving at Lia Eden’s house, the police showed her the warrant for her arrest, and neither she nor her followers resisted, allowing the arrest to proceed smoothly and quickly. 10 children and 23 other followers were also arrested.

The arrest was related to the letter that Lia Eden’s community had sent to a number of newspapers on Sunday, November 23 entitled, “God’s Divine Revelation for the President of the Republic of Indonesia, Susilo Bambang Yudhoyono”. In this divine revelation, Lia Eden talked about how SBY would lose his power because he had ignored Eden’s warning. Later, a 10 page circular of divine revelation for the chief of Indonesian Police was sent on Sunday December 14, which stated that Allah had nullified all His previous revelations for all from the Archangel Gabriel since 1997. She has already composed songs, poems and a 232 page book Perkenankan Aku Menjelaskan Sebuah Takdir/ Let Me Explain to You A Divine Destiny which was written in 29 days, www.jakartapress.com/news/id/3214/Lia-Eden-Diciduk-Lagi.jp.

Broadly speaking, the divine revelation for the chief of Indonesian Police addressed, amongst other things: (1) the abolition of Islam and all other religions; (2) the obligation of Indonesian police to protect Lia Eden and all the religious activities of her community; (3) the need to be careful with the al-Qaeda terrorist network in Indonesia; (4) Lia Eden’s vow that the abolition of religion would produce no victims. After Lia Eden’s arrest, the general head of the Indonesian Muslim Movement (GUII), Abdurahman Assegaf, approached the Jakarta police station to report Lia Eden’s divine revelation, on suspicion that it violated article 156a of the Criminal Code on religious defamation.

In response to Lia Eden’s second arrest and the arrest of some of her followers on December 15, the head of MUI, Amidhan, urged that she be processed according to the law. He added that MUI had no plans to engage in dialogue with Lia Eden. “We did before, but Lia resisted. But there’s no need anymore, it won’t resolve anything. We’re just going to leave it to the law,” Amidhan said.

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43 “Lia Eden Kembali Ditangkap Kasus Penodaan Agama/Lia Eden Rearrested of being suspected of deviance”, hariansib.com/2008/12/16/lia-eden-kembali-ditangkap-kasus-penodaan-agama/-22k-.
According to Zulkarnaen, this time Lia and her followers could be charged with violating article 156a of the Criminal Code on religious defamation, which carried a maximum sentence of five years imprisonment. He explained that Lia, who claimed to be the reincarnation of Mother Mary, was arrested because of accusations from the community. After being released from prison after her first arrest for violating the same article, Lia Eden continued to spread her belief, known as the Salamullah (God’s Peace) religion. “We took her in to avoid mass action,” Zulkarnaen said.45

Prior to rearresting Lia Eden, police were under pressure from several state officials to arrest her and ban her teachings. Initial pressure and demands came from Nursyamsi Nurlan, member of Commission III (Law and Security) of the House of Representatives (DPR), on the grounds that Lia Eden had twisted the teachings of the Qu’ran in a letter she had sent to DPR members. In the letter, Lia Eden had stated her defence of Ahmadiyah and urged the government not to ban the sect.46

Similar pressure came from the Prosperous Justice Party Fraction (FPKS) which felt Lia Eden’s teachings were erroneous. The Fraction supported the firm action taken by police to arrest Lia. FPKS also believed that all religious figures supported the arrest of the women who claimed to be the Holy Spirit.47

45 “Lia Eden Ditangkap Lagi/Lia Eden Arrested Again”, 16/12/2008, www.korantempo.com/korantempo/koran/2008/12/16/headline/krn.20081216.151130.id.html-20k-. At the time of writing no verdict had been handed down in Lia Eden’s second trial.
47 “FPKS: Kalau Lia Eden Ngaku Nabi Di Bulan Nggak Masalah Bukan
Elsewhere, the Attorney General declared that the case of religious defamation against the accused Lia Aminuddin was no longer in the hands of Bakor Pakem but rather fell under police authority as it was a criminal case. The Attorney General is currently waiting for police to thoroughly investigate the case. According to the head of the Attorney General’s Media Department, Jasman Panjaitan, Lia Eden is being investigated because she spread divine revelation that ordered the abolition of religion.48

Previously, on Thursday June 29, 2006, the Central Jakarta panel of judges sentenced Lia Eden to two years in jail after finding her guilty of religious defamation and inciting public unrest. She was declared guilty of defaming a religious teaching that was protected in Indonesia (accusation 1) and of demeaning behaviour in accordance with the prosecution’s letter of indictment (accusation 3). However the panel of judges felt that the second accusation against Lia Eden was not proven because the trial did not find that Lia Eden’s teachings had caused hostility, hatred or offence against any other group in Indonesia, in this case MUI or any other Islamic organisation.49 After serving her two year sentence50, Lia

50 “Lia Eden Divonis 2 Tahun Penjara Tongkat digoyang Baca Firman/
Eden was released on October 30.  

This first trial began on December 26, 2005 when Bungur Senen residents became angry after receiving a letter distributed by Lia Eden’s community. It contained Lia Aminuddin’s claim to be the Holy Spirit and threatened that Gabriel would kill ulama if they continued to pursue plans to hold the mass religious meeting at Masjid Maranti, Bungur which would address her false claims to be the Archangel Gabriel and her deviance.

Intimidation and terror only escalated when the Bungur district head initiated a meeting to plan a siege and attack of Lia Aminuddin’s house. During the meeting, the Muslim community of Bungur decided to send an ultimatum to Eden’s community in Jalan Mahoni, Senen, Central Jakarta, giving them three days to leave. After the meeting, a group of people gathered in front of the community’s headquarters and bombarded the facilities on two separate occasions.

In response to these demands, Lia Eden and her community stressed that they would not move nor would they stop their activities. Because of their persistence, local residents then approached Lia Eden’s home,
devising a plan to attack it. Feeling threatened, followers of the Salamullah sect, who had previously been easy to contact, now refused to be interviewed by journalists.55

Police detected the plan to attack Lia Aminuddin’s house, and on the same day, Wednesday afternoon of December 28, Lia Eden and 33 of her followers were evacuated by Metro Jaya police officers on suspicion of following a deviant teaching that disturbed local citizens, and in anticipation of the course of action angry local residents might have taken.56 During the evacuation, police officials set up a human wall to stop about 3,000 residents who were trying to break into the headquarters of God’s Kingdom of Eden.57 Eventually, after some resistance, members of Lia’s group left the residence one by one.58

After investigation by Metro Jaya police, Lia Aminuddin was officially declared the sole suspect in the case of religious defamation, and to make the police investigation easier, the police officially arrested Lia Eden on suspicion of defaming religion and inducing or inviting

55 “Ratusan Warga Mendatangi Rumah Kediaman Lia Aminuddin/ Hundreds Approach Lia Eden’s House”, http://www.liputan6.com/news/ ?c_id=3&id=114952. Eden’s community was previously based in Cisarua, Bogor, West Java. Yet after being threatened that the community would be burned down, they moved back to their own houses. Before claiming to be an angel, she had claimed to be Mary, and had claimed that her son was the Prophet Jesus. MUI had already released a decree stating that Lia Eden’s teachings were deviant.


others to follow her teachings. She was accused with violating articles 156a, 157, 335, and 336 of the Criminal Code, and faced up to five years in jail.\(^5^9\)

Four months later, on April 19, 2006, Lia Eden attended her first hearing at the Central Jakarta State Court. From this initial hearing throughout the entire trial Lia Eden caused quite a commotion.\(^6^0\) In the initial hearing, the prosecution accused Lia Aminuddin of three things: (1) religious defamation which carries a maximum jail sentence of five years according to article 156 of the criminal code; (2) disrupting public order (article 157 of the Criminal Code); and (3) of inciting public unrest (article 335 of the Criminal Code) which carries a maximum sentence of three years in jail. The legal advisor for the defence stated that she would submit a defence to counter the prosecution’s accusations within two weeks from the hearing. However the panel of judges determined that the following hearing, in which the defence would be read out, would be held within a week.\(^6^1\)

Elsewhere, during this initial hearing, the Minister for Religious Affairs Maftuh Basyuni explained that he would disband the Eden sect that Lia Aminuddin lead. He reasoned that the teachings to which they adhered defamed religion and had disturbed social harmony.\(^6^2\)


\(^{62}\) “Pengacara Lia Eden Menerapkan Hak Kebebsan Beragama/Lia Eden's
On April 26 in the following hearing to hear the defence, Lia Aminuddin’s legal team stated that the prosecution’s accusations were vague and unfounded. Lia Eden’s lawyer stated resolutely that the indictment did not fully or clearly describe the identity of the accused and thus should be annulled for legal reasons. She also stated that the prosecution was clearly siding with a certain group of people who did not respect religious freedom.63

In the hearing on May 10, Lia Aminuddin asked the panel of Judges to address the Archangel Gabriel. She said that the judges’ questions should be directed to Gabriel, and not herself. Then all of a sudden she fainted, unconscious. According to her lawyer, Lia fainted because her spirit was with the Archangel. The material to be presented to the court had to be postponed.64

The hearing on June 7 was cancelled because the panel of judges had not appeared after two hours. About 40 of Lia Eden’s followers had been waiting in the court room on level 3 of the Central Jakarta State Court since 13.00, only to find that the hearing would not go ahead.65 Lia Eden’s defence protested to the head of the court, because the absence of the panel of judges was in violation of the law.66


66 “Hakim Tidak Hadir, Sidang Lia Eden Tidak Digelar/Absent Judge,
Then in the following session on June 19, Lia Aminuddin and her legal representative, Asfinati, refused to continue with the trial, deciding on this course of action after Asfinati tried to express her objections to the head of the Central Jakarta State Court for the second time. During the hearing, Asfinati had presented her objections to judge Lief Sufijullah, however the court refused to consider her objections and her request to replace the panel of judges. Lia Eden followed the actions of her lawyer. She refused to explain anything as the accused because, she reasoned, she had no lawyer. As a result, the head of the panel of judges ruled that Lia had forgone her right to defence.67

In the final hearing on June 21, Lia Aminuddin threatened that there would be another earthquake in Indonesia if she was not released. The threat was made via a banner reading “Gabriel, Free Lia Eden or Send an Earthquake” that Lia Eden's followers displayed at the Jakarta court. Lia had also said that God’s fury would descend because the trial against her was continuing even though she had refused to be tried.68

On June 29, the panel of judges, led by Lief Jufiullah, sentenced Lia Eden to two years in jail for being proven guilty of defaming a religion protected in Indonesia (accusation 1) and of inciting public unrest in accordance with the prosecution’s accusations (accusation 3).

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However, as mentioned above, the panel of judges did not find Lia Eden guilty of the second charge as her teachings had not caused hostility, hatred or offence against any other group in Indonesia, in this case MUI or any other Islamic organisation.69

The controversies surrounding Lia Eden’s teachings and deviance had developed over a period of 12 years. It all began in 1997 when one young member of the Salamullah community told MUI about the strange nature of Lia Eden’s teachings. Based on the report, Lia Eden was summoned and evaluated by MUI on November 11, 1997. One month later, MUI issued a fatwa on December 22 No: Kep-768/MUI/XII/1997 which banned and labelled deviant Lia Eden’s teachings. From that moment onwards MUI has not altered its stance, in fact today it remains a strong supporter of stopping Lia Eden, her community and all their activities because it considers her teachings to distort the truth of Islamic teachings.70

After the release of MUI’s fatwa, and as a result of mass media news reports, in 1998 Lia Eden and the Salamullah community were summoned by the Attorney General for investigation. He later stopped the investigation and no further legal action was taken against Lia Eden and the Salamullah community. News reporting was largely concerned with Lia Eden’s claim that God had chosen her as Imam Mahdi (Christ) and that one of her children –Ahmad Mukti– was the awaited person who would carry Jesus’ soul. Having proclaimed

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this one day, the next she stated that the claim was only true at a spiritual level, because the Archangel Gabriel had just revealed that the real Imam Mahdi was Muhammad Abdul Rahman.71

Lack of clarity over the handling of the case by the Attorney General made the local community increasingly agitated with Lia Eden’s teachings, and eventually in April and May of 2001 a petition was signed by residents of Coblong, Megamendung, and Bogor (where Salamullah activities were held at the time) that rejected the Salamullah community because it was considered deviant and misleading as according to MUI’s fatwa. A meeting to expel the community was held in Megamendung, Bogor. After the meeting, the crowd became violent and destroyed and plundered the houses in which the Salamullah community held their activities. Salamullah activities were then moved to the house of one member in Jatipadang, South Jakarta, but it was not long before a number of local residents bombarded the house with rocks. Activities were then moved to other members’ houses in Jatiwaringin and Pondok Gede, of Bekasi.72

As a result of the attacks on and destruction of houses associated with Lia Eden’s community and their activities, in 2002 the Salamullah community held peace parades for several months to spread the messages of God, which opposed war, the threatened use of nuclear weapons, and the American invasion of Iraq. The Salamullah community

delivered these messages to all embassies in Jakarta. The subdistrict head of Jatiwaringin, Pondok Gede, banned Salamullah activities. Local residents expelled Salamullah members because they were worried there would be a mass attack that would destroy their houses and the environment. The Salamullah community then moved their activities to Jalan Mahoni 30, Senen, Central Jakarta.  

Several instances in the above chronology illustrate the state’s inability to implement the ICCPR. Two are of particular importance: first, the evacuation and forced arrest of Lia Eden, on both occasions, which indicates that state institutions tend to side with the majority, to bend under mass pressure, and to neglect the rights of minorities, allowing them to be victimised; and second, Lia Eden’s trial which continued despite pressure, threats, intimidation and terrorising. Every hearing was coloured by course language and taunting by members from FPI, GUI, Laskar Isalm, LPPI, HTI and so on. Indonesian law enforcement is still clearly under the tyranny of the majority, especially in matters pertaining to belief and religious practice. The state is still unable to fully protect the rights of minorities, even though freedom of religion or belief is constitutionally completely guaranteed in both Pancasila and the 1945 constitution. Once again, although the Indonesian government is a State Party to the ICCPR and is thus legally bound to implement all aspects of the covenant, in the case of Lia Eden and her community, it has shown no progression either prior 

to or after ratification of the ICCPR. In fact, it seems the government is neglecting its obligations in this matter now more than ever.

3. **The Case of Mohammad Ardi Husein al-Pardi**

After a lengthy trial, on Thursday September 22, 2005, the panel of judges of the Probolinggo State Court sentenced Mohammad Ardi Husein al-Pardi, head of the Cahaya Alam Drug Abuse and Cancer Foundation (YKNCA), and five other managers of the same foundation to serve jail sentences of five years.74 One other manager of YKNCA, Mufidah, was sentenced to three years in jail.75 In explanation of the verdict, the panel of judges stated that all the accused had been collectively found guilty of “religious defamation” as regulated in article 55 (I) in connection with article 156a of the Criminal Code.76

The judge’s council mentioned the various factors that shaped the final decision. Aggravating factors weighing against the accused were that: (1) the accused felt that they had done no wrong; (2) the accused had given complicated and unclear explanations in court that had made the legal investigation more difficult; (3) accused I to accused VI were not polite in court; (4) accused I to accused VI considered themselves to be correct, and in doing so insulted other parties including MUI and FUIB

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74 Transcript of the Probolinggo State Court Verdict No: 280/Pid. B/2005/PN.Kab.Prob. The names of the other managers of YKNCA who were also sentenced to jail are: Syamsuddin, Mohammad Toha, Ansori, Rahmat Hidayat Ali Wafa, Kris Aryono, and Mufidah.

75 The lighter sentence was imposed based on consideration of the fact that the accused was always polite during court and was a mother with a emotional tie with her children who still needed their mother’s love.

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of Probolinggo. On the other hand, the verdict took into consideration that: (1) there were no mitigating factors for accused I through to accused VI; and (2) accused VII was especially polite during the trial, and as a mother had a spiritual tie to her children who still needed her care and love.\(^\text{77}\)

Six months before the verdict, on Friday May 27, 2005, around 3000 residents of Krampilan village in Besuk, Probolinggo and hundreds of people claiming to be from Pasuruan, Probolinggo and Lumajang attacked and totally destroyed the YKNCA facilities using rocks. They demanded that the rehabilitation center immediately halt all activities. All buildings were damaged, but all residents and patients were rescued. According to one witness, at the time of the attack there were about 30 patients at the foundation, and of them about 12 were in critical condition.\(^\text{78}\)

The destruction of YKNCA facilities was a result of controversy in Krampilan village, over the contents of the book *Menembus Gelap Menuju Terang 2/Through Darkness to Light 2 (MGMT2)* by Mohammad Ardi Husein, which the Probolinggo branch of MUI had judged as deviant.\(^\text{79}\) Published by Pustaka Alam and YKNCA, the 318 page book was intended as study material for the YKNCA community.\(^\text{80}\)


\(^{\text{79}}\) “Transcript of the Probolinggo State Court Verdict No: 280/Pid. B/2005/PN.Kab.Prob. p. 49

Chapter IV  Freedom of Religion or Belief after Indonesian Ratification...

The controversy began on May 5, when Aziz, a YKNCA chauffeur, discovered several deviations and misrepresentations in the book. Eight copies of the book had been produced under orders from Budiono, manager of Fatimah Hospital in Kraksan and head of Probolinggo Muhammadiyah. Budiono had obtained the book from Hermanto, who at the time was secretary of Probolinggo Muhammadiyah and also a participant in YKNCA religious study groups.

At the time, Hermanto’s wife was ill and was being treated at YKNCA. Budiono had, right from the start, warned Hermanto not to participate in the YKNCA study groups, but Hermanto did not heed his words. In fact, Hermanto’s choice to continue participating became a source of tension within his family, culminating in his parents disowning him.81

Tension and disagreement also spread throughout Muhammadiyah, especially when the organisation held its annual meeting on February 10, 2005, and Hermanto was absent because he was holidaying with his family and YKNCA members in the Ijen mountains. This only worsened the rift between Hermanto and Budiono. One day, without permission Budiono copied an archive stored on Hermanto’s computer. The archive included


photos from his holiday in the Ijen mountains, which had been organised and led by Ardi Husein. It was not long before these photos featured in newspapers for almost a month, beginning in early May.

One reason for this was to discredit YKNCA and all its members, in order to make Hermanto’s family increasingly dislike him. After publication of the photos in *Radar Bromo* on May 11, the Besuki Police Chief and District Army Commander went with a journalist to have a look at the YKNCA rehabilitation center. The next day, May 12, *Radar Bromo* wrote up the visit in a piece titled “Two books that Disturbed the Muslim Community”, while the daily *Surya* used the very eye-catching “Sex in YKNCA”.82

After such discriminative news reporting, the YKNCA rehabilitation center became an object of much attention, with many locals visiting to enquire about its teachings and the *MGMT2* book, as well as issues including sexual abuse, praying, and the methods used to medicate patients. The controversy eventually reached MUI and on May 16 and 19, Probolinggo MUI declared that the center and Ardi Husein’s book were deviant.83

The decision was made after Probolinggo MUI claimed to have found 70 deviations from Islam in the *MGMT2* book. MUI first discussed the contents of the book for four hours with a number of religious figures, the local government and police, and then issued the *fatwa*. In it, MUI stated the following five demands: (1) to deal firmly with Ardi Husein and the *MGMT2* book;

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82 Andri A & Salman Al-Farizi, “Konflik Kepentingan Agama, p. 94
(2) to deal firmly with all editors of the book; (3) to ban circulation of the book and all related books; (4) to declare Ardi Husein and his teachings forbidden; and (5) to close down and disband YKNCA. In the afternoon after release of the fatwa, Police Chief Commissioner of Probolinggo, Akhmad Lumumba, went straight to YKNCA and confiscated the remaining 250 MGMT2 books.

In a statement signed by KH M Hasan Mutawakkil, and KH Mahfud Syamsul Hadi, Probolinggo MUI declared that the book was deviant in three categories: (1) its principles of faith; (2) its practices of syariah; and (3) several other areas. For the first category for instance, the following teachings were problematic: (a) that there is still a prophet today; (b) that the devil is more faithful than humans; (c) that the Vedas, and the holy books of Hinduism, Daoism and Confucianism were Abrahamic scriptures; (d) that divine revelation is still being sent to humans; (e) the claim to have met Allah in the world; (f) the belief that Islam is only for Arabs; (g) that one can enter paradise/heaven without having to be Muslim; (h) brothers in faith may be of different religions; (i) the practice of uttering Prophet Muhammad’s name; (j) that being a true Muslim does not necessarily mean having to embrace Islam; (k) that the holy book to guide true Muslims does not exist on earth; (l) asking for Allah’s forgiveness will not be accepted without going through His subjects. Ardhi Husain denied the accusations...
levelled at him, saying instead that there had been misunderstanding in interpreting what he had written in his book.87

For the second category, the practice of syariah, MUI had issues with the following teachings, amongst others: (a) allowing all forms of physical relationship that are based on mutual consent; (b) interpreting the Qu’ran according to logical reasoning; (c) the idea that Prophet Muhammad’s laws ended with the Prophet’s death and are now continued by Allah’s subjects who receive divine revelation directly from Him; (d) differences in syariah are not principal differences; (e) the belief that polygamy is only legal for prophets, and saints; (f) the view that worshiping with the desire to go to paradise is arrogant, and worshiping with fear of going to hell was not sincere; and (g) the belief that perfect men walk, think and worship in ways different from ordinary men.88

Other pressure came from Slamet, the coordinator of Muhammadiyah’s local religious council in Probolinggo. He said that Ardi Husein did not use the guide to understand the verses of the Qu’ran that ulama had long agreed upon, and instead interpreted the Qu’ran according to his own desires. “It should be the case that to interpret the Qu’ran, one must understand Arabic, asbab al-nuzul (the contextual background to Qur’anic revelations), the practices of the Prophet’s associates, and other studies that are fundamental to being able to interpret the Qu’ran. Otherwise the essence will be altered,” Slamet explained.89

89 “Dua Buku Sesat Resahkan Umat Islam/The Two Deviant Books
On May 12, according to a report by local citizens, several police officers, officials from the Department of Religious Affairs and members of Islamic organisations approached the Besuk district government office to listen to and evaluate Ardi Husein’s explanation. Unfortunately only Ali Wafa, secretary of the Ponpes Baitul Taubah Foundation, was able to attend the meeting. Ali confirmed that the book was indeed written by Ardi, and asked police and other involved parties to analyse the book together. The police, Department of Religious Affairs officials and Ali then headed to Ponpes Baitul Taubah in Besuk. There the police confiscated the controversial book while awaiting an official explanation from central and local branches of MUI.

On May 17, the following day, the Krampilan village head, Imam Juharsyad, organised several youth including Samaki, Andi, Halim, Bumin, Her and Sugeng to gather the masses to demonstrate against YKNCA on Friday, May 20. Hartono, one of Ardhi Husein’s nephews, heard of the plan and tried to find out more. According to Hartono, the instigator behind the plan was H Syaiful. Hartono visited Syaiful’s home and was ordered to find as many as three trucks for the demonstration. Syaiful gave him Rp. 150,000 but he refused to go along with the plan and returned the money. Krampilan village leaders involved in the planning included H Syarif Rifai, Sosro, Gondo,

Disturb the Muslim Community”, http://www.swaramuslim.net/printerfriendly.php?id=763_0_1_0_C.


Muhdi, and Imam Juharsyad (village head).  

Then, on May 27 at about 14.00, coinciding with celebrations for Prophet Muhammad’s birthday, four pesantren in Probolinggo (Ponpes Genggong, Ponpes Nurul Jadid, Ponpes Zainul Anwar, and Ponpes Ashabul Musthofa) held a religious meeting only 200 metres from the YKNCA rehabilitation center. At 16.00, those present at the sermon were ordered over a loudspeaker to attack the YKNCA facilities. The 30 residents at the center ran to the safety of neighbouring houses. YKNCA patients, including pregnant women, were evacuated.

The angry attack was witnessed first hand by a number of local and regional government officials and police officers. Unfortunately they remained silent, taking no preventative action. In fact they gave the impression of sanctioning the destruction the YKNCA facilities. The attack organised by Herri Sastro and Aan Satrio ended at 18.00. Police still took no action but to put up a police line after the incident was over. In fact, with no regret or remorse, they gave the organisers of the rehabilitation center 30 minutes to gather and clear up their remaining belongings.

Later, it was found that 20 large trucks from Kalibuntu village, Probolinggo, six trucks from Ponpes Zainul Hasan Genggong Pajarakan, six trucks from Ponpes Kodim Kali Kajar, five from Ponpes Nurul Jadid Tanjung Paiton and

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93 “Warna Hijau Untuk Muslim, Kuning Untuk Non Muslim”, http://www.swaramuslim.net/printerfriendly.php?id=763_0_1_0_C.
94 Andri & Al-Farizi, “Konflik…”, p. 94.
95 Andri & Al-Farizi, “Konflik…”, p. 94.
96 Andri & Al-Farizi, “Konflik…”, p. 95.
hundreds of members from Sumberan were involved in the attack. Based on a report from the Surabaya Legal Aid Foundation (LBH), participants received payment as much as Rp. 20.000, from the regent of Probolinggo. In fact, the regent had even warned police not to arrest or take action against the attackers.97

On June 4, Ardi Husein and YKNCA management complained about the halting of their activities to the Legal Aid Foundation of Surabaya. They also questioned the actions of police during the attack, which occurred at a time when there were about 30 drug abuse patients in critical condition undergoing treatment. Ardi argued that the MUI fatwa that declared the YKNCA rehabilitation center as deviant was unfounded.98

On hearing the complaint and report of discrimination against Ardi Husein and YKNCA management, Deddy Prihambudi, head of LBH in Surabaya, deplored Probolinggo MUI for ruling the book and YKNCA activities deviant. If MUI had felt the YKNCA book to be deviant, the proper path to take would have been to publish its own book to challenge the YKNCA one.99

As mentioned above, during the attack the police took no preventative measures, but rather (1) allowed the attack to continue and did not attempt to secure the facilities; (2) did not arrest nor charge the perpetrators; and (3) arrested the victims of the violence (seven managers of

97 Andri & Al-Farizi, “Konflik…”, p. 95.
YKNCA) after the attack on May 29 in response to pressure from MUI and other religious institutes. After the arrest of the accused, Ardi Husein and the seven managers of YKNCA, with no further or in-depth examination police immediately began the police investigation as detailed in Document Number: SP.Han/106/V/2005/Reskrim, which lasted until June 17.

During the police investigation, Ardi Husein and the seven managers received legal aid from several advocates of Surabaya LBH in accordance with their letter dated July 1, 2005 granting power of attorney. After the police handed the case over to the court, a process that took all of a dozen days from the police investigation on June 29 to the reading of the prosecution’s Letter of Indictment on July 12, their trial began at the Probolinggo State Court.

In this first hearing, the prosecution read out the Letter of Indictment No. Reg.Perkara: PDM-171/KRAKS/Ep. 2/07/2005, accusing Ardi Husein and the seven YKNCA managers of intentionally and in public expressing views or engaging in action that in principle incited hostility against, abused or defamed a religion in Indonesia, in this case Islam. The prosecution even quoted MUI’s fatwa of May 16 and 19 that declared that

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100 “Pengurus Ponpes Baitut Taubah Menjadi Tersangka dan Ditahan/Manager of Ponpes Baitut Taubah Becomes a Suspect and is Detained”, [http://www.swaramuslim.net/more.php?id=A763_0_1_0_M](http://www.swaramuslim.net/more.php?id=A763_0_1_0_M).
104 Transcript of the Probolinggo State Court Verdict No: 280/Pid.B/2005/PN.Kab.Prob. p. 10
the book by Ardi Husein and the seven YKNCA managers was deviant and misleading.  

The hearing on July 25 was held to hear the defence. The lawyer representing Ardi Husein and the seven managers rejected all accusations. However, in the hearing on July 28, in which the prosecution was scheduled to respond, the head of the panel of judges announced interim measures which: (1) rejected the defence of the lawyers representing the accused; (2) stated that Probolinggo State Court in Kraksan was authorised to continue the investigation and trial of the accused; and (3) postponed payment of court fees until the final decision.  

On August 22, the trial continued with the prosecution’s demands. The prosecution stated that Ardi Husein and the seven other YKNCA managers had been proven in a court of law beyond reasonable doubt to be guilty of engaging in criminal activity by collectively defaming religion as stated in article 55 (I) in connection with article 156a of the Criminal Code (as stated in the indictment); that each should be sentenced to jail for four years (minus time already served) and should each pay court fees of Rp. 1000. The prosecution also included evidence (in an attachment).  

The hearing in which the accused were to present their defence to these charges was held on August 29. The defence mainly focused on arguing that the prosecution’s
accusations and charges were unfounded, and that FUI and MUI should actually be the subject of such charges as MUI’s fatwa in response to the book MGMT2 had disturbed and angered the Muslim community, and was in itself a form of defamation, insult and abuse against the teachings of Allah that the accused had written about in the book.\textsuperscript{108}

The legal aid team from Surabaya LBH asked that all the prosecution’s indictments be annulled, as the accused had not been proven guilty of misusing or defaming religion as regulated in article 156a because: (1) aspects of article 156a had not been fulfilled and had not been proven legally and beyond reasonable doubt; (2) the prosecution did not apply the methods for preventing religious misuse or defamation as regulated in Law No. 1/PNPS/1965 in conjunction with Law No. 5/1969 on prevention of religious misuse or defamation as a basis for its accusations. Strangely, the article that the prosecution did refer to, article 156a of the Criminal Code, was added to the Criminal Code based on Law No. 1/PNPS/1965 in conjunction with Law No.5/1969.\textsuperscript{109}

On the basis of these legal arguments, the prosecution clearly disregarded the legal regulation stated in the first chapter of the Criminal Code: General Regulations, Chapter 1, Context of Validity of the Criminal Code. Article 1 states, “No action can be punished, except by the power of criminal regulations in the law, which pre-exist the action”. This regulation means that the panel of judges is tied to the principle \textit{nullum delictum sine praevia lege}.

\textsuperscript{108} Transcript of the Probolinggo State Court Verdict No: 280/Pid.B/2005/PN.Kab.Prob. p. 8

\textsuperscript{109} Transcript of the Probolinggo State Court Verdict No: 280/Pid.B/2005/PN.Kab.Prob. p. 9
poenali when punishing someone, and cannot sentence a person if there are no pre-existing legal regulations that can be applied. This is usually referred to as the principle of legality, and it is regulated in Law No. 1/PNPS/1965 in conjunction with Law No. 5/1969.\textsuperscript{110}

The lawyers for the accused asked that the panel of judges agree to the following: (1) to state that the accused had not been proven legally and beyond reasonable doubt to have violated the law as stated in article 156a of the Criminal Code; (2) to release the accused or at the very least (3) release them from all criminal procedures.\textsuperscript{111} In the hearing on September 6, the panel of judges heard the prosecution’s rejoinder from September 1 in which the prosecution stated that it held fast to the claims read in the hearing on Monday, August 22. They also heard the defence’s rebuttal from September 6 in which the defence also stated that it was also sticking to its defence.\textsuperscript{112} On Thursday September 22, the court sentenced Mohammad Ardi Husein and five other managers of the rehabilitation center to five years in prison.\textsuperscript{113}

During the trial, up until the verdict was passed, there are several points worthy of analysis. First, Ardi Husein’s sentence was based largely on non-jurisdictional considerations. The transcript of the Probolinggo State Court Verdict No: 280/Pid.B/2005/PN.Kab.Prob. p. 9

\textsuperscript{110} Transcript of the Probolinggo State Court Verdict No: 280/Pid.B/2005/PN.Kab.Prob. p. 9

\textsuperscript{111} Transcript of the Probolinggo State Court Verdict No: 280/Pid.B/2005/PN.Kab.Prob. p. 10

\textsuperscript{112} Transcript of the Probolinggo State Court Verdict No: 280/Pid.B/2005/PN.Kab.Prob. p. 10

\textsuperscript{113} Transcript of the Probolinggo State Court Verdict No: 280/Pid.B/2005/PN.Kab.Prob. p. 10. The Board Members of YKNCA who were jailed are Syamsuddin, Mohammad Toha, Ansori, Rahmat Hidayat Ali Wafa, Kris Aryono, dan Hj.Mufidah.
Court’s verdict shows this to be the case with almost all legal considerations and arguments, including those used by the prosecution and those used in the judges’ decision to reject the defence of the accused. It seemed as if the majority of both the judges’ and the prosecution’s arguments were based on highly subjective religious interpretation. This was further reinforced by several facts, such as the witnesses that were produced.

Second, Ardi Husein’s trial was legally flawed because: (a) the judges’ rulings were almost or exactly the same as those of MUI, which issued a fatwa of deviance against YKNCA teachings prior to the announcement of Ardi’s verdict; (b) there was no joint decree by the Minister of Religious Affairs, the Attorney General and the Minister for Internal Affairs that warned against, ordered, banned, restricted or even outright stopped Ardi Husein’s interpretation of his faith and his activities at YKNCA; (c) there was no Presidential order to disband YKNCA because it was considered to have violated the above mentioned Joint Decree by the Minister of Religious Affairs, the Attorney General and the Minister for Internal Affairs, even though the Presidential Decree 1965 Number 1, article 4 (State Document 1965 Number 3) was added to article 156a of the Criminal Code, stating that if after a warning and order was given for activities to be stopped, and the organisation continued to violate these orders, only then could people/members or managers of the organisation be jailed for a maximum of five years.

Third, the Indonesian government has been a State Party to the ICCPR since October 2005 and is thus legally obliged to implement all clauses of the legally binding covenant, including article 18a. However, this case indicates once again that the government is still unable...
to handle cases of religious freedom in a fair, independent and unbiased manner.

Fourth, the Probolinggo regent provided funds for the attack against and destruction of YKNCA facilities, and forbid police to take action against the attackers.

Fifth, the sub-district head as well as local and regional government officials were also involved in the attack.

And lastly, police acted discriminatively by allowing the attack to proceed, without a single attacker being investigated or charged.

B. RESTRICTION AND BANNING TREND

1. The Case of Ahmadiyah in Parung, Bogor

Throughout the course of 2008, the Ahmadiyah community located in Al-Mubarak Campus, Jalan Raya Parung-Bogor, Udik village, Kemang, Bogor, was continually terrorised and threatened. Threats of attack are still made on a regular basis. The latest data shows that on April 17, 2008 dozens of people in the name of the Movement of Indonesian Muslims (GUII) lead by Abdurahman Assegaf descended upon the Al-Mubarak campus as if to show that they really did mean to make good on their threats to attack Ahmadiyah. The incident was a response to Bakor Pakem's recommendation concerning the Disbanding of the Indonesian Ahmadiyah Group, issued in an evaluation meeting the day before. Fortunately police, in this case the riot police, were able to intercept and disperse the masses before any violence occurred.\textsuperscript{114}

\textsuperscript{114} “Ahmadiyah di Mata Nara/Ahmadiyah in the Eyes of Nara”, www.
After the failure of the first attempt, on Tuesday April 29 Abdurrahman Assegaf once again mobilised his supporters and headed to the campus. While walking they shouted out threats at the Ahmadiyah community. Yet once again police were able to intercept them. Unable to enter the campus, they finally resigned themselves to erecting provocative banners in front of the campus.\textsuperscript{115}

It did not stop there, however. After GUII’s second failure to enter the campus, it was FPI’s turn to threaten further attack against the campus on Friday May 2. At the time, according to police intelligence, FPI members intended to approach Al-Mubarak campus after Friday prayers with some 2000-3000 people. The atmosphere in front of the campus after Friday prayers was a tense and abnormal, due to the presence of quite a large number of police, standing guard. A number of intelligence officers were also there. Riot police vehicles were parked on the side of the Parung-Bogor main road, and a vehicle carrying barbed wire was also present – to be used to stop the masses if necessary. Police were clearly well prepared. By late afternoon FPI had still not showed.\textsuperscript{116} This kind of tense and terror-filled atmosphere continues to haunt the community today.

The most tragic incident had occurred three years before, on Friday July 15, 2005 when about 10,000 people


under command of Abdurrahman Assegaf\textsuperscript{117} attacked Ahmadiyah in Parung, Bogor, West Java.\textsuperscript{118} They damaged and then set alight Ahmadiyah's Al-Mubarak campus.\textsuperscript{119} Dozens of Ahmadiyah members were wounded, three policemen were injured from thrown rocks, the library was destroyed, the women's dormitory was burnt, windows were broken, hundreds of books were burnt, houses were damaged from the fire, and important documents, jewellery, televisions, motorbikes and other possessions were burnt.\textsuperscript{120}

The incident can be traced back to July 5, when Amin Djamaluddin\textsuperscript{121} submitted the document number 50/VII/LPPI/05 to the chief of West Java police and the head of Bogor regional police in a request to cancel Ahmadiyah's annual meeting (Jalsah Salanah) to be held from July 8-10.\textsuperscript{122}

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\textsuperscript{117} Founder and Leader of GUII, whose headquarters are located in Parung, Bogor, West Java.
\textsuperscript{121} Head of the Institute for Islamic Studies and Research (LPPI) and also member of the central branch of MUI. Through LPPI, Amin Djamaluddin coordinated the attacks against Ahmadiyah in Manis Lor on December 13 and 18, 2007, with GERAH (the Anti-Ahmadiyah Movement).
\textsuperscript{122} “Tentang Kasus Ahmadiyah Polisi Tidak Boleh Mendiamkan Kasus
In the request, Amin Djamaluddin referred to the January 18, 2005 meeting of the Central Bakor Pakem team, authorised by the Intelligence Officer to the Deputy Attorney General, a representative of Army Headquarters, Police Headquarters, the Department of Foreign Affairs, Department of Internal Affairs, the Indonesian Intelligence Agency (BIN), the Department of Religious Affairs, Central MUI, and the Attorney General. The meeting had resulted in the “unanimous decision that both Qadiyan Ahmadiyah located in Parung, Bogor and Lahore Ahmadiyah centered in Yogyakarta, be banned from all parts of the Indonesian state”.

Amin Djamaluddin also attached the Bakor Pakem circular dated May 12 which contained recommendations for banning Ahmadiyah in Indonesia. In the application to cancel Parung Ahmadiyah’s Jalsah Salanah event, Amin Djamaluddin threatened the West Java police chief that if he did not cancel the annual meeting, then the 1998 attack would be repeated. That is, society would take it upon itself to disband the community.

Then early in the morning of Friday July 8, at about 07.00, the atmosphere around the Al-Mubarak campus became quite tense after eight people erected a banner reading “Ahmadiyah is not Islam – Their Prophet is Mirza Ghulam Ahmad – Their Holy Book is the Tadzkirah” in the parking lot. After Friday prayers, at around 13.50, a group...

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of about 80 people started to gather, under the direct leadership of Amin Djamaluddin. Once assembled, Amin Djamaluddin demanded to meet with the Ahmadiyah amir (leader) and other representatives.¹²⁵

On receiving the demands, Ahmadiyah representatives agreed to meet Amin Djamaluddin and the 80 people he was with. For several reasons the meeting was held at the Pondok Udik village chief’s office in Kemang, Bogor. In addition to the crowd of 80, Amin Djamaluddin also brought Abdurrahman Assegaf along. Ahmadiyah representatives present included Mulyadi Sumarto, Ruhdiyat Ayyubi Ahmad, Mln Qomaruddin Shd, and a journalist from Muslim Television Ahmadiyya (MTA). The Pondok Udik village chief was present, along with the Kemang district head, the Kemang district army commander, and the Kemang police chief.¹²⁶

Throughout the meeting Amin Djamaluddin and Abdurrahman Assegaf continually emphasised that, in accordance with Rabithah 'Alam Islami’s decision, “Ahmadiyah is not Islam”. Both also stressed that after surveying the Muslim community in Bogor, they were, on behalf of Bogor Muslims, demanding that all Ahmadiyah members leave Parung. In fact, the two threatened that if in seven days time Ahmadiyah had not dispersed, then not only would the Jalsah Salanah event be stopped, but Amin and Assegaf threatened that they would also direct thousands of people to wage jihad to destroy Ahmadiyah.¹²⁷

On the same day, July 8, Amin Djamaluddin circulated a LPPI pamphlet bearing the title “Task Force for the National Disbandment of Ahmadiyah”. For the umpteenth time, Amin Djamaluddin referred to the Bakor Pakem team meeting of January 18. Strangely however, in the pamphlet Djamaluddin appealed to Islamic organisations to not take violent action or play judge and jury in disbanding Ahmadiyah and all their activities.

Provocative material continued to circulate. On July 9, several people displayed banners reading “Task Force for the Disbandment of Ahmadiyah”. In the afternoon, a large crowd lead by Amin Djamaluddin and about another 100 people coming from the west approached Al-Mubarak campus. Some gave speeches outside the front gate, punctuated by shouts from the crowd, including “burn Ahmadiyah”. According to Mubarik Ahmad, Vice Chairman I of the Jalsah Salanah (annual meeting), around 300 Ahmadiyah members were trapped in the campus.

Then, the crowd led by Amin Djamaluddin and

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128 LPPI’s office is located in Central Jakarta. The institute is actively publishing anti-Ahmadiyah books. The main activities of the institute are studying, researching and investigating a variety of sects/factions outside of the Islamic mainstream, and forwarding the results and their recommendations to MUI. The institute’s source of funding is unclear, but what is certain is that their leading role in the anti-Ahmadiyah movement through publication of books and facilitation of training and seminars requires significant funds.


132 The Leader of LPPI and one of MUI’s Member. During the Ahmadiyyah
FPI\textsuperscript{133} members forced their way into the campus and Ahmadiyah houses and tore down the front gate that displayed a plywood and wood sign reading “Welcome to Participants of the 2005 Jalsah Salanah”. The crowd then threw pieces of the sign at Ahmadiyah members trapped within the campus. Then a group wearing red Arab-style shirts and another sporting FPI attributes attacked Ahmadiyah members, throwing rocks and broken bottles from nearby street vendors, and generally damaging and burning anything they came across.\textsuperscript{134}

The attack injured many. Ten Ahmadiyah members were knocked unconscious, 12 received stitches for wounds caused by thrown rocks and glass shards, and dozens vomited. Glass windows of several buildings and four cars were smashed, and four motor bikes were burnt.\textsuperscript{135} Much furniture and other possessions were looted from the Ahmadiyah community, including the sign displaying their name, the front gate, objects from their show room and several other buildings. Street vendors selling coconuts and drinks were also victims.

\textsuperscript{133} FPI was established on August 17, 1998 with Rizieq Syihab as leader of the group. FPI claims to have 22 branches and seven million followers throughout Indonesia. See Andri Rosadi, \textit{Hitam Putih FPI (Front Pembela Islam); Mengungkap Rahasia-Rahasia Mencengangkan Ormas Keagamaan Paling Kontroversial/Inside FPI (The Islamic Defenders Front); Revealing the Baffling Secrets of the Most Controversial Religious Organisation}, (Jakarta: NUN Publisher, July, 2008), p. 8.


as the attackers used their goods to throw at Ahmadiyah members.¹³⁶

Seeing that the situation was only worsening, on July 10 the National Ahmadiyah Amir closed the Jalsah Salanah event early, at 09.00 instead of the planned time of 12.00. Despite being officially closed, pressure and terror continued. Abdurrahman Assegaf and seven commandos from the movement to disband Ahmadiyah were agreeing to sign the “Fatwa of commandos from the movement to disband and shut down Ahmadiyah in Indonesia”. Generally speaking, the fatwa called for three things: (a) that Muslims fulfil their obligation to destroy Ahmadiyah and stop all its activities throughout Indonesia; (b) to urge all Indonesian Muslims to wage war against Ahmadiyah; (c) to determine that all areas inhabited by Ahmadiyah members are part of the Dar al-Harbi (land of war, as opposed to the land of Islam/peace). The seven Islamic commandos besides Abdurrahman Assegaf were KH Saarih, KH Mad Rodja Sukarta, KH Khaerul Yunus, KH M Nasip, Kyai Ahmad Hasyim, KH M Mi’an, and KH Mad Hasan.¹³⁷

At the same time the fatwa was issued, the alliance of Islamic groups of Kemang published a Joint Declaration dated July 10 for the Bogor government. Bearing the title “Kemang Muslims in particular, and Indonesian Muslims in general”, the declaration urged all levels of the Bogor government to expel the Ahmadiyah community from the Al-Mubarak campus. The “NB” at the end of the declaration

Chapter IV  Freedom of Religion or Belief after Indonesian Ratification...

stated in block letters “On Friday July 15, 2005 after Friday prayer there will be mass mobilisation of the two districts of Kemang and Parung to attack Al-Mubarak Campus.” The statement also urged the government, ulama and police to take steps in anticipation of possible violence and anarchy and thus to immediately disband Ahmadiyah.138

Because of the tense situation, on the afternoon of July 14 the head of Ahmadiyah sent a request for security backup at the Al-Mubarak campus to the Indonesian police chief, and the regional and local Bogor police chiefs, but received no meaningful response. The police only made an appearance, without carrying out their duty to guarantee the safety and security of Ahmadiyah members. In fact, they even gave the impression of siding with those attacking the community.139 Ironically, the request for help was actually responded to in quite a shocking way, with the release of a Joint Decree to close the Al-Mubarak Campus.140

The Joint Decree had been signed in the Bogor Town Hall by the regent of Bogor (Agus Utara Efendi), the chairman of Bogor DPRD (Rahmat Yasin), the two vice chairmen of Bogor DPRD (Moh Rusdi As and Karyawan Fatchurrahman), the 0621 Bogor regional military commander (Lukas Rusdiono), Bogor police chief (Agus K Sutrisna), the chairman of the Cibinong State Prosecutor’s Office (MB Harahap), the ATS Bogor air force commander

(Marsma TNI Ign Basuki), and the Bogor Department of Religious Affairs’ Office (Maman Sulaeman). Coinciding with the release of this decree, the local government ordered the Bogor police chief and the district council to arrange the appropriate documents to seal the campus, stating agreement to shut down all activities held within the Al-Mubarak campus, and to set up a police cordon for security reasons.141

At about 15.30 of the same day, the Kemang police chief and members of the Kemang district council approached the campus to meet with Ahmadiyah representatives. The visit was to inform the community of plans to secure the campus by setting up a police cordon at all gates into the campus and around the campus fence. This was, according to the Kemang police chief, for security reasons, and not to seal off the campus.142

On the same day about 500 members claiming to be from the Bekasi Muslim Community Guard held a large sermon in the Bekasi Sport Stadium. On several occasions Sulaiman Zachawerus, head of the Bekasi Muslim Community Guard, stated that in the near future the guard would demand the Bekasi DPRD to immediately issue anti-Ahmadiyah regulations. Amin Djamaluddin and the vice mayor of Bekasi Muchtar Mohammad also attended, expressing their opposition to the existence of Ahmadiyah.143

142 Mujtaba Hamdi, “Sang Liyan…”, p. 230
143 Mujtaba Hamdi, “Sang Liyan…”, p. 230
Then on July 15, at about 14.00, Abdurahman Assegaf and a 10,000 strong crowd armed with pointed wooden and bamboo sticks approached Al-Mubarak Campus. Upon arriving at the campus gate, they began speaking, and shouting out threateningly. The crowd threatened that if by 16.00 Ahmadiyah members had not left the campus, they would burn it down.144

Before the Abdurrahman Assegaf led masses had arrived, police were present, guarding the campus. By the time the crowd began to speak, there were hundreds of police present, under the direct command of Police Chief Commissioner Agus K Sutisna, Bogor Police chief. Apparently the Bogor police station deployed two companies of riot police, and two crowd control companies, as well as a group of police women. One company consisted of 100 officers.145 Unfortunately however, the police still failed to do their job well.

This was made apparent when several speakers climbed on police vehicles while speaking quite threateningly and provocatively at the masses, urging them to enter the campus. The police stood back to watch.146

State officials present in the middle of the wild crowd included the Kemang district head, the regent of Bogor, the State Public Prosecutor, and the regional

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and local police chiefs of Bogor. These officials gathered in front of the gate to negotiate with Ahmadiyah. The negotiation began with the Kemang district head talking to Mulyadi Sumarto, the man who was in charge of security for the Jalsah Salanah event. The district head ordered Mulyadi Sumarto to immediately take down the sign displaying Ahmadiyah’s name to prevent the nearly out of control masses from running amok. Mulyadi then sought agreement from the Ahmadiyah Amir, but the Amir refused to give his permission. No agreement was reached, and so the officials ordered police to pull down the Ahmadiyah name board.147

As the situation started to spiral out of control, Bogor government officials in front of the main gate to the campus summoned Supardi, an Ahmadiyah representative. The officials then announced that agreement had been reached between the Bogor government and Abdurrahman Assegaf. The regent of Bogor and the regional and local police chiefs suggested that the Ahmadiyah community be evacuated so as to prevent more tragic mass rioting. Once again, no agreement was reached and eventually the regent and several other officials contacted the Amir of Ahmadiyah, H Abdul Basith, urging that the community be evacuated immediately or uncontrollable rioting would break out.148

Unfortunately, because negotiation was difficult and lengthy, the angry and wild masses no longer felt the need to observe calls for peace, and attacked the Lajnah Imaillah building (women’s hall), destroyed and burnt

the library and anything else that they came across. The crowd went so far as to ransack the houses of Ahmadiyah members.\textsuperscript{149} While this was in full swing, the police stood back and let the crowd do as it pleased.

In fact, during the attack the police brought in four police busses to evacuate Ahmadiyah members from the campus, and when it became obvious that these busses were not enough, they brought another four trucks. Ahmadiyah members were more than willing to be evacuated because police had previously promised to protect them throughout the evacuation. However, after learning that Ahmadiyah members would be evacuated by bus, the crowd began pelting the bus with rocks and wood, and the police made no effort to prevent the attack as they had promised. In such a situation, Ahmadiyah members could do nothing but pray and hope that they remained safe.\textsuperscript{150}

The involvement and siding of Bogor government officials, DPRD members, and the police with those attacking the Ahmadiyah community was increasingly apparent after the attack. With nothing to impede them, Abdurrahman Assegaf and the government officials entered the damaged campus just to check how badly the campus had been destroyed.\textsuperscript{151} After the attack and the evacuation of Ahmadiyah members, the crowd slowly began to disperse, first erecting the banner “Sealed by the

\textsuperscript{149} \url{http://www.politikindonesia.com/readhead.php?id=602}.

\textsuperscript{150} \url{http://www.detiknews.com/read/2005/07/15/165316/403773/10/100-jemaat-ahmadiyah-akan-dievakuasi-massa-bersalawat}.

\textsuperscript{151} \url{http://www.politikindonesia.com/readhead.php?id=602}.
Indonesian Muslim Community”.  

On July 19, the Minister for Religious Affairs stated that the banning of Ahmadiyah did not require a new ban to be issued because the Department of Religious Affairs had already issued a circular on September 20, 1984 to its regional offices throughout Indonesia, particularly to the section heads for Information on Islam. The circular stated that Ahmadiyah was deviant because the sect believed that Mirza Ghulam Ahmad was a prophet. The circular stated that, “examination of Ahmadiyah sects showed that the Qadiyani Ahmadiyah sect deviated from Islam because of its belief in Mirza Ghulam Ahmad as a prophet, indicating it believed that Prophet Muhammad was not the last prophet.” The circular also mentioned that “the Department of Religious Affairs bans the Ahmadiyah community in Indonesia from spreading its belief”. The Department of Religious Affairs also ordered central and local branches of MUI, ulama and preachers (dai) throughout Indonesia to explain Qadiyan Ahmadiyah’s deviance to society.

The Bogor government, who should protect and defend all citizens, issued highly discriminative policies, especially after the attack on Ahmadiyah at the Al-Mubarak Campus. On July 20, the West Java government issued a formal declaration banning Ahmadiyah activities in Parung in a Bogor council meeting which was attended

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by the chairman of the Bogor DPRD, 0621 Bogor regional military commander, Bogor police chief, Cibinong State Prosecutor, chairman of the Cibinong State Court, the ATS regional air force commander, head of the Bogor Department of Religious Affairs’ Office, and Bogor MUI.155 The joint decree of the Bogor government was further reinforced by its reference to the circular of the Department of Islamic Mass Guidance and Haj Affairs Number D/B.A.01/3099/84 which the Department of Religious Affairs had issued in relation to the evaluation that Ahmadiyah teachings contradicted Islamic teachings.156

In the tragic attack against the Parung Ahmadiyah community, central MUI fatwa supported the release of the decree to ban Ahmadiyah in Bogor. The basis to the joint declaration signed by Bogor officials was MUI’s fatwa from 1980 which stated that Ahmadiyah deviated from Islamic teachings, that it was outside of Islam, and was deviant and misleading.157

In response to the attack, the central branch of MUI issued a fatwa at the National Meeting from July 26-29. Of a total of 11 fatwa issued during the meeting, the one concerning Ahmadiyah stated that it was a non-Islamic

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sect, and thus its members were apostates. This fatwa had far-reaching impacts, the most concerning of which were attacks by a number of people against Ahmadiyah facilities, such as those against the Ahmadiyah campus in Parung, Bogor.

Generally speaking MUI, being a “religious authority”, should have taken responsibility for the attack against Ahmadiyah members at the Al-Mubarak campus. There was much evidence to suggest that the religious institute was involved, even if not directly. Similarly, several “state authorities” (the local government, the state prosecutor, the police, district and subdistrict heads, regents, and district military commander) were also fully involved in the discrimination and criminalisation that occurred. This blatantly contradicts the constitutional foundations of the state, namely Pancasila and article 29 of the 1945 constitution on religious freedom, but also to the ICCPR, especially article 18 on Protection of the Right to Religion and Belief.

In response to the continual pressure, Ahmadiyah took legal action, challenging the Bogor district council’s joint decree that banned the existence of Ahmadiyah in

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159 Besides MUI, we are aware of several culprits, including Hartono Ahmad Jaiz, a member of LPPI who published the book Aliran dan Paham Sesat di Indonesia/Deviant Sects and Understandings in Indonesia. He is one of those executors responsible for pronouncing countless numbers of Muslims in Indonesia deviant or apostate, amongst them Gus Dur, Amien Rais, and Nurcholis Majid.
Parung in the Bandung State Administrative Court (PTUN). However, due to the power of the “state authorities” and “religious authorities” and their legitimacy in the violence against the Parung Ahmadiyah community, the Bandung Administrative Court rejected the lawsuit, with the head of the panel of judges, Syamsir Alam, ordering the plaintiff to pay court fees of Rp 289,000.160

Prior to this, during the announcement of the judges’ interim measures, the panel of judges, which included Judges Iskandar and Tedi Rosmansyah, reasoned that the court did not have the authority to hear the case against the joint declaration signed by the regent, chairman of DPRD, 0621 regional military commander, Bogor police chief, chairman of the Cibinong State Prosecutor’s Office, chairman of the Cibinong State Court, ATS air force regional commander, head of the Department of Religious Affairs’ Office, and the head of Bogor MUI.161

The panel of judges felt that the involvement of Bogor MUI in signing the statement meant that the statement could not be the object of a lawsuit in the Administrative Court, because MUI was not part of the local government. However the judges also felt that the joint decree did not violate laws concerning local government as it was issued in an emergency situation to protect public law and order. The judges suggested that the lawsuit be tried in a public court.

Unfortunately, until today there has still been no


investigation or initiative on behalf of the Indonesian government to correct the discriminative behaviour of its officials, in both regional and central governments, even though Pancasila and the 1945 constitution completely guarantee freedom of religion and belief in Indonesia, and the government has, moreover, ratified the ICCPR.

2. **The Case of Ahmadiyah in Manis Lor, Kuningan**

Throughout 2007, the Ahmadiyah community in Manis Lor, Kuningan were also targeted with threats and terror. The violence they experienced was in part carried over from the previous attack against the community in the Al-Mubarak campus, in Parung, Bogor. The most serious violence against Manis Lor Ahmadiyah members occurred on December 18, 2007. Around 1000 people violently attacked the Ahmadiyah community in West Java. The attack resulted in seven people being wounded (one stabbed), two mosques being badly damaged, and eight Ahmadiyah houses being destroyed.

The bitterness that the Manis Lor Ahmadiyah community has experienced goes right back to the Old Order, to 1956. It was then that discriminatory measures started to emerge, and the Ahmadiyah community began to be criminalised, especially when they built the first

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163 According to tempointerktif.com (18/12/2007) about 10 Ahmadiyah houses were destroyed, and one mosque was also target and its fence destroyed. Three people were wounded, one reported to have been stabbed. See also “Ahmadiyah Kuningan: 8 Rumah Dibakar, 2 Masjid Rusak Berat/ Kuningan Ahmadiyah: 8 Houses Burnt, 2 Mosques Badly Damaged”, www.detaknurani.com/2007/12/18/ahmadiyah-kuningan-8-rumah-dibakar-2-masjid-rusak-berat.
Ahmadiyah mosque. Local residents protested heavily against the construction, and several ulama reported it to police. The tension and conflict between Ahmadiyah and non-Ahmadiyah groups triggered an open debate between sympathetic and non-sympathetic ulama.\textsuperscript{164} Hundreds of pamphlets supporting Ahmadiyah decorated the city, as did those protesting against the community.\textsuperscript{165}

During the New Order, in 1976, violent conflict became a frequent occurrence.\textsuperscript{166} However, because media was strictly controlled under the New Order, the conflict and violence was not really exposed, but rather tended to be hushed up.

Escalation occurred during the reformation era. It began on August 11, 2002 when the Institute for Islamic Studies and Research (LPPI) held a seminar on the theme Uncovering Ahmadiyah’s Deviance. LPPI invited a number of youth from RUDAL (Manis Lor Al-Huda Mosque Youth Group). After attending the LPPI seminar, the youth from RUDAL erected abusive and insulting banners on the road to the Ahmadiyah community’s complex. They also asked the Kuningan government to ban Ahmadiyah activities in Manis Lor. Conflict between RUDAL and Ahmadiyah

\textsuperscript{164} Commandment Letter of Kuningan’s City Mayor; No: 300/4778/Pol. PP/2007

\textsuperscript{165} Editorial Team, “Bangunan Peristiwa Kasus Ahmadiyah Kuningan/Construction of Events in the Kuningan Ahmadiyah Case” in Rekam Jejak Kekerasan Tehadap Ahmadiyah Manis Lor 2007/Recording the Violence Against Ahmadiyah in Manis Lor, (Jakarta: the Wahid Institute, 2007) unpublished.

\textsuperscript{166} Editorial Team, “Bangunan Peristiwa Kasus Ahmadiyah Kuningan/Construction of Events in the Kuningan Ahmadiyah Case” in Rekam Jejak Kekerasan Tehadap Ahmadiyah Manis Lor 2007/Recording the Violence Against Ahmadiyah in Manis Lor, (Jakarta: the Wahid Institute, 2007) unpublished.
increased, and on October 25 of the same year, RUDAL youth damaged the al-Taqwa and al-Hidayah mosques, as well as several houses belonging to Ahmadiyah members.\footnote{Editorial Team, “Bangunan Peristiwa Kasus Ahmadiyah Kuningan/Construction of Events in the Kuningan Ahmadiyah Case” in Rekam Jejak Kekerasan Tehadap Ahmadiyah Manis Lor 2007/Recording the Violence Against Ahmadiyah in Manis Lor, (Jakarta: the Wahid Institute, 2007) unpublished.}

On November 3, under pressure from RUDAL and several other social organisations, the Kuningan government issued Joint Decree I which banned Ahmadiyah teachings in Kuningan. The decree was legalised and signed by a number of state officials, including the Kuningan regent, the chairman of the Kuningan DPRD, the head of the State Prosecutor’s Office, regional military commander, the local police chief, head of the Department of Religious Affairs’ Office, head of Kuningan MUI, several other Islamic social organisations including NU, Muhammadiyah, GUPPI, PUI, and a number of youth organisations from Kuningan. After the joint decree was released a lot of Ahmadiyah houses were targeted.

Joint Decree I was followed by a Pakem statement dated December 3, 2002 which contained: (a) a request to the Kuningan police chief to investigate Ahmadiyah management; (b) to ask that the district head and head of the Religious Affairs Office not allow Ahmadiyah members to marry; and (c) to ask that the district head not allow national identification cards (KTP) to be made for Ahmadiyah members. This discriminative behaviour meant 150 Ahmadiyah couples were unable to obtain marriage certificates and dozens had no access to public
services. After the release of Joint Decree 1 and the Pakem statement, on December 4 Bakor Pakem undertook a “cleansing” operation which involved removing or demolishing all visible Ahmadiyah symbols or attributes in Manis Lor. In response, on January 10, 2003 the Human Rights National Commission sent a letter to the regent of Kuningan to address the intimidation directed at the Ahmadiyah community. The letter also mentioned the state’s guarantee to all citizens, including Ahmadiyah members, that they would be allowed to worship as stated in article 28 E and 29 (2) of the 1945 Constitution, and Article 22 (2) of Law No. 39/1999 on Human Rights.

The Directorate General of National Unity of the Department of Internal Affairs expressed a similar attitude in a letter dated February 25 which was sent to the regent of Kuningan. The letter urged the Kuningan government to protect harmony by working together with the Ahmadiyah community of Manis Lor.

As it turned out, the conflict continued to escalate and by mid-October of 2004, FPI attacked Ahmadiyah mosques. Prior to the attack FPI had attended a large sermon in celebration of the ascension of Muhammad in the Manis Lor al-Huda mosque. FPI demanded that all Ahmadiyah members living in Manis Lor to obey the joint decree and to immediately stop all activities.

168 Jakarta LBH & Kontras, *Investigative Report*, p. 34.
171 Editorial Team, “Catatan Proses Hearing dengan Muspika (12
Then on January 3, 2005 the Kuningan government issued Joint Decree II\(^{172}\) which was much more resolute in banning Ahmadiyah from Kuningan. Ahmadiyah members were no longer safe.\(^{173}\) Joint Decree II number 451.7/KEP.58-Pem.Um/2004, KEP-867/0.2.22/Dsp.5/12/2004, kd. 10.08/6/ST.03/1471/2004 was signed by the regent of Kuningan, the head of the State Prosecutor’s Office, head of the Department of Religious Affairs’ Office, and the regional secretary. In response the Manis Lor Ahmadiyah community filed a lawsuit against the decree in early February at the Bandung Administrative Court and asked that the Kuningan government delay implementation of the decree.\(^{174}\)

Throughout 2005 four incidences involving terror, intimidation and sealing of facilities occurred. On July 30, one Ahmadiyah mosque and seven prayer rooms were closed. The following day, a group of people intimidated the community. August 1 saw the sealing of Ahmadiyah education facilities and several other public facilities, preventing 112 students from receiving an education.

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\(^{172}\) The Contents of Joint Decree II of 2005 can be read in the Ahmadiyah’s response No. 127/JA.CM/XII/07 to KOMPAK (Kuningan Muslim Component) in The Wahid Institute, *Rekam Jejak Kekerasan Terhadap Ahmadiyah Manis Lor 2007/Recording the Violence Against Ahmadiyah in Manis Lor*, (Jakarta: the Wahid Institute, 2007) unpublished.


Then on August 10, an Ahmadiyah mosque in Majalengka was sealed by local police officers. Throughout 2005-6 the religious life of Ahmadiyah members was coloured by fear, confusion and broken hopes.

The physical and psychological violence did not stop, and on November 19, 2007 about 17 Islamic organisations grouped under KOMPAK (the Kuningan Muslim Component) gave a harsh warning to Ahmadiyah leaders in Manis Lor (number 01/KM.KK/XI/2007). Their ultimatum stated that first, Ahmadiyah must immediately return to Islam or leave the Muslim community; second, Ahmadiyah must immediately stop all religious activities and obey Joint Decree I and II; and third, Ahmadiyah must immediately demolish all places of worship and other facilities. Prior to this on October 21, RUDAL had erected a permanent banner on the road to Manis Lor, declaring Ahmadiyah as deviant.

KOMPAK gave Ahmadiyah 15 days to stop all religious activities, threatening that if they had not, it meant that they were asking for war. War preparations began with labelling houses and other public facilities as either

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176 KOMPAK is the center organisation for anti-Ahmadiyah Kuningan organisations whose primary aim is to bring a stop to and to disband the Ahmadiyah community in Kuningan.


178 Jakarta LBH & Kontras, Investigative Report, p. 36.
Ahmadiyah or non-Ahmadiyah. Houses and facilities belonging to non-Ahmadiyah members were labelled with “members of the al-Huda mosque, community of Prophet Muhammad”.  

In response to KOMPAK’s ultimatum, on November 26 representatives of Ahmadiyah sent the letter number 123/JA.CM/XI/07 to the 855 Kuningan police chief which requested legal protection and security. The letter, besides informing the police of the various threats and terrorising that the community had been at the receiving end of, Ahmadiyah representatives also stressed that the request for legal protection was in accordance with article 28 I verses 1-2 of the 1945 constitution. The letter also reemphasised Ahmadiyah’s official status as a legal entity (No. J.A.5/23/13, dated March 13, 1953).

On November 30, a meeting was held between the district council, the district head, the district army commander, district police chief, section 1 district police chief, head of the Religious Affairs’ Office, head of Kuningan MUI and 10 board members of the Manis Lor Ahmadiyah community. The meeting, held in Jalaksana, was based on the KOMPAK letter, Ahmadiyah’s letter, and supporting data concerning the release of the two joint decrees. The result of the meeting was: (a) to respond to KOMPAK’s plan in regards to the ultimatum sent to Ahmadiyah, (b) to recommend that KOMPAK tone down

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their attack against Ahmadiyah, (c) to decide that any kind of preaching must be accompanied by police, and (d) that the Ahmadiyah representatives were not willing to sign.\footnote{Editorial Team, “Catatan Proses Hearing dengan Mupspika (12 Desember 2007) in Rekam Jejak Kekerasan Tehadap Ahmadiyah Manis Lor 2007/Recording the Violence Against Ahmadiyah in Manis Lor, (Jakarta: the Wahid Institute, 2007) unpublished.}

On December 3, Ahmadiyah representatives sent a letter in response to KOMPAK, to emphasise: (a) that Ahmadiyah was not a religion but an Islamic organisation based on the Qu’ran and hadith, and (b) that the release of the second joint decree was not in accordance with legal procedures. According to Ahmadiyah representatives, the letter was intended to be a response to the harsh stance of KOMPAK.\footnote{Jakarta LBH & Kontras, Investigative Report, p. 34.}

Not long after on December 10, Ahmadiyah board members sent a letter to the regent of Kuningan to form an independent team to specifically examine articles 12 and 13 of the Joint Decree. Unfortunately, the regent responded quite differently, and after meeting with members of the regional council and Pakem team, he summoned representatives of Ahmadiyah to his office and under the pretext of protecting social order and security he told Ahmadiyah representatives directly that he would bring the two joint decrees back into effect. On the same day Ahmadiyah representatives sent a letter of complaint to the local police chief in regards to the plethora of banners, pamphlets, billboards, and graffiti that were highly insulting and that threatened the Ahmadiyah community.\footnote{Jakarta LBH & Kontras, Investigative Report, p. 35.}
Then on December 13, the Kuningan government ordered police to seal the an-Nur, at-Taqwa, and al-Hidayat mosques. In the draft document authorising the sealing, the government as represented by Indra Purwantoro (head of the municipal police) and the Manis Lor Ahmadiyah community (represented by Abdul Sukur, head of the Manis Lor Ahmadiyah community) were informed that: (a) the regional government was temporarily securing all activities at the an-Nur, at-Taqwa, and al-Hidayah mosques, (b) the second party completely obey the arrangement, (c) the sealing of the mosques was only temporary, (d) the regional government had the authority to remove all Ahmadiyah symbols and attributes, (e) local Ahmadiyah board members must cooperate with the regional government to protect law and order, (f) if the declaration was violated, legal sanctions would apply.184

Yet the promises of state officials to guarantee the rights of their citizens were little more than sweet talk. On December 18, 15 days after KOMPAK’s ultimatum, as promised about 1000 people from various Islamic organisations violently attacked the Ahmadiyah community in Manis Lor, Kuningan, West Java.185 In addition, five mosques were sealed by municipal police officers under direction from the Kuningan government.186

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186 Instruction Letter of the Regent of Kuningan No: 300/4778/POL.
During the attack, officers from Kuningan riot police and mobile brigade forces who were deployed in the main road of Manis Lor, failed to stop the masses. The tear gas fired by the riot police was unable to stop the crowd from pushing through the police line. Using small alleys, KOMPAK members eventually arrived at Ahmadiyah prayer rooms, which they promptly attacked. Not only that, they also damaged houses belonging to Ahmadiyah members. Some Ahmadiyah members resisted, fighting off the attackers. As a result four KOMPAK members were gashed.  

The district head of Jalaksana, Maman Hermansyah, witnessed the attack and sided with the attackers, saying “agreement has been reached between the Kuningan government and representatives of Islamic organisations that the attack today be cancelled.” The agreement, he said, was that Ahmadiyah would no longer use the sealed mosques for worship. If the agreement was breached, all Islamic organisations would be free to destroy the sealed mosques and prayer rooms.

Those involved in the attack included the Anti-Ahmadiyah Movement (GERAH), Indramayu GUII,


190 GERAH was specifically established to advocate anti-Ahmadiyah
FPI, RUDAL\textsuperscript{191}, the Islamic Community and \textit{Ulema} Forum (FUUI)\textsuperscript{192}, IPSBS (Pencak Silat martial arts association), and several other organisations. After the violence and attacks of December 13 and 18, intimidating and insulting banners kept appearing.\textsuperscript{193}

Generally speaking, the involvement of religious and state authorities in the humanitarian tragedy that occurred in Manis Lor follows the following pattern. Attacks against the Ahmadiyah community began to escalate after MUI’s 1980 \textit{fatwa} was issued concerning the banning of Ahmadiyah in Indonesia. This MUI \textit{fatwa} then formed the basis of the release of Joint Decree I of 2002\textsuperscript{194} which addressed banning the spread of Ahmadiyah teachings, and Joint Decree II of 2005\textsuperscript{195} which

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  \item \textsuperscript{191} RUDAL is the pioneer of opposition to Ahmadiyah in Kuningan and has emotional ties with LPPI as most Manis Lor youth associated with LPPI are RUDAL alumni. In the December 13, 2007 incidence RUDAL members were present and contributed to the violent attack against Ahmadiyah.
  \item \textsuperscript{192} This institute was declared in the al-Furqon Mosque, Indonesian University of Education in 2001. The founder and first leader was Athian Ali. The primary activities of this institute are education and overcoming apostasy.
  \item \textsuperscript{193} “Kronologi Kasus Ahmadiyah Kuningan (Pra-Penyerbuan) / Chronology of the Kuningan Ahmadiyah Community (pre-attack)”, http://www.detaknurani.com/2007/12/19/kronologi-ahmadiyah-kuningan-pra-penyerbuan.
  \item \textsuperscript{194} The publication process of Joint Decree I dated 3 November 2002 is detailed in “Kronologi Singkat Peristiwa Jamaah Ahmadiyah Manis Lor 2007/A Short Chronology of the Case of the Manis Lor Ahmadiyah Community in 2007”, in the Wahid Institute, \textit{Rekam Jejak Kekerasan Terhadap Ahmadiyah Manis Lor 2007/Recording the Violence Against Ahmadiyah in Manis Lor}, unpublished.
  \item \textsuperscript{195} The contents of Joint Decree II of 2005 can be read in the Ahmadiyah response No. 127/JA.CM/XII/07 to KOMPAK (Kuningan Muslim Compo-
more firmly addressed “banning the Ahmadiyah group/community in Kuningan.” Kuningan Bakor Pakem issued a letter of warning after the first decree to all elements of the Kuningan government, which threatened Ahmadiyah civil servants and ustaz (religious leaders) who failed to obey the first decree. After the second decree was issued, Bakor Pakem in Kuningan also monitored the Ahmadiyah community.

In addition to the Kuningan local government and Pakem team, the central branch of Bakor Pakem issued a letter of request to the Kuningan Religious Affairs Office to not register marriages of Ahmadiyah members after the first decree in 2002, resulting, as mentioned above, in 150 couples not obtaining marriage certificates. And then on October 21, 2004 the central MUI fatwa was followed up by the Kuningan branch which issued fatwa Number 86/MUI-KFH/X/2004 on The Deviance of Qodiyani Ahmadiyah Understandings/Teachings, and an intimidating MUI statement signed by Hapidin Ahmad (Kuningan MUI) and HD Arifin (head of the Kuningan Department of Religious Affairs’ Office).

From the discussion above, it may be concluded that, first, the violence experienced by the Ahmadiyah...
community, particularly in Manis Lor, has existed under almost all regimes. Changes in government cannot guarantee their safety. Under three different political periods, the Old Order, the New Order and the reformation era, violence against the community continued.

Second, to date there is very little known about the physical violence against Ahmadiyah members in Manis Lor in the 1950s.

Third, Ahmadiyah members have experienced an increased amount of physical and psychological violence since the Indonesian government ratified the International Covenant on Civil and Political Rights on October 28, 2005.

Fourth, the chronology of events above suggests that the government is still unable to consistently translate and implement Pancasila and the 1945 constitution, in particular the articles on freedom of religion and belief.

Fifth, after the attack, the Kuningan police only investigated those people proven to have been directly involved in attacking, destroying, and looting Ahmadiyah property, with no court trial or follow up action taken. Meanwhile the intellectual brains behind the planning and preparation of the attack were never processed.

3. The Case of Ahmadiyah in Lombok (West Nusa Tenggara)

For eight years from 1998–2006, the humanitarian tragedy involving the Ahmadiyah community in West Nusa Tenggara (WNT) caused an immeasurable amount of physical and spiritual trauma. One person was killed and eight others died from stress during their search for asylum, four people were tortured, nine people suffered from severe depression (mental disabilities), 379 people
were forced to flee their homes, children suffered from malnutrition in refugee camps, nine people were forced to divorce their spouses, three people had miscarriages, 61 people dropped out of school, 45 people had difficulty in obtaining national identity cards, 322 people were forced to leave Ahmadiyah, 11 houses of worship were destroyed, 144 houses were damaged or destroyed, 64.17 hectares of land went unattended, 15 business facilities were destroyed, and the attackers plundered all riches.\textsuperscript{200}

Violence against and eviction of the Ahmadiyah community in WNT began in 1998, with two incidences of arson and eviction. The first occurred on October 1, at about 14.00 after Friday prayers. Close to 50 people attacked Ahmadiyah residential houses in Dusun Kanji, Kepompong village, Keruak, East Lombok. Dozens of houses and a mosque were burnt or otherwise damaged. Three days later, on October 4, at about 16.00 some 60 people burnt and destroyed four Ahmadiyah houses and a prayer room in Dusun Tompok Ompok, Ekas, Pemongkong, Keruak. These two violent attacks affected as many as 10 families and 41 individuals, causing them to flee their homes.\textsuperscript{201}

The violence continued the following year when on June 22 at 17.00 at least 100 people attacked the Ahmadiyah community in Dusun Sembielen, Loloan, Bayan, West Lombok. One person was killed (Papuq Hasan), another was stabbed in the torso (Inaq Ruqiah,

\textsuperscript{200} Jakarta LBH & Kontras, \textit{Investigative Report}, p. 77.
\textsuperscript{201} Khamami Zada, el. al., \textit{Prakarsa Perdamaian; Pengalaman dari Berbagai Konflik Sosial/Peace Initiatives: Experiences From Several Social Conflicts}, (Jakarta: PP Lakpesdam NU & EIDHR [European Commission], 2008). p. 90.
the wife of Papuq Hasan), 14 houses were totally destroyed, and a prayer room and mosque were burnt to the ground.202

With the fear and shock from the previous attack still lingering, on September 15, 2002 another attack occurred, this time at the Ahmadiyah community of Pancor village, Selong, East Lombok. In the attack eight houses were burnt and a further 28 were damaged by the masses.203 In the same year, violence against Ahmadiyah members also occurred in Sebarlawang and Medes. One house was damaged and 70 people were intimidated in Sebarlawang, with around 300 members having to flee their homes. Meanwhile in Medes four families were evicted.204

On November 12, 2003 violence broke out in Empan, Sumbawa. Mass brutality saw seven houses set alight and many Ahmadiyah members terrorised and intimidated, with 35 families evicted. As many as 127 residents of Ketapang who were evicted in this incidence were Ahmadiyah members who had previously fled from East Lombok.205

Two years later, on October 19, more violence and evictions occurred in Ketapang, Gegerung, West Lombok.

202 Jakarta LBH & Kontras, Investigative Report, p. 46.
The material loss the community suffered included damage to dozens of houses, forcing residents to flee as refugees. Locals threw rocks at them and gave them an ultimatum to immediately leave the village.\textsuperscript{206}

Violence continued, striking the same village on Saturday February 4, 2006. Hundreds of people wielding clubs, spears, swords, Molotov, and sickles, shouting angrily, attacked the local Ahmadiyah community. 31 houses were burnt to the ground.\textsuperscript{207} The anger within several sub-villages over Ahmadiyah’s refusal to leave the area triggered the attack.\textsuperscript{208}

During the attack, Mataram police officers on the scene were able to do little. The emotional masses nearly broke straight through the anti-riot police. Warning shots fired into the air did little to scare them off. In order to prevent mass rioting, the police forced Ahmadiyah members to leave their houses and gather in a field. The crowd gradually began to calm down. When the situation was finally under control police then evacuated all Ahmadiyah members and the belongings they had managed to save to the Asrama Transito temporary refugee camp, belonging to the Social Department of Majeluk, Mataram.\textsuperscript{209}

Since the attack Ketapang has been shut up, and under tight police guard. The Mataram police chief, Police

Chief Commissioner Ismail Bafadal explained that the police could have stopped the attack, but other factors emerged out of the blue that prevented them from doing so.\textsuperscript{210} At least four police officers were injured by thrown rocks. Then a rock thrown by one resident hit his friend, splitting the man’s head open, and an older lady named Inaq Misnah (60) was wounded by a stray bullet.\textsuperscript{211}

In response to the violence, the regent of West Lombok ordered the forced evacuation of Ahmadiyah members from the Ketapang Asri housing complex to Asrama Transito, and would not allow them to leave Asrama Transito. In fact, previously, they had twice been evacuated by force to the same refugee camp. They were then forced from Pancor to the East Lombok police station.\textsuperscript{212}

Almost all the attacks against and evictions of Ahmadiyah members in Lombok referred to the 1980 MUI \textit{fatwa} which banned Ahmadiyah from Indonesia, and which the WNT branch of MUI followed up on. This was especially the case after LPPI held a campaign through a range of seminars and training sessions.\textsuperscript{213} Prof H Syaiful Muslim, head of West Lombok MUI, reinforced the \textit{fatwa}, declaring that, in accordance with the Central MUI \textit{fatwa} of 2005, Ahmadiyah teachings were deviant and

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\item \textsuperscript{210} “Nasib Pahit Jemaat Ahmadiyah/Ahmadiyah’s Bitter Fate”, http://mobile.liputan6.com/?c_id=8&id=117680.
\item \textsuperscript{211} “Nasib Pahit Jemaat Ahmadiyah/Ahmadiyah’s Bitter Fate”, http://mobile.liputan6.com/?c_id=8&id=117680. See also “Massa Bakar Rumah Warga Ahmadiyah/Crowd Burns Ahmadiyah Homes”, http://www.balipost.co.id/balipostcetak/ 2006/2/5/n5.html.
\item \textsuperscript{212} “Massa Bakar Rumah Warga Ahmadiyah/Crowd Burns Ahmadiyah Homes”, http://www.balipost.co.id/balipostcetak/ 2006/2/5/n5.html.
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misleading. His institute had already urged Ahmadiyah adherents to return to true Islamic teachings, but he did note that “This fatwa is not binding. A decree by the regent or governor would strengthen it”.214

Right from the beginning the presence of Ahmadiyah in the area has been viewed negatively by parts of society and government. The head of the Public Relations Department of West Lombok, H Basirun Ahmad, explained that the ban against all forms of Ahmadiyah teachings and understandings based on the Declaration of the West Lombok Regent Number 35/2001 made use of intimidation to make members to leave their belief, forcing them to sign a declaration to that effect.215

The West Lombok government has actually tried to resolve the issue. The solution, Basirun said, was for the Ahmadiyah community to re-examine their stance, giving much consideration to the majority of other Muslims who clearly do not accept their teachings. However, the controversy over Ahmadiyah’s existence still continues.216

The Sumbawa government has also been proven to have supported violence against Ahmadiyah by releasing a joint declaration banning Ahmadiyah, which effectively legitimised violence and forced evictions, and obviously banned Ahmadiyah members from residing in the region. Similarly with the Central Lombok government, which triggered violence with its release of a joint decree banning

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Ahmadiyah from Central Lombok, again legitimising violence and eviction and intimidating members so much so that they leave their faith and sign a declaration to that effect.\textsuperscript{217}

The tragic fate of Ahmadiyah in WNT has yet to be resolved. This indicates several things. First, the central and local governments are not serious in guaranteeing civil and political rights of all citizens, even though these rights which are also guaranteed in Pancasila and the 1945 constitution have clearly been violated. This also suggests that the Indonesian government is unable to translate the state constitution, especially the articles addressing freedom of religion and belief based on 	extit{Bhinneka Tunggal Ika} (Unity in Diversity).

Second, local governments interfere too much with religious affairs, and at times have been directly involved in the discrimination against the West Nusa Tenggara Ahmadiyah community.

Third, physical and psychological violence against Ahmadiyah members has only increased and spread much more widely since the Indonesian government ratified the ICCPR in 2005. Ironically, the Indonesian report to the UN Council claimed that the opposite was true.

Fourth, to date, the police have not investigated those people proven to have been directly involved in causing damage and destruction to, or looting the possessions of Ahmadiyah members, nor have there been any subsequent trials, let alone for the brains behind the attacks.

And finally, if indeed Ahmadiyah understandings and teachings are to be considered misguided, this alone

\textsuperscript{217} LBH Jakarta & Kontras, \textit{Investigative Report}, p. 77.
does not mean that they forfeit their civil rights. Moreover, there has been no legal decision from court declaring Ahmadiyah an illegal organisation.

3. **The Joint Decree on Ahmadiyah**

On October 30, 2008 the Central Jakarta State Court sentenced Rizieq Shihab, head of FPI, and Munarman, commander of the Islamic Brigade Command (KLI), to 18 months jail for their involvement in the violent incident at Monas, June 1, 2008.\(^{218}\) Both were deemed guilty of violating article 170 verse 1 connected with article 55 of the Criminal Code concerning attacking, provoking or agitating other people to act violently and illegal towards other people or objects in a collective and public manner.\(^{219}\)

The sentencing of these two men began with the “Monas Tragedy” on June 1, 2008 during AKKBB’s (National Alliance for Freedom of Religion and Belief) commemoration of Pancasila. When AKKBB was setting up their peaceful event at Monas (Jakarta’s National Monument), dozens of FPI members attacked them out of the blue. At least 90 AKKBB members were injured, 14 critically, with several being hospitalised for a number of days as they recovered from the beatings they had


received from club-wielding FPI members.\textsuperscript{220}

The government responded immediately. President Susilo Bambang Yudoyono and Vice President Jusuf Kalla condemned the attack and urged police to take immediate action against the culprits of the violence as they felt the attack smeared Indonesia’s good name.\textsuperscript{221} Sympathy for the victims and condemnation of FPI and KLI came from a number of national figures, including the chairman of the PKB Advisory Board, Abdurrahman Wahid (Gus Dur).\textsuperscript{222} Similarly, a number of *ulama* and students in Cirebon also condemned the attack against AKKBB. They demanded that FPI be banned and the perpetrators of the Monas attack be dealt with.\textsuperscript{223} The Anshor Youth Movement and the National Guard also expressed their sympathy


and demanded that the government take immediate and firm action by bringing the full weight of the law against the perpetrators. Elsewhere, MUI responded on the contrary, viewing the Monas tragedy as a result of AKKBB’s provocation of the masses due to its open support of Ahmadiyah.

The tragedy was a result of pressure from several Islamic groups for the government to immediately issue a regulation banning Ahmadiyah. Munarman himself admitted that the violent attack against AKKBB members at Monas by several Islamic organisations was because these organisations felt that the AKKBB event was in support of Ahmadiyah, and according to Munarman, Ahmadiyah is a criminal organisation.

Similar pressure came from the Dakwah Council of the Muslim Forum (FUI), represented by Mursalim. According to Mursalim, pressure for the banning of Ahmadiyah came not only from FPI, but from the entire Muslim community because of their belief that Ahmadiyah teachings are misleading. Moreover, FUI threatened to hold an even bigger protest, demanding that the president resign.

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The day after the tragedy, the head of the Coordinating Ministry for Political, Legal and Security Affairs, Widodo AS, announced that the Indonesian Government would still issue the three Ministers’ Joint Decree, by the Minister for Internal Affairs, the Minister for Religious Affairs and the Attorney General, on halting Ahmadiyah activities. Bakor Pakem had on several occasions held discussions and made several recommendations in relation to Ahmadiyah activities. After these discussions and review of these recommendations, the Government formulated the decree in accordance with the procedures regulated in Law Number 1/PNPS 1965 on Preventing Misuse and/or Defamation of Religion.\textsuperscript{228}

The Vice Chairman of Commission III (Legal Commission) of DPR, Aziz Syamsuddin, urged police to immediately investigate the FPI organisation.\textsuperscript{229} Condemnation of FPI also came from the chairman of DPR, Agung Laksono.\textsuperscript{230} The controversy between supporters and opponents of FPI and AKKBB continued, featuring in print and electronic media for almost an entire week.

On Friday June 6, in a startling move after the official meeting of the special committee for the presidential election bill, the government, via Hatta Rajasa, announced


that the joint decree on Ahmadiyah was ready for release.231 On the same day about 200 people attended a large sermon held by FUI in the al-Azhar mosque. FUI also held sermons in several other areas of Jakarta, demanding that Ahmadiyah be banned and the joint decree be published immediately.232 Similar demands were made by the Batavia Forum Against Ahmadiyah (FBTA) during a long march in which members displayed medium sized posters reading “Ban Ahmadiyah”.233

Also on the same day, sitting in his cell before his trial began, Rizieq Shihab urged all Islamic organisations to join an action of solidarity to be held on June 9 (coinciding with the release of the three ministers’ joint decree to ban Ahmadiyah).234 Rizieq’s invitation was accepted by many, as on June 9 5,000 people surrounded the presidential palace to demand Ahmadiyah be banned.235 On that same day, the three ministers’ joint decree on Ahmadiyah was

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231 “SKB Ahmadiyah Dikeluarkan Juni/Ahmadiyah Joint Decree Issued in June”, http://www.tempoiteraktif.com/hg/nasional/2008/06/05/brk, 20080605-124532,id.html.


released.

In general, the Joint Decree Number SKB No: 3/2008, No: Kep-033/A/JA/6/2008, and No: 199/2008 brought a halt to the spread of Ahmadiyah belief, threatening to disband the community if they refused to obey. Although it contained no mention of the words “ban” or “disband”, in practice the decree banned Ahmadiyah belief and threatened to ban the community if they continued to maintain their beliefs. It also mentioned the community would be monitored by the government.236 The decree was issued while the presidential palace, where the president works, was under siege by 5000 members of radical Islamic groups demanding Ahmadiyah be banned.237 The state was clearly defeated.

Throughout the entire trial of Rizieq Shihab and Munarman, from beginning to end, FPI members hurled threats and insults at AKKBB witnesses. In fact, witnesses were even attacked, sexually assaulted and physically abused in the court room.

The first session of the Monas case was held on August 29, in which the prosecution read out the letter of indictment against Munarman and Rizieq Shihab. The prosecution accused Munarman of violating three articles, including: (a) the primary article 170, verse 1 of the Criminal Code on openly and collectively attacking humans or objects in a violent manner, and the subsidiary article 406 connected with article 55 verse 1

236 Ahmad Suaedy, Religious Freedom, Collective Violence and Democratization in Indonesia, Paper, (Kyoto University, 2009).
of the Criminal Code on destruction, (b) article 351 verse 1 connected with article 55 verse 1 of the Criminal Code on torture, and (c) article 160 connected with article 55 verse 1 of the Criminal Code on provocation. Meanwhile Rizieq Shihab was accused of violating article 170 verse 1 of the Criminal Code connected with article 55 verse 1 and article 156 of the Criminal Code. The trial of the two accused, case number 1664/PID B/2008/PN JKT PST was held at the Central Jakarta State Court.238

Munarman was accompanied by at least 34 lawyers and about 100 supporters. Upon entering the room, he was immediately greeted with cheers from his supporters and every now and again yells of “Allahu Akbar”. Hundreds of police were tasked with securing Munarman’s first trial.239 Munarman had no intention of reading out any defence to the prosecution’s accusations.240

As the trial continued, witnesses were brought forward to give testimony. Throughout the trial they were terrorised psychologically with taunts such as: “God, you’re an infidel”, “damn you infidel”, “how dare you call yourself a Muslim”.241 Istiqomah Sari (an activist of the

Islamic Movement for Non-Violence) also experienced terror and violence in the second hearing. When she was to testify against FPI, FPI members slapped her and pulled her hair.242 Other intimidation by FPI was aimed at law enforcement officers, the prosecution and the judges for not siding with FPI.

In the following hearing on Monday, September 15, one AKKBB activist was sexually assaulted. One of the witnesses was hit in the head and stomach, and claimed to have had her stomach fondled by FPI members.243 Intimidation occurred right up until the judge pronounced the verdict against Rizieq Shihab, Munarman and seven other members.244 Guntur Romli, a witness, was also physically abused during the hearing on September 22.245

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The attacker was M Subhan, LPI commander and one of the seven LPI members also on trial for their role in the Monas tragedy.\footnote{246 “Kericuhan Sidang Gara-Gara Kaki Guntur Ditendang/Guntur’s Legs Kicked In Hearing Chaos”, http://www.kompas.com/read/xml/2008/09/22/15504261/kericuhan.sidadang.gara-gara.kaki.guntur.ditendang.}

The panel of judges did not respond nor warn the accused for their violent actions. Adnan Buyung Nasution, member of the Presidential Advisory Council, also criticised the ineptitude of the police who failed to provide sufficient security. “The judge should be the first person to act to protect respect and order. If the judge is unable to do so, he may appoint a prosecutor or the police to remove trouble makers. If this still does not succeed then the police may arrest them”, Buyung said.\footnote{247 “Guntur Mengadu Ke Wantimpres/Guntur Complains to Presidential Advisory Council”, http://www.kompas.com/read/xml/2008/09/23/21132618/guntur.mengadu.ke.wantimpres.}

In the trial on September 25, FPI attacked AKKBB with rocks and other hard objects after the hearing. Four AKKBB members received open wounds, and one other, Ardyansyah, was hit so hard in the head he required 18 stitches.\footnote{248 “AKKBB akan laporkan Penyerangan/AKKBB to Report Attack”, http://www.kompas.com/read/xml/2008/09/25/18283563/akkbb.akan.laporkan.penyerangan.}

During the incident all the police tried to do was to break up the fight, separating FPI and AKKBB members. They did not fine or arrest FPI members responsible for the attack or the sexual assault.\footnote{249 “Polisi Pisahkan Massa FPI dan AKKBB/Police Separate FPI and AKKBB”, http://www.kompas.com/read/xml/2008/09/25/13181170/polisi.pisahkan massa.fpi.dan.akkbb.}

On October 7, Munarman’s trial continued with four
witnesses giving testimony in support of the accused.\textsuperscript{250} Then on October 13, the prosecution read out the demands against the two accused, Rizieq Shihab and Munarman. The prosecution stated that the accusations made were legally sound and thus demanded two years imprisonment.\textsuperscript{251}

On October 20, Munarman and his lawyer presented their defence. Munarman’s lawyer, Achmad Michdan, stated that his client had not been proven guilty of the accusations levelled at him over the Monas incident. He also accused the prosecution of concealing evidence. Michdan asked that all indictments against Munarman be removed.\textsuperscript{252}

On Thursday October 30, the Central Jakarta State Court sentenced Rizieq Shihab and Munarman each to one year and six months imprisonment.\textsuperscript{253} Both were deemed guilty of violating article 170 verse 1 connected with article 55 of the Criminal Code on attacking, provoking or agitating others to act violently and illegal towards other

\textsuperscript{250} “Sidang Munarman Digelar Lagi Lusa/Munarman’s Trial Resumes Day After Tomorrow”, http://www.inilah.com/berita/politik/2008/10/07/53304/sidang-munarman-digelar-lagi-lusa.


From this chronology of events, we can conclude that, first, the release of the three ministers’ joint decree on June 9, 2008 was done so under pressure. Secondly, the contents of the decree were very interpretative and have the potential to trigger new conflicts in the future. Third, the decree contradicts Pancasila and the 1945 constitution, especially articles 28e and 29 on religious freedom. Fourth, the decree also completely contradicts the principles addressed in the ICCPR. Fifth, the government has yet to show an independent attitude in upholding civil and political rights. Sixth, Munarman’s trial is further proof of the inadequacy of the state apparatus, especially the police, in securing the trial and protecting the freedoms of all witnesses. Seventh, the police gave the impression of only taking incidental action, and of not holding a neutral position in securing the trial. Lastly, although the intellectual actors behind the Monas incident were eventually jailed, in general when it comes to violations of religious freedom in society, the Indonesian government is still far from protecting these rights. This is apparent in a variety of cases, both within the Muslim community or between different religious communities.

III. PROBLEMS IN PROTECTING NON MUSLIM MINORITIES

According to a report by PGI (Alliance of Indonesian Churches)\footnote{255 PGI is an alliance of Protestant churches in Indonesia.} and KWI (Indonesian Church Fellowship)\footnote{256 KWI is an association of Catholic churches in Indonesia.} submitted to the National Commission on Human Rights on
December 14, 2007, during Susilo Bambang Yudhoyono’s presidency from 2004-2008 108 churches and houses of worship were recorded to have been closed or forced to close without sufficient protection from the government. In fact, in several cases not only were houses of worship closed, but adherents were banned from worshiping. Most church closures were instigated by society, in order to enforce religious or national law. Religious law was drawn upon in instances of Christianisation, or apostasy of Muslims.\(^{257}\) National law was enforced over issues of valid authorisation for construction of churches. The following cases depict the way in which churches and other houses of worship have been closed.

1. **Sukapura Immanuel Indonesian Pentecostal Church**

   In 2007, the Sukapura Immanuel Indonesian Pentecostal Church (GPdI) congregation was subject to four instances of interception, blockading and eviction prior to and during worship. The first instance occurred on April 29, 2007, when members were worshiping in a shed on land owned by the church. Members of the local community blockaded the road leading to the church.

   Opposition occurred for the second time on May 6 of the same year when locals once again cut off access to the road leading to the church.\(^{258}\) The third incidence occurred on May 13, when the congregation was


stopped from worshiping in the church they have always worshiped in. The final instance took place on August 5, when the congregation was prevented from worshiping because locals had already blockaded the roads. The congregation worshipped on the road. However, that apparently triggered the emotions of locals who then evicted the community.  

These four instances involving opposition, intimidation and eviction by locals only depicts a little of the nasty fate the church congregation, led by Priest Paul E Refi, has experienced while worshiping in two sheds, located respectively in the Bea Cukai Complex and the PT. Pelabuhan Indonesia (Pelindo) II Complex in Sukapura, Cilincing, North Jakarta. Opposition to the congregation was led by members of society claiming to be from the PT. Pelindo II Association of Land Owners which expressed its dissatisfaction over plans to establish a church in the vacant plot.

The Sukapura GPdI congregation had held religious worship since 1989 but because they did not have a church activities had been held in members’ houses. Then in 1997, the church and its 513 members were authorised to lease land in the Bea Cukai Complex to construct a semi-permanent building (shed) in which to worship. During their use of the shed, locals did not interfere or protest. In fact, the church participated in many Idul Fitri activities celebrated by their Muslim neighbours. Similarly, during Christmas, their Muslim neighbours gave them Christmas greetings.

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Increasing membership and lack of accommodation led the GPdI committee to act on plans to construct a more permanent and representative church by submitting a request for location to the North Jakarta mayor. The GPdI committee also sought approval from the local community and the subdistrict head.\textsuperscript{261}

Problems arose when the church’s lease on the land expired and all religious activities were moved to the PT. Pelindo II complex, in a vacant plot that the government had already set aside for the church. The land was not inhabited and was not listed as part of the local community association unit. Despite this, the move sparked strong reaction from those who felt that they owned the land. Whenever the congregation prepared for religious worship, demonstrations were held, more often than not causing physical and psychological harm to the congregation.\textsuperscript{262}

In response to the situation, the church made several efforts to ensure that religious activities, a right of all citizens, could continue. They tried taking a persuasive approach to both the local residents and the relevant apparatus. For instance they attended meetings with the government apparatus and Sukapura citizens, with the Cilincing district council, and even had an audience with the mayor of North Jakarta. In fact, during their audience with the mayor, the subdistrict head of Sukapura, who held authority over the region, stated that there were no issues with the proposed location for the construction of the church. However, this was rejected by nearly all the


heads of the community association units in the area.\(^\text{263}\)

Then the head of the government subdivision for construction and landscaping ordered all construction work to stop. Attempts to secure local police protection through the Defenders of Religious Freedom Coalition were also less than helpful. Although police were present at several of the demonstrations, they took no action to protect or guarantee that the congregation could worship. The passive attitude of police allowed the attackers the opportunity to go further and to ban worship. Then accusations emerged that Sukapura GPdI had disrupted public law and order. In a joint declaration of August 12, for instance, local figures ordered that Sukapura GPdI worship from their houses and not on the church land.\(^\text{264}\)

2. Jatibening Indah Indonesian Christian Church

The Jatibening Indah Indonesian Christian Church (GKI) was closed down after the Forum for Religious Harmony (FKUB) of Bekasi ordered that it be shut. The order was issued after complaints from the local heads of the community and neighbourhood association units which insinuated that houses were being used as places of worship. On the basis of these complaints, FKUB urged the Bekasi mayor to act firmly and close the church located in Jalan Batam Blok B no. 135 Komplek AL Jatibening Indah Rt 006/10, Jatibening, Pondok Gede, Bekasi, West Java.

In a letter of May 31, 2007, FKUB detailed the various procedures they had undertaken before arriving at the


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conclusion to close down the church, which included thorough research and reviews, seeking input from the local community, consideration of Bekasi’s various regulations on houses of worship, consideration of the two ministers’ joint regulation of 2006 on houses of worship, and finally, consideration of the local community’s strong and widespread rejection of the use of houses as places to worship. It was for these reasons that FKUB asked that Jatibening Indah GKI be closed.265

Several weeks later, on July 26, the same order was issued by the Pondok Gede district. However unlike the FKUB order, this order, signed by Aang Sumarna, district head of Pondok Gede, was based on a meeting several days earlier in which representatives from the Jatibening Indah CKI were present. According to the order, church representatives, local figures and members of the neighbourhood association units agreed not to use ordinary houses as churches. In the attachment, one part of the agreement read, “The Indonesian Christian Church Board is prepared to shut down and stop all activities related to religious service, in light of the fact that the building that they are using for such activities is a residential house”. The building’s status, according to the district head, meant that there was no reason for the church to continue religious activities there. If they continued to use it for religious worship, they would be in violation of the agreement.

However three representatives of GKI admitted that they had been pressured to sign the agreement in the meeting, and later a committee from the Jatibening

Indah GKI Board wrote in a letter to the Bekasi mayor that there was a third party that disturbed the atmosphere and were there to make a personal profit. Jatibening Indah GKI was established on January 8, 2003. Before its establishment, the congregation had been part of the congregation of Rawamungun GKI. In 1989 members left the Rawamungun GKI congregation, and from that time until formally becoming Jatibening Indah GKI religious activities ran safely and orderly without any protest from local citizens.266

The trigger to all the congregation’s problems occurred in 2004, when there was internal conflict between church management and one member, Jonathan O Marthen. The initial issue was over the status of the church, which even today has no valid permit to be used as a house of worship. Yet the real cause of the problem was that the house used for worship was the object of a lawsuit between GKI and Jonathan. According to the GKI committee, the house was the legal property of Jatibening Indah GKI because they had bought it in accordance with legal regulations. Jonathan however felt that the house was still his, because the sales contract was signed by his wife.267

The lawsuit over the sales contract then became a problem over status. The GKI Board argued that Jonathan intentionally worsened the issue by turning the locals, who had previously had no problems, against the church. Jonathan, they continued, often claimed to be the manager of GKI, including when meeting with district,

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subdistrict and community elements. “All correspondence concerning this house of worship, from the government, the Pondok Gede district, the Jatibening subdistrict, and community and neighbourhood association units 10 and 06, never reached the GKI Board. All were sent to Jonathan O Marthen, when in fact he was not the manager of Jatibening GKI. The board was very shocked to find that they knew nothing about the issues going on between the locals and Jonathan O Marthen, and knew nothing of the pressure from the local community and neighbourhood association units to the GKI board to immediately stop all religious activities,” Marthen Manefe, head of the advocacy team, explained.268

The GKI board, which represents a congregation of about 230 people, is well aware that the place they use for worship is not ideal nor appropriate. They have been on the look for an appropriate place since 2003. “But the board’s efforts have always been hampered by Jonathan in a variety of ways. In fact, the board had been reported to police on suspicion of embezzling the congregation’s money in their efforts to find land,” the team explained. According to Untari, a seminary student at Jatibening GKI, Jonathan is currently being punished spiritually, banned from all church activities in order that he reflect upon the errors he has made.

Aside from these issues, Jatibening GKI continues efforts to ensure they can still worship. For instance, they have requested legal protection from the mayor of Bekasi so that religious activities can run as per normal until a permanent place is found. Further action was taken by asking the government to help the church find public or

social land suitable for construction of a church and to provide the relevant permits. They hope these efforts are the best solution both for Jatibening citizens and the church community.269

This discussion of the two cases above (Sukapura Immanuel GDPI and Jatibening Indah GKI), highlights the following issues; first, houses of worship are indeed a complex issue, because their construction represents the realm of competition between religious adherents. The government legislation through the joint regulations of the Minister of Internal Affairs and the Minister for Religious Affairs Numbers 8 and 9 of 2006 were a step forward, however in practice, the Indonesian government, especially local government, still bows down to the demands of the majority. This is more than apparent in the indifferent attitude of government to guaranteeing the freedom of all citizens to worship and to construct houses of worship in accordance with their needs.

Secondly, the Indonesian government’s recognition of six formal religions in Indonesia is on the verge of being formal recognition, but apparently the central government is not prepared for all the consequences that entails.

Third, once again, the Indonesian government is still clearly unable to completely guarantee the civil rights of its citizens, especially of minority groups and especially when it concerns the right to religious freedom.

Fourth, the state apparatus has to date failed to show any ability to display neutrality in resolving religious cases.

As a result of this bias in government, in all cases

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of inter-religious violence, the government sides with the group that brings the most political benefit to the ruling elite. This being the case, it is no surprise that inter-religious issues are always resolved based on political concerns and interests.

3. Churches in Cimahi, Bandung, West Java

a. Dayeuh Kolot Pasundan Christian Church

The Christian community in Dayeuh Kolot, Bandung, West Java, was also subject to attacks and destruction of property. Seeds of incompatibility between the Muslim and Christian communities in the region have long been planted, especially after several groups refused to keep the peace provoking hostilities with accusations of missionary activities and apostasy. “Several groups” here refers to the Anti-Apostasy Movement Alliance (AGAP) and the Anti Apostasy Front (BAP). Since their establishment, these organisations have been aimed at fighting all indications of “apostasy” which, according to both AGAP and BAP, threatens the existence of the Muslim community in Cimahi.

Since 2005, the confrontation initiated by these two groups has been excessive. Besides churches, these groups have been hostile towards the entire Christian community, even when they have been worshiping. Moreover, these two groups have received justification from government institutes. Attacks escalated significantly after the chief of Padalarang police, the district head of Dayeuh Kolot, and the regent of Bandung issued a letter of appeal recommending stopping the worship and all activities
of the Dayeuh Kolot Church community.\textsuperscript{270} The letter from the Padalarang police chief, signed by Police Chief Commissioner Asep Gunawan was released on August 6, 2005. The letter was addressed to Priest Danny L Lanthu, Priest Immanuel, Priest Sibarani, Priest Henok Hermintoyo, Priest Yacobus Siagian, and Priest Theo. The appeal urged a temporary stop to all religious activities of the Dayeuh Kolot Pasundan Church in particular, and of churches in the Cimahi complex in general.\textsuperscript{271} Intimidation, which had previously only occurred in the forms of demonstrations and letters of warning, now took on new forms, including besieging, destruction and interrupting religious activities. Church leaders were also forced to sign a statement agreeing to stop all worship.\textsuperscript{272}

On August 21, 2005, AGAP and BAP mobilised their followers to attack the church. They demanded all religious activities be stopped. They argued that the church being used for such activities did not have authorisation from the local government. Eventually the district council, especially the district head and chief of Dayeuh Kolot police, acceded to their demands, and the Christian community in Dayeuh Kolot had no choice but to temporarily stop all forms of


worship, because not one government institution would guarantee their right to worship.\textsuperscript{273}

On August 22, after the AGAP and BAP attack of the church congregation, a meeting involving the district council, Sukabirus Church management, district military headquarters, Dayeuh Kolot police, the head of the Religious Affairs Office, the head of MUI, the village head and several community figures decided that for the meantime all activities of the Dayeuh Kolot Pasundan Church would be stopped for an unknown period of time that would be decided upon in a consultation to be held in the district of Ngamprah. Not long after, on August 24, the district head, chief of police and district military commander of Dayeuh Kolot issued an Order of Closure for the Dayeuh Kolot Pasundan Christian Church.\textsuperscript{274} It was then followed by the letter of appeal on August 31 from the district head of Ketapang (Harry Waryono) Number: 452.2/3.16/Dantratib on Banning the Use of Residential Houses as Places of Worship.\textsuperscript{275}

Unfortunately the regent of Bandung, the figure responsible for religious life, acted counterproductively in this case, by sending letter Number: 4522/1829/Kesbang on September 3 to 12 churches in Bandung in relation to the ban on using residential houses for worship.\textsuperscript{276}

Violence became more of a concern, especially after a serious attack on November 18, 2007. Those involved

\textsuperscript{273} Jakarta LBH & Kontras, \textit{Investigative Report}, p. 60.
\textsuperscript{276} Jakarta LBH & Kontras, \textit{Investigative Report}, p. 61.
were none other than AGAP and BAP. The incident led to destruction of buildings, pews, tables, chairs, doors, an organ, the cross, a variety of inventories and other church property. Police were involved in the intimidation, as proven by the words they directed at the priests of the Cimahi Permata Complex at the beginning of their sealing of the church, “Just sign this statement if you want to stop the crowds running amok outside.”

On November 23, the district head of Dayeuh Kolot, Tata Irawan, issued a letter of appeal on banning the use of buildings as places of worship.

Then, on December 30, 2007, the Dayeuh Kolot Christian Church was once again attacked for not having authorisation. The AGAP and BAP attack did not go so far as to physically damage the church building, but the psychological pressure and trauma they caused was far beyond limits, to the extent that the Dayeuh Kolot leadership decided to stop religious activities. Another actor involved in the closure of the church was the Bandung branch of FPI, but they only constituted a small number.

After the attack, the number of Dayeuh Kolot church members decreased drastically. If before there were about 200 members, after the terror and intimidation only 20 or so remained. AGAP and BAP violence involved,

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amongst other things, slapping, threatening, shouting at, abusing, and insulting church members.

\section*{Cimahi Complex Church}

From 1992-2007, violence haunted a number of churches in the Cimahi Permata Complex. Eight separate instances involving violence, eviction, cessation and banning of worship occurred. Initially, in mid 1992, there was a violent outbreak when the Christian community there started to build the foundations for a church. Locals, who had disagreed with the construction from the outset, immediately destroyed the foundations and then demanded that all Christian activities in the region be brought to a stop. For almost three years, the congregation used a house to worship in. However, in 1995, violence struck again when protesters collected about 800 signatures in a petition to oppose the construction of the Imanuel Church. All church activities were then stopped.281

On July 12, 1999, residents of Rawa Pojok Pakusrakan village violently attacked and almost burnt down the “house” at Priest Hermintoyo’s home that the congregation was using as a church. Three months later, on October 25, the district council, village head, community and neighbourhood association unit heads and Padalarang police sealed by force this “house”-turned-church.282

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On March 12, 2005, the heads of the neighbourhood units 11/14, 04/05 and 04/06 issued a joint statement of objection which asked that the activities held in Hermintoyo’s “house” be stopped immediately. The statement also included a statement of termination in regards to the previous statement of agreement that gave authorisation for religious activities to be held in Hermintoyo’s house.283

On July 5, the communication forum of mosque boards in the Permata Cimahi area announced a discussion on “The Legal Aspects of Protecting Inter-Religious Harmony” through letter number 007/FSDK/VII/2005. The discussion invited Rizal Fadhilah (legal advocate, Bandung) and Hans Yuliana to appear as keynote speakers.

On July 17, the head and secretary of neighbourhood unit 06 issued a letter of appeal to house owners living in Blok L. No. 8-10 Rt. 006/14 to stop using their houses as places of worship. The letter was based on dissatisfaction of locals, who felt disturbed by the religious activities that involved a large number of people and that had not received authorisation from the local government.284

Then, on July 31, FUUI held a large sermon and meeting at the al-Jihad mosque. Rizal Fadhilah spoke, and the village head was present. Also invited were pesantren leaders from the region around the Cimahi Permata Complex and FPI members from Ngamprah. After the


meeting, as if under command the crowd immediately headed towards Hermintoyo’s “house” at Blok Q 5 No. 24 RT. 1/14. Hermintoyo met them immediately, and they demanded that all religious activities be stopped. Hermintoyo refused to do so, reasoning that he had previously obtained a permit from the Padalarang police chief, Police Chief Commissioner Gurning.  

The crowd did not accept this and then went in search of Priest Theo’s house, but found no one home. They headed for Priest Immanuel Gunawan’s house in Blok Zamrud RW 12 and Priest Yakobus Siagian house. But again, they found that both were not present.

In response to the increasing uncertainty of the situation, on August 2 the priests of Cimahi Complex sent six letters of complaint (representing each of the six churches) to Padalarang and Bandung police, which were promptly ignored. Ironically, on August 6 the chief of Padalarang police issued letter number B/69/VIII/2005/Polsek to Danny L Lanthu, Priest Immanuel, Priest Sibarani, Priest Henok Hermintoyo, Priest Yacobus Siagian, and Priest Theo to urge them to temporarily stop all religious activities specifically at Dayeuh Kolot Pasundan Church, and more generally at all churches in the Cimahi Complex.

Throughout this period the Christian community of the Cimahi Complex was subject to a variety of

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intimidation and terrorising. It peaked in August 14, 2005 at around 09.00, when AGAP led by A Mu’min approached the Anglican church led by Priest M Sibarani. The crowd demanded that mass and other religious activities be stopped. Then AGAP leaders forced their way into the church and handed a draft agreement to the leaders of the church demanding that they sign it. After obtaining the signatures, the crowd headed to the nearby Pentecostal church led by Priest Henok Hermintoyo. They also forced their way in and demanded that mass and religious activities be stopped.\textsuperscript{287} Using the same method, the priest was also forced to sign the draft agreement to stop worship.

The crowd approached another church, the Indonesian Christian Church led by Priest Kurdiyanto Harsono. As no members of the congregation were present, the crowd vandalised the church, removing the pulpit and cross. Eventually, under threat of further AGAP violence and terror, these three priests signed the draft in agreement to stop all church activities and in confession that residential buildings and activities had been used to spread Christianity to non-Christians in West Java. This was reinforced with the release of the letter of appeal dated August 31, 2005 from the district head of Ketapang (Harry Waryono) Number: 452.2/3.16/Dantratib on banning the use of houses as places of worship.\textsuperscript{288}

In July 2007, the Pentecostal church was surprised once again by an AGAP attack involving erection of banners and graffiti on the church walls or on walls around the

\textsuperscript{287} LBH Jakarta & Kontras, \textit{Investigative Report}, p. 61.
Cimahi housing complex. The graffiti read “Jesus is a Tramp”, “Jesus is not God, He’s a Lunatic” amongst other things.289

The various incidences against church congregations in both Dayeuh Kolot and the Cimahi Complex, indicate that government apparatus, institutions, regional officials, and even the lowliest of officials (village heads, and community and neighbourhood association unit heads) acted discriminatively in relation to ensuring the freedom of these congregations to worship. In fact, there were even indications that extortion occurred in organising church building permits.

289 LBH Jakarta & Kontras, Investigative Report, p. 56.
CONCLUSION

Implementation of article 18 of the ICCPR on religious freedom in Indonesia has faced some serious obstacles. Constitutional and legislative developments intended to guarantee freedom of religion or belief are still implemented inconsistently.

This research has highlighted at least three trends that contradict implementation of legislation guaranteeing freedom of religion and belief. First, there is a trend whereby condemnation of leaders of religious sects or faiths considered to deviate from mainstream religious understandings turns into accusations of deviance or religious blasphemy based on article 156a of the Criminal Code. These leaders are tried for violating this article and given varying verdicts, up to a maximum five year jail sentence.

Secondly, there has been a trend in local or central government actions to formally restrict, ban or shut down certain groups who are considered deviant or guilty of religious defamation. These so-considered deviant groups are then officially outlawed.
The third trend can be seen in the forced closure or sealing of houses of worship, and interruption of the religious practices of religious minorities.

It is pertinent to note that, when compared to the situation before ratification of the ICCPR, there has been no apparent progression in guaranteeing the right of religious freedom in Indonesia. Imprisonment, restrictions, cancellation of activities, even outlawing of specific sects has only increased.

These trends have occurred for several reasons, firstly, because legal regulations allow for the monitoring of faiths and religious sects. Monitoring may culminate in submission of a recommendation to the government via the public prosecutors office or the attorney general. It is then left to the relevant legal institutions, namely all government levels of Pakem (The Team for Monitoring Mystical Beliefs in Society) and Bakor Pakem (The Coordinating Board for Monitoring Mystical Beliefs in Society), to decide the fate of the sect or faith involved.

In this sense the government has at its disposal a legal apparatus through which it may take action against those faiths/sects deemed deviant by the majority (whether of the same religion or different), often in the form of restricting or outright banning their activities. This is clearly akin to an authoritarian system of governance in which the government monitors society, including religion and faith, the most private of aspects held in deep in peoples’ hearts and minds. In such an atmosphere legislation can easily be distorted or bent in order to monitor groups that critique or disagree with the government.

Lia Eden’s “divine revelation” that recently sent her to jail for the second time contained a sharp critique of religion, Susilo Bambang Yudoyono (SBY)’s presidency and police
operating methods. This may well have made the police more resolute in detaining Lia Eden’s community on the grounds of religious defamation.

In practice, the existence of these institutions —Pakem and Bakor Pakem— contradicts article 18 of the ICCPR in so far as they handle affairs concerning faith and belief, because the right to freedom of belief is a non-derogable right – a right that cannot be restricted – and consequently the government can not interfere, let alone ban or jail religious adherents.

This is different, for instance, to those rights that concern religious expression that affects others, such as construction of houses of worship and religiously motivated attacks against others. In so far as faith concerns social relations, the government does need to regulate it with the intention of protecting all parties equally, particularly minorities, because this is a derogable right. The joint regulations between the Minister for Internal Affairs and the Minister of Religious Affairs No. 8 and 9 of 2006, for instance, regulate the responsibility of local governments, from the provincial level to the district level, to maintain harmony and interfaith relations and to regulate establishment of houses of worship.

Thus, implementation of article 18 of the ICCPR requires clear differentiation between non-derogable and derogable rights, from the legal concepts themselves right through to their implementation.

Second, there are still regulations or articles in legislation which in principle contradict article 18 of the ICCPR. For example, Law No. 1/PNPS/1965, on which article 156a of the Criminal Code was based, is actually intended to protect mainstream, or primary, religions from interpretations and practices that they consider deviant, or from interpretations and practices that resemble those of the mainstream but are considered deviant. However it is frequently used to jail
the leaders or members of so-considered deviant sects or religions, a trend which clearly contradicts article 18 of the ICCPR because religious choice is, as mentioned above, a non-derogable right.

To date the Indonesian government has made no serious effort to revise or harmonise Pakem and Bakor Pakem, or even Law No. 1 PNPS/1965 with other legislation in implementation of article 18 of the ICCPR and article 28 of the 1945 constitution. Legally restricting religious freedom is mentioned in article 12 verse 3 of the ICCPR with the intention to protect public order, health, morals or the rights and freedoms of others, and has been adopted into the 1945 constitution in article 28J verse 2, in consideration of “morality, religious values, security, and public order in a democratic society”. The possibility of restricting religious freedom is irrelevant to the existence of Pakem, Bakor-Pakem and Law No. 1 PNPS/1965 because the regulations stated in this law do not fall under any of those categories. Implementation of article 18 of the ICCPR and thus article 28 of the 1945 constitution requires that these instruments restricting religious freedom be immediately revised, corrected and synchronised.

In addition, as discussed in chapter IV, imprisonment based on article 156a of the Criminal Code and use of Pakem, Bakor-Pakem or government legislation such as declarations or joint decrees to restrict, ban or imprison groups accused of deviance and religious defamation, are very much influenced by mass pressure from specific groups. Ironically, the state and government apparatus has yet to prove that they have the power to protect and guarantee the rights of minority groups, both minorities within one particular religion (intra-

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1 The 1945 Constitution of the Republic of Indonesia
religious) or religious minorities in general (inter-religious). This is a direct result of misunderstandings over the state’s responsibility to be neutral and objective in protecting the rights of its citizens, and the poor commitment of government institutions to guarantee, protect and create peaceful inter-faith relations.

This becomes a serious issue when it results in the state or government neglecting their duties to protect and guarantee citizens’ rights to freedom of religion or belief. This also implies failure to implement article 18 of the ICCPR by omission.

The third trend is the increasingly powerful roles the Indonesian Council of Ulama (Majlis Ulama Indonesia – MUI) and the Department of Religious Affairs play in shaping public opinion over “deviance”, in influencing local and central government policy making, in influencing Pakem and Bakor Pakem, and even in influencing court processes and the sentencing of so-considered deviant groups. In every case involving violence, MUI’s central and local branches always trigger violent outbreaks against minority groups through their fatwa of deviance or through their provision of expert witnesses to testify against groups or individuals. To date, Pakem, Bakor Pakem, and central and local governments have tended to side more with MUI and the Department of Religious Affairs.

It may be fitting that MUI and the Department of Religious Affairs, as representatives of a certain Islamic perspective, make their general opinion known, including in regards to the deviance of other groups, so long as these opinions are then treated on par with those of other groups. It becomes problematic when the government and society frequently hold these two institutes’ perspectives above all others as the only correct stance, and then adopt them as bases on which to
formulate formal decrees, government policies or legal cases. It is similarly problematic that the masses always use MUI’s *fatwa* as a guide that legitimises their pressuring, threatening and attacking of minority groups.

In this matter the government and state apparatus must act to protect minority groups from deviation and the resulting consequences that include attacks, violence and banning or outlawing. Government siding with those whose only consideration is to restrict, ban or jail such minority groups can result in financial loss or violation of the rights of those groups banned or labelled deviant for good. This is nothing other than complete violation of article 18 of the ICCPR.

This examination has also revealed that mass sentiment, the attitudes of MUI and the Department of Religious Affairs, and the weakness of the state apparatus stems from the unresolved or still existing discrepancy between human rights values, particularly as expressed in article 18 of the ICCPR, and Islamic understandings, and their implementation in Indonesian government policies. The lack of any effort to harmonise these rules and regulations and the release of various declarations and joint decrees which restrict and ban religious sects indicate a lack of mutual understanding between the state’s constitutional obligations and the state apparatus’ understandings of these obligations. This is similarly evidenced by the state apparatus’ failure to protect groups accused of deviance and religious defamation from physical attack by the masses.

Meanwhile, MUI’s involvement, the state’s stance, and even those legal experts who render MUI *fatwa* as the only true reference in understanding Islam, are all factors indicating that there are significant discrepancies in understanding Islam as a faith and the constitutional duty to protect and
guarantee the rights of citizens to religious freedom. A large part of the Muslim community still considers that protection and guarantees of religious freedom in some circumstances contradict Islamic doctrine. Thus in many cases they ask that the state protect their claims about what is true Islamic doctrine over the rights of others. On the other hand, the government apparatus lacks the independence to guarantee minority rights in the Indonesian nation-state based on Pancasila and the 1945 constitution.

This last point raises a much more serious problem: is religion and religiosity a private-individual problem or a collective-communal issue? If there are, indeed, private and public realms in religion, the question arises, which aspects are private and which are public? This problem has been debated at length for quite some time, both in religious studies and discussions over human rights. Yet despite such long debate, there remains no firm and definite answer that satisfies all parties. Accusations of deviance or religious defamation are just one part of this vagueness. In practice, that which is considered private must still surrender to community interests. The private no longer exists. This book has illustrated quite explicitly that in the name of public and community interests, the private can be considered deviant and can be prosecuted. This is the largest challenge to enforcing human rights concerning freedom of religion or belief in Indonesia.

**RECOMMENDATIONS**

Reflecting on the problems above shows quite clearly that human rights activists have their work cut out for them, particularly in initiating and monitoring implementation of article 18 of the ICCPR on freedom of religion or belief. The
steps detailed below deserve consideration:

1. The government should fast-track concrete and measured implementation of article 18 of the ICCPR in Indonesia’s Human Rights National Action Plan. The Indonesian government has indeed already devised the Human Rights National Action Plan, but its success is difficult to measure. Several immediate priorities include harmonisation between the contents of specific legal regulations and article 18 of the ICCPR (also detailed in article 18 of the 1945 constitution). This is crucial as State Parties to the ICCPR are obliged to review those regulations considered to contradict the principles of the covenant.

2. It is important to increase the knowledge of the government apparatus as to its duty and function to protect and guarantee citizens’ religious freedom. It is of high priority that the government, particularly the law enforcement apparatus, be educated in the various issues raised in this book. The government must also immediately publish a reference guide detailing the duties of the law enforcement apparatus. This is necessary because the government, specifically law enforcement, seems afraid to protect citizens, preferring instead to wait for MUI to release a “fatwa”, even though MUI most definitely is not representative of all religious groups in Indonesia. This makes the government appear as if it lacks confidence in resolving human rights issues concerning religion and faith.

3. Politically, the Indonesian Government needs to reconsider the rather significant role of MUI in a number of violations of article 18 of the ICCPR. In addition, the government must treat and position MUI and MUI members respectively as a mass organisation and as
citizens in general who have the right to express their own opinions, religion and faith, but not as an institution or people with the monopoly on truth, or as a source for central government decisions. Awarding MUI with such a privileged position could potentially create a religious power that could control and monopolise truth in all aspects of national and social life. In a democratic country, giving the opportunity to one religious group to monopolise truth threatens the very core of democracy itself.

4. The government must urge tertiary institutions and other educational institutions to compile coursework materials for all levels specifically addressing freedom of religion and belief as it has come to the forefront of late, and the situation only seems to be getting worse. It is important that all students understand the principle issues so that they do not become prey to antireligious freedom groups.

5. It is also important that the government involve Islamic educational institutions and Islamic mass organisations to, both individually and in cooperation, undertake intensive studies on Islam and implementation of article 18 of the ICCPR. The product of such research could well strengthen and accelerate the process of democratisation in Indonesia.[]
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