

Islamic Quarterly Fw: correction to make...

From: herdi sahrasad (sahrasad@yahoo.com)
To: sahrasad@yahoo.com; achyanuddin@gmail.com
Date: Saturday, July 29, 2023 at 10:56 PM GMT+7

----- Forwarded Message -----

From: herdi sahrasad <sahrasad@yahoo.com>
To: "iq@iccuk.org" <iq@iccuk.org>
Sent: Tuesday, January 19, 2016 at 08:50:47 PM GMT+7
Subject: Re: correction to make...

Assalaamu - 'alaikum,
Thanks a lot, we are still revising our paper, and take time, we are sorry for our english from Indonesia,
Sincerely Yours

herdi and al chaidar

On Tue, 1/19/16, Islamic Quarterly <iq@iccuk.org> wrote:

Subject: correction to make...
To: sahrasad@yahoo.com
Date: Tuesday, January 19, 2016, 4:20 AM

Assalaamu - 'alaikum,
Kindly find attached your paper which
requires certain correction and proof reading. Kindly revise
and re-submit the paper. Kindest Regards, Mr. Anwar Rahmtullah
IQ Co-ordinator
Islamic Cultural Centre 146 Park Road London NW8 7RG, UK. Tel: 020 7725 2206 <http://www.iccuk.org/page.php?section=media&page=iq>

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Searching for an Ideal Format in the Relationship between Religion and State: A Reflection from Indonesia

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Abstract

Since the establishment of the Indonesian state, contestation between the state and religion has not actually been concluded. Theoretically, there are problems in the 1945 Constitution that are fundamental enough to become strong foundation for religious freedom and ideal relations to bridge interests of the state (government) and interests of the religions in the life of the nation. This is important to emphasize, because in the context of discussions on religious freedom that can not be separated from the role of the state. Therefore, there are several important matters to be discussed. First, how and to what extent international law guarantees religious freedom normatively; second, how is the general portrait of world state constitutions when discussing religious freedom, and third, the extent to which freedom is practically influenced by conditions in the public sphere and the existence of dominant majority groups.

Keywords: *Religion, Islam, non-Muslim, freedom, Sharia.*

Introduction

In general, it can be said that the principles of freedom of religion historically rooted in the concept of 'freedom of thought and conscience'; a

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phrase that first appeared in the Westphalia Treaty of 1648 which ended a long war in the name of religion in Europe.¹ This idea continued to develop and get authenticity in the twentieth century along with the emergence of new sovereign nations with the concept of nationstate. And in turn, religious freedom becomes identical as both natural and divine rights simultaneously.²

Hence, legal recognition of religious freedom, both in principle and practice, arises as a direct or indirect part of the ratification of inter-state treaties. A study conducted by Bates more than fifty years ago shows that since the nineteenth century, several sovereign states included clauses on the right of religious expression in agreements made with other countries, both who have the same (or even different) religious traditions with them.³ For example, the Treaty of Berlin of 1878 between Russia and Turkey, which is considered as the most important single expression in the international treaty on religious freedom, includes a clause on equal rights and respect for minority religious groups in both countries concerned respectively. The same thing is contained in the General Act relating American Possessions and the Minorities Treaties of 1919-1923 after World War I.⁴

Furthermore, normative arguments about religious freedom in more detail are certainly found in international documents such as the UN Universal Declaration of Human Rights in 1948 which was strengthened by several other international instruments such as the UN International Covenant on Civil and the Political Rights (ICCPR) of 1966 and the Principles of the Helsinki Final Act of 1975 which were followed by the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (hereinafter referred to as the Anti-Discrimination Declaration) of 1981.⁵

This is the most important milestone in international law since World War II since almost all countries in the world signed the UN Universal Declaration and more specifically there have been 38 countries that have ratified the ICCPR, including some countries that are known to be very restrictive. Therefore, as Padelford revealed, "guarantees about freedom of religion are generally accepted postulates in international law where each country has an obligation to include religious freedom in the jurisdiction of each law."⁶

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In these international documents and instruments, it is very clearly stated that religious freedom is *irrevocable right* (that is, a right that cannot be suspended) as is the right to life or the right to defend itself. Religious freedom in the sense of 'free to believe and embrace one particular religion', including moving from one religion to another, is an absolute internal forum and cannot be limited by anything.

It followed with a question of how religion and belief could be universally recognized and protected. It is important to note that there is no clear and binding definition yet on what is meant by 'religion' (and 'belief') in these documents because even now, there is not a single definition that could satisfy all parties in the international law (and also human rights documents).⁷ The *travaux préparatoires* (the preparatory works) only agree to provide protection against any models of the expression 'religion or belief' shall include theistic, non-theistic and atheistic beliefs. There is no explanation of the elements of religion or the mentioning of specifications for variants of religion (such as Islam, Christianity, etc.).⁸

What is protected by international law is the 'right' of a person or group to adhere and at the same time the 'right' of a person not to embrace a religion and belief; and not on what and how religion and belief are believed and implemented. Therefore, as revealed by Gunn, the scope of this category is indeed very general. What is of concern here is not what religion or belief may be free and protected but more substantial is how a system of truth, belief, is recognized and protected universally in the core of linguistic identity and language, as well as an integral part of human political life.⁹

However, it must be observed that the right to embrace religion or belief does not parallel or automatically give birth to the right to manifest or to promote the religion concerned publicly. This is what 'distinguishes little' between UNDHR and ICCPR. In the ICCPR, however, religious manifestations are an integral (*de facto*) part of basic human rights, but they are external freedoms i.e., conditional rights which could be subject to restrictions because they are intrinsically related to rights of other people's rights.

In the extreme, it can be exemplified that religious manifestations of one particular group, such as human sacrifice (which occurs in 'primitive' religions / beliefs) or the practice of 'sati' (i.e. a wife plunges into a fire that

burns the dead body of her husband who died in ancient Hindu Indian tradition), indeed should be banned because there is a direct conflict between religious manifestations and the state's obligation to save and protect the lives and rights of life which are the basic rights of every citizens. And according to Article 18 (3) of the ICCPR for example, restrictions are possible if (1) it is based on law; (2) to protect public safety, order, health, or morals or the fundamental rights and freedoms of others; and (3) it is considered important to achieve the intended purposes.¹⁰

Here it is clear that only the state as an institution has the right to impose such restrictions because it is the holder of the political and legal authority that overcomes society. Only the state has the right to regulate and not the dominant group (social or religious) that exists in the country concerned. And it is important to stress that the validity of state regulations in the name of public order or morality, at least, requires among other things that (1) the regulations are regulated in non-discriminatory laws; (2) it applies equally to all groups and individuals; (3) proportional; and (4) there is a direct relationship between the needs of the community at large with the limited trust.¹¹

The question that arises thereafter, is whether the countries that have signed or ratified the international charter are really fighting for the religious freedom mandated in these documents? This is quite crucial and complicated, which is one of the most important indicators that measure a country's ability to provide best service and protection for its citizens. Because, when the state fails to protect this right, it altogether "fails" to carry out the functions mandated in social contracts. However, it must also be noted that the state is a political entity full of interests and bargaining with existing social groups and this is the fundamental character of the state as expressed by Joel Migdal.

In this perspective, the basic institutional capacity of the state is to penetrate and regulate society through carefully created rules and resources. With this model of domination, primarily using a systematic bureaucratic machine (and in some cases also with military assistance), a country can be declared as a strong state or a weak state. The greater the state's dominance over existing social groups and the smaller the concessions granted to them, the stronger the country; conversely, the

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smaller the state's domination and the greater the concessions granted to the group, the weaker the state.¹²

It must be admitted that this argument about strong and weak state is certainly inadequate in the sense that a strong state does not automatically 'succeed' in developing its wings of political authority because the model of power possessed by the state and social groups themselves is not homogeneous and highly dynamic according to the constellation of political change and culture. At this point, the competition of interest groups, both within the government itself (such as politicians from various parties) and social groups (civil society), presupposes ongoing negotiations, make compromises, concessions and bargaining.¹³ Therefore, the distribution of power that occurs is always changing or different from one to another, so that in turn it produces various forms of governance (statehood) namely: (a) pluralist, (b) elitist, (c) corporatist, and regimes that can be typologically divided at least into: (1) liberal democratic, (2) socialist or communist (and post-communism), and (3) authoritarian regime, as revealed by Alan Ball.¹⁴

The simple explanation of the model and system of government above may be too arbitrary and subjective. Nevertheless, it does not mean that a pluralist state with liberal democracy (a + 1) is the only best model of government for society in the service of security, social order, freedom, and economic prosperity. It's just that in a certain measure it is easy to conclude that a country with that model might be far better than a corporate state with an authoritarian regime (c + 3). And in relation to religious freedom, several studies have concluded that there is a strong relationship between the state regime and the existence of that freedom on the one hand, and between religious freedom and the emergence of various regulations relating to religion on the other. Here, as Anthony Gill puts it, it can be said that 'the more authoritarian a regime is, the less religious freedom in the country; the smaller the religious freedom in the country, the more regulations are issued'.¹⁵

Back to the issue of the country's constitution regarding religious freedom. If we look at the state model and system as explained simply above, then in practice, however countries (whether democratic or authoritarian; even pluralist or corporate) may agree with the general idea of religious freedom, they are in a certain measure should also carry out process of redefinition, modification, or filtering for the practice of religious freedom

in the respective constitutional regions. This will be seen when we later examine the articles in the constitutions of these countries.

It must be noted that there are several constitutions written long before the international documents were ratified and signed, so it makes sense that the constitutions might be a little far from the 'impression' of protecting religious freedom because this discourse might not or have not been the main concern initially. Nevertheless, many constitutions which were written or revised after the ratification of the international document that still 'treated' very carefully the idea of religious freedom in accordance with the spirit to safeguard the interests of the state or other things which are considered far bigger and more important. So, it is rather clear that the 'exclusion space' as stipulated in the documents above is a loophole and it is convincing enough for a country or regime to suppress or at least limit the practice of religious freedom on the grounds for example to maintain social cohesion and stability.

In turn, as stated by Nicholas Gvosdev, in the writing of the constitutions of each country the political interests will be seen, for example, articles are found revealing on one hand to provide guarantees of freedom, but on the other hand also provide new prerequisites which in the end limits the freedom itself.¹⁶ Here we will see a correlation between the interest of the state and religious freedom guaranteed by the constitution as illustrated in the models below:

Religious Freedom and State Interests: Equal but Different

The first model is to put articles regarding the interests of the state with articles on religious freedom in *primus inter pares* (parallel but one is higher than the other). For example, it can be found in the Vietnam Constitution where on the one hand the state guarantees religious freedom (Article 70) but at the same time it also states that 'every person must not abuse beliefs and religions that are contrary to state law and policies' (no one can misuse beliefs and religions to contravene the law and the State policies).

The same thing is also found in the Chinese Constitution. After elaborating on the rights protected by the state, Article 51 of the Constitution also states that 'the practice of the freedom and rights of Chinese citizens must not conflict with the interests of the state, society and groups, and must not be above the freedom of law and rights other citizens' (the exercise by

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citizens of the Republic of China of their freedom and rights may not infringe upon the interests of the state, of society, and of the collective, or upon the lawful freedoms and rights of other citizens). It was further stated in Article 36 that, no one may use religion to engage in activities that ... interfere with the educational system of the state'. What is meant by the country's education system? Article 19 states that the state education system means socialism education which refers to Marxism-Leninism and is based on the concept of universal materialistic atheism. This implicitly shows that religion, which believes in the existence of God and the spiritual world, is considered to disrupt the state education system which is oriented to the dissemination of materialistic views to the people.¹⁷

Another example that can be mentioned is the Venezuelan Constitution (Article 66) which states that 'the practice of religious worship must be under the supervision of the highest state governing body' (worship shall be subject to the supreme inspection of the National Executive) where 'no one may invoke religious beliefs or disciplines to avoid complying with the laws'. Or also found in Article 24 (2) of the Turkish Constitution which states that 'acts of worship, religious services and ceremonies shall be conducted freely but followed with notes (as in Article 13) 'does not violating the indivisible of the State with its territory and nation, of endangering the existence of the Turkish State and Republic'. If this happens, 'the government has at its disposal a powerful legal tool for diminishing religious freedom'.¹⁸

Another ambiguity that arises is linking religious freedom with national security as found in the 1992 Mongolian Constitution. Article 16 (15) clearly states the guarantee of religious freedom, but in Article 19 (3) it also states that 'in exercising one's rights and freedoms, one may not infringe the national security or rights and freedoms of others or violate public orders'. What is meant by national security and public order in the constitution remains undefined thus vague.

The same phrase also exists in the Singapore Constitution where the state protects the individual's right to practice or adheres to religion, but it is said in another section that 'this Article does not authorize any act contrary to any general law relating to public order, public health or morality'. Or, in the case of the Syrian Constitution (Article 26) which is based on Islamic teachings, freedom of religion which means freedom to worship, and where

the state is obliged to provide guarantees of 'the freedom to hold any religious rites, provided they do not disturb the public order'.

Vague language about public order, morality and the like are also found in various constitutions such as in Italy, the Netherlands, Denmark, and several other countries. Learning from the experience of the constitutions above, it can generally be said that the idea of public order and morality has indeed become the most popular theme for some countries (especially for authoritarian and semi-authoritarian countries) to modify the ideas and practices of religious freedom.

Subordination of Freedom of Religion Under the Interest of the State

The second model is the inclusion of articles concerning religious freedom that 'collide' with other articles concerning the interests of the State, and where articles on state freedom are praxis subordinated in that other article. An example for this model is the Constitution of Pakistan. In Article 20 it is said that '*every citizen shall have the right to profession, practice, and propagate his religion*'. But Article 27 also states that '*all existing laws must be in accordance with Islamic teachings sourced from the Qur'an and Sunnah*'. Here it is clear that the barometer of religious freedom rights in the Constitution must be in accordance with the conventional rules and views of Islamic law about non-Muslim societies.

The other is the Egyptian Constitution. Article 46 states that '*the state guarantees freedom of religion and freedom of practicing religious rights*'; but on the other hand, this freedom is contrasted with the statement (as in Article 2) that Islam is '*the religion of the state ... and the principal source of legislation is Islamic Jurisprudence*'.¹⁹

Furthermore, there are several constitutions that make a unique relation between religious freedom and the desire to respect and preserve national culture or traditions as in the case of Turkmenistan. It is stated in Article 37 that '*the exercise of those rights and freedoms cannot be separated from the obligation of individuals and citizens to carry out obligations towards society and government. Everyone who lives and is in the territory of Turkmenistan is obliged to submit to the Constitution and laws and to respect the national traditions of the Turkmen nation*'.

In the Constitution of Jordan, it is also stated similarly that *'the state will protect the freedom of the implementation of religious worship and rites in accordance with the customs practiced in the Kingdom'* and because in the Constitution of this country (Article 2) also states that Islam is the state religion, implicitly that freedom must not only be in accordance with the royal tradition but more specifically, it must also be in accordance with the tradition that developed in Islam. In this connection, when religion (in this case Islam) is considered part of national culture and identity, it means that what is done by other religious minorities or missionaries can be prohibited on the grounds that their activities constitute a 'threat' to national culture. Because this prohibition is a form of cultural reservation from threatening infiltration of outside traditions, logically it is not considered a form of defamation of religious freedom.

In some Western countries the same thing also happens. In the Irish Constitution it is said that in the name of 'the Most Holy Trinity' and obligations to 'our Divine Lord, Jesus Christ', religious freedom and religious practices in Article 44 (2) guarantee to every citizen must be subject to public order and morality in accordance with the spirit of respect for 'the Most Holy Trinity' and 'our Divine Lord' earlier. Therefore, in Article 40 (6.1.i) the government has the right to limit views which may result in the defamation of public order, morality, or state authority. The government also has the right to prohibit 'publications or speeches that are insulting, defying or other things that deviate' (*publication or utterance of blasphemous, seditious, or indecent matter*).

Narrowing the Meaning of Religious Freedom

The third model is when the state is making a definition in the constitution about freedom of religion and/or religious terms that are narrower and far from the general understanding of the terms themselves. In the Greek Constitution, for example, Article 13 (2) states that the state guarantees freedom of worship but prohibits efforts to spread religion because it is contrary to the position of the Orthodox Church as the official state religion (Article 3). Another example is the Turkish Constitution where everyone has the right to freedom of religion and to exercise it, but that freedom only applies at the individual level and not at the religious corporate institution.

A rather unique thing is found in the Argentine Constitution, where citizens have *'freely profess their religion'* (Article 14), but it only applies to the the

private actions of men which in no way offend public order or morality, nor injure a third party, are only reserved to God (Article 19). This article is a justification for Catholic missionary activities because it is in accordance with this Argentine Constitution, as the Catholic Church is the official state religion (Article 2). For this reason, activities related to the religious activities of the church are understood as part of an effort to serve God, and this form of service must be supported constitutionally.²⁰

The narrowing of the meaning of religious freedom is also found in the Constitution of our country (Indonesia) where the definition of religious freedom in the 1945 Constitution (both before and after the Amendment) is placed within the framework concept of God which is imbued (qualifying) in the word Almighty. At this point, Article 29 (1) which states that 'the state is based on the Almighty God', is an absolute prerequisite for 'the state guarantees the independence of each population to embrace their respective religions and to have dignity according to their religion and beliefs as they are explained in Article 29 (2). With these two articles, even though rhetorically it is stated that freedom of religion is one of the most basic rights among human rights, the constitutional protection only applies to religion/with the concept of Godhead. Therefore, if a belief could not fulfil this primary requirement, then it is declared not as a religion.

Another thing that can be found besides the examples above is the narrowing of the meaning of religion itself. In some constitutions there is a tendency to associate religion with history or culture that has developed for so long in a particular region such as Islam in the Middle East or the Orthodox Church in Eastern Europe. An example that can be mentioned is the 1992 Lithuanian Constitution where the word 'churches' has at least 2 important elements namely 'societal support' and 'cultural heritage'. Therefore, when the word is associated with religious freedom then what is protected by the state under the law is the 'tradition' which has been developing continuously for more than 300 years in Lithuania. If there are other traditions that have just developed or are less than 300 years old, then according to Article 43 (1), these institutions will get protection only if they 'have roots in society and where the teachings and worship are not contrary to morality or the law itself'. In this sense, what is understood as having roots or bases in this society is certainly very common and multi-interpretative, and this in turn opens the state's space to limit the emergence of both conventional religions such as Islam, Hinduism, or Buddhism for example as well as new religious movement that is rife today.

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In this regard, it is also important to mention that some international documents such as the ICCPR document indeed allow a country to adopt the dominant religious tradition (and / or some traditions) as the official state or traditional state religion. Examples of this can be found in the Sudanese Constitution which adopts Islam as the official state religion. Similar things also happen in Greece and Bulgaria with the Eastern Orthodox Church, Georgia with the Autocephal Apostolic Orthodox Church, Argentina with the Catholic Church. Thailand is the only country that clearly recognizes Buddhism as its official religion but at the same time also constitutionally recognizes the right of other religions to develop and get the same protection as what are given to Buddhism.

Based on this, what is then the relationship between these models with the management of religion, especially in Indonesia? As explained above, Indonesia is categorically included in the third category in relation to the state and religious freedom. In this sense, from the beginning the state's role in religious life is certainly very large. This does not merely mean that the state recognizes religion only, but the state could also act as regulator for religious life. This is evidenced by the establishment of the Department or Ministry of Religion as a state institution that deals with matters relating to religious life.

Meanwhile, in its effort to regulate the people's religious life, the state also issues several policies that directly or indirectly limit religious freedom. This is shown by the issuance of Presidential Decree No. 1/PnPs/1965 (*juncto* Law Number 5 of 1969) on The Prevention of Abuse and/or Blasphemy in Religion. At this level, it would be easily seen what is called as a 'split-level character' in the practice of regulating religious life settings. At this point, several important cases indicated that there is a strong tendency carried out by the government to protect freedom only for those who believe in a traditional religious belief. But not for those who have differences with the traditional mainstream view.

This disparity can clearly explain that there is a 'discriminatory' treatment which violates the principle of fairness (i.e., reciprocity) for those who are not part of the traditional religious community. Because in fact there is a tendency in the argument of freedom of religion that is intrinsically only associated with religious activities of religious people, and (once again) does not include those who are not traditionally religious.

This is what makes some people feel that the state intentionally or not also plays a role in discriminatory practices based on religion as is the case of several cases such as the prohibition of various groups and teachings that are considered to deviate from the mainstream belief in Indonesia. This tendency was further exacerbated by the emergence of Islamism attitudes and behaviour since the fall of the New Order regime, which often used the attributes of mainstream religious symbols in carrying out violence in the name of maintaining the authenticity and purity of religion. It is in this context that the views of activists and non-religious group leaders in this writing are laid out as explained in the following section.

Non-Muslim Group and State-Religion Relations

According to Stanley, in principle the state should not interfere in the internal affairs of religion, especially in terms of determining the main points of teachings as what has happened in the history of Christianity where the state could easily give a false label for groups or teachings that are different from those included in the policy of the country because of this interference. However, Stanley agrees that the State or government has the right and authority to take decisive actions for those who commit the blasphemy of a particular religion or when the understanding or teachings and practices of religious people have led to or have constituted criminal act. In this case, the state must carry out its duties, namely securing, reconciling, and prospering by enforcing the law for the sake of humanity. Here, the state has the right to bring people who are guilty and break the law to "go to cell" (which is the legal authority of the state) but not to "go to hell" (which is a matter for religious people).²¹

Stanley also saw that the ideal relationship between the State and religion must be accommodative in the sense that there are religious elements that could be adopted by the state. At this point he stressed that what is understood as elements are virtue values taught by religion as substance, and not on religious symbols. With that, Stanley is in the opinion that in carrying out its duties, the state must truly provide freedom for its citizens to have a religion and practice the teachings of their religion, whatever religion it is (including animism and tribal religions). In addition, the state must also guarantee that religious rights can be freely exercised by its adherents. This guarantee of religious freedom from the government can be manifested in the official recognition and acceptance of religions or their followers who declare themselves to be religious, and who have activities

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as a religious organization. Furthermore, the guarantee from the government towards religious freedom can involve the provision of religious facilities such as land for the establishment of places or centers of religious activities, security and peace in religion, and the fostering of religious communities in the life of society, nation, and state.

Stanley further revealed that the granting of freedom and guarantees of the implementation of religious life by the state or government to the people in accordance with the 1945 Constitution, certainly did not give freedom as freely as possible. As mentioned above, religious communities in Indonesia are very numerous and varied. Indonesia is a country with a plural society, because:

“Absolute freedom for a group of people of one religion can cause problems if it is done by disregarding the existing socio-cultural and legal principles. Therefore, the existing rules and regulations need to get the attention of religious people and protection of the state. When rules and regulations are violated, here the state (society and government) must act decisively. This is the authority of the state, which protects society, human rights, universal humanity and high civilization.”²²

The same view was also expressed by Bhikku Saddhaviro where the relationship between the State and religion must be placed in a frame where religious people can practice their respective religions, but on the other hand, religious communities must also comply with all agreed state regulations. Bhikku Saddhaviro believes that it must also be agreed on how the state management of religion can bring prosperity, peace and harmony of life for all religious communities as can be done by the American state and some other secular countries. This system is very important because without it the relationship between the two will not be able to run well. This presupposes, said Bhikku Saddhaviro, that the rules made must be a common foundation on which the state must continue to guard, guide and direct the citizens to obey the teachings of their respective religions. On the same occasion religious adherents are also expected to obey the rules of the State, and with that, Bhikku Saddhaviro believes that this synergy will not cause many problems that can disrupt social life.²³

It is important to clarify that almost all non-Muslim groups are not too concerned with the discourse on the establishment of an Islamic state in Indonesia. For them the idea of establishing an Islamic state would not

have the support of all Muslims in Indonesia because basically they think the idea of an Islamic state itself lacks a historical and conceptual basis in this country. Stanley further said, for example, that:

“As for the ideals of establishing an Islamic state in Indonesia (or the Khilafah Islamiyah in the Asia/ Southeast Asia), is not so much worrying. This is because; such idealism will not get support from the Islamic community let alone the international community. Such idealism would not be supported because it is no longer relevant to the era of globalization (with emphasis on rationalism, liberalism, and humanism) as well as science and technology which are very popular everywhere, including in Indonesia. Moreover, the example of countries that reflect a strong Islamic ideology and style is also not ideal for them, because socio-political, economic, and humanitarian issues are still very prominent, such as in Iran, Iraq, Afghanistan, and Pakistan.”²⁴

Conclusion

The ideal relationship between the state and religion must be accommodative in the sense that there are religious elements (but not religious symbols) that can be adopted by the state. At this point he stressed that what is understood as elements are virtue values taught by religion as religious substance.

Furthermore, the relationship between the state and religion must be placed in a frame where religious people can practice the religion that each one believes, but on the other hand the religious community must also comply with all the agreed state regulations.

In terms of the ideal relationship between the state and religion, non-Muslim groups see that in principle the state must not interfere with the internal affairs of religion, especially in terms of determining the main points of the teachings. Because labels given by religion, such as heresy, for example, trigger a prolonged conflict in society. However, some figures certainly agree if the state or government takes firm action for those who commit blasphemy of a particular religion or when the understanding or teachings and practices of religious people have led to and or have constituted a criminal act. For them in these cases, the state must carry out its duties by upholding the law for the sake of humanity. Here, the state has the right to bring people who are guilty and violate the law to “go to cell”

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(which is the legal authority of the state) but not to “go to hell” (which is a religious affair).

The discourse of the establishment of an Islamic state in Indonesia for the people of Indonesia, especially non-Muslims, is not considered too worrying. The idea to establish an Islamic state will not get support, especially from Muslims in Indonesia, because basically this idea lacks the historical and conceptual foundation in this country.

Interviews

- Interview with Pastor Stanley Rambitan at Jakarta Theological College on November 9, 2010, and November 2, 2020.
- Interview with Bhikku Saddhaviro at Ratana Graha Vihara, West Jakarta on November 18, 2010. And November 3, 2019.

Endnotes

¹An explanation of the history of religious freedom discourse as an international dictum can be found in the 1960 Arcot Krishnaswami report, "Study of Discrimination in the Matter of Religious Rights and Practice," U.N. Doc. E / CN.4 / Sub.2 / 200/Rev.1, U.N. Sales No. 6.XIV.2. This work is one of the most important materials about religious freedom which is the official document of the United Nations (UN). This report is reprinted in Tad Stahnke and J. Paul Martin, *Religion and Human Rights: Basic Documents* (New York: Center for the Study of Human Rights at Columbia University, 1998), p. 2-54.

²James E. Wood, JR., "Religious Rights and a Democratic State," *Journal of Church and State* 46 (Autumn 2004): pp. 739-765.

³Further see M. Searle Bates, *Religious Liberty: An Inquiry* (New York: Harper and Brothers, 1945), p. 476.

⁴See Richard B. Lillich and Hurst Hannum, *International Human Rights* (Buffalo, New York: William S. Hein, 1995), p. 324.

⁵There are at least 39 international documents in the form of *Declarations, Bills, Treaties, Covenants, Protocols, Agreements*, and others relating to religious rights or freedom as found in Stahnke and Martin, *Religion and Human Rights: Basic Documents*. For further discussion on this see Natan Lerner, *Religion, Beliefs, and International Human Rights* (Maryknoll, New York: Orbis, 2000).

⁶Norman J. Padelford, *International Guarantees of Religious Liberty* (New York: International Missionary Council, 1942) as quoted by Wood, JR., "Religious Rights," p. 740.

⁷See for example a review of this in T. Jeremy Gunn, "The Complexity of Religion and the Definition of Religion "in International Law," *Harvard Human Right Journal* 16 (2003): pp. 189-215.

⁸In the ICCPR commentary, based on that category it was agreed that what is understood as religion encompasses monotheistic, polytheistic, agnostic, free thought, and animistic beliefs. Also included in this category are racism, Nazism, and apartheid, although in their development these three models of 'false religion' were excluded from this explanation. See Donna J. Sullivan, "Advancing the Freedom of Religion or Belief Through the UN Declaration on the Elimination of Religious Intolerance and Discrimination," *The American Journal of International Law* 82 (1988): pp. 487-520.

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⁹T. Jeremy Gunn, "Majorities, Minorities and the Rights of Religion and Belief," *Helsinki Monitor* 3 (1998): pp. 38-44.

¹⁰Karen Musalo, "Claims for Protection Based on Religion or Belief," *International Journal of Refugee Law* 16, no. 2 (2004): pp. 165-226.

¹¹See further Martin Scheinin, "Freedom of Thought, Conscience and Religion," *Studia Theologia* 54 (2000): pp. 5-18; See also Lerner, *Religion, Beliefs and International Human Rights*, p. 131.

¹²See further Joel S. Migdal, *Strong Societies and Weak States* (New Jersey: Princeton University Press, 1988).

¹³Michael Mann, *The Sources of Social Power: The Rise of Classes and Nation-States* (Cambridge: Cambridge University Press, 1993).

¹⁴Alan R. Ball, *Modern Politics and Government* (London: Macmillan, 1994), pp. 31-36.

¹⁵Anthony Gill, "The Political Origins of Religious Liberty: A Theoretical Outline," *Interdisciplinary Journal of Research on Religion* 1 (2005): pp. 3-35.

¹⁶Nikolas K. Gvosdev, "Constitutional Doublethink, Managed Pluralism and Freedom of Religion," *Religion, State and Society* 29, 2 (2001): pp. 81-90.

¹⁷For more on religious freedom in China see among others Pitman B. Potter, "Belief in Control: Regulation of Religion in China," *The China Quarterly* (2003): pp. 317-337; Beatrice Leung, "China's Religious Freedom Policy: The Art of Managing Religious Activity," *The China Quarterly* (2005): pp. 894-913; and Eric R. Carlson, "China's New Regulation on Religion: A Small Step, Not a Great Leap, Forward," *Brigham Young University Law Review* 3 (2005): pp. 747-797.

¹⁸On Turkey see Mostafa Erdodan, "Religious Freedom in the Turkish Constitution," *Muslim World* 89, 3-4 (1999): pp. 377-388.

¹⁹More details about the constitutions in various Muslim countries of the world can be found in Tad Stahnke and Robert C. Blitt, "The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitution of Predominantly Muslim Countries," *Georgetown Journal of International Law* 36, 4 (2005): pp. 947-1078.

²⁰For the case of Argentina, further see Juan G. Navarro Floria, “Religious Freedom in the Argentine Republic: Twenty Years after the Declaration on the Elimination of Intolerance and Religious Discrimination,” *Brigham Young University Law Review* 2 (2002): pp. 341-352.

²¹Interview with Stanley Rambitan at Jakarta Theological College on November 9, 2010, and November 2,2019.

²²Interview with Pastor Stanley Rambitan at Jakarta Theological College on November 9, 2010, and November 2,2019.

²³Interview with Bhikku Saddhaviro at Ratana Graha Vihara, West Jakarta on November 18, 2010. And November 3,2019.

²⁴Interview with Pastor Stanley Rambitan at Jakarta Theological College on November 9, 2010, and November 2,2019.

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