

Limitation in The Right to Freedom of Thought, Conscience, and Religion (*Forum Externum*): Study of Ahmadiyya Muslim Community Case

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Abstract: According to General Explanation of Presidential Decree No. 1/PNPS/ 1965 on Prevention of Misuse and/or Blasphemy, there are six religions in Indonesia. There are Islam, Kristen, Katolik, Hindu, Budha, and Khong Cu (Confucius). It raises the issue of Indonesian who choose conscience or religions out of the six religions. One example is the Ahmadiyya Muslim Community who choose their conscience. Ahmadiyya Muslim Community often received public rejection and some limitations from the Government of Indonesia. This paper aims to: (1) examine and analyze the international instrument about the limitation in the right to freedom of thought, conscience, and religion (*Forum externum*); (2) observe and value the limitation in the right to freedom of thought, conscience, and religion (*Forum externum*) in Indonesia (Ahmadiyya Muslim Community case). Deploying normative legal research, this research argues that the limitations in religious activities and sealing of several places of worship of the Ahmadiyya Muslim Community by the Government have a legal basis in the international law of *externum forum* principle and that- the Government limitation on religious activities of Ahmadiyya Muslim community is designed and applied to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Keywords: *human rights; forum externum; freedom of thought; conscience and religion; Ahmadiyya*

Abstrak: Berdasarkan Penjelasan Umum Penetapan Presiden Republik Indonesia No. 1/PNPS/1965 tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama. Hanya Ada 6 agama di Indonesia yaitu Islam, Kristen, Katolik, Hindu, Budha dan Khonghucu (Confusius). Pembatasan enam agama tersebut menimbulkan persoalan mengenai bagaimana warga negara Indonesia yang memilih kepercayaan atau agama selain dari ke enam agama tersebut, seperti kelompok Muslim Ahmadiyya yang memiiah kepercayaannya sendiri. Kelompok Muslim Ahmadiyya sering mendapatkan penolakan publik dan pembatasan-pembatasan dari

Pemerintah Indonesia. Penelitian ini bertujuan untuk: (1) menguji dan menganalisis instrumen internasional mengenai pembatasan hak untuk berfikir, berkeyakinan dan beragama (*forum eksternum*); dan (2) mengamati dan menilai bagaimana implementasi hak untuk berfikir, berkeyakinan dan beragama (*forum eksternum*) di Indonesia (kasus Kelompok Muslim Ahmadiyya). Dengan pendekatan hukum normatif, penelitian ini membuktikan bahwa pembatasan-pembatasan dalam melakukan kegiatan keagamaan dan penyevelan beberapa tempat ibadah jemaah Ahmadiyya oleh Pemerintah memiliki basis hukum dalam hukum internasional yakni prinsip *forum eksternum* dan pembatasan pemerintah terhadap kelompok Muslim Ahmadiyya diterapkan demi tercipta keselamatan, ketertiban, kesehatan, atau kesusilaan umum, atau hak-hak dan kebebasan-kebebasan mendasar milik orang lain.

Kata kunci: *hak asasi manusia; forum eksternum; kebebasan berfikir, berkeyakinan dan beragama; Ahmadiyya*

Introduction

A long history of human life has been engraved in reality nature. Starting from the dark period (*jabiliyyah*), renaissance period to the modern period (science and technology). The dark period (*jabiliyyah*) showed no awareness of human values, so absolutely, there was no respect for human dignity and human nature.¹ Entering the renaissance period or called the period of revival in the mid century, some figures tried to contribute the ideas and concepts of original thought about human values, respect for human dignity and human nature by human nature, which was a gift from God, among others in Europe known John Lock, De La Montesquieu, Karl Von Savigny, Immanuel Kant, AV. Dicey, Stahl, and in the Islamic world-known Ibnu Khaldun, Muhammad Iqbal, Ali Jinnah, Syekh Muhammad Abduh, and others.²

Inspired by those ideas and concepts of thought, entering the end of the nineteenth century onwards has been discoursed, constructed, and normed about human values, the protection, and

¹ Nurul Qamar, *Hak Asasi Manusia dalam Negara Hukum Demokrasi*, (Jakarta: Sinar Grafika, 2014), p. 1.

² *Ibid.*, p. 2.

respect for human dignity and human dignity and nature as fundamental human rights.³ These rights adhere inherently in human as a gift from God that anyone must respect becomes a responsibility for the state to uphold it. It was conceptualized with several terms, those were “natural rights”, “fundamental or basic rights”, or “sunatullah right”, and now it is known as “human rights”.⁴

Human rights were a form of appreciation and respect for humanity without any distinction and discrimination.⁵ Human rights were believed to have a universal value that means to apply in general and does not recognize space and time boundaries.⁶ The universal value of human rights was given as a result of human dignity. Someone does not need to have additional status except human nature as a human who had dignity forgot human rights.⁷

However, are human rights absolute? This becomes an important thing to be understood. Human rights owned by everyone can also be limited to other's rights and freedoms (*forum externum*). One of the human rights inherent in every human being is the right to freedom of thought, conscience, and religion. Everyone has the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or conscience of his choice.⁸

According to General Explanation of Presidential Decree No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy, there are six religions only in Indonesia such as Islam, Kristen, Katolik, Hindu,

³ Jack Donnelly, *Universal Human Rights in Theory and Practice*, (Ithaca and London: Cornell University Press, 2003), pp. 89-93.

⁴ *Ibid.*, pp. 2-3.

⁵ Budiyo, *Right to Religion in International Human Rights Document*, (Lampung: University of Lampung, 2014), p. 57.

⁶ Muladi, *Hak Asasi Manusia, Hakikat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat*, (Bandung: Rafika Aditama, 2007), p. 70.

⁷ Al Khanif, *Hukum dan Kebebasan Beragama di Indonesia*, (Yogyakarta: LaksBang Mediatama, 2010), p. 81.

⁸ Article 18 Paragraph (1) International Covenant on Civil and Political Rights (ICCPR).

Budha, and Khonghucu (Confusius).⁹ Indonesia also prohibits anyone who deliberately tells, encourages, suggests, and recommends someone about its religion, or makes an interpretation about a religion that held in Indonesia, or perform religious activities that resemble religious activities of that religion, which interpretations and activities deviate from the points of spiritual teachings.¹⁰

It raises the issue of how is a citizen of Indonesia chooses consciences or religions out of the six religions. For example, the Ahmadiyya Muslim Community choose their conscience. Ahmadiyya Muslim Community often received a public rejection, even though there was persecution from pilgrims' intolerant. The Government sealed several places of the Ahmadiyya Muslim Community Worship. Furthermore, the Government sometimes prohibits that Community from gathering to do their religious activities.¹¹

The Government of Indonesia issued Joint Decree (SKB) No. 3/2008, No: Kep-03/A/JA/6/2008, and No. 199/2008 dated June 9, 2008, by the Minister of Religion, Minister of Internal Affairs, and the General Attorney.¹² The regulation contains warnings and orders to adherents, members, and/or administrators of the Indonesian Ahmadiyya Muslim Community and society, which prohibits members of the Ahmadiyya Muslim Community from the manifest and teaching their interpretations by the principles of the Islamic religion.¹³

⁹ General Explanation of Presidential Decree No.1/PNPS/1965 on Prevention of Misuse and/or Blasphemy.

¹⁰ Article 1 the Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy.

¹¹ Online news, Tirto.id, *Intolerant Group Pressure Triggers Repression in Ahmadiyya*, Can be accessed online at <https://tirto.id/tekanan-kelompok-intoleran-memicu-represi-pada-Ahmadiyya-cp5C> accessed on August 5th 2019.

¹² Aniqotul ummah, "Ahmadiyya and the Right to Freedom of Religion in Indonesia". *Jurnal Keamanan Nasional* 2, no. 1 (2016): p. 69. Can be accessed online at <http://garuda.ristekbrin.go.id/documents/detail/1706644>. accessed on December 15th, 2020.

¹³ Imral Riki Rahim, "The Controversy on the Prohibition of Ahmadiyya in Indonesia: a Human Rights Perspective". *Padjadjaran Jurnal Ilmu Hukum* 1, no 1 (2014): p. 22.

Furthermore, the Governor of East Java issued Decree No. 188/94/KPTS/013/2011, which limiting the activities of the Indonesian Ahmadiyya Muslim Community, especially in East Java. According to the Ahmadiyya Muslim Community, those Decrees are restricting their rights, including worship. According to them, the limitations in these regulations contradict international law provisions, the 1945 Constitution and cause constitutional losses.¹⁴ This certainly led to protests and even submitted a judicial review to the constitutional court.

Therefore, the aims of this research were: 1) to examine and analyze the international instrument about the limitation in the right to freedom of thought, conscience, and religion (*Forum externum*); (2) to examine and analyze how is the limitation in the right to right to freedom of thought, conscience, and religion (*Forum externum*) in Indonesia (Ahmadiyya case). As to answer these two questions, this research used normative legal investigation and refer to a number of relevant regulations, both international and national regulation, including Declaration of Human Right (UDHR), International Covenant on Civil and Political Rights (ICCPR), Constitution (*UUD 1945*), Law No. 39/1999 on Human Rights and the Law No. 26/2000 on Human Rights Court, Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy, and Law No. 12/ 2005 on Ratification of International Covenant on Civil and Political Rights.

International Instrument About The Limitation in The Right To Freedom of Thought, Conscience, and Religion (*Forum externum*)

The provisions of the right to freedom of thought, conscience and religion were governed in several international instruments, such as Declaration of Human Right¹⁵ (UDHR), International Covenant on

¹⁴ Online news, Tirto.id, *Ahmadiyah lawsuit on the article on blasphemy against religion was rejected by the Constitutional Court* can be accessed in <https://tirto.id/gugatan-jemaah-Ahmadiyya-soal-pasal-penodaan-agama-ditolak-mk-cPjd> accessed on December 15th 2020.

¹⁵ Universal Declaration of Human Right (UDHR) was the first elements of the International Bill of Rights, a tabulation of fundamental rights and freedoms. The UDHR is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the

Civil, and Political Rights (ICCPR), etc. The Universal Declaration of Human Rights states a basic human rights term. One of those rights was Right to Freedom of Thought, Conscience and Religion.¹⁶ Related to the limitation of the right to Freedom of Thought, Conscience, and Religion, governed in Article 18. Article 18 gave the guarantee of the right to freedom of thought, conscience and religion was a *forum internum*, that was the unlimited right, while the right to change his religion or conscience, and freedom, either alone or in community with others and in public or private, to manifest his religion or conscience in teaching, practice, worship, and observance were a *forum externum*.¹⁷

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely to secure due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.¹⁸ International Covenant on Civil and Political Rights (ICCPR)¹⁹ also regulates the limitations of the right to freedom of thought, conscience, and religion in Article 18. Article 18 ICCPR states that everyone shall have the right to freedom of thought, conscience, and religion.

The limitation can apply to give a freedom to practice religion and conscience (*forum externum*). Freedom to manifest one's religion or consciences may be subject only to such limitations as were

world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations can be accessed in <http://www.un.org/en/universal-declaration-human-rights/>.

¹⁶ Yeni Handayani, "Right to Worship in Indonesia", *Rechtsvinding Journal*, National Law Development Media, ISSN 2089 9009, August 6th 2015, p. 1.

¹⁷ Natan Lerner, *Sifat dan Standar Minimum Kebebasan Beragama atau Berkeyakinan*". *Dalam Kebebasan Beragama atau Berkeyakinan: Seberapa Jauh?*, (Yogyakarta: Kanisius, 2010), pp. 176-178.

¹⁸ Article 29 Paragraph (2) Universal Declaration of Human Right (UDHR)

¹⁹ General Assembly Resolution of the United Nations, General Assembly resolution 2200A (XXI), *International Covenant on Civil and Political Rights (ICCPR)*, 16 December 1966, can be accessed in <https://treaties.un.org/doc/.../volume-999-i-14668-english.pdf>.

prescribed by law and where necessary to protect public safety, order, health, morals or the fundamental rights, and freedoms of others.²⁰

The Limitation in the Right to Freedom of Thought, Conscience, And Religion (*Forum externum*) in Indonesia: Ahmadiyya Muslim Community Case

Required demands during the reform era were human rights and democracy. Those two things become urgent in the life of a nation, state and society in Indonesia.²¹ The Republic of Indonesia as a constitutional state highly recognizes and upholds human rights and basic freedom that must be protected and respected for the improvement of human dignity, welfare, intelligence, and justice.²² That was why Indonesia was a country which supports the international provisions relating to human rights such as the Universal Declaration of Human Right, International Covenant on Civil, Political Rights, etc. Those Instruments were universal recognition of human rights that attached to everyone naturally.²³

As the implementation, Freedom of conscience and religion is guaranteed in the 1945 Basic Constitution (UUD 1945), namely in Articles 28E and 29. Article 28E states that “everyone was free to embrace religion and worship according to his/her religion, believes his/her conscience, expresses his or her thoughts and attitudes according to his/her conscience”, while Article 29 paragraph (1) states that “state was based on the God almighty, would guarantee the freedom of every citizen to embrace his or her religion and to worship according to his/her religion and conscience”. UUD 1945 determines that the right to freedom of religion was not a gift of the state or a class but is based on consciences, so it cannot be imposed.

²⁰ Article 18 Paragraph (3) International Covenant on Civil and Political Rights (ICCPR).

²¹ Ahmad Muladi, *Politik Hukum*, (Jakarta: Akademia Permata, 2014), p. 37.

²² Laurensius Arliman Simbolon, “Settlement Disputes of Inter-Religious Conflicts (Study at Human Rights Commission, Representative of West Sumatra)”, *Padjadjaran Law Journal* 2, no. 2 (2015): p. 1. and Laurensius Arliman Simbolon, *Komnas HAM dan Perlindungan Anak Pelaku Tindak Pidana*, (Yogyakarta: Deepublish, 2015), p. 3.

²³ Al Khanif, *Hukum dan Kebebasan Beragama di Indonesia*, p. 81.

Indeed, the religion and conscience in God Almighty itself do not force everyone to embrace it.²⁴ Then, Indonesia established the constitution namely the Law No. 39/1999 on Human Rights and the Law No. 26/2000 on Human Rights Court. Indonesia seems to want to accommodate a variety of evolving human rights thinking, both from International law and religious tradition or cultural that live in Indonesia.²⁵

a. Limitation in The Right to Freedom of Thought, Conscience, and Religion (*Forum externum*): National and International Law

The general explanation of Article 1 Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy, explains that religion recognized in Indonesia consists of 6 (six) religions, namely: Islam, Protestant, Catholic, Buddhist, Hindu, and Khonghucu (Confucian).²⁶ That Article states that everyone banned intentionally tell, encourage and organize the general support, make interpretations of religion those held in Indonesia, or carry out religious activities that resemble religious activities of those religions, which interpretations and activities deviate from the points of religion those held in Indonesia. Then, Article 3 states that everyone, organization, or flow of conscience who violates the provisions of Article 1, so the person, adherent, member and/or board member of the organization must be sentenced to imprisonment for five years maximum.²⁷

Related to this matter, all parties who disagree with the provision in Law No .1/PNPS/1965 on Prevention of Misuse and/or Blasphemy file a judicial review of those rules. All applicants have to argue and prove that articles in Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy had caused the constitutional loss of the applicants and brought about discrimination of religion against six religions in Indonesia. They

²⁴ CST. Kansil and Christine S.T. Kansil, *Sekitar Hak Asasi Manusia Dewasa ini*, (Djambatan: Jakarta, 2003), p. 30.

²⁵ Ikhwan Matondang, "Universalitas dan Relativitas Ham". *Miqot Journal* 32, no. 2 (2008): p. 212,

²⁶ Simbolon, *Settlement Disputes*, p. 381. See general explanation of Article 1 of Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy.

²⁷ The law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy.

also must argue and demonstrate that provision is contrary with the human rights principle in freedom of religion as governed by Universal Declaration of Human Right, International Covenant on Civil and Political Rights and other International Instrument Law and violates the provisions of UUD 1945.²⁸

The six religions specified in the provision of Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy were the religions embraced by most of Indonesian at that time. It can be evidenced in the history of religious development.²⁹ That provision can be found in general explanation of Article 1 Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy. That general explanation also explains that the others religion or conscience which was not included in the six religions, for example, Yahudi, Zarasustrian, Shinto, Taoism, Kejawen, Sunda Wiwitan, and other local consciences still got a guaranteed and legal protection from the Government of Indonesia as governed by Article 29 paragraph (2) of the 1945 Constitution (UUD 1945).³⁰

That protection is also guaranteed in the Law Number 39 year 1999 on Human Rights. The Article 4 the Law No. 39/1999 on Human Rights states that Right of religion was a human right that cannot be reduced under any circumstances and by anyone ", then Article 22 states that "everyone was free to embrace his/her religion and to worship according to his/her religion and conscience, whereby the state guarantees the freedom of everyone to embrace his/her religion and to worship according to his religion and conscience".

UUD 1945 also does not specify which religions and consciences are legally recognized, even the laws under it also do not mention which the recognized religions and consciences.

²⁸ Constitutional Court Verdict Number 140/PUU-VII/2009 on Judicial Review of Law Number 1 year 1965 on Prevention of Misuse and/or Blasphemy, can be accessed in <http://www.mahkamahkonstitusi.go.id/> accessed on December 17th 2020.

²⁹ General explanation Article 1 Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy.

³⁰ *Ibid.*

Therefore, there was no limitation on the right to choose religion and conscience, everyone is free to determine their religion and conscience, all religions and consciences that embraced by Indonesian were recognized and validated and even obtain legal protection from the Government of Indonesia. The limitation referred in Article 1 of Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy was a limitation in the application of consciences and religions, such as worship, writing and spreading spiritual teachings, establishing the associations and religious organizations that resemble religious activities of that religion, and others.

That limitation is also regulated in Article 28J of the 1945 Constitution. This article states that in exercising his rights and freedoms, everyone is obliged to comply with the limitations set by law, the rights and freedoms of others, moral and religious values, security and public order in a democratic society. Then, Article 73 of Law No. 39/1999 concerning Human Rights states that the rights and freedoms regulated in this law can be limited by law, solely to guarantee recognition and respect for human rights and the basic freedoms of others, morals, public order and the interests of the nation.

Ahmadiyya case in Indonesia has surfaced nationally since the violence in Cikeusik, Pandeglang, Banten in early February 2011.³¹ Even the Ahmadiyya case that dragged on took many victims, especially on the part of its adherents, so that the government pay attention to solving it.³² The Government of Indonesia issued Joint Decree (known as the Three Ministers Joint Decree/SKB) No. 3/2008, No. Kep-03/A/JA/6/2008, and No. 199/2008 dated June 9, 2008, by the Minister of Religion, The Minister of Internal Affairs and the Attorney General, which

³¹ Zainal Abidin Bagir, *Kasus Ahmadiyya di Indonesia* (Yogyakarta: CRCS Document, 2011).

³² Ummah, *Ahmadiyya*, p. 68.

contains a series of rules aimed at the Indonesian Ahmadiyya Muslim Community (JAI). That Decree contains six dictums:³³

1. Giving warnings and order to members of the public to not tell, recommend or seek public support for interpreting a religion adhered in Indonesia or carrying out religious activities that resemble the religious activities of that religion that deviate from The teaching's principles.
2. Giving warnings and order adherents, members, and/or members of the JAI structures as long as they claim to be Muslim to stop the spread of interpretations and activities that deviate from the principles of Islamic teachings, namely the spread of understanding that acknowledges the existence of a prophet with all his teachings after the Prophet Muhammad SAW.
3. Adherents, members and/or members of the JAI Structures who do not heed the warnings and orders as referred to in the first dictum and the second dictum may be subject to sanctions by the provisions of laws and regulations, including their organizations and legal entities.
4. Giving warnings and order members of the community to maintain religious harmony and peace and order of social life by not taking any actions and/or actions against the law against adherents, members and/or members of JAI structures.
5. Citizens who do not heed the warnings and orders as referred to in the first dictum and fourth dictum may be subject to sanctions by the provisions of the laws and constitutions.
6. Instruct government and regional government officials to take steps for guidance in the framework of securing and supervising the implementation of the Joint Decree

³³ Three Ministers Joint Decree (SKB), No. Kep-03/A/JA/6/2008, and No. 199/2008, June 9th, by the Minister of Religion, The Minister of Internal Affairs and the Attorney General.

Furthermore, the Governor of East Java issued Decree No. 188/94/KPTS/013/2011 which limit the activities of the Indonesian Ahmadiyya Muslim Community, especially in East Java. The regulation contains warnings and orders to adherents, members and/or administrators of the Indonesian Ahmadiyya Muslim Community and society which prohibits members of the Ahmadiyya Muslim Community from manifest and teaching their interpretations that are not by the principles of the Islamic religion.³⁴

The issuance of these two decrees is a recommendation from the Coordinating Board for the Supervision of Community Beliefs (Bakor Pakem) which is based on Law No. 1/PNPS/1965 concerning the Prevention of Abuse and Blasphemy of Religion. Mainstream Islamic groups that are supervised by MUI claim that the Ahmadiyya sect has tarnished Islam, because it spreads heretical teachings, namely believing in a Prophet after Prophet Muhammad SAW.³⁵ The figure that Ahmadiyya believes as the successor of the prophet after the Prophet Muhammad SAW is Mirza Ghulam Ahmad, founder of Ahmadiyya.³⁶ If Ahmadiyya does not bring Islam or establish a new religion, maybe it is not a problem for Muslims. However, Ahmadiyya carries the 'flag' of Islam as its religion so that it becomes a problem for Muslims because their conscience is certainly against Islamic creed. This conscience is declared heretical and deviates from the Islamic religion, and has an impact on chaos, conflict, violence and disorder.³⁷

The East Java government emphasized that the Governor's Decree No. 188/94/KPTS/013/2011 was intended to reduce

³⁴ Rahim, *The Controversy*, p. 22.

³⁵ Aimmatul Alawiyah, "Larangan Aktivitas Jemaat Ahmadiyah Indonesia (JAI) di Jawa Timur dalam Perspektif External Protection dan Internal Restriction Will Kymlicka?". *Religió: Jurnal Studi Agama-agama* 6, no. 1 (2016): p. 5.

³⁶ Online News, BBC Indonesia, *Why Ahmadiyya Is Not Considered Islam: Facts and Controversies*, can be accessed in <https://www.bbc.com/indonesia/indonesia-42642858> accessed on December 17th 2020.

³⁷ Moh. Rosyid, "Resolusi Konflik Berlatar Agama: Studi Kasus Ahmadiyah Di Kudus." *Fikrah* 1, no. 2 (2013): p. 57.

potential anger among Muslims or prevent social conflicts and the safety of the ahmadiyah community itself. Thus, the limitation policy adopted by the 3 Ministers and the Governor of East Java was the right policy and did not violate the rule of law or violate human rights because these limitations were carried out based on law and to create security and order in society.³⁸

The limitations are also related to the manifestation of Ahmadiyah's religion or conscience which is an *externum forum*, namely a forum that can be limited because this element has the potential to intersect with the rights and freedom of religion that are owned by others and can cause disturbances to public order and security. Although the Government prohibits Ahmadiyah religious activities that interfere with public order, the Government admits that it does not prohibit Ahmadiyah conscience or beliefs and religious rituals (*forum internum*).³⁹ So the prohibition or limitation regulated by the Government is simply limiting actions related to expressing thoughts and attitudes in public, not limiting the belief of an individual which is indeed his right.⁴⁰

That limitation was governed by international law, such as UDHR. According to article 18 UDHR, The right to freedom of religion and conscience consists of two different elements, namely the *forum internum* and *forum externum*. *Forum internum* was a freedom conscience or religion by the conscience of human, absolute or non-derogable rights, this was because the *forum internum* related with the consciences of the heart and mind, therefore it can be limited,⁴¹ *forum internum* is the internal and private realm in which

³⁸ Online News, Voa-islam.com, *Decree on the Ban on Ahmadiyah: The Governor of East Java is Ready to Face Ahmadiyah's Lawsuit*, can be accessed in <http://www.voaislam.com/read/indonesiana/2011/03/03/13585/sk-pelarangan-Ahmadiyah-gubernur-jatim-siap-hadapi-gugatan/#sthash.hXU5FQRD.dpbs> accessed on December 18th 2020.

³⁹ *Ibid.*

⁴⁰ Tirto.id, *The Ahmadiyah*.

⁴¹ Tore Lindholm, W. Cole Durham, Jr. Bahia G. Tahzib Lie, *Facilitating Freedom of Religion or Belief: A Deskbook*, (Leiden: Martinus Nijhoff Publisher, 2004) as translated by Rafael Sdy Bosko, etc, *Kebebasan Beragama atau Berkeyakinan, Seberapa Jaub?*, (Yogyakarta: Kanisius, 2010), p. 203.

no state interference is ever justified.⁴² The *forum externum* was a right of freedom in religious behaviour derived from spiritual teachings and consciences that humans embraced, such as worship, writing and spreading spiritual teachings, establishing associations and religious organizations, Constructing of religious facilities, religious discussions, and others.⁴³

Article 18 paragraph (3) states that the limits apply only to freedom to practice the religion and conscience (*forum externum*). Freedom to manifest one's religion or consciences may be subject only to such limitations as were prescribed by law and where necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.⁴⁴ It was also governed in Article 29 paragraph (2) UDHR which states that "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely to secure due recognition and respect for the other's rights and freedoms and of meeting the just requirements of morality, public order, and general welfare in a democratic society".⁴⁵

The constraint in the actualization of conscience and religion or conscience may be related to the provisions of the regulations and policies of a State, which caused individual or community can not fully express their religion or conscience.⁴⁶ The right to freedom of conscience and religion as an individual right was a right that inherent in every human being since he/she was born, but in the context of nation and state, religion rights had also become a collective right of society to carry out their religion teachings peacefully and safely without being disturbed from the other side.

⁴² Rafael Domingo, "Restoring Freedom of Conscience", *Journal of Law and Religion* 30, no. 2 (2015): pp. 176-193.

⁴³ Al Khanif, *Hukum dan Kebebasan Beragama di Indonesia*, p. 110.

⁴⁴ Article 18 Paragraph (3) International Covenant on Civil and Political Rights.

⁴⁵ Article 29 Paragraph (2) Universal Declaration of Human Right.

⁴⁶ FIAI UII Lecturer and UII Researcher Center for Islamic Studies, "Right to Religion in Human Rights Perspective". *Al-Mawarid* 11, No. 2 (2011): pp. 267-268.

b. Limitation to Ahmadiyya Muslim Community for Security: Judges' Interpretation of Relevant Rules

In the Constitutional Court Verdict No. 140/PUU-VII/2009 on Judicial Review of Law No. 1/1965 on Prevention of Misuse and/or Blasphemy, the judge stated that the Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy never distinguish the existing of religion or conscience pluralism in Indonesia, but rather all religion or conscience received equal recognition and protection guarantees.⁴⁷ The judges state that the applicant's argument which that "the state is not entitled to intervene on religious freedom" was inappropriate. It is an attempt by the government to maintain the security and public order which disturbed by the conflict in the society caused by the Religious or conscience dissemination which most of societies perceive as deviant.⁴⁸

The Court considered that the Article 1 of Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy which gave the prohibition to anyone to publish the different interpretations of the religion that recognized in Indonesia was a preventive action of the possible horizontal conflicts among Indonesians. The Court understands that religion was a sacred matter that is very sensitive to most people. The existence of religion, not only as the absoluteness of personal transcendent relations but has become a social capital that plays a major role in building social cohesion.⁴⁹

The right of religion in the context of individual rights cannot be separated from communal rights. The restriction of

⁴⁷ Ministry of Justice and Human Rights of Republic of Indonesia, Summary of Constitutional Court Verdict No. 140/PUU-VII/2009 on Judicial Review of Law No. 1/1965 on Prevention of Misuse and/or Blasphemy, Media of Publication Legislation and Legal Information, can be accessed in <http://ditjenpp.kemenumham.go.id/harmonisasi-rpp/62-data-perkembangan-litigasi/486-putusan-mahkamah-konstitusi-terhadap-uu-pencegahan-penyalahgunaan-danatau-penodaan-agama.html> accessed on December 19th 2020.

⁴⁸ Constitutional Court Verdict No. 140/PUU-VII/2009 on Judicial Review of Law No. 1/1965 on Prevention of Misuse and/or Blasphemy.

⁴⁹ *Ibid.*

religious values as communal values was a legitimate restriction under the constitution. It aims to actualize the the best life possible (life of nation and state).⁵⁰ With these considerations, the Panel of Judges of the Constitutional Court, in its decision Declare to reject the petition for all.⁵¹

Conclusion

The right to freedom of conscience and religion as an individual rights was a rights that inherent in every human being since he/she was born, but in the context of nation and state, religion rights had also become a collective right of society to carry out their religion teachings peacefully and safely without being disturbed from the other side (*forum externum*). The limitation of *forum externum* is the legal limitation.

It was governed in various international instruments, among others: Universal Declaration of Human Right, International Covenant on Civil, and Political Rights. *Forum externum* was a right of freedom in religious behaviour derived from spiritual teachings and consciences that embraced by humans, such as worship, writing and spreading spiritual teachings, establish associations and religious organizations, the construction of religious facilities, religious discussions, and others. Everyone shall be subject only to such limitations as are determined by law solely to secure due recognition and respect for the other's rights and freedoms and of meeting the just requirements of morality, public safety, order, and general welfare in a democratic society.

The prohibition in religious activities and sealing of several places of worship of the Ahmadiyya Muslim Community by the Government is a legal limitation, because it was a *forum externum*-derogable rights. After all, that forum was potentially tangent to the rights and freedom of religion owned by others and can disrupt public order and security so that the Government has the right to limit to create public order. That limitation also governed by constitution

⁵⁰ *Ibid.* Vide Constitutional Court Verdict Number 012-016019/PUU-IV/2006.

⁵¹ Constitutional Court Verdict No. 140/PUU-VII/2009 on Judicial Review of Law No. 1/1965 on Prevention of Misuse and/or Blasphemy.

such as Article 28J UUD 1945, Article 1 of Law No. 1/PNPS/1965 on Prevention of Misuse and/or Blasphemy, and Article 73 of Law No. 39/1999 concerning Human Rights.

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