

EXECUTIVE SUMMARY

BARGAINING FREEDOM

A Decade of Monitoring Freedom of Religion or Belief
Wahid Foundation



Supported By :



*Title: Executive Summary Bargaining Freedom:
A Decade of Monitoring Freedom of Religion
or Belief Wahid Foundation*

Writer :
Alamsyah M. Djafar

Proofreader :
Anuri Furqon

Translated by :
Utari Widura

Design and layout :
Rifky Fadly Akbar

Dimension :
21 x 29.7 cm

Published by Wahid Foundation in July 2020
Address of WAHID Foundation
Jl. Taman Amir Hamzah No. 8 Jakarta 10320
Telp. 021-3928233 / 3145671
Fax. 021-3928250
E-mail: info@wahidinstitute.org
Website: www.wahidfoundation.org

ABSTRACT

This study presents data and an analysis of a decade of Wahid Foundation's Freedom of Religion or Belief Reports and answers the questions of why Religious Freedom Violations by state and non-state actors still occur frequently and why the steps taken by the State have not been successful enough to resolve the violations.

Based on the data collected, this study shows that Indonesia still faces quite serious challenges in fulfilling one of the Human Rights: freedom of religion or belief. This situation is highly influenced by the State's position in determining whether or not a religion or a belief in Indonesia is deviant, which is a position that has not changed since 1965. This position is instead reinforced by the Constitutional Court's Decision on Law No. 1/PNPS/ 1965 in 2010 and three other Constitutional Court decisions on three material testing submissions of the law.

The above argument presupposes that state institutions, particularly the government, are in a central position. The fulfillment and the guarantee of the right to freedom of religion or belief are not only related to the willingness and capacity of the government, but are often also influenced by the support of mainstream non-state actors. Amid the complexity of the issue, this report recommends the government take a number of strategic measures that are in line with the international instrument recommendations, including the facilitation of problematic permits for places of worship, the imposition of a moratorium on the religious blasphemy law article, and the criminalization of hate speech cases.

INTRODUCTION

Why violations of freedom of religion or belief in Indonesia have not diminished is an important question that continues to be evaluated in a number of studies and reports by national and international monitoring institutions of freedom of religion or belief. This trend is also reflected in the reports of state institutions in Indonesia (Setara Institute, 2019; BPS, 2019; USCIRF, 2019; Wahid Foundation, 2018).

In order to find the answer, research studies and reports usually examine and analyze the causal factors. With those, solutions and strategic measures are formulated. The analyses also observe how the normative framework guarantees the right to freedom of religion or belief in reality.

In terms of the role of actors, there are at least three approaches on how to deal with violations of freedom of religion or belief: the role of the state (state-centered); community-centered role, and; the role of the state and society (state and society centered).

The first approach believes that the role and power of the state, including the government, has a great influence in overcoming and preventing various violations. Countries with all their instruments become institutions that should be responsible (Hwang, 2011; Ibrahim, 2019; Ropi, 2017; Suryana, 2020).

Unfortunately, in the cases of many countries, the state and government institutions often become a source of problems due to the ideology and policies that they adopt (Menchik, 2014; McCoy, 2013; Bouchier, 2019; Fenton, 2016; Grim & Finke, 2006). Because the state is not so reliable, the role of civil society is central to this second approach. Communities have capital and social mechanisms to prevent and overcome violent and non-violent conflicts, including respect for the right to freedom of religion or belief (Miichi & Kayane, 2019; Mietzner, Muhtadi, & Halida, 2018).

If the first and second approaches seem to be conflicting, the third approach actually sees these two institutions as interrelated and inter-influential. The guarantee of freedom of religion or belief can be fulfilled when there is a strengthening of positive roles and interactions between the two gigantic institutions (Fealy, 2016; Sumaktoyo, 2019).

Meanwhile there are two approaches to answer what strategic instruments are used to prevent and resolve violations: legal instruments and social instruments. The first approach believes that the right and fair law becomes the main instrument for the solution of various conflicts and differences in society (Lerner, 2013; Bielefeldt, 2013). In fact, although the law guarantees the right to freedom of religion or belief, in practice, violations continue to occur even in the name of the law. Therefore, the second approach looks at the important role of social capital and socio-cultural mechanisms in preventing and resolving conflicts (Bräuchler, 2009; Sullivan, 2005; Putnam, Leonardi, & Nonetti, 1993; Qurtuby, 2012; Kirk, Stein, & Fisher, 2018) .

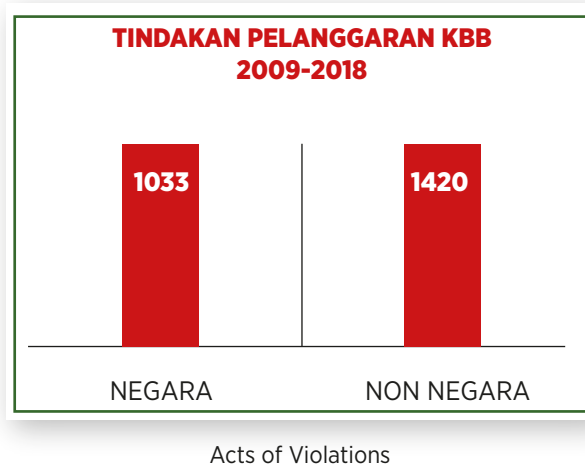
This study argues that the state-community relations approach is the most strategic approach to reducing violations of freedom of religion or belief. This increase presupposes that the state and the government are committed to fulfilling the right to freedom of religion or belief. This commitment can be seen by the extent to which the state has tried to reduce and resolve violation cases. At the same time, this view also assumes that the state's attitude is highly influenced by the support and attitude of civil society.

The Wahid Foundation's A Decade of Freedom of Religion or Belief Report (2009-2018) also reveals this challenge. The findings in this study are based on a review of the ten annual Freedom of Religion or Belief reports. This study, using content analysis, examines the ten documents. Furthermore, to compile and classify data over a decade, this study first establishes the types of violations and good practices based on the chosen conceptual framework, and conducts an analysis of these findings

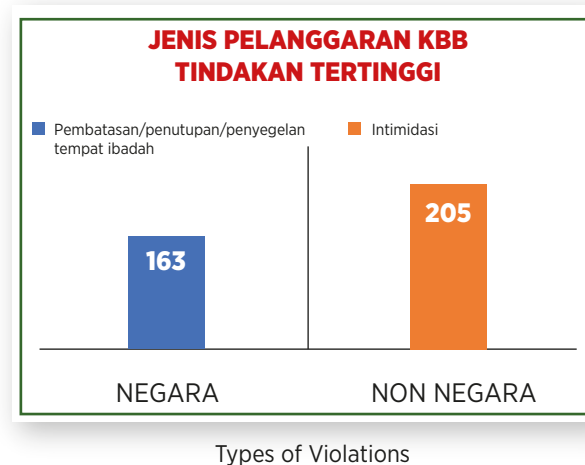
This study fills a gap in the research on freedom of religion or belief monitoring and reporting using an event-based approach in Indonesia over a period of one decade. The main findings from this decade can disclose the general pattern of how violations and good practices occur.

FINDINGS

Chart 1
Number of Violations of Freedom
of Religion or Belief during 2009-2018



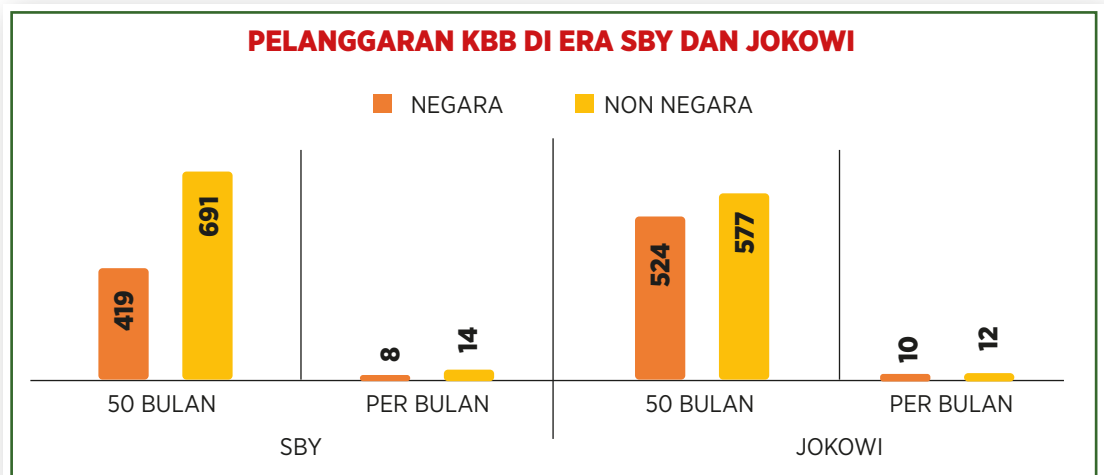
1. In 120 months, Indonesia faced a total of 1,420 non-state violations or an average of 12 acts per month and 1,033 state violations or an average of 9 acts per month. The top types of violations by the state are "restriction/closure/sealing of places of worship" (163 acts) and "intimidation" by non-state actors (205 acts).



2. The settlement of cases of discrimination and violence against minority groups such as JAI, Shia Sampang, Gafatar, hundreds of churches, and groups accused of heresy have not made significant progress. Likewise with the revision or revocation of discriminatory regulations at the central and regional levels. Until now, most of these regulations have not been revoked or amended.

FINDINGS

Chart 2
Violations of Freedom of Religion
or Belief during the Eras of SBY and Jokowi

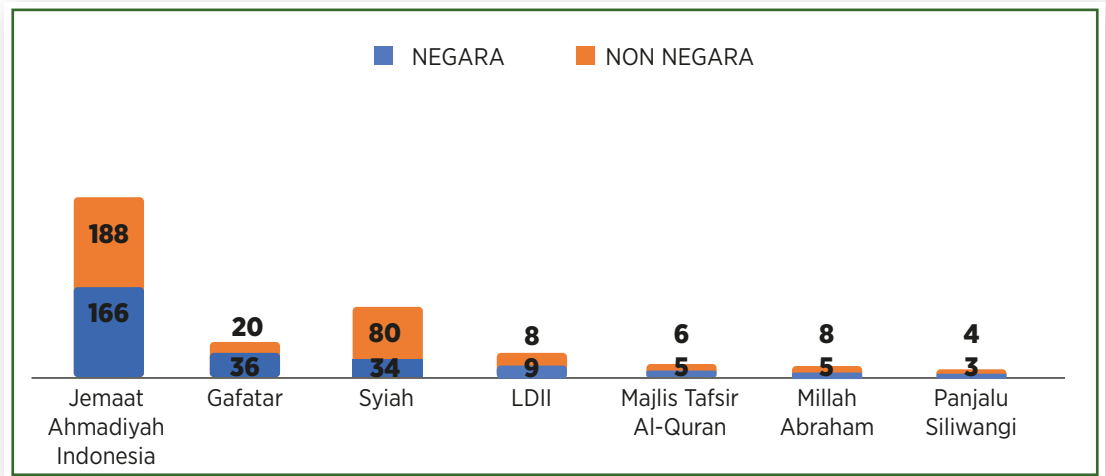


3. The number of non-state violations was less during Jokowi's term than SBY's term. However, the number of state violations was smaller during SBY's term, when compared to Jokowi's term. Jokowi's administration encountered 577 non-state violations with an average of 12 acts per month while SBY's had a total of 691 acts with an average of 14 acts monthly. Related to state violations, there were a total of 524 acts with an average of 10 acts per month by state actors during Jokowi's administration, while there were 419 acts during SBY's term.

4. The trend of physical violence is decreasing. In SBY's era, physical attacks came in second with 106 acts. This type of violence came down to sixth place in the Jokowi era with 39 acts. At the same time there was an increasing trend of hate broadcasts. The cases began to increase in 2013 and experienced a peak period in 2017. In the Jokowi era, the number of broadcasts of hatred by non-countries increased one-fold to 104 acts. During the SBY period there were 56 acts. Meanwhile, criminal punishment by non-state actors also increased almost six times, from 11 acts during SBY's era to 69 acts in the Jokowi's era.

FINDINGS

Chart 3
The Seven Victims of the Highest Number of Violations by State and Non-State Actors during 2009-2018



5. The three highest victims of both state and non-state acts were the Indonesian Ahmadiyya Congregation, who experienced 188 non-state acts and 166 state acts; Shia Muslims, who experienced 80 non-state acts and 34 state acts; and the Gafatar group, who experienced 20 non-state acts and 36 state acts. These three groups have been accused of religious heresy. Further, in terms of group actors, there were three prominent actors: the Islamic Defenders Front (Front pembela Islam [FPI]), who committed 153 acts; Indonesian Ulemas Council (Majelis Ulama Indonesia [MUI]), who committed 150 acts; and the Islamic Community Forum (Forum Umat Islam), who committed 40 acts.

6. There are 88 local regulations with the top three issues being labelled as heretical/deviant sects (there are 26 regulations), activity prohibition (there are 16 regulations), and religious competence (there are 11 regulations). A total of 16 regulations were issued at the provincial level and 72 regulations at the city/regent level. The top three provinces enacting the regulations are Aceh, West Java and South Kalimantan. A total of 57 regulations were issued during SBY's term and 31 regulations during Jokowi's term.

7. During 2015-2018, 1,988 practices and acts of tolerance were performed by state and non-state actors. In addition, there were 11 acts of policy advocacy and 44 acts of advocacy of religion/belief. During the era of SBY, a number of good practices emerged in the form of law enforcement and tolerance acts.

ANALYSIS

1. The declining trend in physical violence was influenced by the government's efforts in cases of physical violence. The SBY and Jokowi administrations had uniform views that physical violence was the main concern that must be avoided. Not only because it is against the law and democratic values, but because it tarnishes the good name of all parties, from local governments, the police, to the central government.

2. The downward trend of cases of physical violence on the one hand shows that Indonesian people were trying to abandon the use of physical violence by replacing it with non-physical means of punishment. Unfortunately, the existing discriminatory regulations, notably the PNPS Law and the Electronic Information and Transactions (Informasi dan Transaksi Elektronik [ITE]) Law, generate a great opportunity for the public to punish groups they dislike or hate. The increasing trend of hate speech must also be interpreted as something planned and an indication of there being an active actor.

3. The decline in the number of non-state violations in the Jokowi era was due to the influence of two aspects. First, more active steps were taken by the state in responding to a number of violations of freedom of religion or belief, such as the settlement of the administrative rights of the Shia refugees in Sampang and JAI in Lombok. Second, the rise of good practices that guarantee the right to freedom of religion or belief by the regional heads and local governments such as Bekasi Mayor Rahmat Effendi, Bandung Mayor Ridwan Kamil, Purwakarta Mayor Dedi Mulyani, Manado Mayor Vicky Lumentut, and others. These two analyses display that the state is indeed a key factor.

4. The active involvement of the state in responding to religious issues carries the risk of a potential increase in state violation cases, as has occurred in the Jokowi era. During the Jokowi administration, cases of violations by non-state actors were indeed reduced, but violations by state actors in fact increased compared to the SBY administration. The risk of increasing violations can be influenced by the ideological options of the state and government on issues of freedom of religion or belief. As has occurred in many other countries, Indonesia has also misinterpreted the principles of freedom of religion or belief. One example of this can be seen in the existing policies that preserve interreligious harmony and ignore the rights of religious minority groups.

ANALYSIS

5. The high number of criminal and religious coercion cases indicates that the state has not changed much in its ideological choice to see and position convictions. The state still determines whether a conviction is deviant or not. This ideological choice can be seen through the 2010 Constitutional Court's ruling on the 1965 PNSP Law and the rejection of the three material testing submissions against the law.

6. In the complexity of the issue of freedom of religion or belief, the government can take measures to prevent and handle violations of freedom of religion or belief through legal loopholes. One of them is by no longer using discriminatory regulations. This step can be executed with a limited moratorium on article 156a of the Criminal Code (KUHP). Related to the construction of houses of worship, the local government can take action by issuing permits, as was done in cases of mosque construction in Batuplat, East Nusa Tenggara and in Tolikara, Papua.

7. As illustrated in the development of good practices, the socio-cultural approach that can be seen in good practices by non-state actors can provide alternatives in promoting freedom of religion or belief while preventing various violations. However, their efforts have not been enough to encourage further and broader measures to provide protection and defense to religious minority groups that are considered heretical. In fact, the largest portion of good practices is indeed often done through promotional acts and practices of tolerance, but not for freedom of religious or belief advocacy, law enforcement, or policy advocacy.

STRATEGIES

1. The ideal measure to overcome violations of freedom of religion or belief is to reposition the state's attitude towards religions and beliefs in Indonesia. The state must provide an equal place to the convictions that exist in Indonesia. At the same time, the state must also keep a distance when assessing whether certain convictions are heretical or not, or considered as religions or not. The authority to determine the answer must be from the religious communities themselves or internally decided within the religious communities. This repositioning is subsequently related to how the state interprets religious rights as written in the 1945 Constitution, and the state's attempts to reinterpret the 1965 PNPS Law. This change will further have implications for the existence of other discriminatory religious regulations at the central and regional levels.

2. The government can also take strategic measures and implement various policies so that minority groups are protected and victims of freedom of religion or belief violations receive recovery. These measures and policies can be directed to address at least three crucial issues as illustrated in this report: religious heresy, hate speech, and the construction of houses of worship. The measures are in the form of:

- a. The Indonesian National Police and the Attorney General conduct a moratorium (cease or not use) the law article on religious blasphemy in religious cases.
- b. The central government and local governments facilitate the establishment of houses of worship that are rejected by residents or do not meet the requirements of the Joint Ministerial Regulation (Peraturan Bersama Menteri [PBM]). If there is a rejection at the kelurahan/village level, the regional government can facilitate a committee for the establishment of houses of worship to meet the requirements at the sub-district or regent level.
- c. The Indonesian National Police and the Indonesian Attorney General's Office have improved the handling of hate speech cases by the police by only criminalizing moderate and severe cases as recommended by the international human rights instruments. Moderate cases entail hate speech that may be convicted for targeting individuals and threatening with violence and assault, but not inciting others to act or attack an individual based on the characteristics and identity of the person. Severe cases are those that directly advocate hatred to the public by inciting discrimination, hostility, persecution or violence, including solicitation of war or genocide.

STRATEGIES

3. In carrying out these three strategic measures, the central government and regional governments must always consider the fulfillment and protection of the rights of women and children as vulnerable groups. This report reveals that various violations on religious minority groups have different impacts on women and children than those experienced by men and adults. For example, violence cases arose against Ahmadiyya and Shia during the DKI Jakarta elections. Women particularly become victims in four ways: psychologically, physically, economically and socially. In order to overcome this issue, it requires a sensitive attitude towards the victims, which can be translated by implementing measurable procedures.

4. The government is not only required to be able to overcome violations, but also needs to increase sensitivity to the rights of minorities and vulnerable groups by performing affirmative acts or reasonable measures in order to create conditions in which minorities and vulnerable groups can live according to their norms and beliefs. For example, the government can issue a policy that grants holiday permits for religious minorities to celebrate their holidays even though the government will indeed encounter difficulties in determining the existing religious holidays.

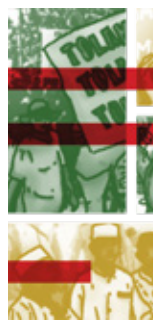
5. The explanation of the measures and options in framing the relationship between religion and the state in Indonesia presupposes that the state and government institutions are in a central position. Violations of freedom of religion or belief can be overcome only with the willingness and support of the state. Nevertheless, of major concern is that the support and willingness of the state are determined by the extent of mainstream support of the public. Changes in the attitude of the state often occur with changes and support from the mainstream. This is when each party, who has a commitment to guarantee the right to freedom of religion and belief in Indonesia, bargains for freedom that the state seeks to limit []

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