

ATTITUDES TO HUMAN RIGHTS AND
FREEDOM OF RELIGION OR BELIEF IN INDONESIA

Attitudes

to Human Rights and Freedom of Religion or Belief in Indonesia

VOICES OF ISLAMIC RELIGIOUS LEADERS
IN EAST JAVA

by **Syamsul Arifin**

edited and rendered into English by
Nelly van Doorn-Harder,
Tore Lindholm and **Nicola Colbran**



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BELIEF IN INDONESIA

072190

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PENERBIT KANISIUS (Anggota IKAPI)

Jl. Cempaka 9, Deresan, Yogyakarta 55281, INDONESIA

Kotak Pos 1125/Yk, Yogyakarta 55011, INDONESIA

Telepon (0274) 588783, 565996; Fax (0274) 563349

E-mail : office@kanisiusmedia.com

Website : www.kanisiusmedia.com

Cetakan ke-	3	2	1
Tahun	12	11	10

Cover Desain : Jaya Supena

Layout : Drikhen

ISBN 978-979-21-2863-5

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Printed by Percetakan Kanisius Yogyakarta

1. *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.*
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."*

Article 18 of the International Covenant on
Civil and Political Rights
(ratified by Indonesia, 23 February 2006)

ATTITUDES TO HUMAN RIGHTS AND FREEDOM OF RELIGION OR BELIEF IN INDONESIA: VOICES OF ISLAMIC RELIGIOUS LEADERS IN EAST JAVA

This research was conducted in East Java by a team from the Muhammadiyah University in Malang, led by Dr. Syamsul Arifin, the director of the Center for the Study of Islam and Philosophy (Pusat Studi Islam dan Filsafat – PSIF). The research was sponsored by the Norwegian Centre for Human Rights at the University of Oslo and several researchers connected with the Centre provided the theoretical framework on discourses concerning human rights and freedom of religion or belief. The researchers who assisted in the field work were: Pradana Boy, Haery Fadli, and Subhan Setowara. Ahmad Nur Fuad provided several references related to human rights. Researchers involved in the project on behalf of the Norwegian Centre for Human Rights (NCHR) were Prof. Tore Lindholm (NCHR), and Prof. Nelly van Doorn-Harder (Wake Forest University, USA). Nicola Colbran (NCHR) integrated legal references into the report and contributed significantly to the editing process. Furthermore, Knut D. Asplund (NCHR), Liv Hernæs Kvanvig (NCHR), and Dag Kaspersen (Oslo Coalition) all advised during the research and writing of the report. Aksel Tømte (NCHR) and Neni Indriati (NCHR) helped in finalizing the text. Christina Kloster paved the way for this cooperation. Dr. Arifin thanks them all, including Suhadi Cholil, Muktiono, and Kadek who became close friends during his stay as a guest researcher at NCHR, Faculty of Law, University of Oslo, Norway. This research is based on interviews that were conducted in 2007. Informants were selected from the districts of Malang, Surabaya, Jombang, Sampang and Pasuruan in East Java, and represented a variety of organizations, ranging from Islamic fundamentalists and other Islamists, to mainstream moderates and liberals. The organizations were: Muhammadiyah, Nahdlatul Ulama (NU), Majelis Ulama Indonesia (Indonesian Ulama Council or MUI), Hizbut Tahrir Indonesia (HTI), Majelis Mujahidin Indonesia (MMI), one political leader belonging to the Islamist PKS (Prosperous Justice Party), and one Shi'ite leader. An outline of each of these organizations is included in the Annex.

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SUMMARY

Since the fall of the Suharto regime, there has been an increase in the reported instances of intra- and inter-religious conflict. Both radical and moderate religious groups have taken advantage of their new-found freedom to reach out to their followers and engage in political activities.

The research presented in this report is based on a number of interviews with religious leaders in East Java. It aims at understanding their views and attitudes regarding the challenges of human rights within the current Indonesian context, in particular with respect to the right to freedom of religion or belief.

Chapter one gives a basic historical and political introduction that contextualises the research, explains about how the research was conducted, the use of terminology and the chosen interview topics.

Chapter two provides more information on the different interview topics and the Indonesian context. It also looks at the legal framework for freedom of religion of belief in Indonesia, Indonesia's human rights obligations, and how freedom of religion is understood from an international human rights perspective.

Chapter three focuses on the discourse on Islam and human rights between Muslim scholars. The main focus is on the discourse within Indonesia.

Chapter four presents the opinions of the Islamic leaders interviewed on the different interview topics; the universal validity or particularity of human rights, the relationship between religion and the state, majority-minority issues and groups that are seen to deviate from mainstream Islam.

* * *

I

INTRODUCTION

In May 1998, President Suharto stepped down after a suppressive rule that had lasted nearly three decades. Under his regime (the New Order), almost every aspect of daily life, including religious life, was strictly controlled. He curtailed the political role of religion, and Muslim leaders espousing Islamist ideas were jailed or lived in self-imposed exile in neighboring countries. Suppression of dissenting voices thus led to a variety of resistance movements which included those advocating for a more visible role of Islam and *Shari'ah* (Islamic law).

Following the events of May 1998, a new era of “reformation” was ushered in, during which successive governments made democratization of the political system their top priority. They lifted existing bans on the media, and allowed a greater freedom of expression, including in relation to views previously not tolerated. Since 1998, the administrative, political, and religious profile of the country has changed dramatically. The government has been decentralized, there are direct presidential elections and the number of political parties that may contest elections is

no longer limited to three government sanctioned parties.¹ In this more open democratic electoral system, Islam-based parties have gained in votes and visibility. These parties and other interest groups have lobbied to replace the state ideology *Pancasila*² with an Islamic state ideology which would involve the nation-wide application of *Shari'ah* for Muslims.

Tolerance for formerly banned views has gone hand in hand with an increase in the reported instances of intra- and inter-religious conflict. Radical groups such as the Islamic Defenders Front (*Front Pembela Islam* or FPI) have openly attacked venues they consider immoral and un-Islamic, such as nightclubs and gambling spots. Violent acts have also been committed against groups considered to deviate from mainstream Islam. A radical Islamist, Middle Eastern-influenced discourse has further fostered inter- and intra-religious tension.³

In regard to intra-religious tension, such polarization has also occurred in Christian circles. Individual evangelical groups have rejected communication with other Christians and Muslims. In places with a majority Christian population such as in Manokwari, West Papua province, plans have emerged to introduce a “Biblical Law.” This law mimics local *Shari'ah* inspired by-laws in other districts, and purports to

1 Arskal Salim and Azyumardi Azra (2003) have reported several significant developments in relation to Islam since the fall of Suharto. These include Islamic-based political parties replacing the *Pancasila* with Islam as the basis of the party (for example, *Partai Persatuan Pembangunan* (PPP) and *Partai Bulan Bintang* (PBB)); the rise of Islamic hardliners, the Islamic Defenders Front (*Front Pembela Islam* or FPI), Hizbut Tahrir Indonesia and Majelis Mujahidin Indonesia (the latter two were interviewed as part of this report), and a rise in the popularity of Islamic magazines such as *Sabili* which promotes political Islam.

2 The *Pancasila* (literally the Five Principles) sets out the basis of the Indonesian state. The five principles are 1. Belief in Almighty God; 2. Just and Civilized Humanity; 3. Unity of Indonesia; 4. Democracy Guided by Prudence through the Process of Representation and Consultation to Reach Consensus; 5. Social Justice for all Indonesians.

3 The term “islamism” as used in this report indicates a propensity to hold Islamic values, norms and precepts to be pertinent to *all* of social life, not just to matters of religion or belief as a separate social field. “Islamism” does not by itself indicate the *how* of the universal pertinence of Islam whereas the variety of islamism called “fundamentalism” refers to the attitude of holding *a particular interpretation of Islam to be mandatory* for all of social life, including for the political field. An example of an Islamist-minded journal with widespread influence was for example, the monthly journal *Sabili*.

ban alcohol and prostitution, regulate dress and worship, ban the display of certain religious symbols, and forbid houses of worship of any other religion to be built near a church.⁴

Such developments have direct implications for the protection of human rights, especially the right to freedom of religion or belief. While much of the blame is attributed to radical groups, human rights activists indicate that one of the underlying problems is that the state itself appears unable or unwilling to protect groups facing increasing violence, and that at times, agents of the state are directly involved in the violence. While Suharto's regime oppressed voices advocating opposition or resistance, the inactivity and hesitance to confront Islamist power brokers of the post-Suharto leaders have created some of the most acute problems Indonesians are currently facing.

It must be noted that radical groups still remain a minority among Indonesia's Muslim population. In fact, during the parliamentary elections of April 2009, the Islamist parties with a narrow focus on the application of *Shari'ah* or other religious issues suffered a steep drop in popular support. However, the ambition of Indonesian Muslims to live according to the rules of their faith has been a topic of debate since independence in 1945 and remains a sensitive issue in Indonesia.

Given that incidents of religious intolerance, extremism and violence appear to be on the rise, it is important to understand whether there is a connection between the views of Islamic religious leaders, both moderate and radical, and such human rights violations. Research was conducted aimed at understanding the leaders' views and attitudes regarding the challenges of human rights within the current Indonesian context, in particular with respect to the right to freedom of religion or belief. The research focused on three issues:

⁴ See, for example, "Biblical Law." "Laws based on the Bible," April 10, 2007. <http://www.indonesiamatters.com/1218/biblical-law/#footnote-1218-1>

- e. the concept of human rights, the right to freedom of religion or belief, and their relation to Islam;
- f. the implementation of freedom of religion or belief, particularly in relation to sensitive issues such as inter-faith marriage, the building of places of worship, minority-majority issues, and cases of religious conversion; and
- g. the relation between state and religion.

1. Research location: East Java

The area of East Java was selected as the location of research due to its specific characteristics. With a population of more than 35 million, it is the second largest province in Indonesia (after West Java).⁵ 96,2 % of its population are Muslim while 2,7% are Christian and the rest Catholic, Hindu and Buddhist. The area itself is culturally diverse and its population can be grouped generally on the basis of regional differences, i.e. (1) The Madurese (inhabiting Madura island and the northern coast of eastern part of East Java, called Tapal Kuda or “The Horseshoe”); (2) Arek (Bojonegoro, Tuban, Lamongan, Gresik and Surabaya); (3) *Osing* (Banyuwangi and its surrounding areas); (4) Mataraman (from Lumajang to Magetan).

According to I Nyoman Naya Sujana (2003:19), the societies in each of these areas exhibit different characteristics. Taken together, the research location exhibits abundant diversity.

In the rather paternalistic Madurese societies, religious leaders (*kyai*)⁶ are prominent and their relationship with the general population is

5 These figures are taken from the Central Bureau of Statistics (*Badan Pusat Statistik*, BPS, 2005).

6 A *kyai* is an expert in the religion of Islam. Traditionally, students of Islam in Indonesia would study in a boarding school, and the leader of the school was called *kyai*.

analogous to the one between teacher and pupil in the religious boarding schools (*pesantren*) where *kyai* hold absolute power and authority.⁷

In Mataraman societies, however, the influence of religious leaders is less dominant. Society is based on the Javanese kinship system, while religion still includes beliefs in magic and spirits (Sujana, 2003:20).

In the Arek area, perhaps due to the impact of industrialization in areas surrounding Surabaya and Malang, people have adopted a less religious, and what could be described as a more “rationalist” worldview, while the Osing who earn their living as peasants have many skilled artists among them, much like their Balinese neighbors.

Within these groupings there are various degrees of religious observations - not all Muslims observe the religious doctrines consistently. While the Madurese are generally pictured as particularly religious, not all Madurese can be classified as purists. However, during the past two decades, there has been a general shift to more intense practices of Islam which has led to a demise of indigenous practices. One of the most pronounced developments is the growth of Islamist-minded Muslim groups and a general polarization of society among Muslims of various convictions and between Muslims and non-Muslims.

East Java has also been the location of some of the more infamous cases involving religious tensions and violence, both during and after the New Order. One such incident was the violence that occurred in the town of Situbondo on 10 October 1996. Following the sentencing of local man Saleh for defaming Islam, a mob outside the courtroom ran amuck because the sentence was considered too lenient. Unidentified persons destroyed the District Court building, 26 places of worship, two religious schools, shops, an orphanage and five people were killed.⁸

7 Among others, see: Zamakhsyari Dhofier, 1982.

8 “Mensesneg: Pemerintah Sangat Sesalkan Peristiwa Situbondo” (State Secretary: The Government Greatly Regrets the Situbondo Incident) 10 October 1996, <http://www.fica.org/persecution/10Oct96/article/sesal2.html>

In 2005, seven years after the fall of Suharto, Yusman Roy, the leader of an Islamic boarding school in Malang was sentenced to two years prison because he behaved in a manner that caused unrest. Roy conducted prayers in two languages (Arabic and Indonesian) to facilitate the comprehension of his congregation.

2. Key terms: religion (*agama*), belief (*keyakinan*), and human rights (*hak asasi manusia*)

In addition to understanding the diversity of informants and location, the terminology used in the report is also important. The key terms are “religion” and “belief”, and “human rights.”

In every-day language, the term “religion” (*agama*) is used more frequently than the term “belief” (*keyakinan*). The term religion is often used in reference to the so-called world religions: Islam, Christianity, Hinduism, Buddhism, Judaism and Confucianism.

However, in the social sciences the understanding of the term religion is not as straightforward. In sociology, the term is used either inclusively or exclusively. On an *inclusive definition*, “religion” refers not only to theistic systems, distinguished by belief in supernatural things, but also to various systems of non-theistic beliefs, such as atheism, agnosticism, rationalism, or scepticism. On the *exclusive definition*, “religion” refers solely to theistic systems that have doctrines, are socially organized and involve rituals conducted by members or some segments of society. Hence, individual ideas or thoughts are not regarded as religion in so far as these thoughts are not shared and included in a cohesive set of doctrines and rituals (such ideas may be religious but do not necessarily constitute a religion).

Based on the *exclusive* definition, Bahai’ism, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, and Sikhism are religions; whereas agnosticism, atheism, rationalism, and scepticism are not.

In the present study the term “religion” is used in the *exclusive* sense. This exclusive interpretation is also utilized in the Universal Declaration of Human Rights (UDHR).

In regard to the difference between “religion” and “belief”, the UDHR differentiates between the terms “religion” and “belief” and attributes different meanings to each. Article 18 of the UDHR reads:

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change one’s religion (agama) or belief (keyakinan) and freedom either alone or in community with others and in public or private, to manifest one’s religion or belief in teaching, practice, worship and observance. (Emphasis added)*⁹

In Article 18 above, the term “belief” (*keyakinan*) twice follows the term “religion” (*agama*). This use of the term belief (*keyakinan*) in the UDHR and in many other human rights instruments shows that in addition to theistic systems, there are non-theistic or non-religious beliefs (*keyakinan*) such as atheism, agnosticism, and rationalism which are also to be recognized and protected by human rights. The locution “freedom of religion or belief”, as used in international human rights documents, is meant to indicate that *both* religious belief *and* non-religious conviction (*keyakinan*) are to be protected.

The term conviction (*keyakinan*) – different from the term religion (*agama*) – as used in the present study, refers to groups adhering to convictions outside the official category of religion (*agama*), including

⁹ The two English terms “belief” and “conviction” are interrelated in ways similar to the Indonesian terms “*kepercayaan*” and “*keyakinan*”. In both languages the two terms are often used interchangeably. For the sake of clarity, this study will use the word “conviction” (*keyakinan*) to refer to life stances of groups that are non-religious, and use the word “belief” (*kepercayaan*) to refer to faith positions of communities that are religious. Official human rights documents in the English language use the term “belief” and not the term “conviction”. Indonesian translations of human rights documents sometimes use “*keyakinan*” (as in the text above) and sometimes use “*kepercayaan*” as in the translation of UDHR Article 18 prepared by KontraS (www.kontras.org/baru/Deklarasi%20Universal%20HAM.pdf). An authoritative English-Indonesian Dictionary translates the word “belief” both as *kepercayaan* and *keyakinan*; while the word “conviction” is translated *keyakinan* (Kamus Bahasa Inggris-Indonesia, John. M. Elchols dan Hassan Shadily, Jakarta, 2006:60 and 146.)

groups that are outside the mainstream. Examples of such groups are those which have a contested Muslim self-identification, such as Ahmadiyah, Lia Aminuddin, al-Qiyadah al-Islamiyah.

Reference should also be made to the term “kepercayaan”, which is used in the 1945 Constitution in the phrase “agamanya dan kepercayaannya” (religion and [religious] belief). The exact meaning of “kepercayaan” in this phrase is a topic of debate among Indonesian intellectuals, with some arguing that it should be interpreted to indicate “having religion and the corresponding belief,” and other arguing it means “having religion and religious adherence to a traditional belief.” In either case the reference is not, as in international human rights language, to religion or [non-religious] conviction. Indonesian language also uses the term *aliran kepercayaan* to refer to traditional beliefs. The number of adherents of non-theistic convictions and *aliran kepercayaan* is unclear as precise data is not available. However, the Department of Culture and Tourism currently supervises around 245 traditional belief organizations at the central level and 945 branches, with around 10 million adherents.¹⁰ In reality, the figures are likely to be much higher than this.

The third term used in this report is “human rights” (Indonesian: *Hak Asasi Manusia*, abbr. *HAM*) which refers to human rights norms codified in international law after World War II as well as norms reflected in Indonesia’s national laws. Since the development of modern human rights, it has been clear that *freedom of religion or belief* is a fundamental human right.

3. Interview topics

As mentioned above, the research conducted focused on three issues: (1) the concept of human rights, the right to freedom of religion or belief, and their relation to Islam; (2) the implementation of freedom of religion

10 “Gugum, Asep dan Nasib Perkawinan Penghayat Kepercayaan” (Gugum, Asep and the Fate of Marriages of Adherents of Local Beliefs) 26 March 2009, www.hukumonline.com/print.asp?id=21566&cl=Berita

or belief, particularly in relation to sensitive issues such as inter-faith marriage, the building of places of worship, minorities and majorities, and cases of religious conversion; and (3) the relationship between the state and religion. In order to focus the questions posed to informants, these three issues were then broken down into more specific themes (all of which have long been part of debates among Muslim religious leaders and intellectuals):

1. The universal validity or particularity of human rights.
2. The relationship between religion and the state:
 - a. Religions recognized by the state (Islam, Catholicism, Christian-Protestantism, Hinduism, Buddhism and Confucianism)
 - b. Listing an individual's religion on his or her identity card (KTP)
3. Majority – minority issues:
 - a. Permission to build houses of worship for minorities
 - b. Interfaith marriages
 - c. Conversion and apostasy
4. Groups considered to deviate from mainstream Islam:
 - a. The Ahmadiyah community
 - b. The followers of Yusman Roy
 - c. The followers of Lia Aminuddin (alias Lia Eden)

While some of these topics are recurrent issues throughout countries with majority Muslim populations, some are specific to the Indonesian context and require a preliminary explanation.

* * *

II BACKGROUND TO INTERVIEW TOPICS

1. Human rights framework in Indonesia (universal validity or particularity of human rights)

Indonesia has a solid normative foundation guaranteeing freedom of religion or belief. The Introduction to the 1945 Constitution outlines the *Pancasila*, the first principle of which is “Belief in Almighty God”. This sets out the basis of the Indonesian state as a state which has a religious characteristic. The Constitution also contains two chapters containing guarantees for freedom of religion, namely Chapter XA on Human Rights, and Chapter XI on Religion. In Chapter XA, Article 28E states that:

1. Each person is free to embrace a religion and to worship according to that religion ...
2. Each person has the right to freedom in his or her beliefs, to assert his or her thoughts and views, in accordance with his or her conscience.

The Constitution also states that this right may not be derogated from in any circumstance,¹ although limitations may be put in place by law (*undang-undang*)² in order to satisfy just demands based upon

1 Art.28I

2 *Undang-undang* is the highest level of legislation in Indonesia.

considerations of morality, religious values, security, and public order in a democratic society.³ Article 28I of the Constitution also mandates that each person has the right to be free from discriminatory behavior and has the right to protection from such treatment.⁴

In Chapter XI, Article 29 the Constitution maintains that:

1. The State is based on belief in Almighty God.
2. The State guarantees all persons the freedom to embrace his or her own religion and to worship according to that religion and [religious] belief.

Affirming the protection contained in the Constitution, Article 22 of Law No.39/1999 concerning Human Rights repeats the Constitutional guarantees on religious freedom:

1. Everyone has the right to choose his or her religion and to worship according to this religion and [religious] belief.
2. The state guarantees everyone the freedom to choose and practice his or her religion and to worship according to this religion and [religious] belief.

Law No.39/1999 also contains the same provisions in relation to derogations and limitations, but does not permit limitations based upon considerations of religious values. Under Law No.39/1999 limitations may also be placed on the right to freedom of religion by law to guarantee recognition and respect for the basic rights and freedoms of other persons.⁵ Each person has the right to protection of human rights and basic freedoms without discrimination.⁶

In addition to the protection provided by the Constitution and Law No.39/1999, Indonesia ratified the International Convention on the

3 Art.28J(2)

4 Art.28I(2)

5 Art.4, Art.70, Art.73,

6 Art.3(3)

Elimination of all Forms of Racial Discrimination (ICERD) in 1999 and the International Covenant on Civil and Political Rights (ICCPR) in 2006. It made no reservations in relation to freedom of religion or belief at the time of ratification or subsequently.

Once Indonesia ratified these two treaties they became national law,⁷ and the government was immediately obliged to respect, protect, implement and advance the human rights contained in them.⁸

The ICCPR contains specific guarantees in relation to freedom of religion or belief. Article 18 reads:

1. 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, in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
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 respect 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.

As Indonesia has ratified the ICCPR and it immediately became national law, it is important to understand what its legal obligations are,

7 Law No.39/1999, Art.7(2)

8 Law No.39/1999, Art.71

and therefore what constitutes the normative core of the human right to freedom of religion or belief.⁹

The ICCPR has certain *core values* that must be protected by governments if freedom of religion or belief (as a universal standard) is to be respected. These core values constitute a set of minimum standards.

Freedom of religion or belief, as codified in legally binding international human rights instruments, applies to every human being in Indonesia's jurisdiction, without exception. Human beings are the *primary holders* and beneficiaries of this right. States, ideally under continual critical scrutiny by informed citizens in each country, are the *primary addressees* burdened with the correlative obligations to respect, protect, and fulfill this right. Beyond the religious freedom provisions of the Universal Declaration of Human Rights and the ICCPR, key elaborations and specifications of the human right to freedom of religion or belief are provided by, among others, the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. General Comment No. 22 (48) of the United Nations Human Rights Committee provides normative substance to Article 18 of the ICCPR. Relevant regional sources are the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the American Convention on Human Rights (ACHR), and the African Charter on Human and Peoples' Rights (ACHPR).

The normative core of the human right to freedom of religion or belief may be summarized in eight components:¹⁰

9 The following sections are in part based on *Tore Lindholm, W. Cole Durham, Jr., Bahia G. Tahzib-Lie, eds., Facilitating Freedom of Religion or Belief: A Deskbook*, Leiden 2004: xxxvii-xl ("Introduction" by the Editors with Nazila Ghanea). An Indonesian translation of this volume was published in December 2009 by Kanisius Publisher, Yogyakarta.

10 The key provisions drawn on are Article 18 of the Universal Declaration of Human Rights; Article 18(1) to 18(4), Article 2(2) and Article 4(2) of the ICCPR and Article 14 of the Convention on the Rights of the Child. See also the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief; Article 9 of the

1. *Internal freedom*: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom for all to have, adopt, maintain or change¹¹ religion or belief.¹²
2. *External freedom*: Everyone has the freedom, either alone or in community with others, in public or private, to manifest his or her religion or belief in teaching, practice, worship and observance.¹³
3. *Non-coercion*: No one shall be subject to coercion that would impair his or her freedom to have or to adopt a religion or belief of his or her choice.¹⁴
4. *Non-discrimination*: States are obliged to respect and to ensure to all individuals within their territory and subject to their jurisdiction the right to freedom of religion or belief without distinction of any kind, such as race, color, sex, language,

ECHR; Article 12 of the ACHR; and Article 8 of the ACHPR. Component 6 differs from the other eight, in that it is implied from rather than directly stated in the relevant treaties.

- 11 While the notion that freedom of religion or belief includes the right to “have or adopt” a religion is undisputed, there has been considerable controversy about whether it includes the right to “change.” The Universal Declaration of Human Rights (Article 18) and major regional treaties (ECHR, Art.9(1); ACHR, Art 12(1)), as well as leading commentaries recognize that this is an integral part of freedom of religion or belief. See, e.g., John P. Humphrey, “Political and Related Rights,” in *Human Rights in International Law: Legal and Policy Issues*, ed. Theodor Meron (Oxford: Clarendon Press, 1984), 171, 179; Richard B. Lillich, “Civil Rights,” in *Human Rights in International Law: Legal and Policy Issues*, ed. Theodor Meron (Oxford: Clarendon Press, 1984), 115, 159; Manfred Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary* (Kehl/Strasbourg/Arlington: N.P. Engel, 1993), 316; Karl Josef Partsch, “Freedom of Conscience and Expression, and Political Freedoms,” *The International Bill of Rights: The Covenant on Civil and Political Rights*, ed. Louis Henkin (New York: Columbia University Press, 1981), 209, 211. Commenting on the “have or adopt” locution that was settled upon in the ICCPR in an effort to avoid controversy with Muslim countries over the word “change”, the UN Human Rights Committee has observed that “the freedom to “have or to adopt” a religion or belief necessarily entails the freedom to choose a religion or belief, including, inter alia, the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief,” General Comment 22(48), para.5.
- 12 General Comment 22(48) clarifies that “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.”
- 13 ICCPR, Art.18(1); ECHR, Art.9(1).
- 14 ICCPR, Art.18(2).

religion or belief, political or other opinion, national or other origin, property, birth or other status.¹⁵

5. *Rights of parents and guardians:* States are obliged to respect 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, subject to providing protection for the rights of each child to freedom of religion or belief consistent with the evolving capacities of the child.¹⁶
6. *Corporate freedom and legal status:* Religious communities themselves have freedom of religion or belief, including a right to autonomy in their own affairs. An aspect of this corporate aspect of freedom of religion or belief is for religious communities to have standing and institutional rights to assert their rights and interests as communities. Religious communities may not wish to avail themselves of formal legal entity status, but they have a right to acquire legal entity status as part of their right to freedom of religion or belief and in particular as an aspect of the freedom to manifest religious beliefs not only individually, but in community with others.¹⁷

15 Anti-discrimination norms, and in particular, norms that bar discrimination on the basis of freedom of religion or belief, are common throughout the key international instruments. See, e.g., UDHR, Art.2; ICCPR, Art.2(1). Moreover, as the UN Human Rights Committee has noted, restrictions on religious freedom “may not be imposed for discriminatory purposes or applied in a discriminatory manner.” UN Human Rights Committee, General Comment No. 22(48), para.8. Thus, the non-discrimination norm is built into the requirement that limitations on religious freedom be “necessary” in order to be permissible under Article 18 of the ICCPR. Similarly, Articles 2 and 3 of the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief make it clear that discrimination is inconsistent with freedom of religion or belief.

16 ICCPR, Art.18(4); Convention on the Rights of the Child, Art.14.

17 The key treaty language of the ICCPR states that the right to “freedom of thought conscience and religion . . . shall include . . . freedom, either individually or in community with others and in public or private, to manifest his religion . . .” ICCPR, Art.18 (emphasis added). The binding status of the corporate freedom component of the normative core is implicitly recognized in Article 18, and can be deduced from existing standards, the factual necessities of protecting individual rights, and the jurisprudence that has emerged. There has been disagreement over the years as to whether freedom of religion or belief has the corporate “group rights” dimension identified in this sixth component of the normative core. The

7. *Limits of permissible restrictions on external freedom:* Freedom to manifest one's religion or belief may be subject only to such restrictions as:
- a. are prescribed by law; and
 - b. are applied by the state for the purpose of protecting (i) public safety, (ii) order, (iii) health, (iv) morals, or (v) the fundamental rights of others; and
 - c. are necessary – that is proportionate and not excessive – in order to achieve the purpose of the state when applying the restriction.¹⁸
8. *Non-derogability:* States may make no derogation from the right to freedom of religion or belief, not even in times of public emergency.¹⁹

These eight components of the human right to freedom of religion or belief can be identified from amongst the complex body of mutually supporting and internationally codified human rights norms. They receive independent reinforcement from other human rights norms that often have vital significance for the exercise and enjoyment of religious

alternative was to hold that the international instruments created only individual rights, and that to the extent religious groups were granted standing to represent rights of religious communities, they were doing so only in a derivative capacity. In many respects, this is merely a metaphysical dispute, because as a functional matter, the rights of religious communities have been consistently recognized and protected. In fact, freedom of religion or belief has collective dimensions that cannot be fully protected without an institutional rights bearer (typically with some type of corporate form or legal entity status) that can stand for and express the rights of the community. Accordingly, there is a corporate dimension that belongs to the normative core of freedom of religion or belief. Though there may be disagreement on the point whether collectives can themselves be right bearers, there can be no doubt that there is a collective dimension to the religious freedom rights held in common by the many members of religious communities.

18 ICCPR, Art.18(3); ECHR, Art.9(2); UN Human Rights Committee, General Comment No. 22 (48). It is important to emphasize that while some limitations on the scope of freedom of religion or belief are necessary, they are to be construed very narrowly in order to maximize the scope of the freedom.

19 ICCPR, Art.4(2).

freedom, notably freedom of expression, freedom of assembly, freedom of association, and freedom of movement.²⁰

In addition to ratifying the ICCPR, Indonesia has also ratified ICERD. It is obliged therefore to prohibit and eliminate all forms of racial discrimination and guarantee the right of every person, without distinction as to race, color, or national or ethnic origin, to freedom of thought, conscience and religion.²¹

In connection with the ratification of ICERD, Indonesia has passed Law No.40/2008 concerning the Elimination of Racial and Ethnic Discrimination. However, religion is not a basis of discrimination under the Law, and the right to equal treatment in regard to the enjoyment of civil, political and cultural rights excludes freedom of religion or belief. Belief (*kepercayaan*) on the other hand, is included as a basis of discrimination, and the right to culture is protected.²²

The legislative framework outlined above provides an important background to the first issue raised in this report as to whether human rights have universal validity or not. When Indonesia ratified the ICCPR and ICERD, no reservations were made and the implementing legislation clearly states that both Conventions are not inconsistent with the *Pancasila* and the 1945 Constitution. The legislation continues that the Conventions are “in accordance with the character of the Republic of Indonesia as a state based on law that upholds the worth and dignity of human beings... and the desire of Indonesia to continually advance and protect human rights in the life of the nation and the state.”²³ Such statements indicate that the state views human rights as universal and in accordance with the character of Indonesia. But on the other hand, Law No.40/2008

20 ICCPR Arts 19, 21, 22, and 12.

21 Art.5(d)(vii)

22 See Law No.40/2008, Art.1 definition of “discrimination” and “ethnic,” and Art.9 and its Elucidation.

23 Law No.12/2005 concerning the Ratification of the International Covenant on Civil and Political Rights, Consideration d; Law No.29/1999 concerning the Ratification of the International Convention on the Elimination Of All Forms Of Racial Discrimination 1965, Consideration e.

concerning the Elimination of Racial and Ethnic Discrimination states that the universal principles of “equality”, “freedom”, “justice” and “humanitarian values” set out in the Law must be implemented bearing in mind religious, social, cultural and legal values in Indonesia.²⁴ This may introduce cultural relativism to the fundamental principles of racial and ethnic discrimination.

In spite of the strong framework for freedom of religion or belief in Indonesia, numerous reports and personal accounts suggest that the state does not in practice uphold the basic norms of freedom of religion or belief. According to an analysis by Imparsial (2006), the state is in fact often involved in the violation of human rights. The report describes two ways in which the state is involved. First, it commits indirect violations by failing to respond to various events that lead to acts of violence, and secondly it enacts and enforces various policies that limit and confine freedom of religion or belief.

In relation to the first (indirect violations), police officials have failed to take preventive measures, thus indirectly allowing violations such as the closure of places of worship (particularly those of minority groups) or physical attacks on minority groups. As a state institution with authority to control security and order, the police should act against persons responsible for violent acts. But often the police have failed to act, giving the impression that the acts of violence were justified.

In relation to the second (direct violations), human rights activist Ghufron Mabruhi (2007) argues that such violations occur due to the tendency of the state to intervene in religious affairs. Mabruhi cites the existence of the Directorate on Monitoring Traditional Beliefs in Society (*Direktorat Pengawasan Aliran Kepercayaan Masyarakat dan Keagamaan* – Pakem) as an example of excessive state intervention in the affairs of religion and belief. Pakem is part of the Attorney-General’s Office and

24 Law No.40/2008, Art.2(2)

has existed for over 50 years.²⁵ Its tasks include following, observing, and monitoring the movements and developments of all religious movements, all streams of traditional belief and spirituality, and examining/checking books, religious or belief brochures which originate from inside and outside Indonesia. According to Mabruri, the role of the state should be limited to guaranteeing the rights of each individual citizen. It should therefore prevent any potential for disturbances of, and constraints on, persons choosing and observing their own belief. (*Mabruri 2007:4*)

Violations of the right to freedom of religion or belief by state actors facilitate the violation of the right by individuals. Opportunity, however, is not enough. There is also a question of the prevailing doctrines and attitudes of any given religion, including the opinions and convictions of religious leaders and authoritative bodies in a particular society. The influence of such opinions and convictions should not be underestimated, and form the basis of this report.

The report focuses on issues that have long been part of debates among Muslim religious leaders and intellectuals. In addition to the question of the universality of human rights, the issues relate to the relationship between religion and the state (religions recognized by the state and the requirement to list an individual's religion on his or her identity card); majority – minority issues (permission to build houses of worship for minorities; interfaith marriages; conversion and apostasy); groups considered to deviate from mainstream Islam (using the examples of followers of Ahmadiyah; Yusman Roy; and Lia Eden (alias Lia Aminuddin)). Outlined below is the background to such issues.

25 Interdepartmental Committee on Beliefs in Society was formed on the basis of SK No. 167/PROMOSI/1954 which then in 1960 became the Directorate on Monitoring Traditional Beliefs in Society (PAKEM) under the Attorney-General.

2. The relationship between religion and the state: recognized religions and identity cards (KTP)

Law No.1/PNPS/1965 concerning Prevention of the Misuse and/or the Defamation of Religions outlines the religions adhered to in Indonesia, namely Islam, Catholicism, Protestantism, Buddhism, Hinduism and Confucianism, but states that other religions are not prohibited.²⁶ In practice however, this Law has been interpreted to mean that only six religions are recognized in Indonesia, and subsequent legislation uses the term “religions that are not yet recognized” in reference to anything other than these six religions.²⁷ In addition, the Law prohibits interpretations or activities that deviate from the main teachings of religions adhered to in Indonesia.²⁸

In accordance with the six religions recognized in practice, Indonesia has six official religious institutions, one for each religion. These organizations are MUI (Indonesian Ulama Council), KWI (Indonesian Conference of Bishops), PGI (Association of Indonesian Churches), Walubi (Representative of the Indonesian Buddhists), Parisada Hindu Dharma Indonesia (Administrative Council of Hinduism), and Mataklin (High Council of Confucianism). Each institution interprets religious teachings and resolves religious disputes involving the religion for which it is responsible. The institutions are the ultimate religious authority for their respective religions.²⁹

The Indonesian government has not made any notable effort to correct this misinterpretation of Law No.1/PNPS/1965 and its flow on

26 “The religions adhered to in Indonesia are Islam, Catholicism, Protestantism, Buddhism, Hinduism and Confucianism, but that this does not mean that other religions, such as Judaism, Zoroastrianism, Shintoism, Taoism are prohibited in Indonesia.” Adherents of other religions are entitled to the guarantee set out in Article 29(2) of the 1945 Constitution, namely, freedom to adhere to their own religion and to worship according to that religion or belief, provided they do not violate the provisions of Law No.1/PNPS/1965 or other regulations: Elucidation of Art.1

27 Law No.23/2006, Arts.8(2), 61(4), 64(2)

28 Art.1; Elucidation, General, para.4

29 “Negara dan Diskriminasi Agama” (The State and Religious Discrimination) April 2007 <http://www.indonesiamedia.com/2007/04/mid/opini/Negara.htm>

effects. In this way, the government has, and continues to, condone the existence of a limited number of religions and a uniform interpretation of each religion. This limits an individual's freedom to determine, maintain or change religions in an unacceptable manner from a human rights perspective.

The second issue raised in connection with the relationship between the state and religion is the requirement for individuals to list their religion on their identity cards (KTP).³⁰ The most recent law to govern this requirement is Law No.23/2006 concerning the Administration of Population Affairs.

However, under Law No.23/2006, an individual is no longer required to list his or her religion as one of the six recognized religions. Under the new Law, if a person's religion is not yet recognized as a religion, he or she "must still be served and must be recorded in the population database".³¹ However, it is not clear what this phrase means, and whether the Civil Registry Office must still issue an identity card to those persons whose religion "is not recognized." In practice, identity cards tend not to be issued to persons belonging to a non-recognized religious group,³² and if the religion column is left blank, the holder of the identity card may be accused of being an atheist. Although contrary to the right of persons to choose not have a religion, atheists have no place in Indonesia. Prior to Law No.23/2006, most individuals would just choose one of the six religions rather than risk being called an atheist.³³

30 An identity card is essential for every aspect of life in Indonesia, and without one a person cannot participate in society.

31 Law No.23/2006 concerning the Administration of Population Affairs, Art.64(1)

32 International Religious Freedom Report 2008 [a report produced annually by the US Department of State], Released by the Bureau of Democracy, Human Rights, and Labor, p.6

33 "Laporan Alternatif Pelaksanaan Konvensi Penghapusan Segala Bentuk Diskriminasi Rasial (ICERD) di Indonesia "Menguak Tabir Diskriminasi Rasial dan Impunity di Indonesia"" (Alternative Report on the Implementation of the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in Indonesia "Drawing Back the Curtain of Racial Discrimination and Impunity in Indonesia"), para.145, http://kontras.org/pers/teks/Indo_%20Final_CERD.pdf, para.144

The requirement that a person's religion must be listed on his or her identity card is of further concern from a human rights perspective. Under international law, an individual may not be compelled to reveal his or her thoughts or adherence to a religion or belief.³⁴ Indonesian activists have also protested against the requirement stating that it may place individuals at risk of harm, especially in areas where religious based violence occurs.³⁵ The Committee on the Elimination of Racial Discrimination has also expressed its concern over the requirement, and that those wishing either have the column blank or to register under one of the "non-recognized" religions reportedly face discrimination and harassment.³⁶

The concern expressed by the Committee has been elaborated on by the Wahid Institute, an NGO promoting pluralism and peaceful Islam:

Having people's religious affiliation as an important category in our citizenship data clearly opens the room for discrimination. Article 61.2 and Article 64 both provide that everyone whose religion is not yet recognized (a religion that is not legal), is permitted to leave the column of religion blank. This clause seems fair enough, for it leaves citizens, whether they adhere, or do not adhere to a religion, options enabling them to have a citizenship document. However, the reality is different in relation to bureaucratic procedures such as registering a marriage, inheritance, the guardianship of children, etc. Here, citizens who do not have a recognized religious status will encounter obstacles which will make them "second class" citizens when they need to deal with public services.³⁷

34 This is in accordance with Articles 18.2 and 17 of the ICCPR: General Comment No.22 (48), para.3

35 "Petisi Kebebasan Beragama" (Petition for Religious Freedom) 19 March 2008, <http://akkbb.wordpress.com/author/anick/>

36 Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination, Indonesia, 15 August 2007, CERD/C/IDN/CO/3, para.21

37 Bulletin, The Wahid Institute, No.10, 10 February 2007.

3. Majority-minority issues

A. Building permits for houses of worship

Establishing places of worship is an integral part of manifesting one's religion or belief. However, between 2004 and 2007 around 108 churches were forcibly closed, destroyed and attacked.³⁸ Perpetrators justified their actions by stating that the building was not a church, but rather a house that had been illegally converted into a church. In many cases police reportedly did nothing to prevent the interference and destruction, and in some instances gave the impression that they supported the closure or destruction (Sutanto 2006).

Much of this violence was attributed to inadequate and unclear regulation of the establishment of places of worship. The government therefore in 2006, through the Minister for Religion and the Interior Minister, formulated Joint Decision Letter of the Minister for Religion and the Minister of the Interior Number: 9 of 2006 Number: 8 of 2006 on the Establishment of Places of Worship.³⁹ This Regulation replaced the Joint Letter of the Minister of the Religion and Minister of the Interior No1/BER/MDN-MAG of 1969.

The 2006 Joint Letter requires the establishment of a place of worship to be based on “a real need” and on the composition of the population in the relevant area so that worshippers in the area have a place of worship.⁴⁰ Anyone wanting to establish a place of worship must, among other things, collect 90 names and identity cards of persons who will use the place of worship; collect at least 60 names of persons who live in the area, belong to other faiths and who support the proposal; obtain the written

38 Association of Indonesian Churches (PGI) and the Conference of Bishops (KWI) quoted in Rumadi: 2007.

39 The full title of this regulation is Joint Decision Letter of the Minister for Religion and the Minister of the Interior Number: 9 of 2006 Number: 8 of 2006 concerning the Guidelines for the Implementation of the Regional Head/Deputy Regional Head in Guarding the Harmony of Religious Communities, Empowering the Forum for the Harmony of Religious Communities, and the Establishment of Places of Worship.

40 Art.13(1)

recommendation of the head of the department of religious affairs at the district or city level; and obtain the written recommendation of the Forum for the Harmony of Religious Congregations (FKUB).⁴¹

However, rather than solving the problems attributed to the former law, the 2006 Joint Letter creates many new problems and continues some old ones. The Letter does not make provision for followers of religions outside the six religions recognized by the state in practice. As such, it is unclear if such persons are permitted to build a place of worship, and if they are, how they go about this. Even for those who adhere to one of the six religions, the Joint Letter does not address the plight of minority groups who are likely to experience difficulties obtaining the required 60 signatures in support of their application or the required written recommendations. For example, Muslims in Manokwari, West Papua province, have experienced difficulties building a mosque because the majority of the population is non-Muslim. Christians have experienced a similar fate in areas that are predominantly Muslim.⁴² In this report, the plight of Christians in Sampang is discussed further below. It is highly likely that these problems will exacerbate conflict between minorities and the dominant majority, because decisions regarding places of worship can be dictated by the majority (Rumadi: 2005). The 2006 Joint Letter is a restriction on the right to freedom of religion or belief as it restricts the ability of a person to establish a place of worship. As such, it is worth considering whether the requirements are truly necessary to achieve one of the permissible aims under the ICCPR, namely to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.⁴³ This question is generally considered by the interviewees in this report.

41 Art.14(2). FKUB is a forum formed by society and facilitated by the government in the context of building, maintaining and empowering religious congregations to achieve harmony and welfare.

42 "Muslim Manokwari Sulit Bangun Masjid Karena SKB Dua Menteri" (Manokwari Muslims are Experiencing Difficulties Building a Mosque Because of the Joint Decision Letter of Two Ministers) 1 May 2006 <http://news.antara.co.id/print?id=114649601>

43 ICCPR, Art.18(3)

Finally, the Joint Letter requires that a place of worship can only be based on a real need, but it is not clear who determines this. A letter of recommendation from the FKUB is required also. Both these factors mean that politicization of building places of worship seems inevitable, especially considering the structure of the FKUB. At the provincial level for example, the FKUB is structured as follows: the Chair is the Deputy Governor, the Deputy Chair is the Head of the Provincial Department of Religion office; the Secretary is the Head of the National and Political Unity Body at the provincial level; the members are related agencies such as the police, the military and the Attorney-General's Office).⁴⁴ It also means that building places of worship is open to public pressure from individuals such as religious leaders and extremist groups.

B. Interfaith marriages

The issue of mixed marriages has long been a controversial issue in Indonesia. Law No.1/1974 concerning Marriage in principle forbids marriage between two individuals of different faiths, as does the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI) which Muslims follow in regard to matters of family law. According to Chapter IV, Article 40(c) of the KHI, a Muslim man cannot marry a non-Muslim woman, while Article 44 prohibits a Muslim woman from marrying a non-Muslim man.

According to Islamic regulations, a Muslim man may marry a non-Muslim woman from the Christian or Jewish faith, but a Muslim woman may not marry a non-Muslim man. This is based on the Qur'an: Surat al-Ma'idah (5) 5 and Surat al-Baqarah (2) 221:

All good things have this day been made lawful to you. The food of those to whom the Book was given is lawful to you, and yours to them. Lawful to you are the believing women and the free women from among

⁴⁴ Art.11(3). The structure of the FKUB at the district/city level is as follows: Chair: deputy district head/deputy mayor; Deputy Chair: head of the department of religion of that district/city; Secretary: head of the national and political body of the district/city; Members: head of related institutions: Art.11(4). Rumadi: 2005

those who were given the Scriptures before you, provided that you give them their dowries and live in honor with them, neither committing fornication nor taking them as mistresses... (al-Ma'idah [5]: 5)

You shall not wed pagan women, unless they embrace the faith. A believing slave-girl is better than an idolatress, although she may please you. Nor shall you wed idolaters, unless they embrace the faith. A believing slave is better than an idolater, although he may please you. These call you to Hell-fire; but Allah calls you, by His will, to Paradise and to forgiveness. He makes plain His revelations to mankind, so that they may take heed. (al-Baqarah [2]: 221)

These prohibitions cause many difficulties for couples from different faiths wanting to marry, and compromise their freedom of religion or belief. In regard to Indonesian law, couples with the resources to do so often travel overseas to get married, and then register the marriage at the relevant Indonesian Embassy. Other couples choose to covert, with one person changing to the same religion as their future spouse. Where couples from different faiths do marry, but maintain their own religion, they face difficulties concerning the legal status of their marriage. Such couples also experience administrative difficulties, for example in obtaining a Family Card (*Kartu Keluarga* –KK) which requires a marriage book (*Buku Nikah*).⁴⁵ Without a marriage book, couples are unable to get a birth certificate (*Akte Kelahiran*) for their children that acknowledges both parents. It is possible to obtain a birth certificate that states the child was born to a mother only, indicating that the child is born out of wedlock.⁴⁶ Socially however, this is likely to cause difficulties for both the

⁴⁵ See: Zaitunah Subhan, 2008.

⁴⁶ There are only three types of birth certificate in Indonesia: legally recognized child, a child with only a mother, and a child whose origins are unclear: “Pemerintah Godok Aturan Perkawinan Penghayat Kepercayaan” (The Government Cooks Up Regulations on the Marriages of Local Belief Adherents) 5 June 2007, <http://hukumonline.com/detail.asp?id=16853&cl=Berita>. This experience was recounted by Mrs Dewi Kanti from the Sunda Wiwitan belief in Cigugur quoted in “Laporan Alternatif Pelaksanaan Konvensi Penghapusan Segala Bentuk Diskriminasi Racial (ICERD) di Indonesia “Menguak Tabir Diskriminasi Racial dan Impunity di Indonesia”” (Alternative Report on the Implementation of the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in Indonesia “Drawing

child and the parents as having a child out of wedlock is not acceptable in Indonesia. But on the other hand, if the child's birth is not registered, he or she will have difficulties enrolling in school, breaching both the child's right to have his or her birth registered and the right to education.⁴⁷

The problems faced by couples from different faiths were further outlined in the 2007 International Religious Freedom Report (IRFR) published by the Bureau of Democracy, Human Rights and Labor of the US State Department:

Men and women of different religions continued to face obstacles to marrying and officially registering their marriages. Such couples had difficulty finding a religious official willing to perform an interfaith marriage ceremony; a religious ceremony is required before a marriage can be registered. As a result, some persons converted in order to marry. Others traveled overseas, where they wed and then registered the marriage at an Indonesian Embassy.

Women's rights activists such as Prof. Siti Musdah Mulia (2007) view these restrictions as a violation of freedom of religion or belief and argue that people of different religions, sects, or religious ideologies should be allowed to marry provided the marriage is not performed under coercion or duress. In Mulia's view sameness of religion is not an absolute requirement for the validity of a marriage. She rejects fatwas or related regulations that prohibit marriage across religious divides as mere advices. Mulia also believes that the state should neither interfere in religious practices nor in marriage procedures. Such views, however, have been rejected by the religious leaders interviewed who perceive them to be contrary to Islamic family law.

Back the Curtain of Racial Discrimination and Impunity in Indonesia"), para.145, http://kontras.org/pers/teks/Indo_%20Final_CERD.pdf

47 ICCPR, Art.24(2), International Covenant on Economic, Social and Cultural Rights, Art.13. This Covenant was ratified by Indonesia in 2005.

C. Conversion and apostasy

Another issue of controversy concerns the Islamic notion of *riddah*, or apostasy from Islam, which according to some interpretations of Islamic law carries the punishment of death. This severe sentencing is based on Qur'an, al-Nisa' [4]: 89: "*They would have you disbelieve as they themselves have done, so that you may be all alike. Do not befriend them until they have fled their homes for the cause of Allah. If they desert you, seize them and put them to death wherever you find them.*" Needless to say, the punishment of death is contrary to freedom of religion or belief and the right to life.

With this in mind, Islamic teachings concerning apostasy have been a hotly debated issue in Indonesia not least, since according to state legislation, conversion to and from any of the officially recognized religions is allowed. However, a number of Muslim leaders interviewed for this research disapproved of Muslims changing their religion for whatever reason.

From a different point of view, Tri Hidayati argues that the law of *riddah* can be reinterpreted in order to find a compromise with basic human rights that permit religious conversion. In Hidayati's view, two fundamental steps are necessary to reach this compromise:

First, return the law of riddah to its fundamental principle, i.e. a responsible freedom of religion. In principle, Islam holds religious freedom and responsibility of individuals in high esteem. But to remain a Muslim or not is an individual and personal choice. However, this choice embodies consequences for which a person is accountable. Responsible freedom would have external and internal impacts. Externally it will be manifested in tolerance, while internally it will be manifested in a high degree of obedience.

And secondly, the death sentence for apostates, in addition to being loaded with the political background of Seventh Century Medina, is no longer appropriate in the context of modern society where the state is ruled

by secular principles. From the present socio-historical circumstances we can recognize that theocracy might have been fitting for the era of early Islam whereas secular democracy is more appropriate for present day nation-states thus we clearly can no longer accept the death penalty for apostates. (Hidayati, 2008:173-174)

While Indonesian law does not prohibit conversion, it does criminalize public expression or actions intended to make a person no longer follow “one of the religions adhered to in Indonesia”. Any person found guilty may be imprisoned for a maximum of five years.⁴⁸ Article 86 of Law No.23/2002 concerning Child Protection also criminalizes the act of deliberately deceiving, telling lies and coaxing a child to choose a religion other than the child’s own, not on the child’s own wishes. Any person found guilty will be sentenced to at least five years jail and/or fined a maximum of IDR 100,000,000 (approximately USD 8,850). It is important to note however that both provisions only protect followers of a recognized religion, and only those that follow the main teaching of that religion.

4. Groups considered to deviate from mainstream Islam: Ahmadiyah, Yusman Roy & Lia Aminuddin (alias Lia Eden) and their followers

An issue that has raised much controversy, both in Indonesia and internationally, is the issue of groups that deviate from a mainstream religion and are accused of defaming that religion. In Indonesia it is a criminal offence to defame a religion (meaning one of the six recognized religions). Any person found guilty may be imprisoned for a maximum of five years. This provision is based on Law No.1/PNPS/1965.⁴⁹

The status of defamation of religions in human rights is a hotly debated issue. Some states, including Indonesia, argue that defamation of religions is an important part of human rights protection because

48 Criminal Code, Art.156a.

49 Criminal Code, Art.156a.

it is inseparable from issues of religious discrimination, hatred and intolerance. Defamation of religions is a form of incitement to religious hatred, hostility and violence against followers of those religions, which in turn leads to the denial of their fundamental rights. Combating religious discrimination requires a particular focus on preventing the direct and indirect consequences of defamation of religions.⁵⁰

States opposed to defamation of religions having a place in human rights discourse argue that efforts to combat defamation of religions typically result in restrictions to the freedoms of thought, conscience, religion and expression. In other words, it is often those who are accused of defaming religions whose fundamental rights are violated. From a legal perspective the defamation of religions concept is also problematic since individuals (and not religions, ideologies, or beliefs) are the holders of human rights and are protected by the law. The concept of defamation of religions seeks to convey the idea that a religion itself can be a subject of protection under human rights law.⁵¹

The constitutional validity of Law No.1/PNPS/1965 (on which the criminalization of defamation of religions is based) was recently challenged by a consortium of NGOs and human rights activists. The applicants argued that the Law was in violation of the freedom of religion guarantees provided by the Constitution and therefore should be declared invalid.⁵² However, on 19 April 2010, the Constitutional Court decided to uphold the law.

Some of the most prominent cases which have caused intra-Islamic conflict have been groups accused of deviating from the normative teachings of (mainstream) Islam. These groups have also been accused of defaming Islam and in many cases have been sentenced to prison terms.

50 Combating Defamation of Religions, Report of the Secretary-General 21 October 2008, A/63/365, para.18

51 Ibid, para.35

52 "UU Penodaan Agama Diuji ke Mahkamah Konstitusi" (Defamation of Religions Law is Tested by the Constitutional Court), 9 November 2009, <http://www.hukumonline.com/berita/baca/lt4af83c7554820/uu-penodaan-agama-diuji-ke-mahkamah-konstitusi>

The Muslim leaders interviewed in this report were asked particularly about the cases of Ahmadiyah, Yusman Roy (Gus Roy) and Lia Eden (officially: Lia Aminuddin).

The Ahmadiyah movement was founded in India towards the end of the 19th century by Mirza Ghulam Ahmad (1835-1908). He envisioned the movement to be a revitalization of Islam. In 1925, the movement was founded in Indonesia where today it consists of two groups: Jemaat Ahmadiyah Indonesia (JAI) which believes in the prophethood of Mirza Ghulam Ahmad, thus challenging the Islamic core belief that the Prophet Muhammad is the final and greatest prophet. The second group is Gerakan Ahmadiyah Indonesia (GAI) whose followers do not believe that their founder is a prophet, but consider him merely to be a reformer of Islam. Ahmadis consider themselves Muslim, but because of their controversial views on certain beliefs in Islam, many mainstream Muslims do not consider them to be Muslims.

Both groups are considered heretical by MUI which issued fatwas against their teachings. The first fatwa was issued in 1980 and was directed towards JAI only. However in 2005, MUI restated its fatwa, stressing that the Ahmadiyah belief (including GAI) is outside of Islam, is deviant and causes deviant practices, and that Muslims who believe in it are apostate (have left Islam). The fatwa continued that the government must prohibit the dissemination of the Ahmadi belief in Indonesia and that the organization itself must be frozen and all its places of worship be closed.⁵³

After the fall of Suharto, followers of Ahmadiyah have increasingly become the target of violent actions by groups opposing its presence in Indonesia. One area that has raised particular concern is Lombok in West Nusa Tenggara province. The 2007 and 2008 US State Department Reports on Freedom of Religion in Indonesia detail violence against its followers, who were attacked by local Muslims in February and March

⁵³ Fatwa Decision of the Indonesian Ulama Council No: 11/Munas VII/MUIi/15/2005 concerning Ahmadiyah.

2006, and whose houses and mosques were destroyed. According to the Reports, as a result, 187 Ahmadiyah members permanently live in a refugee shelter in the capital Mataram. On July 24, 2006 they approached the Australian consulate in Bali to ask for asylum from persecution by local Muslims, but their application was declined. The local government has provided counseling for the Ahmadis seeking refuge so that they “might accept mainstream Islamic teachings and live together with other Muslim people” but in contrast, has made no effort to change public views or reconstruct the damaged homes of the Ahmadis.⁵⁴ The Ahmadis in Lombok have reported their plight to the President and the Head of the National Police, but do not feel they have been taken seriously.⁵⁵

The 2005 MUI fatwa appears to have led to increasing violence against the Ahmadiyah community. Since then, policies, regulations, and official action (or inaction) have also increasingly restricted freedom of religion for the Ahmadiyah community and have led to the violation of other basic rights. The 2007 US State Department Report gives the example of the July 2005 attacks on Ahmadis in West Java where, despite strict surveillance by the police, none of the perpetrators were arrested. The local government then prohibited Ahmadiyah from operating in West Java, preventing its members from using their places of worship. Again, according to the Report, no action was taken against those committing violence. The conclusion to this is that the government appears to continuously tolerate discrimination and persecution of Ahmadiyah followers. It has remained silent about the MUI fatwa in 2005, the anti-Ahmadiyah prohibitions by local governments and until mid-2008, on the legal status of Ahmadiyah.

On 9 June 2008, the government issued a formal statement on the status of Ahmadiyah in Indonesia in the form of a Joint Decision Letter

54 HM Nur quoted in Nugraha: 2008

55 “Ahmadiyah Berniat Ajukan Gugatan PMH” (Ahmadiyah Intend to Submit an Action for Breach of Law) 13 January 2008, <http://www.hukumonline.com/detail.asp?id=18326&cl=Berita>

(SKB) concerning Ahmadiyah.⁵⁶ The Letter, issued by three Ministers, instructed that all followers, members and/or leaders of Ahmadiyah, as long as they claim to be Muslim, must cease all activities that are incompatible with the mainstream interpretation of Islam.⁵⁷ In other words, the Ahmadi could either continue with their religious activities provided they acknowledged that they were not Muslim, or change their teachings to accord with mainstream Islam. If members of JAI were seen to ignore this “warning”, then they would be charged with defaming Islam in accordance with Article 156a of the Criminal Code.⁵⁸

A second case discussed by the Muslim leaders interviewed in this report is Yusman Roy (Gus Roy). Yusman Roy was the leader of an Islamic boarding school (*pesantren*) in Lawang, Malang. He was sentenced to two years prison in August 2005 because he behaved in a manner that caused unrest. Roy conducted bilingual prayers (in Arabic and Indonesian) to facilitate the comprehension of his congregation. The MUI regarded this as an act of defiling the authenticity of Islam which requires prayers to be conducted in Arabic. Roy was freed on November 9, 2006 after 18 months in prison.

The third case referred to by respondents in the interview is Lia Eden, the self-proclaimed leader of the group called “God’s Kingdom of Eden” (“Tahta Suci Kerajaan Eden”) from Bungur, Senen in the Central Jakarta area. Lia has been charged a number of times and convicted for blasphemy. She has claimed to embody the angel Gabriel, the Mahdi, and the Virgin Mary, has carried out prayers in more than one language, and allowed her followers to eat pork. Other charges made against her include disturbing public order, and committing criminal acts against children (she allegedly set the hair of a nine-year-old child on fire). Lia had prosthelytised for about six years before she was first charged with

56 Joint Decision of the Minister for Religion, the Attorney-General and the Interior Minister Number: 3 of 2008 Number: Kep-033/A/JA/6/2008 Number : 199 of 2008 concerning the Warning and Instruction to the Followers, Members and/or Coordinating Members of the Indonesian Ahmadiyah Congregation (JAI) and to Society.

57 Second point of the Joint Decision Letter.

58 Third point of the Joint Decision Letter.

defaming religion, although in 1997 the Indonesian Ulama Council (MUI) issued a statement that her writings were deviant because they differed from true Islamic teachings.⁵⁹ She was sentenced to two years in prison in 2006 for defaming religion and has since been re-arrested and sentenced to an additional two and a half year in prison.

* * *

59 “Tak Ada Unsur Meringankan, Lia Eden Dijerat Art. Penodaan Agama” (There are no Mitigating Factors, Lia Eden is Caught by the Defamation of Religions Article) 25 June 2006 <http://hukumonline.com/detail.asp?id=15057&cl=Berita>

III

HUMAN RIGHTS AND ISLAM

The tension and conflicts outlined in the introduction raise many issues of concern in regard to human rights. The cases attract media interest and therefore public attention both in Indonesia and abroad, and contribute to shaping an image of Islam and the religion's approach to human rights. These tensions, conflicts and the subsequent reporting also influence the attitude of Muslims to human rights. In some instances the attitude is one of suspicion coupled with a view that human rights is a foreign concept, formed by Western countries and therefore not appropriate in the Indonesian or broader Islamic context. However, there are a number of Muslim intellectuals who criticize such views and argue for the strengthening of Islamic moral and social commitment to the implementation of human rights.¹

A positive approach to human rights in the wider Islamic community has not developed without friction. Literature about the relationship

1 Voices contesting the violent and suppressive side of Islamism are many and come from Muslims belonging to NU, Muhammadiyah and other organizations. One of the leading voices is Abdurrahman Wahid, the former President of Indonesia and former National Chair of the Nahdlatul Ulama (NU). The website of the Network for Progressive Muslims (JIL, Jaringan Islam Liberal) is one platform resisting Islamist trends. See, for example its websites in Indonesian and English, <http://islamlib.com/id/> & <http://islamlib.com/en/>

between Islam and human rights testifies to the resistance towards human rights, both by Muslim scholars and Muslim states. Among others, Ann Elizabeth Mayer (1999) and Daniel E. Price (1999) have discussed how some Muslim scholars reject the idea of the universal applicability of human rights. Using the concept of cultural relativism, human rights are said to have limited applicability to Muslim countries whose cultures differ from those of Western countries. Moreover, 'the West' is seen not only to be dominant in creating and disseminating the idea of human rights, but also to be critical of Muslim countries. However, Western countries, such as the US, are perceived as having a poor record in enforcing human rights themselves.

However, not all scholars share this attitude to human rights. Noted Indonesian human rights lawyer Todung Mulya Lubis (2000), who is Muslim, does not find such considerations relevant. Most states, notwithstanding their cultural and religious composition, have ratified international human rights instruments. Human rights are thus equally binding on all states, irrespective of their cultural or religious composition.

Muslim thinkers such as the prominent Sudanese Muslim intellectual, Abdullahi Ahmed an-Na'im, argue that the concept of human rights is in principle universally valid because it is not based on religious philosophies.² When the Universal Declaration of Human Rights was first agreed to as a universally applicable notion, neither religion in general, nor a specific religious tradition, was used as a justifying foundation. While in retrospect this avoidance has led to an underdeveloped role of religion in human rights discussions, it was a deliberate effort to facilitate the acceptance of the fundamental concepts of human rights by all (both religious and non-religious). Instead of rejecting human rights for being secular, this interpretation firmly calls on all Muslims to recognize that human rights are the product of international consensus.

2 *Islam and the Secular State* (2008); *Islam dan Negara Sekular: Menegosiasikan Masa Depan Syariah*.

In an-Na'im's view, the Universal Declaration of Human Rights is an important instrument for protecting human dignity and for enhancing human welfare due to its universally acceptable moral legitimacy and its strong political authority.

An-Na'im has consistently argued for the strengthening of a positive and reconciliatory relationship between Islam and human rights from the perspective of *Shari'ah*.³ In his view, Islam can legitimize the idea of universal human rights. However, his approach to Islam and human rights has triggered much discussion both within Muslim communities and externally.⁴

In light of the debates regarding the compatibility between human rights and religion, in particular Islam, it also is worth noting the views of Joseph Runzo, Nancy M. Martin and Arvind Sharma in their introduction to *Human Rights and Responsibilities in the World Religions*:

Religions have too often been used to justify the violation of human rights, in part through the hierarchical and selective use or role ethics and the postponement of temporal justice to divine judgment or future karmic consequences. Yet the world religions have also provided a constant voice of critique against the violation of human rights by calling for equity, and universal compassion and love; calls which reach far beyond the mere protection of human rights. (2003:1)

The crucial point is how religion – while often used to justify violations of human rights – is also used as a positive construction and as a source of energy for the full realization of human rights. This point provides an interesting backdrop to the issues raised in this report, in particular, the attitudes of religious leaders to human rights and to freedom of religion or belief.

3 Abdullahi A. An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*, Syracuse: Syracuse University Press, 1990

4 See the differing assessments in A. An-Na'im and M. Arkoun, Dkk., *Dekonstruksi Syariah (II), Kritik Konsep, Penjelajahan Lain*, Yogyakarta: LkiS, 1996. The book is a translation of Tore Lindholm and Kari Vogt eds.: *Islam and Human Rights: Challenges and Rejoinders* Oslo: Nordic Human Rights Publications, 1993.

1. Indonesian discourse on religion and human rights

The history of Indonesian discourse on religion and human rights also provides an interesting backdrop to the issues raised in this report. References to human rights can be seen in the letters from R.A. Kartini titled “From Darkness into Light”, the political writings of H.O.S. Cokroaminoto, Agus Salim, Douwes Dekker, Soewardi Soeryaningrat, the petition made by Sutardjo at the Volksraad⁵ or Soekarno’s defense titled “Indonesia Accuses” and Hatta’s “Indonesia is Free” which were read out in the Dutch East Indies court.

However, discussions about the compatibility of concepts relating to human rights and Islam first came to prominence when independence advocates began developing a foundation and ideology for Indonesia as an independent nation. Over time the debates have developed on several levels with Muslim thinkers striving to create Islamic hermeneutics that agree with non-Islamic discourses of human rights and religion. Concurrent with these pro-human rights voices has been consistent resistance from various Islamist groups that consider the concept of human rights to be a Western construct.

Human rights debates and independence

Engagement with human rights concepts in Indonesia began prior to Indonesia’s independence when the Japanese occupiers established *Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia* (the Board for Investigating Efforts in Preparation for Indonesia’s Independence) in the early 1940s. This Board began to draft what is now the Indonesian Constitution.

The human rights debates at that time vacillated between two groups: the first was led by Raden Supomo, who argued that the post-independence constitution should not contain articles concerning human

5 The Volksraad was an advisory body created by the Dutch in the East Indies (now Indonesia) in 1917. It served as a forum for the expression of grievances.

rights. The second group was led by Mohammad Hatta and Mohammad Yamin, who insisted on the importance of including human rights in the new Constitution. Supomo was opposed to doing so because in his view human rights emphasized individualism and contradicted the basic principles of familial values (*kekeluargaan*) and national integration. Individualism, as embodied in human rights, would separate individuals from the state while the Indonesian state should be integralist, where the interests of society and the state were one. However, Supomo's view on integration ignored the possibility of the state not acting in the best interest of its citizens, and of the possibility that the state may commit violence against them. On the other hand, Hatta and Yamin anticipated this possibility and argued that including articles on basic human rights in the Constitution would help protect the rights of the Indonesian people by holding the state accountable for its acts and omissions.⁶

The persistence of Hatta and Yamin resulted in a compromise. One day after the declaration of independence on 17 August 1945, Indonesia adopted its new Constitution (*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*) which was formulated by BPUPKI in July. It consisted of 37 articles with 5 articles addressing matters relating to human rights, namely Articles 27, 28, 29, 30, and 31. Article 29 provided for the recognition of freedom of religion as follows:

1. The State is based on belief in Almighty God.
2. The State guarantees all persons the freedom to embrace his or her own religion and to worship according to that religion and [religious] belief.

The impact of how religious views and preferences influenced the human rights inspired discourse prior to independence has never been thoroughly studied. It is therefore difficult to assert that either Supomo on the one hand, or Hatta and Yamin on the other, were representing specific religious views or groups in Indonesia.

⁶ See: Jimly Asshiddiqie, 2005, and Adnan Buyung Nasution, 2000

However, in his book *Islam and Matters of the State: A Study of their Constellation in the Constitutional Assembly (Islam dan Masalah Kenegaraan: Studi tentang Percaturan dalam Konstituante, 1987)*, Ahmad Syafii Maarif discusses the role of Islam during the meetings of the Konstituante assembly (BPUPKI, 1956-1959) which studied the Constitution in the 1950s. The members of the *Konstituante* represented three ideologies: nationalist, Islamist and socialist which eventually crystallized into two mutually contradicting poles: Islamist and secularist.⁷

Maarif's research discusses the influence of the then prominent politician Hasbi Asshiddiqie who represented the large Islamic modernist Masyumi party. Asshiddiqie, an expert in *Shari'ah*, held the view that taking Islam as the basis for human rights was natural and appropriate since the Qur'an and the Sunnah provided a more adequate account of human rights than non-Islamic holy books and scriptures. Referring to the Qur'an, Asshiddiqie asserted that Muslim human rights philosophy could avoid the heterogeneity and controversy connected to human rights debates in the West which were based on philosophical thinking. By referring to the verses that asserted the dignity of human beings, Asshiddiqie was optimistic about the possibility of referring to the Qur'an as the basis for human rights. In his view Surat *al-Isra'* (17:70): "*We have bestowed dignity on Adam's children and guided them by land and sea. We have provided them with good things and exalted them above many of Our creatures,*" conveyed the appreciation of Islam for universal humanity regardless of ethnicity, political preference, religious background, and other differences.

Moreover, Asshiddiqie argued that the verse discerned three types of dignity that God has bestowed upon humankind: (1) personal or individual dignity (*karamah fardiyah*), which has material and spiritual dimensions; (2) collective dignity (*karamah ijtima'iyah*), i.e. that human beings are of equal rank regardless of their background; and (3) political

7 See: Ahmad Nur Fuad, et. al., 2007.

dignity (*karamah siyasiyyah*), i.e. the individual political rights to elect, and to be elected to, a political position.

According to Asshiddiqie, these three concepts of dignity could be used as a foundation to develop a link between Islam and at least five aspects of human rights: the rights to life and to security of person, to freedom of religion, to own property, to work for one's livelihood, to freedom of speech and expression and to education and instruction.

In explaining these five aspects of human rights, Asshiddiqie referred to the Qur'an. Firstly, he based the right to life and to safety on Surat *al-Ma'idah* (5:32): "...*whoever killed a human being, except as a punishment for murder or other wicked crimes, should be looked upon as though he had killed all mankind.*"

Secondly, he drew the right to freedom of religion from Surat *Yunus* (10:99): "*Had your Lord pleased, all the people of the earth would have believed Him. Would you then force faith upon men?*" This verse according to Asshiddiqie, contains the Islamic assertion that individuals have the right to practice their religion voluntarily. This right thus implies respect for other people's right to adhere to the religion or belief of their choice. To reinforce this idea, Asshiddiqie quoted Surat *al-Baqarah* (2: 256): "*There shall be no compulsion in religion. True guidance is now distinct from error.*"

For the right to own property, Asshiddiqie referred to Surat *al-Nisa'* (4:32): "*Do not covet the favors by which Allah has exalted some of you above others. Men as well as women shall be rewarded for their labors. Rather implore Allah to bestow on you His gifts. Allah has knowledge of all things.*" In his view, this verse also instilled the social values of sharing one's wealth with those who are less fortunate.

Fourth, he based the right to work for one's livelihood on Surat *al-Mulk* (67:15): "*It is He who has subdued the earth to you. Walk about its*

regions and eat that which He has given you. To Him all shall return at the Resurrection.”

And finally, the fifth concerns the right to freedom of speech and expression, and the right to education and instruction. According to Asshiddiqie, these rights are significant indicators that Islam respects the use of reason in order for people to avoid blind imitation (*taqlid*). Asshiddiqie mentioned two proofs from the Qur'an to strengthen this right; the first proof is from Surat *al-A'raf* (7:179): “*We have predestined for Hell many jinn and many men. They have hearts, yet they cannot understand; eyes, yet they do not see; and ears, yet they do not hear. They are like beasts – indeed, they are less enlightened. Such are the heedless.*” The second proof is from *al-Tawbah* (9:122): “*It is not right that all the faithful should go to war at once. A band from each community should stay behind to instruct themselves in religion and admonish their men when they return, so that they may take heed.*”

As Maarif has shown, Asshiddiqie presented an Islamic vision that affirms freedom of religion or belief and shows that Islamic teachings can be used to reconcile Islam and human rights including the human right to freedom of religion or belief.

Post Konstituante: 1959 onwards

After the *Konstituante* assembly, human rights and related concepts continued to be the subject of debate among Indonesian Muslims. Discourse on the links between Islam and human rights continued in earnest almost a decade after the *Konstituante* assembly when Islamic thought entered the “neo-modernist” phase. One of the most influential thinkers during this period was Nurcholis Madjid.⁸ Apart from publishing

8 The late Nurcholis Madjid was a prominent Indonesian Muslim intellectual, who argued throughout his career that for Islam to be victorious in the global struggle of ideas, it needs to embrace the concepts of tolerance, democracy and pluralism. The term neo-modernism originates from Fazlur Rahman. The term is used by Rahman to describe four phases of the Islamic reform movement from the end of eighteenth century through the following two centuries. The four phases are: (1) The Revivalist movement. This movement emerged at the end of eighteenth century and early nineteenth century (i.e., the Wahhabi movement in

on Islamic thought, he was greatly concerned with the issue of freedom of religion or belief. Referring to the Qur'an, the core of his thinking was that Islam can function as a theological foundation for freedom of religion or belief.

According to Madjid, the spirit of Islamic teaching concerns first the deity (*habl min Allah*), and then humanity (*habl min al-nas*) (Madjid, 1992). By emphasizing humanity, Islam intends to provide awareness that in principle, human life is characterized by diversity. This diversity cannot be rejected and avoided by human beings as it is part of the grand design of Allah's creation. Madjid based his view on plurality on the Qur'an, *Hud* (11:118-119): "*Had your Lord pleased, He would have united all mankind. But only those whom He has shown mercy will cease to differ. For this end He has created them. The word of your Lord shall be fulfilled: 'I will fill the pit of Hell with jinn and men.'*" According to Madjid, this commandment of Allah affirms that diversity is a reality which cannot be disputed by human beings. "*Thus, there is no monolithic society, which is the same and equal in all aspects.*" (Madjid, 1995:196).

According to Madjid, human beings have only one choice: they have to manage this diversity based on the principles of pluralism. Pluralism should not be viewed as contrary to Islam since it belongs to the same category as diversity. Further, as a consequence of the human spirit, Islam, in addition to affirming the plurality of human life, provides freedom for each group to exist and live a life according to their belief:

... If in the Sacred Book (the Qur'an) it is mentioned that human beings are created into nations and tribes that they might get to know one another (al-Hujurat 49:13), plurality develops into pluralism: a value

Arabia, Sanusi movement in North Africa, and Fulaniyah in West Africa); (2) The Modernist movement. In India this movement was pioneered by Sayyid Ahmad Khan. In Egypt the modernist movement was pioneered by Jamal al-Din al-Afghani, Muhammad 'Abduh and Rashid Rida; (3) The Neo-revivalist movement, exemplified by al-Mawdudi in Pakistan; and (4) Neo-modernism. Fazlur Rahman states that he is part of the Islamic neo-modernist movement.

system which perceives diversity positively and optimistically, accepts it as a reality and achieves excellence on the basis of this reality. In the Sacred Book it is also mentioned that differences among human beings in language and color should be accepted as a positive reality, as one of the signs of God's greatness. (Q. al-Rum 30:32). The Sacred Book also affirms that diversity of opinion and way of life among human beings need not be feared, but ought to be used as a basis for competing in goodness, and that it is God who will explain later, when human beings return to Him, why they are diverse. (Q. al-Ma'idah 5:48) (Madjid, 1992:lxviii)

This inclusive Islamic view, which corresponds to pluralism, can also be used to legitimize freedom of religion or belief. Madjid seemingly had no difficulty in connecting freedom of religion or belief to Islam. For Madjid, discussing freedom of religion or belief on the basis of Islam is normal, because, as a consequence of Islam's recognition of diversity, the Qur'an guarantees freedom of religion. On the basis of this guarantee, Madjid was of the opinion that Muslims are required to exhibit maturity in dealing with the issue of freedom of religion or belief. He elaborated on this view:

The principle of freedom of religion is concerned with quite complicated matters, as it relates to the most emotional aspects and deep feelings of our life. The implementation of the principle of freedom of religion will work very well if each of us can prevent their emotions from prevailing over healthy reasoning. This ability is concerned with levels of certain maturity and our own consistency, both at the individual and collective levels. In the Qur'an, the principle of religious freedom is clearly related to an attitude free from emotion, the use of healthy reasoning and our confidence in ourselves, for we believe in the existence of clear criteria of truth and error: "There shall be no compulsion in religion. True guidance is now distinct from error. He that renounces idol-worship and puts his faith in Allah shall grasp a firm handle that will never break. Allah hears all and knows all." (Q. al-Baqarah 2:256) (Madjid, 1999:73).

Madjid understood the Qur'an to be inclusive on several matters relating to human rights. Consequently, at the empirical level, he considered openness to the ideas of universal human rights to be mandatory. He understood the Universal Declaration of Human Rights adopted by the United Nations to be the most authoritative reference when dealing with human rights and disagreed with the rejection of human rights based on cultural relativism. For Madjid, the relationship between Islam and human rights, including the human right to freedom of religion or belief, was not contradictory.

Madjid's work has influenced a younger generation of Muslim intellectuals in

several ways. Some of the most prominent voices referred to in this report are those of Masdar F. Mas'udi, Jalaluddin Rahmat, Dawam Rahardjo, and Siti Musda Mulia.

2. Contemporary Indonesian debates on human rights and religion

In contemporary debates, the fundamental concept of *huquq al-nas* (the rights of individuals) has been elaborated on in the field of *fiqh* (Islamic jurisprudence)⁹ to strengthen the argument that Islam and human rights are not in conflict. This branch of the Islamic sciences contains study of the *maqasid al-Shari'ah* (the objectives of the *Shari'ah*) which are perceived to be the intention (the objectives) of Allah and His messenger in formulating *Shari'ah*.¹⁰ These objectives can be traced in the Qur'an and the Prophetic tradition as the logical ground for formulating laws for the benefit of mankind, and to prevent destruction (*mafsadat*), either in this world or in the hereafter.¹¹ To ascertain benefit and avoid destruction, there are five points which are core to the objectives of *Shari'ah* and which provide

9 *Fiqh* has been highlighted because of its authority in Indonesian Islamic educational institutions.

10 See, among others, Satria Effendi (2005).

11 See, Fathurrahman Djamil (1995).

protection for religion, soul, reason, offspring and property. A Muslim who is called a *mukallaf* (a person obliged to perform the regulations of Allah) can receive benefit, and avoid destruction (*mafsadat*), if he or she is able to maintain these five points.

In contemporary debates, Muslim scholars refer to these five points when developing the concept of human rights from an Islamic perspective. Related to the issue of freedom of religion or belief, one of the five points which is most often mentioned is the protection of religion. Connecting the concept of religion (*hifz al-din*, the protection of religion) to the issues of freedom of religion or belief, some Muslim scholars have included religions other than Islam. Islamic scholar Masdar F. Mas'udi for example argues that the principle of freedom of belief is part of the protection of religion and thus forbids coercion in the choice of religion.¹² For example, Mas'udi disagrees with regulations in *Shari'ah* that severely punish those who convert (*riddah*, apostasy):

Initially, riddah is the right of each individual since it is said in the Qur'an "those who wish to believe, believe, and those who wish to disbelieve, disbelieve." The choice of belief or disbelief is an individual choice. For example, in relation to salat (prayer) there is no punishment for those who do not perform the salat. But later on, Muslim rulers claimed themselves to be the manifestation of God. Therefore, the rights of Allah were taken over by the rulers (the state) and the state then tried to enforce the rights of Allah on human beings. Accordingly, salat, which is initially an individual affair with Allah, became an individual affair with the Sultan (the ruler), thus the Sultan had the right to punish those who did not pray.

This mechanism applied to those who converted (apostates) as well. Riddah used to be a matter between the individual and Allah: to believe or not to believe in Allah. But then these rights of Allah were taken over by the rulers; therefore, the rulers functioned as Allah, forcing individuals and punishing apostates who changed their religion.

12 "Hak Azasi Manusia dalam Islam" (Human Rights in Islam) (2000).

Jalaluddin Rakhmat (1993) also sees “the non-coercion doctrine” as an important part of the concept of the protection of religion. Rakhmat mentions four types of freedom of religion (as settled by Islam) that should be protected from aggressive actions: i.e. (1) freedom to choose religion; (2) freedom to adhere to religion; (3) freedom to conceal one’s religion; (4) freedom to express religion.

Dawam Rahardjo argues that religion is an individual affair in which no authority can interfere; neither the state nor religious institutions.¹³ To support his argument, Rahardjo refers to the principles of *la rahbaniyah fi al-Islam* (there is no priesthood in Islam). For Rahardjo, religious authority tends to reduce religious freedom. Yet, faith cannot be coerced by any authority, as emphasized by the principle of *la ikraha fi al-din* (no coercion in religion). To guarantee the implementation of freedom of religion or belief, the existence of regulation (law) is absolutely needed. The law, which Rahardjo calls “the Law on Freedom of Religion”, should cover the following nine guarantees of freedom of religion:

Firstly, freedom of religion in the sense of freedom to choose one’s religion or to decide which religion to adhere to, and freedom to worship in accordance with one’s choice of religion or belief.

Secondly, the freedom not to embrace any religion. Freedom of religion also includes the freedom not to believe in God or to have an atheistic belief or conviction. However, Rahardjo only allows atheism in the form of scientific discourse, not as a discourse against religion or God, which in his view should be banned by the state. It would otherwise contradict the state ideology contained in the *Pancasila*, the first principle of which is “Belief in Almighty God.”

Third is the freedom to convert, or to change one’s religion. According to Rahardjo, instead of being categorized as apostasy, changing one’s religion should be considered an effort to find new consciousness within

13 “Dasasila Kebebasan Beragama” (Ten Principles of Freedom of Religion) published on the website of *Jaringan Islam Liberal* (Networks of Liberal Islam), www.islamlib.com.

religiosity. Rahardjo also rejects calling those who convert *kafir* (infidel) as the term *kafir* cannot mean having another religion, but rather being opposed to the commands of God.

Fourth is the freedom to disseminate religion (preaching). However, Rahardjo argues that activities of preaching (*da'wah*) conducted by violence or coercion, or that are unethical, should not be protected:

Activities of preaching (da'wah) to gain followers through food distribution and scholarships for children of poor families, or by providing free health services which require the recipients to adhere to a certain religion, are unethical. They degrade human dignity by 'buying' someone's belief. However, aid programs may be conducted by religious organizations as far as they do not require people to adhere to a certain religion.

The direct spreading of religion by persuasion of faith and salvation, person-to-person, or through house visits with the intention of proselytization is impolite and upsetting behavior; thus it should be prohibited. The activities of spreading religion through communication channels (pewartaan) are not prohibited, but the efforts of Christianization or Islamization for the purpose of proselytization are not allowed. If the mechanism of religious preaching is properly regulated, accusations of Christianization, Islamization, or apostasy no longer apply.

Fifth, freedom of religion also includes a fair or just attitude of the state towards all religions. For the state to be fair and just, it needs to revise policies that potentially lead to injustice towards certain religious groups. Rahardjo gives the example of identity cards (*Kartu Tanda Penduduk/KTP*) which require the inclusion of religious identity. He regards the policy as providing occasions for favoritism and discrimination which benefits the dominant religion or those who are influential in the government.

Sixth, the state should allow interfaith marriages if individuals or their families have agreed to the marriage, even though a religious authority may have issued a fatwa (religious advice) prohibiting interfaith marriage. A fatwa is not legally binding.

Seventh, in education each student is entitled to study religious teachings of his or her choice and need not automatically follow the parents' religion, although the parents can have an influence and if necessary decide for their children. This right includes the choice of not attending certain religious teachings. However, at a minimum, students should attend a course on ethics, such as those presenting the *Pancasila* due to its importance for instilling good citizenship.

Eighth, each citizen has the right to establish a particular religious group, even to develop a new religion, as long as it does not disturb public order and does not perform practices which violate the law and ethics or is deceitful in the name of religion. This freedom applies to those who wish to establish associations promoting health, emotional, or spiritual intelligence based on various religious teachings as this affiliation does not imply adherence to a certain faith or religious doctrine is mandatory.

Ninth, the state or a particular religious authority is not allowed to make legal decisions affirming that a certain religious interpretation or sect is deviant and leads others astray (*sesat dan menyesatkan*), except if these violate the law or ethics. However, the religious authority can provide enlightenment and guidance concerning rituals, faith, and law (*Shari'ah*). These do not bind the state or individuals.

These nine proposed legal guarantees of freedom of religion spelled out by Rahardjo have been endorsed by Muslim intellectual and activist, Siti Musdah Mulia. In her article, *Hak Asasi Manusia dan Kebebasan Beragama* (Human Rights and Freedom of Religion, <http://www.icrp-online.org>), Mulia re-asserts the scope of religious freedom in a manner similar to Rahardjo.

While the approaches outlined above advocate a harmonious interpretation of the relationship between human rights and Islam, there are also Islamist views on human rights and religion which should be elaborated on before continuing to the discussion of the opinions of religious leaders in East Java.

3. Islamist opinions on human rights and religion

Several Islamist groups which advocate for state application of *Shari'ah* in Indonesia reject the views outlined above regarding the harmony between human rights and the interpretation of holy sources. One of these groups, the Hizbut Tahrir Indonesia (HTI) firmly rejects human rights on the basis that it originates in democracy. HTI strictly opposes democracy, and rejects all thoughts based on democracy, such as individual freedoms. A book often referred to in this context by HTI activists is *Democracy of the Infidel System: The Unlawfulness of Adopting, Implementing and Spreading It. (Demokrasi Sistem Kufur: Haram Mengambil, Menerapkan dan Menyebarluaskannya, 2003)*, written by Abd al-Qadim Zallum, one of the main leaders of Hizbut Tahrir. Zallum strongly rejects democracy since it originates in Western culture, which he considers to be an infidel system and not directly or indirectly related to Islam. In Zallum's view, Muslims are forbidden to adopt the governance system of democracy in the same way as they are forbidden to adopt an economic capitalist system.

To support his argument, Zallum puts forward several aspects of the democratic system which in his view contradict Islam:

First, democracy is the product of human reasoning and does not originate from Allah. Democracy is not based on revelation and does not have any relationship to any religion that has ever been revealed by Allah to His messengers;

Second, democracy emerges from belief in the separation of religion from life which subsequently results in the separation of religion from the state;

Third, democracy is founded on two ideas: (1) sovereignty is in the hand of the people; and (2) people are the source of authority (power);

Fourth, democracy is a system of government by majority. The election of rulers and members of the legislature is conducted on the basis of the majority of electorates. All decisions in these institutions are also taken based on the majority opinion;

Fifth, democracy advocates the prevalence of four types of general freedom: (1) freedom of religion; (2) freedom of speech; (3) freedom of ownership; (4) personal freedom.

According to Zallum, the democratic notion that sovereignty is in the hands of the people or *ummah* (the community) contradicts Islam, which perceives sovereignty to be in the hands of God who decreed the *Shari'ah*. Nobody in the *ummah* is allowed to make laws, not even a single law:

The Ummah in its entirety has no right to make laws, not even a single law. If the entire Muslim ummah gathered and then agreed upon various matters which contradict Islam – such as allowing riba (interest) in order to enhance economic conditions; allowing localized adultery (prostitution) in order to prevent [vice] from spreading in society; abolishing individual ownership [as in communism]; abolishing fasting in Ramadan in order to increase work productivity; or adopting the idea of individual freedom which gives freedom to an individual Muslim to adhere to any conviction he wishes, giving the right to enhance his property by any means (even when unlawful), giving freedom to enjoy life as he wants, to drink intoxicants (khamr - wine) and commit adultery – all these decisions mean nothing. In the view of Islam, these agreements are worthless; not even reaching the value of a mosquito wing. If a group of Muslims agree on such matters, they should be fought against until they turn away from these agreements.

In Zallum's thinking, the criteria for legal decision making should not depend on the view of the majority or the minority, but rather on the sacred text (the sources of *Shari'ah*). The only law maker is Allah, not the *ummah*. Only the caliph has the authority to adopt and conduct the legislative processes of *Shari'ah*. Zallum considers the basic freedoms guaranteed by democracy such as the freedoms of religion, speech, ownership, and to behave in a certain way as contradictory to Islam: Muslims are obliged to legally bind themselves to *Shari'ah* in all their deeds. They are not allowed to behave as they wish. The only freedom in Islam is the freedom of slaves from slavery, since slavery itself was abolished a long time ago.

Still considered to be Islamist, although perhaps a little more sympathetic towards human rights, is *Majelis Mujahidin Indonesia* (MMI or the Indonesian Mujahedin Council). Their proposed *Amendment of the Constitution in Line with Islamic Shari'ah* put forward after the fall of President Suharto¹⁴ included chapters related to human rights. The difference between the amendments proposed by MMI and those ultimately adopted by the People Representatives Assembly (MPR) can be seen in the proposal for a new Article 28E and an amended Article 29. The amendment proposed by MMI for new Article 28E(1) read: “*Every person shall be free to choose and to practice the religion of his/her choice, but it is prohibited for Muslims to convert from Islam.*” (emphasis added to indicate the additional words proposed by MMI). MMI’s proposed amendments to Article 29 of the Constitution read: *(1) the state is obliged to regulate and monitor Indonesians so that they worship according to the teachings of their own religion; (2) the State guarantees all persons the freedom to embrace their own religion and to worship according to that religion.*” MMI’s proposed amendments clearly conflict with human rights principles in two ways. First, they prohibit Muslims from converting to other religions (apostasy). And secondly, the state is allowed, even obliged, to regulate the practices of worship in order to fit with the religion of the majority. In other words, the amendments sanction state interference in religious life, neutralizing the separation between state and citizen.

From the above discussions, it is clear that there are a variety of opinions among Indonesian scholars in responding to the challenges of the interaction between human rights and Islam. The section below explores this diversity of opinion as it applies in daily life and the teachings and opinions of the East Javanese Muslim leaders.

* * *

14 “Amandemen UUD ’45 Disesuaikan dengan Syariat Islam” (Amendments to the 1945 Constitution in accordance with *Shari’ah*) published by their headquarters, Markaz Pusat Majelis Mujahidin Indonesia, in Yogyakarta.

IV OPINIONS OF EAST JAVANESE MUSLIM LEADERS ON HUMAN RIGHTS AND FREEDOM OF RELIGION OR BELIEF

The interviews conducted with East Javanese religious leaders posed questions related to issues that have, particularly since the fall of the Suharto government, caused heated debates and unrest amongst politicians, religious figures, local community members and human rights observers. The responses from the interviewees, ranging from those deemed to be Islamist to those regarded as moderate, are thoughtful and considered, and follow an interesting logic. The authors of this report thank the interviewees for their time and openness in responding to the questions posed.

The topics which became the focus of discussion with the religious leaders were the universal validity or particularity of human rights; the relationship between religion and the state (recognized religions and the requirement to include religion on identity cards); majority – minority issues (building houses of worship, interfaith marriages, conversion and apostasy); and groups seen to deviate from mainstream Islam (Ahmadiyah, Yusman Roy, Lia Aminuddin (alias Lia Eden) and their followers).

1. The universal validity or particularity of human rights

One of the key questions posed to the religious leaders was: “Are human rights and freedom of religion or belief universal or particular?” The answers given by the informants can be divided into two groups. The division reflects the common divide of human rights and freedom of religion or belief being universal concepts on the one hand, and being particular to religions, time, place and circumstance on the other. The interviewees either accepted or rejected the notion of human rights and freedom of religion or belief in accordance with this divide. For the “universalists,” human rights and freedom of religion or belief are concepts which can be reconciled with Islam, while for the “particularists” or “exclusivists,” human rights and freedom of religion or belief cannot be generalized or applied to Islam. In their view, Islam has its own concepts, different from those of human rights and freedom of religion or belief as understood in the West. Respondents from the Islamist groups Hizbut Tahrir Indonesia (HTI), Majelis Mujahideen Indonesia (MMI, Council of Indonesian Mujahidin or religious warriors/strugglers for the faith) and PKS (the political party, Partai Keadilan Sejahtera or Prosperous Justice Party) are all of the opinion that these concepts are not applicable to Islam, while the responses from those affiliated with the organizations of Muhammadiyah and Nahdlatul Ulama (NU) are mixed.¹

Islamist opinions (HTI, MMI and PKS)

The views expressed by respondents from Islamist groups tend to reflect the view that human rights should be rejected as a hegemonic Western construct. Such views echo the ideologies constructed by their respective organizations. HTI in particular has elaborate publications and teachings about the concepts of human rights and religious rights.

Fikri, an HTI activist, explains the idea that human rights are a tool of the West and clash with Islam:

¹ A brief description of each of these organizations is included in the Annex.

The concept [of human rights] was formalized at the birth of the United Nations... [the countries of the United Nations] were not Muslim countries and developed particularly after World War II. These Western countries, after the UN came into existence, and they also won World War II, had greater opportunity to dominate other countries, particularly Muslim countries, which were at weak and backward in the post-Ottoman period... The West hoped that the idea of human rights would be welcomed and accepted by Muslim countries, as some have done... Yet, if we pay more attention to the historical perspective, the philosophical foundation and detailed explanation of the meaning of human rights clash with Islam. Moreover, we are now witnessing that human rights are being used as political tools by powerful countries... When a country, for example an Islamic country, needs financial assistance it has to follow those requirements [of tying human rights with whatever has been given]. Furthermore, we find sharp discrepancies between theory and practice... Therefore, HTI has published a booklet which describes the danger of the US strategies and their way of peddling their ideologies such as human rights.

In addition to criticizing the West for exploiting its dominant position to further its own ideologies, Fikri also finds fundamental differences between human rights and Islam. The Western concept of human rights emphasizes individual freedom and considers only the virtues of human beings. This ignores people's good or bad actions, and their positive or negative potential. People's actions and potential have no place in the Western concept of human rights since it has evolved from secular ideologies. This one-sidedness, according to Fikri, can lead to a life framed by freedom only. Emphasis on individual freedom within human rights has a negative impact on community life, and creates individuals devoted to their own interest only who disregard the needs of others. Therefore, according to Fikri, human rights are identical with disorder. Unlike the West which prioritizes the individual, Islam prioritizes the process of interaction between individuals based on the principle of equality of thought and feeling. This principle urges individuals to think

about the consequences of their words and actions. Human beings have the potential to commit negative actions, thus regulation is needed: God's regulations. Only by applying those regulations can human beings be liberated from the trap of pseudo-freedom imagined by the Western concept of human rights.

Fikri presents "empirical" evidence for this analysis by elaborating on three forms of freedom in the West: freedom of opinion, of ownership, and of behavior. These are incompatible with *Shari'ah*, and thus not acceptable in Islamic societies.

In Fikri's view, freedom of opinion has negative impacts, particularly on Islam since freedom of religion means:

Everything is debatable and writing about anything is protected by law. Islam is not like this. Every behavior, action or saying is bound to the laws of Shari'ah. In terms of expressing opinions, Islam provides definite signals: speak well, otherwise be silent, fa lyaqul khairan aw liyasmut. We must speak only of what is true. We may not express opinions which destroy the faith of believers, which then leads to wickedness. This is forbidden. When, for example we see cases of insulting the Prophet Muhammad through caricatures, this they [the West] base on freedom of opinion. But we clearly reject his. In Islam there are regulations on expressing an opinion. We may hold an opinion, but it has its corridor. That is, we may express our opinion so long as it does not contradict the laws of Shari'ah.

About the freedom of ownership Fikri states:

In regard to human rights, anything is permitted. It could be in the form of a drug business; they do not care, as long as the demand is there, it is a field of business. Due to the glorification of individual freedom, they marginalize the community's interests, although it will precisely have this effect. In Islam there is no such thing. Quantitatively, (the limit) is not decided in Islam. It means that any individual can be a tycoon, owning anything. However, the manner in which this wealth can be obtained is restricted. In the Western concept of human rights, the manner and

quantity are not restricted. ..In Islam it is regulated by God. The law of Shari'ah must lead to the benefit of human beings.

And on the freedom of behavior:

Freedom of behavior includes for example, clothing style, social behavior, free sex, and the unsupervised socializing of men and women. These are results of what they [Westerners] try to protect in the name of human rights. Now there are such regulations, for example the laws against domestic violence. A child who should be the responsibility of his/her parents, under their supervision and education, for instance, who is dating and has even committed free sex, in the view of human rights is entitled to freedom. The parents have no right to punish their child, and can even be tried and reported to the police if they warn their children harshly in order to educate them.

...If Muslims want to live a good life, they should return to Islamic regulations which are simple, more direct, clearer, and are neither biased nor can they be used in any way a person wants..."

These more general views on human rights are borne out in relation to freedom of religion. As such, the followers of more Islamist leaning groups refute the universality of freedom of religion. In their view, it can only be applied to non-Muslims who have the freedom to choose Islam or not. It cannot be applied to Muslims as they cannot change religions. These groups continue that rather than a universal concept of freedom of religion or belief, *Shari'ah* and not secular laws, provide a superior guarantee of freedom of religion.

Fikri for example, presents the standard HTI view:

Non-Muslims can choose to embrace Islam or not, since it is stated in the Qur'an that there shall be no coercion in religion. This context of religious freedom will be problematic if it is applied to Muslims. Thus, in our view [freedom of religion] is not correct, for when an individual has decided to be a Muslim, he or she must maintain his or her 'Islam-ness'.

Even the Qur'an itself teaches [Ahl Imran, 3:102] do not die unless you are Muslim....

Arifin, another HTI activist from Sampang, agrees that the Qur'an acknowledges the concept of freedom of religion, and he considers the Qur'anic statement: *la ikraha fi al-din* (there is no compulsion in religion) applicable to non-Muslims. However, he maintains that Surat al-Baqarah (2) 208: "*Believers, submit all of you to Allah and do not walk in Satan's footsteps; he is your sworn enemy,*" applies to Muslims and limits their religious freedom.

According to Alwan, a member of HTI from Malang, HTI strives to implement *Shari'ah* in the public sector in order to improve the life of all humans regardless of their religion. Because *Shari'ah* embodies universal goodness, Alwan believes people need not fear *Shari'ah*: "*Non-Muslims will be honored by Islamic Shari'ah*" since it is far superior to secular law which is "*from people to people, who are ordinary human beings, with limitations and weaknesses, while Allah has made Himself the law maker for all human beings.*"

Azam, another HTI activist but from Jombang, adds that:

Although HTI is a movement which supports the implementation of Islamic Shari'ah, it still recognizes freedom of religion. The concept of formal Shari'ah, which HTI wants implemented, is a concept of comprehensive Islam which contains the recognition of freedom of religion as the Qur'anic concept 'lakum diinukum wa li ad diin' and 'la ikraha fi al diin.' It will respect the existence of other religions... Even at a certain level, there is a guarantee for their [non-Muslims'] property, honor and blood. They will also be entitled to receive social welfare from the state when they are considered economically disadvantaged.

Bahri, a member of MMI from Surabaya, believes that non-Muslims see Islam as a religion which opposes the existence of other religions. He strongly rejects this assertion, and states that Islam has acknowledged religious tolerance for over 15 centuries:

The Prophet respected Muslims and non-Muslims. Even the protection of Jews in Madinah was extraordinary. 'You must be ready to step over my soul if you disturb Jews who never disturb you,' he said. The Prophet even wagered his own life. He was concerned with those people of different religions. We believe Islam to be a blessing for the universe. 'wamâ arsalnâka illa rahmatan lil-âlamîn', I shall not send you, Muhammad, except as a blessing for the entire universe.

Muhammadiyah and NU

While representatives of the Islamist groups presented a united front in their view that human rights and freedom of religion are not universal concepts, the responses of the members of Muhammadiyah and NU are mixed. Syafiq A. Mughni, Chair of the Muhammadiyah chapter in East Java and Salim Said, a Muhammadiyah leader in Jombang, are among the religious leaders who express the view that the right to freedom of religion is universal. Both consider it a fundamental human right since it evolves from Islam which teaches that each human being has rights and provides guidance about what is correct and incorrect. They believe that religious communities need the concept of freedom of religion in order to create a harmonious, prosperous, and non-violent environment. In contrast to the Islamist views described above, Mughni and Said do not think that freedom of religion can only be applied to non-Muslims who have the freedom to choose Islam or not. They also do not believe that *Shari'ah* (rather than secular laws) provides a superior guarantee of freedom of religion.

Mughni does however tie his ideas about freedom of religion to the Qur'an, Surat al-Kahf (18) 29: "*Say: 'This is the truth from your Lord. Let him who will, believe in it, and him who will, deny it....'*"

According to Said, individuals are entitled to freedom of worship in accordance with the teachings of their own religion:

Freedom of religion is needed to ensure society lives in a peaceful and harmonious way because the Qur'an teaches that 'you have your religion

and I have mine.’ Freedom of religion and belief in society is needed to create secure and peaceful conditions which serve as a blessing for the universe (rahmatan lilalamin). To worship Allah and live in tolerance with one another [can be achieved] through mutual respect.

Said challenges the idea that freedom of religion is always related to Western ideas as this conveys the impression that Islam lacks such doctrines. To support this view, Said relies on the Qur’anic verses often quoted when dealing with the relationship between Islam and other religions: (Q. 2:256) “*laa ikraha fiddin*” (there shall be no compulsion in religion); and (Q. 109:6) “*lakum dinukum waliyadin*” (You have your religion, and I have mine).

Somewhat less inclusive ideas were expressed by Muhammadiyah leaders, such as Fadlan and Abdullah Hasyim from Malang. They rely on the text from Surat al-Baqarah (2: 256) as the foundation to guarantee freedom of religion within Islam. However, according to their interpretation, the ensuing text of “*qad tabayyana rusydu min al-ghayy*”, (true guidance is now distinct from error) affirms the final truth of Islam and prohibits Muslims to convert. In their view this means that people have the freedom “*to adhere to a religion, but not to convert from Islam to another religion.*” Thus universal freedom of religion only applies to those who have not yet become Muslim. According to Hasyim “*Wanting to believe is fine; wanting to be an infidel is also fine, as long as it does not disturb Islam.*” Thus he applies the verse “*You have your own religion, and I have mine*” in this context to non-Muslims only, stressing that Islam teaches tolerance towards non-Muslims. However, he argues “*Muslims should commit firmly to the truth of their religion, and are not allowed to convert to other religions.*”

NU leaders such as Rubaidi, Marzuki from Malang (who is also a *kyai*), and Mahfudz from Sampang express inclusive views when responding to the issue of human rights and freedom of religion. They consider freedom of religion or belief to be among the most fundamental protections of religious life as guaranteed by the Indonesian state, which has recognized and ratified international human rights treaties.

Referring to Surat al-Baqarah 2:256, Rubaidi does not consider the relationship between Islam, human rights and freedom of religion or belief to be contradictory. Rather, he points out that Islam provides a concrete justification for religious diversity and freedom of religion: “*From an Islamic perspective, Islam highly respects diversity, plurality, including human rights and freedom of religion or belief.*”

Interviewed members of Ahmadiyah and Shi’ites support the concept of religious freedom. In their view, Islam emphasizes tolerant attitudes towards other beliefs and religions. Ahmadiyah leader Ahmad explains:

Islam truly allows a type of freedom in religious life and teaches tolerance in inter-religious relations. As far as Muslim intra-religious relations are concerned, in Indonesia there are many sects or groups such as NU, Muhammadiyah, and so on. They ought to pursue their activities according to their own convictions provided that they are not far from the pillars of faith and the pillars of Islam. As long as they are within these corridors, I assume there will be no problem. Freedom of belief is the most fundamental and basic human right, particularly in Indonesia in the context with the 1945 Constitution. There, it is affirmed that each individual has the right to adhere to a religion according to his or her own beliefs. Thus, in my view, the concept of human rights and that of the religion we adhere to is very relevant.

The responses outlined above about reflect an interesting diversity of opinion in regard to the universality of human rights. It also highlights the challenges for the state in dealing with the sensitive issues of human rights and religious freedom. While the government has ratified international human rights treaties and committed to their implementation at the national level, there are important voices in the community advocating that human rights is a Western concept and incompatible with Islam, a religion officially adhered to by 90% of Indonesians.

2. The relationship between religion and the state:

- A. Religions recognized by the state (Islam, Catholicism, Christian-Protestantism, Hinduism, Buddhism and Confucianism)**
- B. Listing an individual's religion on his or her identity card (KTP)**

What role should the Indonesian state play with regard to freedom of religion or belief? Unquestioningly, the state should guarantee the right of every Indonesian to freedom of religion or belief without discrimination. However, the position taken by the Indonesian state sometimes appears inconsistent, raising questions about its actual commitment to human rights. The 1945 Constitution and Law No.39/1999 on Human Rights guarantee freedom of religion. Indonesia has also ratified the ICCPR and ICERD, commenting that neither is incompatible with the 1945 Constitution or the character of the Republic. However, as seen above, in practice only six religions are “recognized” and there are institutions in place to provide official interpretations of the teachings of each religion. The result is that the Indonesian state ignores “beliefs” and defines “religion” very narrowly, limiting it to a select number of traditional religions. The flow on effects from narrowly defining religion and the way it is interpreted, as well as from ignoring beliefs are numerous, and result in the denial of other civil and political rights. As such, the state has a role in religious freedom that goes well beyond guaranteeing the right of every Indonesian to freedom of religion or belief.

Given this interference by the state and apparent failure to guarantee freedom of religion, questions were posed to the religious leaders interviewed in regard to the role the state should play. Do they agree with existing legislation and support government policy? Do they support state interference and control over religion and the way it is interpreted? Or do they disagree and advocate change?

The general response from the leaders interviewed is that a certain degree of state interference is necessary, on the one hand to guarantee religious freedom, or from the opposite view point, to prevent the rise of new religions. However, some leaders did argue against state inference in religious affairs altogether.

NU leader Rubaidi considers religion to be a private matter - the state should neither interfere, nor limit (the number of) accepted religions. Identity cards should not mention peoples' religious affiliation either since: *“It will lead to official discrimination aganst citizens. For example, if I am a public official dealing with taxes and I see an Identity Card, [and] I read Muslim...then they will be prioritized. For example if there are also Christian or Catholics, whether I want to or not, subconsciously we will treat them unjustly.”*

Rubaidi also questions the role of the Majelis Ulama Indonesia (MUI, the Indonesian Ulama Council), which in his view goes beyond its sphere of authority by issuing fatwas about the truthfulness of religious claims or religious thoughts. These claims, according to Rubaidi, must be left to each individual in relation to his or her own God:

For a long time, I have often said that MUI exceeds its prerogative and authoritative rights... For example, it deals with human rights, particularly in regard to the religion of other people. And until now, MUI has exceeded these boundaries by issuing fatwas, prohibiting things and so on. It does not have the right or authority to state that a religion is valid or not. No one has the right to justify or decide whether a religion or belief is true or false. It is the right of God to decide, a human has no right to justify that.

NU leader Israfil from Jombang takes a contrary position. He argues that limiting the number of officially recognized religions should be supported as it will avoid the rise of new religions that do not fulfill the requirements of a religion. He mentions four criteria for a teaching to be called a 'religion': it should have a sacred book, a prophet, followers,

and universal teaching. If it does not fulfill these four requirements, the teaching cannot be considered a religion. Furthermore, Israfil stresses that the state should restrict religious views that hurt or humiliate other religious groups.

This view is supported by MMI leaders Bahri and Akhwan, both of whom agree that the state may restrict the number of religions to prevent the emergence of various religions of unclear origins which do not fulfil the criteria of religion. Akhwan mentions at least two criteria for a new religion: a sacred book and prophet. Using these criteria, only Islam, Judaism and Christianity can be recognized. It is unclear then what the fate of Buddhism, Hinduism and Confucianism, which are currently recognized as religions, would be. He continues that religion should be mentioned on the identity card (KTP) so that the state can regulate matters of inheritance and marriage.

On the other hand, Muhammadiyah leader Mughni is of the view that the state should not decide the validity of a religion. However, it should play a role in religious life in order to guarantee freedom of religion. As an example he mentions the decision concerning the precise date to celebrate the feasts Id Al-Fitri and Id Al-Adha. Muhammadiyah often has an opinion different from that of other Islamic organizations and the state in regard to the date. Here, he wishes that the state would not interfere because Muhammadiyah, as a minority organization with a different view, often become victims of violence.

As for the fatwas issued by MUI, he stresses that these are not binding:

The role of MUI is the same as NU's or Muhammadiyah's role: issuing fatwas. Those fatwas are not binding but a consideration of what is seemingly true according to Islamic teachings. If you want to use the fatwas, please do, but if not, then that's ok too. A fatwa is not positive law.

Shi'ite leader Ali agrees that religion is a private affair. If the state interferes too much in private affairs it can lead to injustice towards adherents and followers of religions which are not officially recognized by state: *“The state functions only to create a harmonious relationship between adherents of different religions.”*

However, according to HTI member Fikri, the problem lies in the fact that the Indonesian state is not an Islamic state. An Islamic state does not know the terms “official” or “unofficial” religion since it guarantees the existence of religions outside Islam. However, it still has the right to regulate religious life since unlike a secular state, an Islamic state:

... functions not only as regulator, but also maintains and implements the Islamic system in order to produce good individuals in society. If there is a problem, then the state must act firmly. This is the role of the state, as implementer of Shari'ah there is no need to make new rules... it is enough to implement existing Shari'ah... The state in Islam safeguards and implements Islamic Shari'ah, and of course provides services to all citizens, both Muslim and non-Muslims.

In a similar manner to Fikri, MMI leader Alwan from Malang also states that the issue of “official” or “unofficial” religions would not exist if Islam was used as the foundation of the state in which: *“As non-Muslim or dhimmi infidel (kafir dzimmi – a dhimmi unbeliever; a person of the Christian or Jewish faith living in Muslim-ruled areas) will be honored and respected with the assurance that they will be regarded equally as citizens or people.”*

Again, the leaders have presented a wide variety of viewpoints on the issue of the role of the state in religious freedom. For some, religion is a private matter and there should be no interference by the state in such issues. For others, interference is justified only where to do so would guarantee the realization of the right. On the other hand, the more conservative interviewees expressed the need to limit the number of religions and how these religions are interpreted in order to ensure the

purity of religion. They concluded that many of the issues raised would be resolved if Indonesia was an Islamic state.

3. Majority-minority issues

While the majority of Indonesians acknowledge themselves to be Muslim, the country is in reality religiously diverse, and has a substantial number of religious minorities. The relationship between the majority and minority raises many questions and issues concerning the application of religious rights. Currently, three prominent and controversial issues that often raise concern are the building of houses of worship, interfaith marriages and conversion/apostasy.

A. Permission to build houses of worship (especially for minorities)

During the past decade, radical groups have become more vigilant in attacking and forcing the closure of houses of worship that are seen to lack the required permits. Church bodies such as the Association of Indonesian Churches (PGI, *Persatuan Gereja Indonesia*) have gathered data showing a pattern of consistent attacks on churches, and Buddhist and Hindu temples during the past decade.

However, several of the leaders interviewed did not agree that minority groups lack full protection from the state or otherwise in regard to the construction of houses of worship. Muhammadiyah leader Mughni, for example, relies on the regulations issued by the state to govern the matter, asserting that without such regulations anarchy would result.² Mughni also maintains that the fundamental message of Islam emphasizes that

2 The rules Mughni refers to are outlined above: Joint Decision Letter of the Minister for Religion and the Minister of the Interior Number: 9 of 2006 Number: 8 of 2006 concerning the Guidelines for the Implementation of the Regional Head/Deputy Regional Head in Guarding the Harmony of Religious Communities, Empowering the Forum for the Harmony of Religious Communities, and the Establishment of Places of Worship (Peraturan Bersama No. 9 Tahun 2006/ No. 8 Tahun 2006 tentang Pedoman Pelaksanaan Tugas Kepala Daerah/Wakil Kepala Daerah Dalam Pemeliharaan Kerukunan Umat Beragama, Pemberdayaan Forum Kerukunan Umat Beragama, dan Pendirian Rumah Ibadat).

there is no compulsion in religion. In his view, this message forms the moral foundation for Muslim society in responding to and treating minority groups. Furthermore, he asserts that Muslim organizations such as his own, Muhammadiyah, should protect minority groups. He does not refer to his organization's potential, or his own capacity as a religious leader, to prevent violence or the destruction of property.

His Muhammadiyah colleague, Abdullah Hasyim, shares his confidence in the government's joint regulation. Especially when religious groups wish to build a house of worship in a location where they lack members, he agrees with the government's stance to not allow a building permit.

However, in principle, Mughni and other leaders welcome the presence of other religious communities since they encourage Muslims to practice the adagio held high by the Muhammadiyah organization that Muslims should "enjoin what is right and forbid the wrong" (Q. 3:104, *al-amr bi al-ma'ruf wa al-nahy 'an al-munkar*).

While these two Muhammadiyah figures appear to have confidence in the government's regulation of the building of places of worship, the situation in the town of Sampang illustrates its potential drawbacks. Its community of 500 Protestants and the Pentecostal community are not permitted to build churches, even though by law they have the required number of Christian followers. The town has a growing presence of radical and Islamist groups that fear building a church will lead to "Christianization," in other words Muslims converting to Christianity.

While this is the case, several of the local leaders in Sampang such as Mahfudz (NU), and Supardi (Muhammadiyah) said they did not object to the building of a new church. According to Supardi, the Christian presence will invite "*fastabiqul-khairat*," competing to do good. However, in his view, although it may be legally permitted to build a new church, it should not disturb society.

Opposition to the building of a new church was expressed by Junaidi, a teacher of religion at a state high school in Sampang, who based his objections on government rules: “*The number [of Christians] is small. The regulation of church building requires a large number of followers.*”

Others such as Anam, a leader of the Justice and Prosperity Party (PKS-*Partai Keadilan Sejahtera*), express ambivalent, more politically based views. Personally, he considers the presence of the Christian community as a positive call to compete in goodness, and sees no problem with building a church in Sampang. However, he is concerned that the local community is not ready to welcome a church as a permanent place of worship. This is a very common response (and excuse) offered.

MUI member Bukhori is equally ambivalent. Personally he does not see any objection to build a church as the *Pancasila* is what applies “*as long as they do not carry out activities that damage the Muslim community and call them to convert from Islam.*” Yet, he would not allow for a church to be built in Sampang since:

If a church is built, it will be a threat. If I give the recommendation to build a church, I will be criticized by society here, especially since many radical Muslim groups such as HTI and FPI have begun to develop. Instead of (MUI) being criticized by the people, it is better that I take the smallest risk and not give a recommendation.

HTI leader Arifin says that he thinks the threat of Christianization is real. He has heard that in other areas of Indonesia Muslims have converted to Christianity after a church was built. He compares the situation in Sampang with that in Manokwari, West Papua province, where Muslims are the minority: “*In Manokwari, Jayapura, there is a discourse of biblical regional regulation (A type of evangelical religious law; Perda Injil), and Islam is seen as a threat. This is the case for other religions in Sampang. This is what then gives rise to the egos of each.*” Interestingly, his fellow HTI leaders (such a Fikri) stress that under *Shari’ah* (for which HTI

advocates), minorities will be guaranteed freedom to carry out their belief and are allowed to build places of worship.

Ali, who as a Shi'ite in Sunnite Indonesia belongs to a minority himself, is of the view that although Muslims are the majority group in Indonesia, they should not take the position of a dictator that threatens the existence of other groups. In dealing with minority groups, Muslims ought to take a tolerant position by allowing these groups to observe their religious duties according to their belief.

HTI activist Fikri considers the matter from the perspective of *Shari'ah*:

Basically Islam was revealed for all mankind; not only for Muslims, or for a certain group, or a certain time, it is not like that. As such, it means Islam will certainly provide regulations for Muslim-non Muslim relations.

In his view, the inclusive nature of Islam should reassure non-Muslim groups that even when the Islamic caliphate imagined by HTI is established, and Islamic regulations are applied and used as positive law:

... automatically within it regulations regarding non-Muslims will be applied. Globally there are two types of regulations; those related to private/individual matters, such as faith and worship; and those related to communal matters, laws of financial transactions, such as the economy, education, sanctions, and so on. These are public affairs. If it relates to individual/private matters, then Islam gives freedom to non-Muslims, regardless of whether they are the majority or minority. They are granted freedom to carry out their belief. They are allowed to build places of worship for their religious rituals. They are granted the freedom to eat, drink and wear clothing according to their [religious] teachings. But in relation to collective, communal, or financial transactions which are not related to worship, rituals or faith, then Islamic regulations apply, and Muslims as well as non-Muslims are treated fairly and justly. For instance, when someone has stolen, fulfils the minimum amount for paying alms,

fulfils the criteria, and after the judicial process it doesn't matter whether he or she a Muslim or not, it's the same. For what needs to be protected is public security: no favoritism for a Muslim over the others.

Referring to the Qur'an, MMI leader Bahri agrees with this opinion regarding protection for minorities in Islam. *"In Islam we should protect and value the minority, and in Islam there is no term for expelling the minority."*

Q 60: 8,9: Allah does not forbid you to be kind and to act justly to those who have not declared war on you because of religion, or driven you from your country. Allah loves those who act justly.

Allah only forbids you to make friends with those who have declared war on you because of your religion and driven you from your country, and assisted others to drive you out. And for those who make friends with them, they are wrongdoers.

Towards these verses, Bahri has the following understanding:

Thus, as long as they do not disturb us, as far as they do not expel us from our houses, we are obliged by God to do good and justice by them (an tabarrû wa tuqsithû ilaihim), whoever they are. People who understand that Islam came through the sword need to understand that the sword was only to defend against intervention. In Islam, there is no teaching to attack or invade. As long as we are not disturbed and there exists mutual respect of fundamental rights, we can develop this nation. Efforts meant to disturb the purity of Islamic teaching are considered irresponsible acts. Islam was revealed to this world as a blessing for the universe (rahmatan lil 'âlamîn), not only for Muslims, but also for non-Muslims, and the entire universe, including the world's flora and fauna which must be conserved.

Many of the leaders interviewed were inclined to have tolerant views towards the building of houses of worship, although for various reasons were unlikely to defend the rights of minority groups in public. Others expressed a genuine concern over the process of Christianization although did not attempt to justify the concern with tangible evidence.

Although the government's law regulating the building of houses of worship has caused problems in practice, several of the religious leaders showed unquestioning support of the law. Once again, members of HTI expressed the view that such problems would be resolved if Indonesia followed *Shari'ah*.

B. Interfaith marriage: tugs of war between “fiqh” and human rights

Both Indonesian law and Islamic regulations concerning interfaith marriage limit the right of couples from different religions to marry. Indonesian law forbids all interfaith marriage, while the Islamic injunctions allow a Muslim man to marry a non-Muslim woman from the Christian or Jewish faith, but prohibit a Muslim woman from marrying a non-Muslim man.

All those interviewed stated that they were against mixed marriages. These views were expressed by reference to Islamic injunctions without mentioning Indonesian law. For example Muhammadiyah leader Mughni explains:

According to Islam as far as I understand, interfaith marriage is prohibited. If the man is a Muslim and the woman is not a Muslim, it is allowed. But if the woman is a Muslim and the man is a non-Muslim, then this involves conviction.

About the practice of a marriage between a Muslim woman and a non-Muslim man, he says:

Violating [this prohibition] is the same as not observing the obligation of prayer, of not fasting. It is a violation of religion, if they want to do it, let them go ahead but at their own risk. What exists in their hearts is between them and God. But as for me: I would forbid my son or daughter [to do such a thing]. If they reject this, it would be the same as with the prophet Noah: when his son refused to follow him. That was fine, but the risk was the son's. There is no compulsion.

Muhammadiyah leader Hasyim from Malang agrees that a marriage between a Muslim woman and a non-Muslim man is unlawful in Islam. This is also the official position of Muhammadiyah. Such a union would interfere with the objective of an Islamic marriage: to establish a happy, peaceful and harmonious family. Muhammadiyah leaders Fadlan and Rukmini also from Malang, have a similar opinion. According to Fadlan, those entering an interfaith marriage, in particular a Muslim woman who marries a non-Muslim man, can be considered apostate and according to Rukmini, they have committed a great sin (*fasiq*).

NU Rubaidi agrees with Mughni: *“I use the Qur’an as guidance; a Muslim man is allowed to marry a non-Muslim woman. But Muslim women, as far as possible, should not marry a non-Muslim man,”* while NU leader Marzuki, although rejecting interfaith marriage, would not interfere if a couple insists: *“It a choice of the individual. I will not forbid it,”* he asserts.

On the other hand, HTI leader Fikri rejects all reasons to accept interfaith marriage in any form:

We need neither inter-religions fiqh nor gender-approach fiqh. It is only aimed at one thing: freedom.

HTI leader Arifin concurs, and when asked about the relationship between the prohibition of interfaith marriage and human rights he explains that:

If someone is Muslim, we are talking about obligations instead of freedom. This does not violate human rights, but violates the religious teaching itself. Choosing religion is freedom. But after embracing it, you must follow all regulations. It is similar to flying with a plane; a person is free to choose any plane he/she likes. But they must abide by the plane’s regulations.

MMI leader Bahri also categorically rejects the practice of interfaith marriage and sees its acceptance as a result of liberal, secular and pluralist ideas:

Interfaith marriage is freedom of religion without regulation; it is excessive. It will reconstruct existing regulations; engineer them... Such an understanding will obscure existing Islamic values. For example, regulations on interfaith marriage, in Islam it is not permitted. Now it is considered not a problem. Muslim women's clothing, covering the aurat,³ they say is regarded as Arab clothing. As far as clothing is concerned, I agree with differences, but the important thing is to covering one's aurat. But there are people who say that the jilbab [Islamic women's clothing] is not a must, meaning that covering aurat is not a must. This is wrong. It is freedom which is outside religious regulations.

On the issue of interfaith marriage, all the leaders interviewed consider it contrary to Islam on the basis of Islamic regulations. None refer to Indonesian law. While some state that they would not prohibit a couple intending to marry, others state that it would be akin to breaching one of the fundamental tenets of Islam. The more Islamist views reject any form of interfaith marriage and one states that it is akin to apostasy. Given several of the leaders interviewed see human rights and freedom of a religion or belief as a universal concept, it appears that the interpretation given to the freedom is still influenced by Islamic teachings, irrespective of their beliefs concerning universality.

C. Conversion and apostasy

For the Islamic community, issues of conversion and apostasy raise serious issues. For some, they may even involve the death penalty. Indonesian law also imposes criminal sanctions against those found guilty of attempting to convert persons away from one of the religions adhered to in Indonesia.

³ Aurat (Lit: private parts) are the parts of a female body that should be covered in the presence of men to whom the woman is not related. It is usually only the face and hands that may be visible.

In his explanation why Muslims do not have the freedom to convert from Islam, Fikri presents the standard HTI response:

Those who convert with full consciousness and after being called to Islam do not agree or do not want to, will be sentenced since according to the Hadith, 'those who change their religion may be killed.' This is the law for apostasy...

These views are confirmed by MMI activists. For example, Achwan from Malang maintains that:

In Islam conversion is not allowed. There are heavy sanctions for those committing apostasy: they receive the death penalty in Islamic states. Efforts to encourage apostasy will end, because those who convert have no right to life, and people will be afraid. So it [conversion from Islam] will quickly end."

In regard to attempts to convert persons away from religions to which they adhere, Mahfudz, an NU figure from Sampang, is opposed to Muslim missionary activities (*da'wah*) among those who follow a religion other than Islam. "It is wrong. Do not convert those who already have embraced a religion. A Muslim is not allowed to try to convert those who have embraced a religion, and vice versa." Concerning the freedom to choose one's religion and convert voluntarily to other religions, Mahfudz states that "People may convert, provided that it is not-coerced but based on their own consciousness. If it is coerced; it is like raping other religions." However, his view is not as inclusive as might seem, since he considers converts from Islam to be apostates who can no longer inherit from Muslims. Yet he does not support the death penalty for conversion stating that: "To change religion is not a problem as long as the first religion is not disturbed."

The issue of conversion and apostasy are sensitive issues, and in the eyes of several leaders interviewed may justify the death penalty. For others, conversion is possible, but it must not involve coercion and will still involve sanctions for those who leave Islam. In Indonesia, issues of

conversion involve further complications. Once a person leaves one of the “recognized” religions, he or she in practice only has the choice of one of the five other religions. For followers of Ahmadiyah (discussed below), who were told by law to adhere to the mainstream teachings of Islam or no longer call themselves Muslim, this raises interesting issues.

4. Groups seen to deviate from mainstream Islam

A. Ahmadiyah

B. The followers of Yusman Roy

C. The followers of Lia Eden

In the post-New Order era, there has reportedly been a proliferation of violent acts against religious groups considered by mainstream believers to be deviant. In most cases, this violence has been committed in the name of religion. Public reaction towards these religious groups is influenced by Muslim leaders, ranging from those who are part of the Indonesian Ulama Council (MUI) to individual preachers in the mosques and teachers at Qur’an schools.

Indicating a more tolerant view to such religious groups, Muhammadiyah leader Mughni argues that the rise of various non-mainstream religious groups cannot be avoided because everyone has the right to develop their understanding of religion. But other groups also have the right to preach (da’wah) that their teachings are more correct than the other religious groups that have just emerged. Mughni hopes, however, that groups with different religious understandings will avoid violence, and he does not agree that one group should use violence because it has a different religious understanding from another group. Instead, he believes that preaching is the best way to remedy deviant beliefs:

Via da’wah we can show the fallacies or the faults of their religious thought and teaching. Over time, society will understand much better

without restricting their [the other religious groups'] movement, or resorting to violence.”

Rubaidi proposes a similar, natural process. By referring specifically to Yusman Roy he states that:

I think, if we are mature [enough], people will be able to select whether or not Gus [Yusman] Roy's teachings are true. If they are true, people will follow him, but if they are false, people will leave him. Let the law of nature decide.

Rubaidi, as well as Marzuki from NU, disapprove of the use of violence against non-Muslims and minority groups and instead argue in favor of maintaining strong relationships with those communities. As Rubaidi describes:

I see how minority groups are being discriminated against. Let's take the Ahmadiyah community; I am close to them, then non-Muslim groups both Christian, Protestant and so on, as well as Muslim factions, the case of Yusman Roy, we have accompanied them all this time. We can really feel how their rights are fundamentally scorched by the state, either through the MUI (the Indonesian Ulama Council) or through other mainstream Muslim organizations and so on.

In order to prevent violence, Rubaidi advocates the separation of religion and state: “*When religion enters the realm of the state, for sure it will become a political means for certain groups and serve political interests.*” As an example of the politicization of religion he mentions the criminalization of certain religious acts such as religious blasphemy (defamation of religions).

However, their position is a minority position among NU leaders. As'ad Wijaya, NU leader and *pasantren* (Islamic boarding school) supervisor from Jombang, believes that members of non-mainstream religious groups such as the followers of Ahmadiyah, Lia Aminuddin and Yusman Roy should be punished since they deviate far from Islamic

orthodoxy. As an example Wijaya mentions the bilingual prayer taught by Yusman Roy in Malang. He disapproves of using the Indonesian language for the ritual Islamic prayer:

As Muslims, we have to caution that it [prayers not said in Arabic] is wrong and show them the correct way. Therefore, we have an obligation to purify Islam in accordance with the Qur'an and the Hadith.⁴ This warning should be carried out so that other people cannot easily defile our religion through false teachings.

The leader of the Tebuireng *Pesantren* in Jombang, Sholahuddin (also known as Gus Shalah) agrees with the prohibition of bilingual prayer in order to protect public order and to save Yusman Roy from violence by the masses: “*If the goal is to enforce order, just do it [prohibit his teachings]. If we allow it, and the masses attack Roy, the problem will become more serious.*” Interestingly, this comment does not consider the possibility of the police acting against the masses committing the violence.

In Jombang, Muhammadiyah leader Salim Said agrees with Wijaya and Gus Sholah that groups such as Ahmadiyah and the followers of Yusman Roy should be forbidden. In his view, especially Ahmadiyah, which calls itself Islamic while contradicting the Islamic faith, makes apostates out of regular Muslims and: “*disturbs society, and should be banned.*” Said also wants to ban Roy’s teachings:

Replacement of the language of religious rituals with a local language is not part of freedom of religion or belief because it contradicts Shari'ah in the Qur'an and the Hadith. Roy also disturbs society so firm action is needed to ensure that he does not disturb security and public order by practicing a religious belief.

Ali, who is Shi'ite, agrees with Mughni and Rubaidi that the emergence of new religious groups cannot be avoided. He thinks they are

⁴ Hadith are narrations originating from the words and deeds of the prophet Muhammad, and are regarded by traditional schools of jurisprudence as important tools for understanding the Qur'an and in matters of jurisprudence.

a reaction to the status quo. In each religious group there will always be people who feel dissatisfied. Those people will then withdraw from the membership of the main group and develop a new teaching. If the new teaching is accepted by other people, a new religious group will be born and established. This phenomenon, according to Ali, is not typical only in Islam. Other religious groups outside Islam face the same challenge. In dealing with new or non-mainstream religious groups, Ali chooses dialog instead of violence:

The main key to cope with the new religious groups is awareness building. This should not be done in a violent context, but they should be brought back in the context of mutual dialog: of sitting together, digging at the same roots, not by using physical violence as a sledgehammer...

Kejawen beliefs [indigenous Javanese beliefs] are an example of dissatisfaction with formalistic Islam which makes a fuss of fiqh for example, so that they feel spiritually dry... They [the Javanese] did not need a formalistic religion like this, but wanted spirituality ...so they ran to something more spiritual which is definitely regard as deviating from the mainstream religion.

HTI leaders Azam and Fikri disagree that deviant religious teachings can be left to a natural process [of showing them the truth]. According to Azam:

Lia Aminuddin and Ahmadiyah are heretical, for they have deviated from the true context of Islamic teachings. Responding to this matter, I agree with the opinion of the head of MUI who asserts that if they want to establish a new sect or religion, they ought not to base their doctrine on Islam. Thus, it would be better if they created a new teaching or a new religion; and this is not a problem. Because it is a manifestation of freedom of religion.

This view is affirmed by Bahri, an MMI member in Surabaya:

Ahmadiyah is a deviant religious group... claiming the coming of a prophet after the Prophet Muhammad. It must be acted against. Of course, it must be carried out through legal means, not by taking the law into our own hands. There should be those who correct them. Ahmadiyah has gone beyond freedom of religion within Islam. Freedom of religion is freedom to believe in already existing convictions which are based on the Qur'an... It is also the case with the Eden community [under Lia Aminuddin] who claims to be Gabriel and to have received a revelation. It also applies to Yusman Roy who prays in two languages. When dealing with these deviant groups, correction is needed.

Azam, an HTI activist, agrees that Yusman Roy is heretical and thinks his teachings should be banned:

"In my view, if the ulama say that Yusman Roy is heretical, they cannot be blamed. For in Islam there are regulations, particularly those concerning rituals which are definite and cannot be questioned. The Prophet said, shallu kama raauitumuni usholli (pray as you see me praying). This Hadith is an explanation and demand on Muslims to perform prayer correctly. If someone wants to change the language of the prayer, from that of the Qur'anic language (Arabic) to a local language, it is prohibited.

According to Fikri, also of HTI, the regulations of Islam concerning faith and ritual worship are definitive, and need not be debated or challenged. "The risk is great if we modify the faith and rituals in Islam," says Fikri. Fikri then narrates the war of *riddah* (war against the apostates) in the time of the Abu Bakar caliphate.

As in the time of Abu Bakar Siddiq, he not only launched wars against those who did not pay alms (zakat), but also against those who believed that zakat was only due while the Prophet Muhammad was alive and could be stopped after his death. When they were called upon they would not repent and did not want to return to Islam, so they were sentenced according to the law of riddah (apostasy).

Fikri uses the events occurring in the time of the caliphate of Abu Bakar (632-634 CE) as the basis for judging Lia Aminuddin and Yusman Roy, and finds them to be apostate. He strongly rejects the idea that what Lia Aminuddin and Yusman Roy are doing is a kind of *ijtihad* (an individual effort to interpret religion) since this cannot be applied to faith and rituals which follow unchangeable regulations (*qat'i*). Fikri considers the teachings of Lia Aminuddin and Yusman Roy to be expressions of freedom motivated by individual desire, rather than *ijtihad*. For those who have deviated from the faith, the risk is very grave. Fikri asserts:

Because faith is unchangeable (qoth'i), when deviating from the teachings, a group or person should be punished for being apostate. The punishment is clear. If they are called upon to repent but will not, war must be declared on them.

Accordingly, in Fikri's reasoning, the Ahmadiyah congregation is a group deviating from Islam as well. Muslims should stand firm against such groups in order to avoid the emergence of similar cases and to protect the Islamic dogma or faith.

The cases of Yusman Roy, Lia Aminuddin and Ahmadiyah leave the possibility open that we will have similar cases in future. This indicates a weakness of Muslims, a weakness in understanding their faith. In the past, cases such as the Musaylamah al-Kadhhab have emerged; however, there are only a few in the history of Islam. But why are they now occurring more frequently? It indicates a decline in the quality of Muslims' understanding of their religion – this needs reform and refinement; [it is] our duty to strengthen our faith.

The refinement of faith, as Fikri calls it, is a duty which is not negotiable and he doubts that Indonesia's legal institutions can cope with the various new religious groups and splinters. "The legal system in Indonesia is unclear because no-one is courageous enough to base it on Islamic law," Fikri says. In his assessment, this lack of clarity and lack of courage is due to the fact

that Indonesia is not brave enough to free itself from the domination of international regulations under the guise of human rights.

Of course Fikri's views reflect those of HTI, one of the Islamist groups represented in this study. It is only fair then that one of the more moderate groups is given the opportunity to present an alternative view, indicating just how diverse the views held by religious leaders in East Java really are. NU leader, Marzuki, believes that since each religious community worships God, religious diversity is an undisputed reality. To him, the words used for God testify to an inherent plurality:

The word 'God', we –Muslims- call 'Allah'. The Hindus call 'Sang Hyang Widhi Wasa'; the Christians say 'Jesus'. But, in the essence, each adherent of these religions wants to worship his or her God.

Such sentiments have been continued and expanded on by Nurcholis Madjid: *"Plurality of religious understanding among believers is natural because it is God's law (sunnatullah), and this cannot be avoided or denied on the basis of certainty... And so, every citizen is expected to accept plurality in the same manner, then to develop a healthy attitude together within the plurality itself."*⁵

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5 The thoughts of Nurcholis Madjid as formulated by Abdul Muis Naharong in his article "Arah Universitas Paramadina Pasca Cak Nur" presented at The 20 Year Anniversary Seminar of Paramadina 22 November 2006 at Aula, Paramadina University.

V CONCLUSIONS

The last two decades, the role of Islam has become increasingly prominent in Indonesia. Both moderate and Islamists have become more vocal and begun to increasingly reach out to their followers. In some instances this has been accompanied by increasing violence, tension and conflict.

The Indonesian state has, particularly in the international arena, made clear its formal commitment to human rights and freedom of religion or belief. Indonesia has a clear legal framework protecting these rights, but in reality, the state is often seen to be absent, and in some cases, to condone violations of religious freedom and other human rights. For freedom of religion or belief to be realized, it requires the state to take a just approach and to act fairly towards all religious followers.

Indonesia is a diverse country and harmony is the main pillar guaranteeing its unity. Human rights are not something new to Indonesian political dialog, on the contrary; human rights have played a significant role in the history of Indonesia. Discourse among a number of Indonesian intellectuals shows support for viewing human rights and Islam as compatible and in many cases mutually complementary.

Islam is seen as providing a solid base for human rights, and in particular the right to freedom of religion. According to this view, because Islam is so open to human rights, there should also be an openness towards human rights since human rights has become a universal concept. On the other hand, the Islamist viewpoint sees human rights and Islam as incompatible, particularly as human rights are linked to democracy, a mode of organizing a society which they see as contrary to Islam.

The research presented in this report explores these opposing streams of thought and considers the opinions of Islamic religious leaders in East Java. It asks whether these leaders have similar views, and what their opinions are on issues that have led to heated debates in contemporary Indonesia.

The responses indicated a high level of theoretical awareness of the ideas and rules concerning freedom of religion. However, the basis on which this awareness was based differed greatly. In large part, it depended on what interpretation was given to the Qur'an and which passages were relied upon. For some, human rights were unalienable basic rights and for others they represented Western hegemony. Interestingly however, even those who saw human rights and freedom of religion or belief as universal concepts did not agree with the content of the right as a whole as understood at the international level (for example in regard to interfaith marriage). For those who saw human rights as related to Western hegemony, they still saw freedom of religion or belief as a human right, but one which according to the Qur'an applied to non-Muslims only. Muslims cannot convert to another religion, and as Muslims, there is a set of regulations which must be followed.

The religious leaders interviewed did not detach themselves from the ideologies espoused by the organization of which they were members. HTI members referred to the body of writings produced by their leaders in Hizbut Tahrir. Most Muhammadiyah leaders and some from NU referred to decisions of MUI. Reference was also made to domestic law

or policy and in some cases (recognized religions and identity cards) its relevance and necessity was questioned. In other cases, such as in relation to the building of houses of worship, it was unquestioningly considered appropriate. Where leaders made reference to a possible disturbance of the Muslim community, societal chaos or unmanageable mobs were used to uphold the idea that freedom of religion would harm Muslims. Indonesian elites still seem to fear the havoc which the masses could cause.

The difference of opinion as to the role and need for human rights reflected in the debates leading up to the drafting of the 1945 Constitution appears just as relevant today as it was then. However, the balance seems to have shifted to those who cannot accept full freedom of religion or belief. However, the possibility for an Islamic theological framework to offer a system of human rights based on Islam was not apparent in the discourse.

On the whole, the leaders are practical: their opinions reflect a growing trend of increased religiosity among Indonesian Muslims. Although many Muslims might turn a blind eye to a mixed marriage, they might not approve of it. Growing opportunities for religious education in combination with higher levels of literacy have oriented more Indonesian Muslims towards “correct” Islamic rules. At the same time, they have been exposed to more intense discourses from radical groups inspired by Middle Eastern models of Islam. Over and over again, it seems that the government is willing to accommodate those who have the loudest voice or those who inspire most fear. This is often those who are against the application of the human right to freedom of religion. This has the effect of eroding faith in human rights and in the principles of freedom of religion or belief.

In their efforts to guide the community, many leaders have little time for the predicament of those who do not adhere to one of the mainstream religions “recognized” by the state. The human factor and possible

social chaos that could result from strife within Islam (for example with Ahmadiyah members) or between Muslims and non-Muslims does not feature in their frame of reference. There are, however, several who are sympathetic towards the plight of such minorities and advocate discussion and debate to resolve the issue.

There are those, both interviewed and whose academic writings were referred to above, who are committed to sustain a strong and mutually accepting relationship between human rights and Islam. As mentioned, Indonesia is a diverse country and harmony is seen as the main pillar guaranteeing its unity. Finding a point of compromise through open debate, through the state's commitment to neutrality and the protection of those who are most vulnerable would be in keeping with the character of Indonesia as a state based on law that upholds human value and dignity. In the long run it is necessary for the Indonesian state to protect religious minorities in order to safe-guard the harmony which they see as guaranteeing Indonesia's unity.

* * *

ANNEX

The Muhammadiyah organization was founded in 1912 and represents Indonesian Muslims described as modernist or reformist. This means that they strive for a purified form of Islam that is stripped from local culture and practices while referring to the primary sources of the Qur'an and Sunna or teachings of the Prophet Muhammad.

Nahdlatul Ulama (NU) was founded in 1926 and represents traditionalist Muslims who practice certain indigenous rituals as long as these do not contradict the normative teachings of Islam. For its theological reasoning, NU scholars rely not only on the Qur'an and Sunna, but also on legal interpretations (Fiqh) of the early scholars of Islam.

Hizbut Tahrir (HT) is a fundamentalist and Islamist organization with branches in over forty countries. It was founded in 1953, has its headquarters in Jordan and is banned in several majority Muslim countries. Its goal is to create a united Islamic state ruled by *Shari'ah* (Islamic law) with a caliph as the head of state. The Indonesian Chapter is Hizbut Tahrir Indonesia (HTI). HTI tries to influence society by spreading its ideology without resorting to violence.

Majelis Mujahidin Indonesia (MMI, Council of Indonesian Mujahidin or religious warriors/strugglers for the faith) is an umbrella organization of Indonesian Islamist groups. In 2007, its members were at the forefront of those attacking Ahmadiyah mosques and property.

PKS (Partai Keadilan Sejahtera; Prosperous Justice Party) is the largest Islamic party in Indonesia. It is Islamist-minded and attracts votes with its anti-corruption policies and humanitarian activities. PKS expresses its pro-*Shari'ah* stance by advocating on highly symbolic religious issues such as a ban on alcohol and pornography.

Majelis Ulama Indonesia (MUI, or the Indonesian Ulama Council), was set up in 1975 to guide the government and Indonesian Muslims by providing religious advice. The Council holds a strategic position within the various interpretations of Indonesian Islam and its fatwas or legal advice, although not binding, can have considerable influence. Especially after the fall of the Suharto regime, MUI has issued several controversial fatwas against interfaith prayer, interfaith marriage, interfaith inheritance, religious pluralism, liberalism, secularism, and the Ahmadiyah movement. These fatwas do not acknowledge the ideals of religious freedom and mutual respect, and have been criticized for opening the door to religious violence.¹ A fatwa by itself can be harmless; however, if its contents are lobbied widely within society or become translated into state law, it can gain in strength and has the potential to overrule regulations based on basic human rights.

* * *

1 “The impact of MUI fatwas on freedom of religions in Indonesia,” *The Jakarta Post*, August 8, 2005, accessible at: <http://www.thejakartapost.com/news/2005/08/08/impact-mui-fatwas-freedom-religion-indonesia.html?1>.

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