

# Human Rights Protection Policy in Freedom Violations of Religion and Belief

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## Abstract

Freedom of religion and belief is one form of human rights that cannot be revoked (non derogable rights). It is protected and guaranteed in various instruments both internationally and nationally, such as Article 18 of the Universal Declaration of Human Rights 1948, Article 19 of the International Covenant on Civil and Political Rights 1966, Article 29 (2) of the 1945 Constitution of the Republic of Indonesia guarantee and Law of the Republic of Indonesia Number 39 Year 1999 on Human Rights. One problem that arises in this context is the frequent occurrence of human rights violations in this field. How safeguards can be carried out in the context of the state and in community involvement.

**Keywords:** freedom of religion and belief, human rights, protection.

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## I. Introduction

Indonesia is a legal state. As a legal state, Indonesia regulates a variety of basic things, fundamentally as a nation in the constitution. One of the basic points is about human rights. The basic rights that everyone has since birth. Indonesia is also a country with a lot of diversity, one of which is diversity in religion and belief. As a legal state and as a democratic country, respect for human rights is one of its fundamental characteristics. Recognition of these human rights can be seen from the constitutional guarantees and existing laws and regulations. Although at a certain level, it still raises some big and basic questions. For example, whether existing legal instruments are available and sufficient to be implemented directly.

One of the interesting things about this matter is that there are no separate laws that regulate this matter as big and important if considering that this religious matter is recognized in the constitution. Another interesting thing is how the state policy in the aspect of human rights protection can be done. Various phenomena that exist explain how the problem of religion and belief still leaves a lot of space to be debated in state relations and how citizens take an attitude in this matter.

In the framework of constitutionality, religious freedom has an important position. A large number of human activities are protected by articles on religious freedom, freedom of expression, and political freedom. Religious freedom emerges as a basic human right in national and international instruments before the development of a systematic concept of protection for civil and political rights.

Freedom of religion in a human rights perspective has a complex position. Often seen as a facilitator for the benefit of human protection as a social being, allowing humans to develop their own intellectual and moral personality, determine attitudes towards natural and supernatural forces and form relationships.<sup>1</sup>

Religious freedom emerged as the most basic human rights in national and international political instruments, long before the development of thinking about systematic protection for civil and political rights. One of the main characteristics of the rule of law is the recognition of human rights. This is at the same time characteristic of a democratic country. Human rights will be seen in the constitution and laws and regulations below.

Freedom of religion finds the heart of the main problem when dealing with state entities. In the current context, a number of issues concerning religious freedom have emerged, ranging from religion-based violence, banning certain teachings, to criminalizing those who are deemed heretical in their religious activities.

Recognition of the existence of freedom in religion in the constitution is contained in Article 29 paragraph 2 of the 1945 Constitution of the Republic of Indonesia.<sup>1</sup> This article contains several important

<sup>1</sup> Adi Sulistiyono, *Kebebasan Beragama dalam Bingkai Hukum*, paper, 2008

phrases such as guaranteeing the state, independence, each resident, embracing their respective religions, worshipping, according to religion, and their beliefs.

If mapped, there will be a number of basic elements, guarantees of the state of independence for each population to embrace religion, to worship according to their religion and beliefs. The meaning of the state guarantees, state guarantees, interpretations of the word independence, embraces their respective religions and the meaning of the word trust. Freedom of religion finds its common ground when dealing with state entities, one important question is what should be done by the state so that religious freedom is not persecuted. How the state manages, regulates, limits or warrants actions that are contrary to religious freedom.

This study seeks to assess whether existing human rights protection guarantees are available and sufficient to explain existing developments and especially assess whether existing instruments are sufficient to resolve the issue of religious freedom, and especially how safeguards can be carried out by the state.

## II. Research Method

This study uses a type of normative research, a legal research conducted by examining library materials or other secondary legal materials. By using a conceptual approach and descriptive analysis.

## III. Results and Discussion

### Human Rights Protection Policy

The general view of human rights to date may still vary. But the recognition of the existence of human rights, everyone acknowledges it. Problems occur when the level of implementation of acceptance is at the state level and how citizens accept it in their daily lives. It is difficult to imagine how human rights can be thought or become an agenda for countries that are at war because of political differences, ethnic differences, religious differences, or because of struggles over economic resources and political power, or even countries that are threatened as failed states: countries fail due to conflict which is protracted and prolonged.

Everyone has the right to freedom of religion or belief, includes freedom to change his religion or belief. So, we have the right to profess our religion freely and to change it, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. As such the freedom to manifest a religion or belief can be limited, so long as the limitation is prescribed by law; necessary and proportionate; and pursues a legitimate aim, namely the interests of public safety; the protection of public order, health or morals; or the protection of the rights and freedoms of others.<sup>2</sup> As information advances and shared awareness as human beings, the recognition of the existence of a universal right that applies to all people gradually receives mutual recognition. Any human being and whatever they have has human equality because of their image as God's creation.

In the context of universality, human rights are human rights. That are the rights of all human beings who are fully equal. We deserve to be granted those rights solely because we are human.<sup>3</sup> Because human rights are universal and not relative, the power of human rights goes beyond the boundaries of religion, culture, ethnicity and language. Human rights are inherent in every human (inalienable right), not because of social status or a legal right granted by the state, but because of dignity as an autonomous human/individual so that he has the right to equality of concern and respect from the state.<sup>4</sup>

The basic concept of human rights according to Franz Magnis Soeseno has two dimensions of thought, namely<sup>5</sup> (1) the dimension of universality, the substance of human rights in essence has a common sense, and is not bound by time and place, is needed by anyone and in any aspect of culture, it becomes a means to express

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<sup>1</sup> Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia: The State guarantees the independence of each resident to embrace his own religion and to worship according to his religion and his beliefs.

<sup>2</sup> Kadarudin, *Pembatasan Hak Kebebasan Beragama dan Berkeyakinan di Indonesia yang Kian Terlupakan*, Jurnal Keadilan Sosial, 3<sup>rd</sup> Edition 2013, Indonesian Legal Resource Centre, Jakarta, p. 23

<sup>3</sup> Mashood A. Baderin, *Hukum Internasional Hak Asasi Manusia dan Hukum Islam*, Komisi Nasional Hak Asasi Manusia 2007, p. 15. This quote is a concise but substantially solid sentence. Humans, and equality of humanity.

<sup>4</sup> Uli Parulian Sihombing, *Hak Atas Kebebasan Beragama/Berkeyakinan di dalam Perspektif HAM: Teori dan Praktek*, paper. November 2013.

<sup>5</sup> Franz Magnis Soeseno in Heru Cipto Handoyo, *Hukum Tata Negara, Kewarganegaraan dan Hak Asasi Manusia*, UAJ Yogyakarta, 2013, p. 271

himself freely in social life, and (2) the dimensions of contextuality, the application of rights in terms of the place where these rights apply. The idea of human rights can be used effectively as long as the place of the idea of rights provides a conducive atmosphere for that.

Human rights are fundamental rights in human dignity and individual values, equality between men and women and equality between large and small nations. Human rights are also applied by not distinguishing race, gender, language or religion. The problem is that not all countries in the world have become participants of the International Human Rights Conventions, in which the articles contain many matters relating to problems that occur in their country.<sup>1</sup>

Seeing developments in general at the international level, human rights are one of the main agendas of nations in the world today, both in the context of civil and political rights as well as economic, social and cultural rights and other rights in the dynamics of their development.

The existence of rights for everyone is universally regulated in the 1948 Universal Declaration of Human Rights (UDHR). In the first paragraph of the Preamble to the Universal Declaration it states that recognition of natural dignity and equal and irrevocable rights of all members of the human family is the basis of freedom, justice and peace in the world. Recognition of inherent dignity and equal rights cannot be revoked from all humans as the basis of freedom, justice and peace in the world.

There are about 29 articles in the UDHR that specify the types of freedom possessed by humans whose implementation must not be based on taste, colour, sex, language, religion, political opinion, national origin, property rights, birth and other statuses. Some important provisions in the UDHR are (i) born free and equal in dignity and rights (Article 1), (ii) entitled to the rights and freedoms written in the Declaration without discriminating on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth (Article 2), (iii) have the right to live, be free and feel safe (Article 3), and (iv) may not be arrested or tortured (Article 9).<sup>2</sup>

Protection of human rights in the context of promoting, respecting and protecting human rights is an important characteristic of a democratic legal state.

Every human being from his birth has free and basic rights. The formation of a state and the implementation of the power of a country must not reduce the meaning or meaning of freedom and human rights. Therefore, protection and respect for human rights is a very important pillar in every country which is called a rule of law.

If in a country human rights are neglected or deliberately violated, the country concerned cannot be called a law state in the real sense.<sup>3</sup> General knowledge or generally accepted about human rights, that human rights are not merely ideas, because the process and interaction get recognition in various legal systems, various state constitutions, recognition in the technical formulation of articles of the Human Rights Law. The history of human rights globally can be described as more than history. HAM is a movement. The starting point of human rights thinking is from developing realities or from events that provide a firmness that the idea of human rights always has a context and background Legal Politics in Developing Legal System.

The long history of human rights is the human struggle for freedom and equality with other human beings. The idea of human rights is not a single idea, can be seen from various important events in various parts of the world that can be considered to have a weight of defence and protection of human existence. The constitutionalism point of view, the reforms that took place in 1998 can be seen as an effort to organize three things related to constitutionalism, namely the protection of human rights, democracy, and law enforcement. Only with a democratic political system can the people have the opportunity to jointly determine the direction of the state and determine the ways that must be taken to solve common problems as a nation.

At the constitutional level there are a number of articles that not only show the importance of religion and related aspects but also how religion and religious life are human rights, such as the right to freedom of religion and worship (Article 28E), and the right to freedom of belief, express thoughts and attitude, according to

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<sup>1</sup> Iin Karita Sakharina, *Pengungsi dan HAM*, Jurnal Hukum Internasional Fakultas Hukum, Universitas Hasanuddin, Vol. 1 No. 2 November 2013, p. 200

<sup>2</sup> *Ibid.*, p. 204

<sup>3</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Sinar Grafika Jakarta, 2010, p. 131-132

his conscience (Article 28E paragraph 2). The culmination of recognition of human rights in the constitution closes with an authoritative and emphatic phrase in Article 28J (1) every person is obliged to respect the human rights of others in an orderly manner in society, nation and state.

Freedom of religion as one of the foundations of the state is also recognized by the 1945 Constitution of the Republic of Indonesia, namely Article 29 paragraph (1) of the state based on the supreme divinity and (2) the state guarantees the independence of each resident to embrace their respective religion and worship according to their religion and that belief. Recognition in the constitution would be enough to show that religion occupies an important position in the life of the state. That means that the national legal system requires protecting diversity in this country. In addition to the context of the constitution, the regulation of the right to religious freedom is also regulated in Law of the Republic of Indonesia No. 39 Year 1999 concerning Human Rights. In general, this Law contains recognition of human rights and basic human freedoms.

In addition to acknowledging the existence of human rights, it also contains the obligations and responsibilities of the government, restrictions and restrictions, women's and children's rights, national human rights commissions, community participation, human rights courts. Recognition of the existence of the right to religious freedom as Article 22 (1) Everyone is free to embrace their respective religion and to worship according to their religion and beliefs, and (2) The state guarantees the freedom of each person to embrace their religion and worship according to their religion and that belief.

It is also important to look at Article 4, that the right to life, the right not to be tortured, the right to personal freedom, mind and conscience, religious rights, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted Based on retroactive law, human rights cannot be reduced under any circumstances and by anyone.

In General, the Right to Religion and Belief are regulated in various instruments, both international instruments of the UDHR and International Covenant on Civil and Political Rights (ICCPR), and National Instruments through the Constitution, as well as legislation, such as Law of the Republic of Indonesia No. 39 Year 1999 and Law of the Republic of Indonesia No. 12 Year 2005 (which is the Ratification of the ICCPR).

In terms of the interrelationship between Instruments internationally can be seen when it began in 1948 with the UDHR, 1965 with the Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1966 with the ICCPR, 1981 with the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, and 1989 with the Convention on the Rights of the Child (CRC). The instruments are all related to the protection of human rights.

Article 18 of the UDHR regulated that every person has the right to freedom of mind, conscience and religion. In this case, including the freedom to change religion or belief, and the freedom to realize religion or belief by teaching it, practicing it, carrying out its worship and obeying it, both alone and together, with other people, publicly or privately.

Article 18 paragraph (1) of the ICCPR regulated that everyone has the right to freedom of thought, conscience and religion. This right includes the freedom to embrace a religion or belief of his own choice, and the freedom to practice his religion and beliefs both individually and together with others, openly or privately, in religious activities, obeying, practicing or teaching them verse (3) Freedom to practicing religion or belief can only be subject to various restrictions determined by law and which are needed to protect safety, order, health or general morals, or to protect the rights and freedoms of others.

In international norms, human rights are the minimum standards for the country. Standards are at least a reference for the international community to conduct evaluations and scoring related to the responsibility of the state in carrying out its duties to respect, protect and fulfil human rights. In this case, human rights are a modern legal concept that clearly distinguishes between State and citizens. This distinction has the easy effect of identifying human rights violations committed by the state, and how the people or citizens can sue them.<sup>1</sup> As a member of the United Nations, Indonesia has ratified at least six important UN instruments on human rights.<sup>2</sup>

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<sup>1</sup> Eko Riyadi and Syarif Nurhidayat (Ed), *Vulnerable Groups: Kajian dan Mekanisme Perlindungannya*, Yogyakarta: Pusham UII, 2012, p. 17-18.

<sup>2</sup> Indonesia has adopted six important international human rights instruments: (i) Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment/CAT, (ii) International Covenant on Civil and Political Rights/ICCPR, (iii) Convention on the Elimination of All Forms of Discrimination against

Meanwhile, as a member of the UN Human Rights Council (HRC) Indonesia also has an obligation to improve human rights protection standards in its territory.

Within the framework of international human rights law, specifically the traditional approach, the state is still the main component involved in the process of ratification and/or adoption of international human rights treaties. Therefore, the responsibility in it is attached, that the state is the subject that must ensure the fulfilment and protection of human rights against citizens. In this context, the UN Treaty Bodies, through various international agreements that bind states, have adopted three state obligations, namely: First, the obligation to protect, secondly, the obligation to promote, and thirdly, the obligation to fulfil.

The obligation to protect human rights means that the state in this case the government must provide guarantees of protection and prevent all forms of violations of human rights, whether carried out by the state or non-state actors, including intolerant masses, militias and/or companies.

The obligation to respect and promote human rights means that the state must issue regulations, policies or regulations that do not conflict with the values, norms and rules of human rights law, while the obligation to fulfil human rights means that the state must take concrete actions, namely allocating budgets, compiling programs, and making policies in the context of guaranteeing the fulfilment of human rights of every citizen can work well without interference and threats from any party.

One concept of human rights which is always formulated in each document is religious freedom. The formulation of freedom of religion and belief or belief is always united with freedom of thought, inner conviction and freedom of belief and belief. Regarding freedom of religion and belief can be seen in international documents such as the UDHR, the ICCPR; and International Covenant on Economic, Social and Cultural Rights ICESCR).

In the context of European society, it can be seen in the European Convention for the Protection of Human Rights and the freedoms of Essential People; in the scope of Southeast Asia, the Declaration on Basic Obligations for the public and the Government in the Association of Southeast Asian Nations (ASEAN); and in the Islamic State the declaration of the Organization of the Islamic Conference (OIC) concerning Islamic Human Rights. The freedom of religion and belief or belief is very broadly regulated in international instruments or documents.

The right to freedom of religion and belief or belief has two different elements, namely forum internym as the core belief in the religion or belief and the external forum as a manifestation of that religion or belief or belief. The issue of religious freedom besides being listed in the Universal Declaration of Human Rights, is also found in various historical documents on human rights, such as the document Rights of Man France (1789), Bill of Rights of USA (1791) and International Bill of Rights (1966). Article 2 of the UDHR states: "Everyone has the right to all the rights and freedoms listed in this Declaration without any exceptions, such as race, colour, sex, language, religion, politics or different opinions, the origin of nationality or society, property rights, births, or other positions".

In general, the UDHR announced by the United Nations in 1948 contained four basic rights. First, individual rights or rights owned by everyone. Second, collective rights or community rights that can only be enjoyed with other people, such as the right to peace, the right to development and the right to a clean environment. Third, civil and political rights, among others, include the rights that already exist in Indonesian legislation such as: the right to self-determination, the right to obtain compensation for those whose freedom is violated; the right to life, the right to freedom of thought, belief and religion, the same rights for women and men to enjoy civil and political rights, the right of a person to be informed of the reasons for arrest, equal rights and responsibilities between husband and wife, the right to freedom of expression. Fourth, economic, social and cultural rights, among others, include the right to enjoy freedom from a sense of fear and poverty; prohibition on racial discrimination, skin colour, gender, gender and religion, equal rights between men and women to enjoy economic, social and cultural rights; the right to get a job; the right to receive a fair wage for male and female workers; the right to form trade unions; the right to strike; the right to education: the right to be free from hunger.

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Women/CEDAW, (iv) International Convention on the Elimination of All Forms of Racial Discrimination/CERD, (v) International Covenant on Economic Social and Cultural Rights/ICESCR, (vi) Convention on the Rights of the Child/CRC.

The principle of freedom of religion and belief in international human rights documents is clearly stated in Article 18: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change religion or belief, and the freedom to practice his religion or belief in teaching, worship, worship and obedience, both alone and together with others, publicly or privately”.

The existence of the state’s responsibility for guaranteeing the fulfilment and protection of human rights cannot be separated from the basic principles of human rights which become a standard reference for the implementation of international and national human rights, including:<sup>1</sup>

1. Universality and inalienability. Human rights are inherent rights, and all humanity in the world has them. These rights cannot be surrendered voluntarily or revoked. This is in line with Article 1 of the UDHR which reads “Every human being is born independent and equal in dignity and dignity”;
2. Indivisibility. Human rights, both civil, political, social, cultural and economic are all inherently inherent as part of human dignity that is inseparable. Consequently, all people have equal and equal rights status, and cannot be classified according to hierarchical levels. Ignoring one right will have an impact on the neglect of other rights. The right of everyone to obtain a decent livelihood is a right that cannot be negotiated. This right is the basic capital for every person so that they can enjoy other rights, such as the right to education or the right to health;
3. Interdependence and interrelation. Both in whole and in part, the fulfilment of one right often depends on fulfilling other rights. For example, in certain situations, the right to get an education or the right to obtain information is the right that depends on each other;
4. Equality and non-discrimination. Every individual is equal as a human being and has good inherent in their respective dignity. Every human being has the full right to his rights without distinction for any reason, such as differentiation for reasons of race, colour, sex, ethnicity, age, language, religion, political views and other views, citizenship and social background, disabilities and shortcomings, level of welfare, birth and other status;
5. Participation and contribution. Everyone and all people have the right to take an active and free role in participating and contributing to enjoy the life of development, both civil, political, economic, social and cultural life; and
6. State responsibility and rule of law. The state is responsible for obeying human rights. They must be subject to legal norms and standards listed in human rights instruments. if the state fails in carrying out its responsibilities, the aggrieved parties have the right to make appropriate claims, in accordance with applicable rules and procedures.

### **The Violations Prevention of Freedom of Religion and Belief**

Human rights protection can be put in the framework of the rule of law. Thus, the struggle for human rights must be understood as a national commitment that obtains legal, constitutional and institutional footing with the establishment of institutions relating to human rights and law.

The link between protection, respect and fulfilment of human rights at the national level and at the international level is very close. All international human rights law instruments require that each country's national or domestic legal system provide adequate compensation to people whose rights are violated.

The international legal mechanism to guarantee human rights will only be applied if the protection system in the country is shaky or non-existent. Thus, the international mechanism serves to strengthen domestic protection of human rights and provide substitutes if the national system fails or is inadequate.<sup>2</sup> The obligation to

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<sup>1</sup> Muhammad Firdaus, *et.al.*, *Pembangunan Berbasis Hak Asasi Manusia: Sebuah Panduan*, Jakarta: Komisi Nasional Hak Asasi Manusia, 2007, p. 14-16

<sup>2</sup> Retno Kusniati, *Integrasi Standar Perlindungan, Penghormatan, dan Pemenuhan Ham dalam Tugas dan Fungsi Satuan Kerja Perangkat Daerah*, Paper Presented at Workshop on Strategic Agenda for Research and Development in Cross-Sectoral Human Rights, Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, On April 7, 2010 in Jambi, p. 11

respect human rights refers to the obligation to avoid intervention by the state. The obligation to protect human rights also demands positive state action but is different from the obligations to fulfil.<sup>1</sup>

At present, there are various national action programs through the National Action Plan, the rules of the technical ministry responsible for certain fields, and other affirmative programs in the framework of respecting, protecting and fulfilling human rights. There are 3 (three) national human rights institutions with different mandates and constituencies, namely the National Human Rights Commission; Women's National Commission; and the Indonesian Child Protection Commission and has formed 6 (six) Regional Human Rights Commissions and several KPAIDs in both the Province and City/Regency.

The right to freedom of religion/belief has been guaranteed by law in Indonesia, but there are still going on some violations of the right to freedom of religion/belief in the various regions.<sup>2</sup> The existence of constitutional protection for human rights with legal guarantees for demands for enforcement through a fair process. Protection of human rights is widely promoted in order to promote respect and protection of human rights as an important feature of a democratic state of law. Therefore, protection and respect for human rights is a very important pillar in every State of law.

Human rights protection is not only meaningful as a proactive state guarantee to protect human rights in various existing regulatory policies, but also as an effort to react quickly to take legal action if human rights violations occur because it is an indicator of the rule of law. Protection of human rights is how the State carries out policies to prevent and overcome violations intentionally or through omission.<sup>3</sup>

In the context of protection of human rights, there is a Constitutional Court decision related to the protection of the right to freedom of religion and worship. As stated in the First Precepts of Pancasila recognized by God Almighty, which means the obligation of every human being in Indonesia to respect the religion and beliefs of others, because it is the right of every person to choose, embrace, and practice their religious teachings freely without interference and without disturbing parties other. This means that not only is the prohibition on proselytist unethical, but also a prohibition on the desecration and abuse of religion within the Republic of Indonesia to protect security and public order.

It is regulated in the First Precepts of the Pancasila which inspires the articles therein (Article 28E paragraph 1 and Article 29) which regulates the right to freedom of religion and worship, which is further regulated in various laws and regulations, including Law of the Republic of Indonesia Number 39 Year 1999 concerning Human Rights and Law of the Republic of Indonesia Number 1/PNPS/1965 concerning Prevention of Abuse and/or Blasphemy of Religion. Restrictions on the freedom to carry out and determine one's religion or belief according to Article 18 paragraph (3) of the ICCPR can only be limited by provisions based on the law, and which are needed to protect the security, order, health, or morals of the people, or fundamental rights.<sup>4</sup>

Respect means that the state does not take actions that are prohibited or contrary to standard human rights norms, and the state refrains from interfering (abstaining) from enjoying fundamental freedoms. Protecting specifically, the state protects certain groups that are vulnerable or discriminated against (children, women, laborers, indigenous people, minority groups). In general, the state guarantees that basic rights and freedoms are not violated by other parties (through law and justice). Fulfilling the state taking steps needed for the realization of human rights.

Law of the Republic of Indonesia Number 39 Year 1999 Article (1) Number 6 concerning Human Rights defines that human rights violations are every act of a person or group of people including state apparatus either intentionally or unintentionally, or negligence which illegally reduces, obstructs, limits and or revokes human rights human being, a person or group of people guaranteed by this law, and not getting, or feared that they will not get a fair and correct legal settlement, based on the applicable legal mechanism.

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<sup>1</sup> Iin Karita Sakharina, *Kewajiban Negara Terhadap Pemenuhan Hak Atas Kecukupan Pangan yang Layak di Indonesia* (Suatu Tinjauan Terhadap Kovenan Internasional Hak Ekonomi, Sosial, dan Budaya), Pustaka Pena Press, Makassar, 2016, p. 45

<sup>2</sup> Kadarudin, *Legal Guarantees and Inconsistency of State Recognition to the Right of Religion/Belief in Indonesia*, Hasanuddin Law Review, Vol. 1 No. 1, April 2015, p. 1

<sup>3</sup> Suparman Marzuki, *Tragedi Politik Hukum HAM*. Yogyakarta: Pusham UII-Pustaka Pelajar, 2011, p. 182

<sup>4</sup> Fatmawati, *Perlindungan Hak Atas Kebebasan Beragama dan Beribadah dalam Negara Hukum Indonesia*, Jurnal Konstitusi, Vol. 8 No. 4, p. 63-94

Violations of Freedom of Religion and Belief can be done in two ways (1) The act of eliminating, limiting or reducing the basic rights and freedoms of everyone to think, believe and be religious, and (2) Violations can be carried out in two forms: (a) by commission the state actively commits violations, and (b) by omission means that the state does not do something that should be done to prevent violations.

In development, there are also frequent Discrimination Acts. This means that no one may be subjected to discrimination by the state, institution, any group of people for reasons of religion or belief. Potentially discriminating parties include countries (national, regional), government institutions, non-government, groups of people, and/or individuals. Intolerance based on religion and belief means any differentiation, waiver, restraint or prioritization based on religion or belief which results in damaging recognition, enjoyment or the implementation of basic human rights and freedoms. (See Law of the Republic of Indonesia Number 40 Year 2008 concerning Race and Ethnic Non-discrimination).

How Indonesia in an effort to promote and protect human rights can be seen from various efforts, among others, from non-governmental organizations such as Advocacy, Service, Education, Government which since 1993 formed the National Human Rights Commission, Since 1998 the government has also established a Human Rights National Action Plan, Since 1997 Human Rights National Commission has organized human rights education for strategic groups, and since 1998 the MPR has established MPR Decree No. XVII/MPR/1998 concerning Human Rights. The attachment of the state's responsibility to fulfilment of human rights, the state can be determined as a party that violates human rights if it fails to fulfil its responsibilities. These violations can be caused by their own actions (acts by omission) and or due to their own negligence (act of omission).

In another formulation it is stated that human rights violations are actions or negligence of the state against norms that have not been convicted nationally but are internationally recognized human rights norms. The emphasis of human rights violations is on state responsibility, not individuals or other legal entities.

The conceptual framework above reinforces the human rights law itself, namely a rule that separates the responsibilities between the State and the people living in that country. The state is placed as a duty holder because it is an authority, while humans are the rights holders. The conception also explains the institution of protection of human rights, which means institutions or bodies that are given legalistic responsibility by the authorities who have the authority to protect the rights of everyone in one country.

Human rights protection agencies are different from non-human rights institutions, because human rights institutions only have to do with human rights, both in terms of protection, respect and fulfilment of human rights by the state as their duties and responsibilities. Human rights institutions are also tasked with overseeing, protecting and even giving sanctions to state officials and also can be made possible by private parties who commit human rights violations.<sup>1</sup>

In the context of human rights, the obligations of the state that arise are the obligation to promote human rights, the obligation to protect and the obligation to fulfill human rights of every citizen.

Adoption of a variety of international human rights legal instruments provides reinforcement of national legal systems and mechanisms. However, the trident of the state's obligations in the field of human rights above, in practice is not carried out in a balanced manner; specifically, for example in the context of human rights protection. Moreover, a series of violence, discrimination and criminalization of religious and religious minority groups, indigenous peoples and human rights defenders are increasingly prevalent. For example, in the context of religion and belief, the state does not appear to ensure protection and security of security, on the contrary, the state appears to liberalize violence, allowing the masses and mass organizations on behalf of religion to commit murder and various violence.

The politics of human rights law are human rights legal policies concerning respect, fulfilment and protection of human rights. This policy can be in the form of making, changing, loading certain articles, or revoking legislation.<sup>2</sup> Countries that are willing to promote, protect and fulfil their citizens' rights are the demands of citizens and measured by the state if they declare themselves to be members of the political system

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<sup>1</sup> Rudi Muhammad Rizki, *Tanggungjawab Aktor Bukan Negara dalam Hukum HAM Internasional*, in Prasetyohadi and Savitri Wisnuwadhani (Ed), *Penegakan Hak Asasi Manusia dalam 10 Tahun Reformasi*, Jakarta: Komisi Nasional Hak Asasi Manusia, 2008, p. 67-73

<sup>2</sup> Suparman Marzuki (2011), *Op.Cit.*, p. 181; See also Suparman Marzuki, *Politik Hukum HAM di Indonesia*, paper, October 2011.



of democracy. In principle, Indonesia is morally bound to the Universal Declaration of Human Rights and international agreements on human rights, basic freedoms contained in the various agreements. In this moral bond, state obligations are contained.

The principle of state obligation applies in this case; First, there is no promise without the obligation of the state. Second, the basic obligations of the State are put in place because the legal subjects in international human rights treaties are the State. Third, there is no obligation without state responsibility. Fourth, as the party that promises the State not only have potential, but also can factually deny or break their promises.<sup>1</sup>

Thus, according to Suparman, the politics of human rights law in the aspect of respect is a policy that requires the state not to take steps that will result in individuals or groups failing to achieve or fulfil their rights. While fulfilment is the state must take legislative, administrative, budgetary, judicial or other measures to ensure the realization of fulfilment of rights. Whereas protection is how the state carries out policies to prevent and overcome intentional violations or omissions.

In the context of the human rights agenda, there is a large agenda; First, improve legal products, legislation on human rights. These legal products need to be adjusted to the spirit of the constitution which explicitly provides the basis for protection and guarantee of human rights. This includes adjusting to the provisions of international conventions/covenants on human rights, both in terms of material about human rights itself and about the institutions of the National Human Rights Commission and Human Rights Courts. Second, conduct an inventory, evaluate and review all legal products, the Criminal Code and Criminal Procedure Code, which apply that are not in accordance with human rights. There are so many articles in various laws that are not appropriate, even contrary to human rights, Thirdly, developing institutional capacity in judicial institutions and other institutions related to the enforcement of the rule of law and protection of human rights. Fourth, it is also important to schedule the socialization and understanding of human rights itself, especially in government circles, especially among agencies that directly or indirectly related to human rights issues. Fifth, of course cooperation with people outside the government, especially NGOs, academics/colleges and other communities that have concern for law enforcement and human rights should be a well-programmed agenda.<sup>2</sup>

In the context of civil rights, the state has a positive obligation to create conditions that support the right of everyone to fully enjoy their rights and freedoms. While the state has a negative obligation to respect the implementation of individual rights and freedoms. To support positive obligations, the State must use all its resources to the maximum both the legislature and executive. Even Article 2 paragraph (3) of the ICCPR governs the State to provide remedies for individuals whose rights are being violated, this recovery includes court actions to provide effective judicial remedies for victims of civil rights violations.

The negative obligation of the state arises as a consequence of the distinction between private and public spaces, most of the civil rights including the right to religious freedom, the right to privacy and freedom of expression are in the private sphere, so it is forbidden for the state to touch private space.<sup>3</sup> Although in its development, the human rights regime in particular the right to discipline is so fast developing, where private matters become public as an example of violence against women has now become a public space because domestic violence is already a criminal offense.

The conception of a rule of law is not only characterized by the existence of legal instruments through various legal regulations created and created for that and law enforcement to be adhered to by citizens, but the concept of the state of law provides a framework for regulating state conception that is not only pleasing to

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<sup>1</sup> Emilianus Afandi, *Menggugat Negara; Rasionalitas Demokrasi, HAM dan Kebebasan*, European Union and PBHI, Jakarta 2005, p. xxv-xxvi

<sup>2</sup> Adnan Buyung Nasution, *Implementasi Perlindungan Hak Asasi Manusia Dan Supremasi Hukum*, paper. July 2003, p. 8-9

<sup>3</sup> John Locke, for example, explicitly separates the state from religion, religion is a private area that cannot be interfered with by the state. This is what distinguishes between public space and private space which is the forerunner of fundamental principles in liberal democracy, Lock was the one who inspired the inclusion of the right to freedom of religion in article 18 of the ICCPR. Although in the development of Habermas criticizing Locke because in liberal democracy it is not enough to only distinguish between public and private spaces, there must also be communication actions to bridge individual interests and pluralism, and Habermas introduces deliberative democracy in which public discourse is the decisive force in a state of law, including when oppressed religious minorities, the minority must use public discourse as a force that determines a state policy.

restrictions or acts actions as state organs, but it is also pleasing to the regulation as well as a means of legal protection for citizens from arbitrary acts.<sup>1</sup>

If in a country, human rights are neglected or violated intentionally and the suffering or consequence cannot be dealt with fairly, then the State cannot be called a rule of law in the real sense.<sup>2</sup>

If we agree that human rights are universal and not relative, then we will also agree that the power of human rights goes beyond the boundaries of religion, culture, ethnicity and language. Human rights are inherent in every human (inalienable right), not because of social status or a legal right granted by the State, but because of dignity as an autonomous human/individual so that he is entitled to the equality of concern and respect of the State.

In a human rights perspective, the state has no rights and on the contrary the state has obligations.<sup>3</sup> Consequently, the state has positive and negative obligations. Negative obligations mean that the State must be active in guaranteeing human rights, while negative obligations mean that the State must respect the freedom and rights of individuals (Article 2 paragraph 1 of the ICCPR). The ICCPR prohibits discrimination on the basis of race, religion, gender and other status (Article 2 paragraph 1 of the ICCPR), the UN Human Rights Committee defines discrimination as distinction, exclusion, restriction or preference that has the intention or effect to eliminate or reduce everyone to enjoy and exercise their rights.

The principle of non-discrimination is widened into the area of equality before the law and equality of legal protection in which everyone is guaranteed and protected effectively and equally against discriminatory practices.<sup>4</sup> In addition to the principle of non-discrimination, there is also a principle of tolerance which forms the basis of religious freedom. John Locke, making a famous letter about tolerance in 1689 which contained it as if it was gathered in solemn, carrying out religious celebrations, worshiping in public places was permitted to certain religious groups, so this must also be permitted against other religious groups.<sup>5</sup>

Locke interpreted tolerance as an equal treatment among religious groups/beliefs. Or in other words tolerance means giving an opportunity to religious groups to carry out/carry out their worship. Non-discrimination, diversity and tolerance are inherent elements in the right to religious freedom.

One of the main materials for referencing regulations in implementing freedom of religion is the Joint Minister of Religion and Minister of Internal Affairs Regulation (PBM) Number 9 Year 2006 and Number 8 Year 2006 concerning Guidelines for Implementing Regional Heads/Deputy Regional Heads in Maintaining Religious Harmony, Empowering Harmony Forums Religious People, and the Establishment of Houses of Worship.

This Ministerial Joint Regulation is a change and renewal of the Joint Decree of the Minister of Religion and Minister of Internal Affairs Number 01/BER/MDN-MAG/1969 concerning the Implementation of Tasks of Government Apparatus in Ensuring Order and Fluency in the Implementation and Development of Religious Worship by Adherents.

The PBM material includes the Tasks of the Regional Head in Maintaining Religious Harmony, from the duties and obligations of the Governor, Regent/Mayor, District Head, Sub-District Head/Village Head.<sup>6</sup> The contents of the PBM also concerning the establishment of the Religious Harmony Forum at the provincial and

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<sup>1</sup> Aminuddin Ilmar, *Membangun Negara Hukum Indonesia*, Phinatama, Makassar, 2014, p. 22

<sup>2</sup> Suparman Marzuki (2011), *Op.Cit.*, p. 11; See also Jimly Asshiddiqie, *Gagasan Negara Hukum Indonesia*, paper, p. 13

<sup>3</sup> 1993 Vienna Convention, countries that are members of the United Nations recognize the universality of human rights, although some countries in Asia (China, Singapore and Malaysia) oppose it because human rights according to them are relative (the Asian values).

<sup>4</sup> General Comment No. 15 of the ICCPR, in the human rights regime recognize affirmative/positive discrimination for groups who are vulnerable to human rights violations such as children, minority groups and women with the aim of reducing or eliminating discredited, prohibited conditions by the ICCPR. Here, the state (executive and legislative) takes legislative steps or other steps to ensure equal fulfillment of civil and political rights.

<sup>5</sup> Archot Krishnawami, *The Study of Discrimination in the Matter of Religious Practices and Rights UN Documents* (1993)

<sup>6</sup> Article 2 to Article 7

regency/city levels.<sup>1</sup> Another content material is about the establishment of synagogues.<sup>2</sup> Temporary Permit for the Use of Building,<sup>3</sup> dispute resolution,<sup>4</sup> supervision and reporting,<sup>5</sup> and financial rights.

#### IV. Conclusion

Documents and instruments available both nationally and internationally are actually substantially adequate for the benefit of protecting human rights in the field of freedom of religion. Even though it still leaves a large space, a special law is needed regarding this big theme, whether it relates to freedom or harmony, or the life of freedom of religion. Regulatory instruments with the minister are substantially inadequate for solutions to the resolution of violations in this field. Existing regulations are discriminatory and are not yet the best solution. In addition to state space, community members can actually be involved and/or involve themselves in a space of dialogue to build new values in diversity in Indonesia through community dialogue or interfaith or interfaith groups

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<sup>1</sup> Article 8 to Article 12

<sup>2</sup> Article 13 to Article 17

<sup>3</sup> Article 18 to Article 20

<sup>4</sup> Article 21 to Article 22

<sup>5</sup> Article 23 to Article 24