

**Center for Human Rights and Democracy  
(CHRD)  
Faculty of Law  
University of Brawijaya - Indonesia**

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Jl. Mayjen Haryono No.169 Malang – Indonesia 65145  
Tel. : +62-341-553898,  
Fax : +62-341-566505  
Email : hukum@ub.ac.id



**Indonesia**  
**Submission to the UN**  
**Universal Periodic Review**

**Thirteenth session of the UPR Working Group of  
the Human Rights Council  
May 2012**

**The Center for Human Rights and Democracy (CHRD)  
Faculty of Law  
University of Brawijaya – Indonesia**

**November 2011**

## I. Introduction

1. Guarantee of the right to freedom of religion and belief is one of the Indonesian government's commitments and obligations in the field of civil and political rights both nationally<sup>1</sup> and internationally<sup>2</sup>. Based on the national legal system, Indonesia has recognized the right to freedom of religion and belief and the guarantee for no violation and discrimination in its enjoyment<sup>3</sup>. In addition, Indonesia is also bound fully to comply with the provisions contained in Article 18 of the International Covenant on Civil and Political Rights which provides a general framework about how the rights to the freedom of religion and belief should be upheld<sup>4</sup>.

2. Indonesia so far has tried to meet international obligations and commitments by doing legal and institutional reforms such as amending the 1945 Constitution, the establishment of the constitutional court, the establishment of national human rights commissions and courts of human rights, the national action plan on human rights, the enactment of the legislation on human rights, police regulations concerning the application of human rights, and ratification of international conventions relating to the right to freedom of religion and belief such as International Covenant on Civil and Political Rights and International Convention on the Elimination of All Forms of Racial Discrimination.<sup>5</sup>

3. In terms of implementation and promotion of the rights to freedom of religion and belief for minority groups in Indonesia based on the legal framework and domestic remedies mentioned above there are still serious problems both in the terms of materials and procedures for enforcement of its laws and regulations, involving repeated cases of violations in the freedom of religion and belief in the community<sup>6</sup>. This report will provide an account of the serious problems that are divided into two sections, namely:

Section II: Discussing about legislation that still inhibits the enjoyment of the rights to freedom of religion and belief;

Section III: Discussing about the cases of violation of the right to freedom of religion and belief.

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<sup>1</sup> The Constitution 1945 Article 28I (1-2), Article 7(1) Law No. 9/1999 on Human Rights, and Law No. 12/2005 on International Covenant on Civil and Political Rights Ratification

<sup>2</sup> Paragraph 62 National Report of Indonesia which was submitted in accordance with paragraph 15(a) of the annex to Human Rights Council Resolution 5/1 (Doc.: A/HRC/WG.6/1/IDN/1, 11 March 2008)

<sup>3</sup> Article 28I (1,2) and Article 29 of the Constitution 1945

<sup>4</sup> GA Resolution 2200A (XXI) of 16 December 1966 and its General Comment No.22 (CCPR/C/21/Rev.1/Add.4, 07/30/1993)

<sup>5</sup> Supra Note 2 Paragraph 1-14

<sup>6</sup> The Wahid Institute Jakarta: *Report on Freedom of Religion/Belief and Tolerance 2010* and report on some Violations in the Freedom of Religion/Belief 2007-2010 page 61, Setara Institute Jakarta, accessed in <http://www.setara-institute.org/en/content/grafik-laporan-pelanggaran-kebebasan-beragamaberkeyakinan-2007-2010>

## II. The legislation still inhibiting the enjoyment of the rights to freedom of religion and belief

4. Article 28J (2) of the Constitution 1945 grants restrictions on rights to the freedom of religion and belief based on religious values, which are used as a basis for making the discriminatory legal policy and legislation at both the national and local levels to minority groups such as, *inter alia*, the Constitutional Court's decision No.140/PUU-VII/2009 on adoption of the blasphemy law No.1/PNPS/1965, the Joint Ministerial Decree about prohibition of Indonesian Ahmadiyya Congregation<sup>7</sup> activity, which was then followed by the East Java Governor's Decree No.188/94/KPTS/013/2011 at the provincial level about the same subject.

5. Law No. 1/PNPS/1965 on blasphemy law has become a general reference for the establishment of the regulatory coordination agency of the belief by the Attorney General<sup>8</sup> which is followed by administrative measures at the provincial<sup>9</sup> and district levels<sup>10</sup> or cities that restrict and prohibit religious activities of the religious minorities and faiths whose mechanism and procedures are contrary to paragraph 8 of General Comment 22 on Article 18 of the International Covenant on Civil and Political Rights stating that restrictions on rights to freedom of the religion and belief should not aim at discriminating against any religious groups or be applied in a discriminatory way.

6. Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs No. 8-9 of 2006 regulating the establishment of the worship places has resulted in a conflict related to the establishment of worship houses for religious minorities like the case of establishment of the Yasmin Church in Bogor, West Java and HKBP Cikeuting, Bekasi, West Java.<sup>11</sup>

7. Joint Decrees of the Minister of Religious Affairs, Ministry of Home Affairs, and Attorney General dated 19 June 2008 stipulated a prohibition against the minority Ahmadiyya in performing their religious activities because their teachings are regarded to deviate from those of the majority of Muslims in Indonesia. The decree is using the mainstream religious values as a benchmark to restrict the right to freedom of religion and belief for minority groups.

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<sup>7</sup> Jemaat Ahmadiyah Indonesia/Indonesian Ahmadiyya Congregation (JAI) is registered as a legal entity based on the Minister of Justice's Decree No. JA.5/23/13 dated 13 March 1953 promulgated in State Gazette Supplement No. 26 dated 31 March 1953. JAI is also registered as social organization in Ministry of Home Affairs No. 75/D.I/VI/2003 dated 5 June 2003.

<sup>8</sup> Attorney General's Decision No. KEP-004/J.A/01/1994 and Article 30 (3.d-e) of Law No. 16/2004 regarding Prosecuting Attorney.

<sup>9</sup> West Java Governor's Decree No. 12/2011 regarding Prohibition of the Indonesian Ahmadiyya Congregation activity in West Java

<sup>10</sup> Pandeglang District Head's Regulation No. 5/2011 regarding Prohibition of the Ahmadiyya Congregation activity in Pandeglang District

<sup>11</sup> The Wahid Institute Jakarta: *Report on Freedom of Religion/Belief and Tolerance 2010* and report on some Violations in the Freedom of Religion/Belief 2007-2010 page 61, Setara Institute Jakarta, accessed in <http://www.setara-institute.org/en/content/grafik-laporan-pelanggaran-kebebasan-beragamaberkeyakinan-2007-2010>

8. Article 12 (1.a) of Law No. 20/2003 regarding National Education System only provides religious education for students with the government-recognized religions and there is no similar education for students of non-religious faiths although their existence is recognized by the constitution and laws and regulations in the field of human rights.

9. Law No. 23/2006 concerning Demographic Administration and its implementing regulation is still not fully effective in its application because it still leaves the problem for the faith adherents. At the Demography Office of Malang City in East Java province, the ID card renewal form only contains choices of six official religions with no other option for faith adherents<sup>12</sup>. While in West Java Province, there are still cases which replace a column of the faith adherent with official religion<sup>13</sup>.

10. Law No.32/2004 regarding Regional Government and its amendment has given authority to the Regional Government to take administrative measure related to public order and public tranquility. The authority has been used as an excuse for local governments to make legal policies related to religious issues where its processes and the procedures are discriminatory against minorities<sup>14</sup>. This certainly violates the provisions of Article 10 (3) of the Law stipulating that the affairs of religion are the central government authority.

## **II. Cases of violation of the right to freedom of religion and belief.**

11. On 6 February 2011 in the Umbulan Village, Cikeusik subdistrict, Pandeglang District, West Java Province there was an attack against the Indonesia Ahmadiyah Congregation by mass of around 1500 people, killing three members of the Ahmadiyya and four other members were seriously injured and another slightly injured. Since the beginning prior to and at the time of the incident the Indonesian Police have been informed about it and are present in the midst of the incident<sup>15</sup>.

12. On 8 February 2011 the building of Temanggung District Court of Central Java was destructed shortly after reading the judge's decision in cases of blasphemy of Islam and Christianity where Antonius Richmond Bawengan from Jakarta was accused of doing such a blasphemy. The destruction was committed by the mass organizations disappointed with the court verdict that was considered to give the too light punishment on the accused perpetrators of blasphemy law. The mass organizations

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<sup>12</sup> Personal experience: source unpublished.

<sup>13</sup> Annex I to the Table of Cases, Position Paper demanding a fulfillment of the constitutional rights for the faith adherents, Human Rights Working Group, Jakarta, 2001.

<sup>14</sup> East Java Governor's Decree, West Java Governor's Decree and Pandeglang District Head's Regulation regarding prohibition of Indonesian Ahmadiyya Congregation Activity.

<sup>15</sup> Monthly Report on Religious Issues, Edition XXXI, February 2011, The Wahid Institute Jakarta.

also committed similar destruction on police stations and Bethel Church Indonesia along with schools located in one complex, the Pentecostal Church, and Church of St. Peter<sup>16</sup>.

13. City Government of Malang in East Java Province on 30 December 2009 issued a Mayor's Decree No. 452.2/1882/35.73.123/2009 about a rejection of granting the building permit (IMB) for establishment of Diaspora Church in Kiduldalem Kelurahan, Klojen subdistrict where its application has been filed since 2006. With this ground on 21 January 2010 the City Government of Malang issued a Mayor's Decree No.900/2/35.73.501/2010 on cessation of the worship activity in Diaspora Church<sup>17</sup>. City Government of Bogor, West Java was also doing the same thing relative to issuance of the Bogor Mayor's Decree No.645.45-137/2011 dated 11 March 2011 concerning the permanent revocation of building permit (IMB) for Bapos Taman Yamin Christian Church, Bogor Indonesia<sup>18</sup>.

14. Head of National Unity, Politics and Public Protection in Provincial Government of Central Java, dated 30 May 2011 stated that in Brebes, Demak and Rembang districts of Central Java Province, there was rejection of the burial of the faith adherents' bodies in public cemeteries (TPU) by the local residents so that the remains were buried in their yards<sup>19</sup>.

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<sup>16</sup> Monthly Report on Religious Issues, Edition XXXI, February 2011, The Wahid Institute Jakarta.

<sup>17</sup> The Wahid Institute Jakarta: *Report on Freedom of Religion/Belief and Tolerance 2010*

<sup>18</sup> Council of the Christian Churches' Press Release dated 14 October 2011, Jl. Pengadilan 35 Bogor. Contact Person: Bona Sigalingging, Mobile: +628121116660, Dwita Novitarini, Mobile: +628111103276.

<sup>19</sup> <http://news.okezone.com/read/2011/05/30/340/462318/jenazah-penganut-aliran-kepercayaan-ditolak-di-tpu>

## **II. Recommendations**

15. The Government of the Republic of Indonesia immediately initiated a review of Article 28J (2) of the Constitution 1945 through government agencies that implement laws and regulations as well as working with the legislature and the judiciary in order to abolish the fundamentally discriminatory legal systems.

16. The Government of the Republic of Indonesia proposed the creation of new legislation that could substantially remove the enactment of the Law No.1/PNPS/1965 on blasphemy law because the law has proven to be a reference for the preparation of legislation and regulatory institutions of the religions and beliefs as well as administrative measures that discriminate against minority groups.

17. President of the Republic of Indonesia based on his constitutional authority should revoke the legislation along with the dissolution of the institutions created at ministerial levels including the Joint Regulations of the Minister of Religious Affairs and Minister of Home Affairs No. 8-9 of 2006 that regulate the establishment of worship houses and the Joint Decrees of the Minister of Religion, Minister of the Home Affairs and the Attorney General dated 19 June 2008 regarding the prohibition of the Indonesian Ahmadiyya Congregation activity. The ministerial regulations are really contradictory to the Constitution and the International Covenant on Civil and Political Rights.

18. President of the Republic of Indonesia through Minister of Education and Culture immediately proposed revision of Law No. 20/2003 on National Education System so as to accommodate the religious education for students who hold beliefs beyond the official religions.

19. The Government of the Republic of Indonesia supervises and provides technical expertise to government personnel in the lowest service level related to demographic administration so that it can apply consistently Law No.23 of 2006 concerning Demographic Administration accommodating the interests of faith adherents.

20. The Government of the Republic of Indonesia rescinds all applicable local laws and policies governing either directly or indirectly the religion on the ground of public order and the environment because they are conflicting with the Constitution and the Law 32 of 2004 on Regional Government.

21. President of the Republic of Indonesia through the Head of National Police is cracking down on every act of intolerance based on religious reasons, including prevention through prosecution of perpetrators of hatred speech and applying the proper laws so that ultimately produces a fair verdict, especially for the interests of minority groups as victims of intolerance based on religion.