



**GOVERNING RELIGION  
IN INDONESIA AND FRANCE:  
Scope and Limits**

**Asep Saepudin Jahar**

State Islamic University, Syarif Hidayatullah Jakarta

Email: [asepjahar@uinjkt.ac.id](mailto:asepjahar@uinjkt.ac.id)

**Abstract:** This paper discusses the complex implementation of an ideal framework for governing religion in Indonesia and France. Every country is required to apply a balanced approach to protect internal interests on one hand and adapting to the world's values on the other. In practice, however, it is never possible to achieve such an approach perfectly. By investigating the existing rules on religion and civil rights in Indonesia and France, this paper argues that minority groups in both countries have not been treated justly with respect to their religion. Using the case of Ahmadis in Indonesia and Muslims in France, the paper explains how both countries face formidable challenges in maintaining the balance between an internal policy of harmony and peace, and securing civic rights in accordance with international values. In sum, France and Indonesia share a similar dilemma in attempting to ensure that religious and civil rights are neutral and objective for all people. In such matters, limitations are unavoidable.

**Key Words:** religion, citizenship, Indonesia, France, secularism, Ahmadiyya

**DOI:** <http://dx.doi.org/10.20414/ujs.v22i1.315>

---

## **Introduction**

IN RECENT DECADES, discourse on religion and civil rights has flourished. Nowadays, religious and civil rights are recognized in both the West and some Muslim countries. In Muslim countries, religious precepts play a fundamental role in determining which rights people have. In western countries, on the other hand, particularly in America and Europe, it is claimed that democratic rules regulate people in a just manner. In practice, however, when it comes to governing religion, many countries are faced with

challenges in addressing the interests of internal policy, opposition from particular religious groups, and state ideology.

In Indonesia, such issues consistently occupy a central place in discussions of how the state can secure people's rights in a just manner regardless of different backgrounds. Here, there is inevitably conflict between internal policy and universal values of human rights. To what extent do France and Indonesia consistently stand to preserve neutrality among its citizens with different groups?

This paper argues that while France regulates religion and citizenship through principles of majority-minority and ethnicity, Indonesia regulates religion on the constitutional basis of Pancasila. There have been no conclusive acts regulating how new sects or religious groups, like Ahmadiyya, are to be tolerated and accorded the equal treatment granted to Muslims and Christians. In France, secular values are claimed to be the foundation of state policy. The state is free of any religious symbols. In practice, however, symbolic clothes have been commonly used by adherents of some religions like Muslims, Sikhs, Christians etc. In discussing this topic, the present paper is divided into three parts. Part one will highlight the theoretical framework of citizenship. It discusses the principles of citizenship with regards to democratic principles. Part two elaborates the policy and principles implemented in the western countries. This section will demonstrate the distinctiveness of every country in applying its rules and shows that internal policy and security commitments, particularly those concerning with citizenship and religion, have become a dilemma in liberal democracy. Part three will discuss the regulation of citizenship in France and Indonesia particularly in relation to religion and civil rights.

### **Principles of Citizenship**

In theory, citizenship indicates the formal link between a person and a state, with regard to regulating people's rights in society to share liberty, equality and fraternity regardless of their differences in religious belief and ethnic origin. This normative notion was firstly introduced during the French Revolution in response to discrimination and unjust treatment. In a global

context, many countries have pursued an agenda such that they do not treat citizenship merely as national identity or formal recognition of one's membership in a certain country, but rather hold that citizenship requires acceptance of local social and cultural views. This issue has long been debated in Europe and America as increasing migration from less developed countries has flowed to these countries for many purposes, among others, to pursue a better life. Muslim immigrants, in this regards, are the most striking example. Ethnic origins and religions now have become a major issue in social and political debates on citizenship.

Citizenship is defined as individuals' rights of membership in a "national political community." This definition is concerned with two aspects: rights which cover the right to vote, to run for office, and to participate freely in public activities, and duties which require the citizen to fulfill obligations such as paying taxes. Citizenship also serves as "a powerful instrument of social closure," in two respects. First, the boundary of citizenship allows rich states to draw a line that separates its citizens from potential immigrants from poor countries. Second, it allows states to create internal boundaries that separate citizens from foreign residents, by associating certain rights and privileges with national citizenship.<sup>1</sup> It means citizenship serves to outline the clear boundaries between us and the others. It then raises issues over the implementation of people's rights particularly in religious matters among those recognized as legal citizen.

Citizenship is concerned with a general identity for every person. It is not just recognition by a state for his/her own legal national identity but also how far the state provides guarantees for people to freely exercise social and political aspirations. In another

---

<sup>1</sup> Marc Marjo Howard, *The Politics of Citizenship in Europe* (Cambridge: Cambridge University Press, 2009), 1; See also Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge: Harvard University Press, 1992), x; Reinhard Bendix, *Nation-Building and Citizenship: Studies of Our Changing Social Order* (Berkeley: University of California Press, 1997); Evan S. Lieberman, *Race and Regionalism in the Politics of Taxation in Brazil and South Africa* (New York: Cambridge University Press, 2003), 12–14; John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000), 154–157; Seyla Benhabib, "Transformations of Citizenship: The Case of Contemporary Europe," *Government and Opposition* 37, no. 4 (2002): 449–453.

case, a citizen is also required to comply with regulations that ensure certainty and harmony among different groups of people, particularly those who have different religions or beliefs. It may be perceived that theoretically, there is no difference between the non-immigrants and immigrants once the latter are legally recognized as citizens. In practice, however, immigrants are associated with a paradox related to national sovereignty and universal human rights. Based on the principle of national sovereignty, every nation has a right to its own territorially delimited state and therefore only those belonging to the nation have the right to participate as the citizens of the state. This phenomenon is claimed to be the national political condition of humankind.<sup>2</sup> This kind of argument needs further clarification concerning the notion of human rights as a pervasive element in the global culture. Human rights have become the basis of establishing and advancing universal contiguities and making legitimate claims of rights and identities for persons from within or without national limits.

In regards to such international values, nation-states' commitment to human rights values are required to protect and respect foreign populations living within their borders. However, every nation also needs a policy to regulate and control foreign people as a fundamental aspect of sovereignty. It is claimed that the transnational order is the basis of rights, even though individual rights are differentially organized from one country to another. There is a dilemma of reconciling identity and rights with respect to the internal policy of a given country. While rights and claims to rights are seen to be universal, identity, on the other hand, is deemed to be particular and bounded by national, ethnic, regional or other characteristics.<sup>3</sup> In some respects, the apparent contradictions between nation-state policy and universal values have created a dialectic tension. The nation-state exists to preserve national identity, while universalistic rights held by individuals transcend national boundaries generating a new model of

---

<sup>2</sup> Yasemin Nuhoglu Soysal, *Limits of Citizenship Migrants and Post-National Membership in Europe* (Chicago: University of Chicago Press, 1994), 7.

<sup>3</sup> *Ibid.*, 8.

membership. It is impossible to avoid conflict between the national policy of a given country and international universal values. Is there any absolute equality among citizens?

The nature of citizenship designates a privileged position for a recognized person identified as a citizen to enjoy rights and duties of full membership in a country. It covers a variety of rights which can guarantee the liberty of individuals to exercise their will without restrictions or coercion. There are at least three categories that cover the taxonomy of citizenship, that is the civil, the political, and the social. The civil element is composed of 'rights necessary for individual freedom – liberty of the person, freedom of speech ... the right to own property and conclude valid contracts, and the right to justice'; the political element is composed of the 'right to participate in the exercise of political power and engaged in political authority. The third social element is concerned with a 'right to enjoy economic welfare and security, to share in the full social heritage and to live the life of a civilized being according to the standards prevailing in the society'.<sup>4</sup> These inherent rights for citizens can only be obtained once a person is legally recognized as citizen, where such citizenship can be acquired through many ways such as birth, naturalization, and marriage.

In general, the citizenship process applies two approaches: the *jus soli* and the *jus sanguinis* principles. The former confers citizenship based on place of birth, whereas the latter confers citizenship based on descent. A child inherits citizenship from his/her parents, independent of where he/she was born.<sup>5</sup> The two models—by naturalization and marriage—are generally made, among others, through migration. It is at this juncture that religion comes along to exist as the crucial issue in the globalized world.

---

<sup>4</sup> Nasar Meer, *Citizenship, Identity and the Politics of Multiculturalism* (Great Britain: Palgrave, 2010), 10; see also T. H. Marshall, *Citizenship and Social Class and Other Essays* (Cambridge: Cambridge University Press, 1997), 300. These all three elements are quoted from Marshall's concept of citizenship rights in his book citizenship and social class.

<sup>5</sup> Graziella Bertocchi and Chiara Strozzi, "The Evolution of Citizenship: Economic and Institutional Determinants," *Journal of Law and Economics* 53, no. 1 (February 2010): 96.

Being a citizen of a state, one can enjoy all status and rights that are shared by others albeit having different religious affiliation and ethnic origins. This nature of citizenship concept emphasizes inherent rights to be enjoyed by every individual regardless of his/her original ethnicity. It was said that the central feature of citizenship should be 'a status bestowed on all those who are full members of the community'. This concept is also concerned with both a right and a duty. This prospect of membership through citizenship undoubtedly heralded an increase in the rights enjoyed by all, coinciding with the requirement to perform duties and obey the law.<sup>6</sup> The implementation of the concept of citizenship is not without problems. One problem with the liberal conception of universal citizenship is that it is blind to the injustices that might arise from treating people marked by social, cultural and political differences in a uniform manner. It was argued that it is imperative to distinguish this complaint from a rejection of universal social and political inclusion per se. So that what is being advocated is 'a differentiated universalism as opposed to the false universalism of traditional citizenship theory'.<sup>7</sup> This approach may result in a quasi-equal treatment among all members of the state due to the dual treatment in terms of originality and ethnic origins.

Even though many countries apply different policies for citizenship among natives and immigrants, theoretically, a person born in a country or state will likely have no considerable problems exercising his/her rights in accordance with his/her own living traditions and cultures. Religions to which they adhere have usually been accepted or are identical with the nationality system. Once migration becomes common in rich and developed countries, obstacles emerge, particularly on citizenship and religious issues. The practice of performing religious teachings as recognizing people's rights regardless of his/her nationality, culture and ethnic is not simple.<sup>8</sup> National policies, as well as secular values which

---

<sup>6</sup> Meer, *Citizenship, Identity and the Politics*, 11.

<sup>7</sup> Ibid.

<sup>8</sup> Gianluca P. Parolin, *Citizenship in the Arab World* (Amsterdam: Amsterdam University Press, 2009), 13.

are defined as having a close tie with democracy, are generally invoked as the main reason of rejecting such practice.

According to Seyla Benhabib, the practice of citizenship leaves “the paradox of democratic legitimacy.” In essence, the paradox is related to internal and external policies. On the one hand, liberal democracies are “internally inclusive” while on the other they are “externally exclusive.” This is because liberal democracies recognize human rights of free association and participation as a fundamental doctrine, yet they also delineate clear and enforceable borders. This refers not only to territorial limits, but also to the *boundaries* of political membership. Determining who is included in the concept of “the people” also implies at least an implicit understanding of who is excluded.<sup>9</sup> It is likely relevant to our discussion that Muslim immigrants and/or minorities are faced with this policy applied in the western countries. France is one example in this respect.

### **The State and Religion in France**

In Europe, policies for regulating religion are a bit different. Germany<sup>10</sup> and England<sup>11</sup> are preferred places for permanent

---

<sup>9</sup> Benhabib, “Transformations of Citizenship,” 449–453; Brubaker, *Citizenship and Nationhood*, 21.

<sup>10</sup> German citizenship law can be referred to certainly the fall of the Berlin Wall, which The original Wilhelminian citizenship law of 1913, which established strong *jus sanguinis* ties with German emigrants overseas. In the long run, Germany found itself in the paradoxical situation of having a large population of disenfranchised foreigners born on its own soil and, at the same time, millions of ethnic Germans living behind the Iron Curtain. A first step in this direction was the Foreigner Law of 1990, which changed naturalization from a discretionary exception to the rule. A major overhaul of the legislation was finally approved in 1999. *Jus soli* is now the norm in Germany (with the minor requirement that one parent has lived in the country for 8 years). Other factors that may have delayed the introduction of *jus soli* in Germany are the strong ethnic character of German national identity and the thick nature of the German welfare state. Bertocchi and Strozzi, “The Evolution of Citizenship,” 101–102.

<sup>11</sup> *Ibid.*, 101 British nationality law has been deeply affected by the imperial experience. Because of its colonial history, until World War II the concept of nationality in the United Kingdom was particularly extensive because all subjects of the British Empire had equal access to British citizenship simply by establishing residence in the United Kingdom. The British Nationality Act of 1848 created the status of “citizen of the United Kingdom and colonies” for people

settlement by African, Middle Eastern, Turkish, and Asian immigrants. One of the significant consequences of such immigration is the growth of religious diversity. The issue of religious pluralism, cultural integration and citizenship has been debated among political elites and natives. Muslim immigrants, among others, make up the most significant group of immigrants that rationally faced the new social and cultural atmosphere. Muslim immigrants to Europe, for instance, have to adapt to a new culture and society that is certainly foreign to their origins in terms of religiosity and traditions. The assimilation of natives and immigrants is not as simple as the democratic system implemented in that country. The issue of religion is not just a matter of belief and personal identity, but also often be contested as cultural and ethnic origins.

Committed to the values of liberal democracy, European societies respect and protect the private exercise of religion including Islam as an individual human right. Being a public and collective free exercise of Islam in society, it is said that most European societies find it difficult to tolerate the practice since Islam is perceived as a non-European religion.<sup>12</sup> A similar case is also found in Netherlands where restrictive legislation has been imposed among immigrant Muslims in the name of protecting its liberal tolerant traditions from the threat of illiberal, fundamentalist, patriarchal customs, reproduced and transmitted to the younger generation by Muslim immigrants.<sup>13</sup> Some efforts to label Islam as an anti-modern, fundamentalist, illiberal and undemocratic religion have passed over into the issue of

---

with a close connection to the United Kingdom and its colonies. After a postwar wave of colonial immigration, this open-door policy was progressively restricted, although special status is still attributed to citizens of the British Commonwealth. Since the 1980s, redefinitions of national citizenship have been effectively used as a form of selective immigration policy. The 1984 British Nationality Act restricts *jus soli* by establishing that a child born in the United Kingdom qualifies for British citizenship only if at least one parent is a British citizen or resident.

<sup>12</sup> Jose Casanova, "Immigration and the New Religious Pluralism: A European Union-United States Comparison," in *Secularism, Religion and Multicultural Citizenship*, ed. Geoffrey Brahm Levey and Tariq Modood (Cambridge: Cambridge University Press, 2009), 145.

<sup>13</sup> *Ibid.*, 146.



citizenship. In sum, many European countries apply different approaches in their treatment of immigrant minorities based on their faith. It is likely related not simply to liberal democracy which provides liberty and equal treatment for all, but to internal policy

The introduction of secularism in France<sup>14</sup> has been made since 1880s up to today, especially in banning religious instruction and symbols or a certain pledge to God. The state value of *laïcité* (secularism) is the foundation of state rules in separating between religion and state. In such case, therefore, every member of society should relinquish any forms of religious symbols including the headscarf, since such practice is in contradiction with secularism. However, the state exercises an inconsistent since, despite banning religious practices, the state currently pays 80 percent of the budgets of the Catholic private schools that agreed to adopt national curriculum and to be open for all faiths.<sup>15</sup>

To treat all members of people in a country equally is likely not possible, since to a certain extent, internal policy inevitably benefits the majority or promotes state identity. In addition, a fundamental basis of secularism and the conflict between majority and minority group cannot be reconciled in a simple way. The state, in France for instance, provided funding for the Catholic majority, thereby accommodating them more than their Muslim counterparts particularly in public schools. Halal food for Muslims is less often provided than meals sensitive to Catholic religious concerns (e.g., fish rather than meat) In some cases, the state seems

---

<sup>14</sup> Bertocchi and Strozzi, "The Evolution of Citizenship," 101 France introduced a *jus sanguinis* of citizenship recognition in Civil Code of 1804. To ensure that children born to immigrants in France would be subject to the draft, double *jus soli* became automatic in 1889, making the experience of this country a unique one. The revision of citizenship recognition has taken place in 1993 and 1997. In 1993, President Jacques Chirac applied a restrictive revision that required a formal citizenship request from second generation immigrants. In 1997, a further restriction was revised with citizenship automatically assigned at age 18 to immigrants' children born in France who had neither requested nor declined it. Compared to Germany which applies ethnic identity, France follows its tradition as an assimilationist nation.

<sup>15</sup> Ahmet T. Kuru, *Secularism and State Policies Toward Religion* (Cambridge: Cambridge University Press, 2009) 109.

to treat Catholics better than Muslims, Protestants, and Jews in almost half of public secondary schools.<sup>16</sup> It seems that France has a closer traditional-historical relation to Catholicism than to Islam or other religions like Judaism. It is of course certainly difficult to offer equal treatment to all religions in France, since each religion has different numbers and historical roots. The number of Muslim, Protestant and Jewish clerics is less than that of Catholic clerics. In 2004, there were 513 Catholic, 267 Protestant, 69 Muslim, 64 Jewish and 3 Orthodox clerics in French hospitals. In the military, there were Catholic (254), Protestant (71) and Jewish (49). In 2005, however, Muslim military clerics started to be accommodated.<sup>17</sup>

The policy of secularism seems to treat Muslims more poorly because many Muslim traditions conflict with French values and also because most Muslims have immigrant backgrounds. Many efforts, therefore, have been made to integrate Muslims into French culture. The President of France, Nicolas Sarkozy notes that the state should have closer relations with the Muslim population. He then began to propose public funding for mosques. His main concern basically is to assimilate Muslims to the French culture.<sup>18</sup> The main association that has been made during Sarkozy's government was the CFCM (French Council of the Muslim Faith). This council has an important role in coordinating several issues such as the construction of the mosques, Muslim cemeteries, Sacrificing Day (*'id al-Aḍḥā*), the certification of halal meat, the appointment of Muslim clerics to hospitals and prisons, and the training the imams. The integration of Muslims in France also received high concern by Dominique Villepin, Sarkozy's successor as minister of interior. In 2005, he suggested to a foundation of Muslims to fund the mosques in France. This policy is primarily a response to high funding from foreign countries, such as Saudi Arabia that may lead to ideological conflicts. TV and radio channels were also changed so as to release programs on a broader

---

<sup>16</sup> Ibid., 110.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid., 122 In proposing his efforts, Sarkozy supported making the foundation of French Council of the Muslim Faith, CFCM in December 2002. This foundation is linked to Paris Mosque, the Federation National of Muslims of France (FNMF), Turkish Islamic Union for Religious Affairs (DITIB).

range of religions (Catholicism, Protestantism, and Muslim). The issue of headscarf, however, still is more disputed than issues of mosques and imams.

Again the issue of headscarf in France rose to public attention in October 1989. Three Muslim female students were expelled from public high school in Creil due to their headscarves. The main reason of this decision is that wearing a headscarf was incompatible with secularism (*laicite*).<sup>19</sup> The Council of State in November 1989 issued an opinion allowing women students to wear headscarves in schools. It was stated that “in schools, the students’ wearing of signs by which they intend to manifest their affiliations with a religion is not by itself incompatible with the principle of secularism as long as it constitutes the exercise of the freedom of expression and manifestation of religious beliefs...”<sup>20</sup> It was also emphasized that religious symbols should not disturb the functioning of educational activities by being used as “an act of pressure, provocation, proselytism, or propaganda.”<sup>21</sup> In response to public criticism concerning the headscarf, the Council of State proposed a bill prohibiting religious symbols in 2004. The first article of the law states that “in Public primary, secondary, and high schools, the wearing of signs or dress with which the students manifest ostentatiously a religious affiliation is prohibited.”<sup>22</sup> Since then from 1989 to 2004, the council regulated the wearing of headscarves in schools.<sup>23</sup>

It is true that the headscarf ban was proposed for many social and political reasons, particularly secularism and feminism. The backdrop of citizen rights or civil rights has not been used for restricting religious traditions. Secularism and minority identity either affiliated to ethnicity or religions are generally used to oppose religious traditions. In France, advocates of secularism and feminism are among the influential parties that rejected the

---

<sup>19</sup> Ibid., 103.

<sup>20</sup> Ibid., 126.

<sup>21</sup> Ibid. See also the French Council of State, 27 November 1989, no. 346, 893.

<sup>22</sup> Ibid., 104 The Law 2004-228 of March 2004 also “applies about as equally to all religious as the law that prohibits all people from sleeping under bridges applies to the homeless and the wealthy.”

<sup>23</sup> Ibid., 127.

display of religious symbols in public life.<sup>24</sup> Banning the headscarf is among the most important issues raised in France. For feminists, the headscarf is defined as a symbol of patriarchal oppression and female inequality with men. To sum up, in general, however, the French state has applied exclusionary policies towards religions, especially in schools. This restriction, particularly on the headscarf, is a result of a secularist policy supported by activists and politicians.

The issue of the headscarf, basically, is not a particular case of religious limitation. In building places of religious worship such as mosques, Muslims are also faced with municipal and bureaucratic restrictions, despite a growing mosque numbers since 1965 with 5 mosques to 1,685 mosques in 2004.<sup>25</sup> Consistent with secularism, restrictions for religions in France are also applied to Catholicism, such as Christian crosses, Jewish kippas, and Sikh turbans. Likewise, the restriction of religious symbols also occurs in Germany. Christian and Western values in Germany are defined as equivalent compared to Muslim tradition of headscarf. It was mentioned that Muslim women teachers in eight German states were banned due to the headscarf.<sup>26</sup>

The values of secularism seem to be put over the citizen's rights in exercising their religious freedom. In other words, religions should be reduced or even defeated once in opposition to the secularism values. In that, any symbols derived from Islam, Christianity or Sikhs must be excluded from the public sphere. There has been no prayer or oaths in the name of Bible (God) in the French public institution. However, French state policies towards private Catholic schools are different, since the state still provides the funding. France, in this regards is more sensitive to the demands of its citizens.<sup>27</sup>

The anti-immigrant activist of the French nationalist right, Jean-Marie Le Pen has incessantly rejected Muslim immigrants. Islam is seen as a foreign immigrant religion and therefore

---

<sup>24</sup> Ibid., 124.

<sup>25</sup> Ibid., 121.

<sup>26</sup> Ibid., 106.

<sup>27</sup> Ibid., 110.

unwelcome and difficult to assimilate with Europeans. Religion, therefore, becomes another issue which may hinder citizenship rights. French Muslims who wear the headscarf and other ostensibly religious symbols in public sphere are seen as a threat to national cohesion.<sup>28</sup> To become a French citizen, it is required to resort to secularism, and thus religious symbols in public schools are justifiably banned. These symbols and signs are defined as carrying a political meaning, and according to secular principles, religion cannot be a political project.<sup>29</sup>

In France, there was the notable case of a Muslim woman (Faiza Silmi) trying to acquire French citizenship. Her request was finally rejected due to unwillingness to adjust to French secularist values. Faiza Silmi was legally admitted into France and got married to a French citizen and gave birth to three French children. She did everything necessary to become a French citizen, but her application for citizenship was nonetheless rejected. It was likely due to her traditional dress with the *niqab*<sup>30</sup> that prevented her from acquiring citizenship. Her traditional headdress, the *niqab*, was regarded as incompatible with French values. Silmi filed a petition in court to reverse the decision, but lost. She did not give up and took the case to the highest French administrative court, le Conseil d'Etat, where she challenged the lower court decision. On June 27, 2008, the Conseil d'Etat backed the denial of her citizenship based on "insufficient assimilation" into the French Republic. The Conseil ruled that Silmi adopted a "radical religious practice," which is incompatible with the "values essential to the French people, notably the principle of gender equality."

The protection of the French interest is obvious, particularly on a new amendment in the French Civil Code saying that "the government may, on grounds of indignity or lack of assimilation other than linguistic, oppose the acquisition of French nationality by the foreign spouse," and that "no one may be naturalized unless he proves his assimilation into the French community." It means

---

<sup>28</sup> Casanova, "Immigration and the New Religious Pluralism," 146; and see also John Bowen, "Muslims and Citizens: France's Headscarf Controversy," *Boston Review* 29 (February/March): 31–35.

<sup>29</sup> Casanova, "Immigration and the New Religious Pluralism," 147.

<sup>30</sup> A woman cloth that covers almost all part of woman body, including face.

that the basic requirement of integration and assimilation becomes a fundamental condition. It was the first time in French history that citizenship was officially rejected on such a basis. The exact reasons for the *Conseil d'Etat*'s decision are not clear. It is uncertain whether Silmi was denied citizenship due to her beliefs, or her conduct, or both.<sup>31</sup> Thus, it is unclear what the rejection means. Is it related to French political life, wearing a *niqab*. The main issue related to the case of Silmi is lifestyle and clothing.

At its heart, the *Conseil* decision implies that assimilation is a prerequisite for membership in the French community, and the only route to citizenship. Hence, in order to acquire French status, one must first demonstrate some sense of identity with the Republic, some level of political participation, or both. The Silmi case was a clear example. Her sizable efforts to go to several courts were deemed useless unless she holds French traditions, or at least practices a form of Islam that is defined by state as moderate. To acquire French citizenship, one is required to accept French secularist values. Beginning in January 2007, every immigrant must sign a legally stipulated "Reception and Integration Contract" (*Contrat d'accueil et d'integration*) before receiving a permanent residence permit. By signing the contract, the immigrant accepts the obligation to respect the "fundamental values of the Republic," to take French language lessons, and to participate in a one-day civic training. During the session, the immigrant learns about French values through watching a film entitled *Living Together* in France, followed by a personal interview to test the immigrant's language skills and personal outlook. In the film, he or she is exposed to the French idea of nationhood as based on "*liberte, egalite and fraternite*."

## Religion and Minority in Indonesia

When discussing religion in the Indonesian case, a series of political phases need to be emphasized. The experience of changing regimes after Indonesian independence influences policy on these issues. In the era of Soeharto presidency (1967-1998), state policy was closely tied to undemocratic or even authoritarian

---

<sup>31</sup> Casanova, "Immigration and the New Religious Pluralism," 148–155.

approaches. Religious life and citizens' rights are required to be defined within the category of the concept of Pancasila (five pillars of state constitution) developed by the regime's interpretation. Religion and minority groups, particularly communism and Chinese ethnic became the target of this policy.

In regards to citizenship particularly for foreign people, article 26 of 1945 Constitution clearly states that "those who categorizes Indonesian citizen are those of Indonesian natives and foreign people that legalized by the law." This law emphasizes that foreign people may only be accepted to become Indonesian citizens once having fulfilled certain requirements. This law demonstrates very much the nature of native and non-native. The difference between native and non-native until recently still remains a problematic issue in dealing with civil and political rights particularly since 1960s to 1990s, or exactly during Soeharto's era.

To acquire Indonesian citizenship, some requirements are applied in accordance with legal procedures stipulated by Law no. 62/1958. It is stated that for foreign people citizenship can be acquired by naturalization. To become Indonesian, understanding Indonesian culture, religion or many other traditions are not mentioned as the basic requirement. Minimum understanding of Indonesian history and mastering Indonesian language are eligible for foreign people to propose citizenship.<sup>32</sup> A fundamental move on procedure and requirements of citizenship especially for foreign people has been made in 2006 through its law no. 12/2006 on citizenship. This law dismisses the dichotomy between native and foreign and even combining between the principle of *jus soli* (principle of land) and of *jus sanguinis* model (principle of ethnic originality) of the applicants.

Regarding religious life in Indonesia, a fundamental rule has been applied beginning with state Constitution of UUD 1945 followed by many laws and regulations. The basic statement of religious freedom is outlined on Article 29 of 1945 Constitution. It

---

<sup>32</sup> Sugeng Praptono, "Proses Naturalisasi Bagi Warga Negara Asing yang Berdomisili di Indonesia (Process Naturalization for Foreign Citizen Domiciled in Indonesia)," *Yustisia* 68 (August 2006): 1–8.

says that “the state is based on belief in one God, and guarantees freedom of each person (citizen) to embrace his/her religion and performs its teachings in accordance with religious and faith’s rules. According to law no. 5/ 1969, there are six religions officially recognized in Indonesia: Islam, Catholicism, Protestantism, Hinduism, Buddhism, and Confusianism. Interestingly, many other religions, such as Taoism, Shintoism and Zoroastrianism are also allowed in Indonesia.<sup>33</sup> The high concern with religious life is also reconfirmed in 1999 through the enactment of Law no. 39/1999 on Human Rights particularly on articles 22 and 70. In 2000, the Constitution of 1945 was amended by inserting additional statement on articles 28 E, 28 I and 28 J regulating freedom of religion. In 2003, the state furthermore issued Law no. 20/2003 on System of National Education and mentioned a particular concern with religious teaching at schools saying that “every student has a right to acquire religious education in accordance with his/her own faith.” The religion of teachers is also to be in line with the student’s faith. The state also provides religious teachers for the private schools that are incapable of serving them. This approach is basically to ensure that every member of society has access to and awareness of their rights. Before we discuss a current issue of religious life, we need beforehand to demonstrate how religion and civil rights have been developed during Soeharto’s New Order regimes (1967-1998).

A fundamental phase of religious life in Indonesia started since 1965 soon after the assassination of army generals by communist groups. The consultative Assembly (MPRS) issued a decree No.XXV/1966 to ban the PKI (*Partai Komunis Indonesia/ Indonesian Communist Party*) and Communism was deemed as being in opposition to theistic (*bertuhan*) and religious doctrines (*beragama*) inherent in Pancasila. This decree was then also concerned with three broad themes: religion, education and culture. It was also stated in article 1, “religion had to be a subject

---

<sup>33</sup> M Atho Mudzhar, “Pengaturan Kebebasan Beragama dan Penodaan Agama di Indonesia dan Berbagai Agama” (Paper presented at the the Study of the Decree of Court Constitution no. 140 on 19th April 2010 on judicial review of UU No.1/PNPS/1965, held at the Ministry of Legal and Human Rights Affairs, Hotel Anna Muara, Padang, June 28, 2010), 2.



taught from elementary schools to university, and followed on article 4 that educational curriculum should be directed “to uphold noble morality and strengthen religious conviction.” Religious education was considered an effective means to oppose Communism. This decree actually determined the rules to prevent “the misuse of and/or blasphemy against religion” (*penyalahgunaan dan/atau penodaan agama*). The elucidation of the decree mentioned that there were six religions followed by Indonesians, namely Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism. Everybody had to have a religion or otherwise he or she could become a Communist suspect.<sup>34</sup>

In 1967, religious subjects were reinforced to be included at schools starting at Grade I of the Elementary School and the teaching hours each week were: 2 hours for Grade I and II; 3 hours for Grade III; 4 hours for Grade IV to VI and all Grades of the Junior and Senior High Schools, while for universities only 2 hours per week. In addition, “the status of religion was elevated further to the position of Subject No.1, one of a group of six basic subjects designed to develop the spirit of Pancasila.”<sup>35</sup>

The policy of *Ketuhanan Yang Maha Esa* (belief in one God) as clearly stated in 1945 Constitution becomes the basis of making the state custodian of religious orthodoxy. The concept of guidance (*memberikan bimbingan*), administration (*pengurusan*) and control (*pengawasan*) of religious activities in Indonesia is assigned by the MPRS Decree No. XXVI/1966. This approach is designed to defend against Communism and nurture Pancasila among Indonesian citizens. This was found in the enactment of a new Statute No. 5/PnPs/1969 on the Prevention or Misuse and/or Religious Vilification concerned very much with the Indonesian Law on Blasphemy. This rule was chiefly a means of forbidding Communism and at the same time controlling any religious activities allegedly deviating from mainstream traditions. Any form of faith other than the recognized religions was put under the body known as the BAKORPAKEM (*Badan Koordinasi Pengawasan*

---

<sup>34</sup> Mujiburrahman, *Feeling Threatened Muslim Christian Relations in Indonesia's New Order* (Leiden: Amsterdam University Press, 2006), 27.

<sup>35</sup> *Ibid.*, 227–229.

*Aliran Kepercayaan di Masyarakat*/Coordinating Body for the Supervision of Local Beliefs in Society). The purpose has basically nothing to do with religions but is rather for security purposes. Therefore, civil rights were generally violated in favour of "state development."<sup>36</sup>

At the time of Soeharto's regime, the anti-communism agenda introduced a religio-political policy requiring all Indonesians to adhere to one of the state recognized religions, as set out in the 1965 Presidential Stipulation No. 1/PNPS/1965 on the Prevention or Misuse and/or Religious Vilification. This policy was effective in creating the perception that Communism was identical with atheism. This policy was also used to promote notions of religious piety and Indonesian identity as part of a strategy of broader social control. It may be worth noting that adherents of Confucianism and local indigenous beliefs, in that time were required to affiliate themselves to established state-recognized religions. Confucianism is mostly held by Chinese, and arbitrarily associated with Communist sympathizers. During 1967-1988, there was a dark period for the Chinese due to their association with communism in economics, culture, identity and religion. A hard rule was also made by the *Instruksi Presidium Kabinet* (Cabinet Presidium Instructions) No.37/U/IN/6/1967 on the Policy for Resolving Chinese Affairs. This regulation strictly states that there should be no legal extension for residency or work given to new Chinese immigrants and their wives or children. A discrimination policy against the Chinese includes, among others, religion, capital ownership and education. In terms of education, educational facilities catering to immigrants' children should also be closed down. They could register in any national schools run by the government, but 'their number must not exceed the natives.'<sup>37</sup>

In the period following Soeharto's regime, religious freedom became a heated debate, particularly regarding building places of religious worship such as churches and non-mainstream Muslim

---

<sup>36</sup> Ismatu Ropi, "The Politics of Regulating Religion: State, Civil Society and The Quest for Religious Freedom in Modern Indonesia" (Dissertation, Australian National University Melbourne, 2013), 185–190.

<sup>37</sup> Ibid.

sects such as Ahmadiyya or Shi'ite. This issue is not exactly linked to the discriminative state regulation, but mainly to uncertain interpretations of the concept of religion and belief in One God. Such a fundamental concept is very fluid and open to many different understandings. The emergence of new sects as an extension of the main religion, for example Islam versus Ahmadiyya, incites conflicts. The state is faced with two controversial poles. While the state is required to secure civil liberty in religious practices among citizens, this new sect, on the other hand, is defined as violating Islamic orthodoxy especially in terms of theology. The state, therefore, is deemed as not being tolerant and protective of minority groups. Even though a certain religious group due to a security reason was restricted in publicly performing their religious teachings, every citizen is still guaranteed to the right to practice his/her faith.

It is certain that in Indonesia religions are treated as an inherent part of the state, since the state is based neither on secular nor on religious doctrine. The state, therefore, tries to produce harmony and to provide greater liberty for every person to embrace any religion. The crucial issues that may raise criticism relates to missionary work and building places for worship. Both issues are seen as the important issues. Being neither a religious nor secular state, the 1945 Constitution firmly rejects communism to be lived and held by its citizen, and rather designates one of the (six) recognized religions as faith choices of the people.<sup>38</sup>

This issue basically is not exclusively tied to the implementation of religious teachings but also concerned with religious propagation (*dakwa*) or missionary work among Christians. Since New Order times, this case has been viewed as serious to make harmony among these groups. The state through the Minister of Home Affairs, Amir Machmud, and the Minister of

---

<sup>38</sup> Ibid., 162 Confucianism was recently again recognized as one of the six officially recognized religion in Indonesia. In 1950s, Confucianism had been recognized and again in Soeharto's regime it was dropped by associating this religion has close link to Chinese and the latter is associated as the supporter of communism. Since 2000s, particularly once President Abdurahman Wahid, the fourth president of Indonesia, Confucianism has been again recognized as one of six religions in Indonesia.

Religion, Mohammad Dachlan, issued a joint decree on September 13, 1969 dealing with two issues. First, the Government will not hinder any effort to spread religion as long as it does not contradict the existing law and public order. Second, the regional Government is authorized to control both the manner and content of religious propagation. Conditions of propagation were also applied as follows: (1) it should not lead to inter-religious conflict; (2) it should not be carried out through intimidation, deception, force or threat; (3) it should not break the law, nor endanger security and public order. The decree also authorizes the regional Government to control the establishment of new places of worship, namely that people will not be allowed to build a new place of worship unless they get permission from the Governor or the subordinate authorized officials. Finally, if there is an inter-religious dispute because of religious propagation or the establishment of a place of worship, the local Government should act as a just and neutral mediator.

The decree can be seen as a combination and modification of the Christian view of religious propagation, and the Muslim position on the issue of establishing new places of worship. In line with the Christian view, the decree does not restrict religious propagation only to those outside the recognized religions, but also, in accordance with the Muslim demand, the decree stipulates that to give permission for establishing new places of worship, the authorized state official must take into consideration the 'situation and condition' of the region. In practice, this recommendation has become a necessity, and therefore, it has been difficult to build a place of worship in an area where the majority of people do not belong to that religion. In general, however, the decree reflects the logic of 'law and order' of the New Order's Government. The Minister of Home Affairs and the Minister of Religion is expected to be a guide for the policies on religious matters in Indonesia."<sup>39</sup>

In response to the common practice of using houses as religious worship particularly among Christians and Muslims, in May 1975, the Minister of Home Affairs sent a telegram to all governors to remind people not to use a house as a church due to

---

<sup>39</sup> Mujiburrahman, *Feeling Threatened Muslim Christian Relations*, 58–59.

security reason. It also instructed the governors to take security steps to avoid possible excesses. This political act was basically to warn people not to make a house a place of worship. Nonetheless, this interpretation was then explicitly stated to prohibition “to make use of a house as a church”, while gatherings of Christians in a house for familial purposes was not prohibited.<sup>40</sup>

The hidden race in propagation between Islam and Christianity was still running at that time. The state, therefore, reconfirms this possible conflict. In July 1976, Suharto then gave an important comment saying “religious propagation should not disturb the stability of society” and “the efforts to increase the number of followers and to establish places of worship should not create disturbances in society.” He also suggested that foreign aid for religious institutions should be carried out through the Government in order to make sure that it was “used appropriately.”<sup>41</sup> State intervention in religious propagation and foreign aid for religious institutions was carried out by the Minister of Religion and the Minister of Home Affairs in 1979. A lower level of government structure to implement such regulation was exercised by provincial level, Mayors at district level and Departments, including the Department of Religion.<sup>42</sup>

Soeharto’s policy on religious issues seems to be temporary and adhering basically to his slogan of state development and harmony. Soeharto tries to avoid universal values of liberty or civil rights that openly give a wide space among religious groups regardless of majority or minority adherents. Religious freedom is allowed within the constraints of his policy on harmony, state development and security. Both Muslims as a majority and Christians as a minority share the same difficulty facing concerns of harmony and security reasons. In general, however, Soeharto’s suspicion with the spirit other than Pancasila is regarding the teachings of Communism and Islamism. The former was perceived as the black history of Indonesian phase due to 1965 general army forces assassination that tried to convert the ideology

---

<sup>40</sup> Ibid., 60–61; see also Ropi, “The Politics of Regulating Religion,” 167.

<sup>41</sup> Mujiburrahman, *Feeling Threatened Muslim Christian Relations*, 73.

<sup>42</sup> Ibid., 86–87.

of Pancasila. Since the Chinese and Confucianism are regarded closely linked to this event, both groups are made a target for suspicion. The latter, furthermore, was also put within the same line of suspicion, particularly in the cases of political affairs (political Islam). Muslim movements or activities bringing a message of politics that threatened the unity of the nation were banned.

The approach of Soeharto's policy in the case of the Chinese covers a wide range of restrictions, among others, religion and personal identity. Confucianism being regarded inherent with Chinese and KTP (*Kartu Tanda Penduduk*/residential identity card) were placed under control. It was applied to them that their ethnic origin should mention on it. It furthers in 1988 a further restriction through a Circular of the Ministry of Information No.02/SE/Ditjen-PPGK/1988 on publications and any printing using Chinese characters or Chinese language. Any use of Chinese characters in books, calendars, almanacs, food labels, medicines, greeting cards, clothing, decorations or other logos and signs was strictly forbidden. Confucianism was allowed but restricted. In Presidential Stipulation No. 1/PNPS/1965, Confucianism is recognized as one of the six established religions along with Islam, Catholic, Protestantism, Hinduism, and Buddhism. This was reaffirmed by Soeharto in 1967 at the National Confucian Convention that "*Confucianism deserves a decent place in this country (agama Konghucu mendapatkan tempat yang layak di negeri ini).*" At that time, the Chinese were made into a serious target of mistreatment, with respect to their civil rights, by reversing the status of the Chinese religion, beliefs, traditions, and culture as being an 'undesirable' psychological, mental and moral influence upon Indonesian citizens. The requirement of assimilation was fundamentally made as a reason for restricting Chinese affairs.<sup>43</sup> Chinese religious and cultural celebrations were only held in private and within the family circle. Uniquely, Confucianism in

---

<sup>43</sup> Leo Suryadinata, "Indonesian Policies toward the Chinese Minority under the New Order," *Asian Survey* 16, no. 8 (1976): 770–787; and see also Leo Suryadinata, "Chinese Politics in Post-Suharto's Indonesia," *Asian Survey* 41, no. 3 (2000): 504–524.

1978 through Ministerial Home Affairs Directive No. 4777/74054/BA.01.2/4683/95 was removed from the six established religions and again return to five religions in Indonesia, namely Islam, Protestantism, Catholicism, Hinduism and Buddhism. This severe restriction on Confucianism was taken through a series of policies, among others, banning the construction of new Chinese temples (*kelenteng*), renovation of existing ones and using any other places for religious services. It was in that time that Buddhism became the choice of their alternative religion due to this banning. It was not until the post 1998 or so-called reformation era, particularly during Abdurrahman Wahid (Gus Dur) time in 1999 that Chinese tradition, culture and Confucianism were recognized again and the adherents of Confucianism were allowed to publicly exercise their faith.<sup>44</sup>

The policy of personal rights under the rubric of citizenship during Soeharto was manipulated for the sake of security and stabilization programs. Confucianism which was basically associated with socialism and communism was one of political target besides some other forms of ideological and political opposition. Soeharto's policy was strongly held with the agenda of 'national identity' (*jatidiri bangsa*) and 'national culture' (*kebudayaan bangsa*) by which religion becomes the main pillar.<sup>45</sup> The ideology of *Ketuhanan Yang Maha Esa* was perceived as the nature of religiosity and a basic element for all Indonesian religious belief. Therefore, one of five religions should be adhered as citizen's belief. Adopting any belief other than these religions was defined as 'not yet possessing a religion'. Having religion in this country is therefore a basic requirement in order to be in line with Pancasila. It means an Indonesian citizen is required to have faith in religion. The integration into Indonesian culture was required to know and understand Pancasila. In the case of local traditions which primitive faiths are mostly held, fusing with one of the five religions is recommended or defined as the status of a 'local art and culture' (*kesenian/kebudayaan daerah*). It can be said

---

<sup>44</sup> Heriyanto Yang, "The History and Legal Position of Confucianism in Post-Independence Indonesia," *Marburg Journal of Religion* 10, no. 1 (2005): 1–8.

<sup>45</sup> Greg Acciaoli, "'Archipelagic Culture' as an Exclusionary Government Discourse in Indonesia," *The Asia Pacific Journal of Anthropology* 2, no. 1 (2001): 15.

that the New Order policy towards Confucianism and local belief was discriminative and in opposition to civil rights.<sup>46</sup>

Another important regulation of state in personal affairs is on marriage administration. This proposed act was basically designed for national purposes of both Muslim and non-Muslim. Since its initiation, the draft has incited sharp critics from both Muslims and non-Muslims particularly Catholicism and Protestantism. A marriage bill then was proposed in 1973 to determine the legal validity of marriage. The approach of marriage administration seems to demonstrate secular values of state administration. The state position in responding to critics was basically based on secular reasons defining stipulating that all marriages should be administered regardless of religion forms in Indonesia. It was also said that the bill was not against Islamic law nor Catholic and Protestantism. This approach was also defined as the legal unification for all people under the scheme of political doctrine called '*Wawasan Nusantara*' (Archipelagic Perspective) stated in the Mainlines of State Policies (GBHN) of 1973.<sup>47</sup>

Since the beginning of Marriage Law 1975 up to early 1980s, inter-religious marriage between Muslims and non-Muslims, particularly Christians, could be contracted at the Civil Registry Office. The implementation of Regulations of Marriage Law determines that a marriage of a non-Muslim is registered at the Civil Registry Office while Muslim marriage is performed and registered by the Office of Religious Affairs (KUA). This procedure of marriage system, even until recently, has been problematic, particularly with regards to marriage between Muslim and non-Muslim spouses. The KUA, for instance, refuses a male or female Muslim asking to marry with a non-Muslim unless the latter converts to Islam. Likewise, the Civil Registry Office would in the beginning refuse to perform such marriages. The partners, however, can ask permission to get married from the Civil Court (article 21 of the Marriage Law). In general, the Court gave the permission and ordered the Civil Registry to carry out that marriage. Sometimes, the Civil Registry Office was ready to

---

<sup>46</sup> Ropi, "The Politics of Regulating Religion," 200.

<sup>47</sup> Mujiburrahman, *Feeling Threatened Muslim Christian Relations*, 170.



perform the marriage without the permission of the Civil Court, on condition that the partners declared on a legal certificate before a notary that they willingly subscribed to the European Civil Code applicable in Indonesia. A strict restriction on marriage administration among different groups of people, particularly among the non six-religious groups mentioned above was common. In September 1978, for instance, the Supreme Judge banned the circulation of marriage certificates of *Yayasan Pusat Sрати Darma*, one of the Javanese mystical groups based in Yogyakarta. In October 1978, the Minister of Religion, Alamsyah Ratu Perwiranegara sent a letter to all governors explaining that marriage cannot be carried out according to Javanese mysticism because it is not a religion. It is obvious that the state during the New Order times interfered very much with personal affairs of people.

In 1981, however, the head of the Supreme Court sent a letter to the Minister of Religion and the Minister of Home Affairs explaining that interreligious marriage and marriages between the followers of Javanese mysticism should be accommodated under the Regulations on Mixed Marriage. In practice, however, legalizing marriages according to Javanese mysticism was still faced with difficulties. In the long run, inter-religious marriage in the 1990s was almost impossible even though since 1970s up to the mid-1980s had been relatively accommodative. As noted, inter-religious marriage is unregulated in the marriage law. The solution to this legal vacuum was then to apply the previous law on mixed marriage. This solution, however, is still problematic because the marriage law states that marriage is valid if it is carried out according to respective religions and beliefs.<sup>48</sup>

A fundamental development in religious and civil rights affairs started since the reformation era from 1998 onward albeit not satisfying all parties. A better step forward particularly is concerned with the commitment of referring all matters to the standard of human rights values. These regulations are as follows: the Act No. 39/ 1999 on human rights (*Hak Asasi Manusia*, HAM) and the decree of the Council of Indonesian Ulama (MUI DKI

---

<sup>48</sup> Ibid., 182–183.

Jakarta) No: 50/ Fatwa/ MUIDKI/IV/ 2001 on the obligation to preserve national unity; the Act no. 23/ 2002 on the protection of child; a joint regulation between ministry of religious affairs no. 9/ 2006 and the ministry of home affairs no. 8/ 2006 on the guideline of implementing harmony between religious adherents through a forum of religious groups led by the head of regions; And also a decree of Constitution Court, MK No. 140/ PUU/ VII/ 2009 on Judicial Review, Act No. I/ PNS/ 1965 on preventing abuse and or religious blasphemy; Act No. 40/ 2008 on eradicating racial and ethnic discrimination; and Act No. 12/ 05 on the ratification of international conventions on civil rights and politics. The laws are generally designed to protect all peoples within the framework of human dignity and secular values in line with Pancasila principles. These rules try to make the Indonesian system more neutral, humane and in line with international values. In practice, however, there is indeed a certain social and political policy that still leaves a loophole which dissatisfied some groups of people. We can study the actual case below.

On March 21, 2006 the government under President Yudhoyono issued a new Joint Decree by the Minister of Religious Affairs and Minister of Internal Affairs No. 9 Year 2006 and No. 8 Year 2006.<sup>49</sup> This regulation is concerned with regulating the building of religious places used for worship. Consisting of 30 main articles, the new Decree imposed new requirements, such as specifying the religious composition of the area in which the proposed place of worship was to be built (Article 13). It also required a list of names and copies of identity cards of at least 90 residents from that area and those of another 60 people from other religious groups who agreed to the establishment of this place of worship. Those requirements had to be included in the proposal of building the house of worship before permission would be granted. Another requirement was for applications for new houses of worship to be accompanied by recommendations from the

---

<sup>49</sup> This joint decree is basically as a response to the protests of religious groups against the parties (generally minority religious adherents) who tried to build a permanent building used for religious worship. Some protests have even led to anarchistic actions such as destroying the building together with its assets and wounding the members.

district office of Ministry of Religious Affairs<sup>50</sup> and from the FKUB (*Forum Kerukunan Umat Beragama*/The Interreligious Harmony Forum), a new forum created following this Decree in the province and district levels to foster religious dialogue (Article 14).

A month later, on April 17, 2006 Maftuh Basyuni, the former Minister of Religious Affairs, stated that one of the main reasons for this new Decree was to respond to the 'unbalanced' increase in the numbers of houses of worship established from 1997 to 2004. He mentioned that the number of Muslim mosques only increased 64% in that period far behind that of the increase in the numbers of new places of worship for other religious groups. Protestant churches, for instance, increased 131%; Catholics 153%; Buddhist 368%; and Hindu 368%. He believed there was something 'inconsistent' in the practices of the previous 1969 regulation, and therefore it warranted revision.<sup>51</sup> Uniquely, this concern seems to highlight the increase in number not focusing on legality or illegality of these building. In other words, whether these number of buildings lead to social and political security? To the best of my knowledge, the minister of religious affairs did not make a concrete statement on that matter.

Besides building religious houses, the emergence of a new sect has become a problematic issue in religious life. Ahmadiyya,<sup>52</sup> for

---

<sup>50</sup> *Peraturan Bersama Menteri Agama dan Menteri Dalam Negeri Nomor 9 Tahun 2006/Nomor 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*, 2006, available at <http://www.depdagri.go.id>, and also <http://www.depag.or.id>.

<sup>51</sup> Ropi, "The Politics of Regulating Religion," 215–224; Muhammad Maftuh Basyuni, "The Policy and Strategy in Fostering Harmony among Religious Groups" (Paper presented at the Short Course of Indonesian National Resilience Institute (LEMHANAS) Ministry of Religious Affairs, Office of Research and Development and Training, Jakarta, May 26, 2006), 18–22.

<sup>52</sup> The status of Ahmadiyah among Muslim majority in both Indonesia and Muslim countries can be seen from a series of decision meeting among Muslim scholars. According to Islamic Organization Conference held on 14–18 Rabi Awwal H stated that this sect cannot be affiliated to Islam. This decision was also in line with Indonesian Ulama Council's (MUI) deliberative meeting in 1980 saying "Ahmadiyah is outside Islam and violates Islam. Jufri Alkatiri, "Ahmadiyah Qadian" (Dissertation, UINSyarif Hidayatullah, 2014), 165; see also Indonesian Ulama Council's (MUI), *Decree No. 5/kep/Munas II/MUI/1980*, 1980.

instance, has generated both religious debates and conflicts in society. Therefore, it is demanded that the state is take a clear decision, allowing or banning it. Which legal basis should be taken as the reason, universal values of human rights or regulations that have been applied in Indonesia. Since the debates are not merely on religious activities but also on theological basis of Sunni Islam, the state seems to take on the side of Muslim majority by categorizing the Ahmadiyya as heresy and therefore banned.<sup>53</sup> Unlike Ahmadiyya, other recognized religions such as Catholicism and Protestantism can coexist and develop along with Islam freely. It is likely that Ahmadiyya is perceived as distorting fundamental Islamic orthodoxy particularly on the prophet status after Muhammad, which refers to Mirza Ghulam Ahmad as the founder of Ahmadiyya. To deal with this case, the government created BAKORPAKEM (*Badan Koordinasi Pengawasan dan Perkembangan Aliran Kepercayaan*/the Coordinating Body for Monitoring and Supervision of Religious Belief in the Society) in mid-2005, to provide recommendations on the status of Ahmadiyya, particularly on whether this sect lawful or not. On April 16, 2008, the BAKORPAKEM prepared a new regulation for the government to restrict Ahmadiyya in Indonesia.<sup>54</sup> In this case, Ahmadiyya is regarded as a religious movement propagating Islamic heresies in Indonesia. It is at this juncture that the state is trapped in theological debates, especially on the Ahmadiyya controversy or other sects that may contradict the mainstream religion.<sup>55</sup>

On June 9, 2008, the Minister of Religious Affairs, the Attorney-General and the Minister of Internal Affairs issued SKB (*Surat Keputusan Bersama*/ the Joint Ministerial Decree) to regulate

---

<sup>53</sup> See also Ahmad Najib Burhani, "Hating the Ahmadiyya: The Place of 'Heretics' in Contemporary Indonesian Muslim Society," *Contemporary Islam* 8, no. 2 (May 2014): 133–152 and "Treating Minorities with the Fatwas: A Study of Ahmadiyya Community in Indonesia," *Contemporary Islam* 8, no. 3 (September 2014): 285–301.

<sup>54</sup> Official notes on "Rakor Pakem," in Aula Jaksa Agung Muda Intelijen Jakarta April 16, 2008

<sup>55</sup> The government seems to follow the pressing of Muslim political parties such as PPP and PKS and Muslim-mass Organization NU and Muhammadiyah on banning Ahmadiyya.

religious life in general including Ahmadiyya. The regulation recommended six important points as follows: “[Firstly] to give warning and to order all society not to inform, persuade or mobilize any attempt for interpreting any religion embraced in Indonesia or for doing any activities resembling religious activities that are deviant to that of the foundation of religious doctrines; [Secondly] to give warning and to order followers, members, and/or members of the executive body of the JAI (*Jamaah Ahmadiyah Indonesia*/ the Followers of Indonesian Ahmadiyya) along with their confession as Muslims, to stop the spreading any interpretation and activities which are deviant to the foundation of Islamic doctrines such as spreading the belief on the existence of new prophet with new teaching after the Prophet Muhammad; [Thirdly] the followers, members, and/or members of the executive body of the JAI who ignore the warning and order as mentioned in Point 1 and Point 2 will be sanctioned in accord with the existing regulation, and this applies to its very organization and related legal bodies; [Fourthly] to give warning and to order the community to preserve and maintain religious harmony, rest and order in societal life by not committing any activity and/or action against the law toward the followers, members, and/or members of executive body of the JAI; [Fifthly] those members of community who ignore the warning and order as mentioned in Point 1 and 2 would be sanctioned in accord with existing regulation; [Sixthly] to order the central and local government apparatus to take any measured steps in order to maintain and monitor this Joint Decree.”<sup>56</sup>

It is worth noting the role of judicial review in valuing the position of state, religion and civil rights of citizens. In response to “judicial review of Act No. 1/PNPS/1965 on the Prevention or Misuse and/or Religious Vilification, the state takes harmony as a crucial foundation. To this case, the interests of majority seem to be preferred dominantly over the minority. Securing majority interests as opposed to upholding the universal values of religious freedom is given greater consideration to create harmony within

---

<sup>56</sup> Alkatiri, “Ahmadiyah Qadian,” 167 This statement I quote fully also from Ropi’s dissertation.

society in general. As an example, in April 2010, the Constitutional Court released its decision on the judicial review stating that this Law in essence did not violate the right of religious freedom. The Court also held that any interpretation of whether or not a particular teaching was considered deviant should be based on the opinion of relevant religious authorities. The Court concluded that the state was responsible for maintaining security and order, and therefore has legal authority to prohibit any interpretation that was differs from and contradicts mainstream teachings.<sup>57</sup> In other words, the interpretation of the Muslim majority, in the case of Ahmadiyya for instance, could become the main reference once a certain sect is regarded as contradicting the mainstream belief. The state, for the sake of security reasons should take this position. This is a dilemma concerning religious life in Indonesian context.

## Conclusion

Regulation of religion in France and Indonesia share the scope and limits once faced with the existence of minority groups. In France, the minority of religious adherents is welcomed but to a certain extent encountered social restrictions. The foundation of liberal democracy is indeed exercised to determine people's rights in public sphere. Some restrictions, however, are found such as on headscarf in France. France in general is very concerned with secularism and ethnic origin in regulating religion.

Indonesia, on the other hand, tries to exercise a balanced approach to govern the relationship of the majority and minority groups. While the state bans atheism, the state in turn recognizes only six religions (Islam, Christianity, Protestantism, Hinduism, Buddhism and Confucianism). Therefore, in certain cases, it is demanded that the state determines the accepted theological foundation of the mainstream religion at the expense of the emergence of new sects, which are regarded as heresy. A religious sect group branching off from the main religion (Islam) such as Ahmadiyya is banned due to reasoning which considers security and harmony. In this case, Indonesia employs an internal policy of harmony and peace in protecting theological orthodoxy and the

---

<sup>57</sup> Ropi, "The Politics of Regulating Religion," 225–239.

social domain. In sum, France and Indonesia share a similar dilemmatic position in regulating religion among multiple groups of religious adherents. Restrictions in scope and limitations are unavoidable.

### References

- Acciaioli, Greg. "'Archipelagic Culture' as an Exclusionary Government Discourse in Indonesia." *The Asia Pacific Journal of Anthropology* 2, no. 1 (2001): 1–23.
- Alkatiri, Jufri. "Ahmadiyah Qadian." Dissertation, UIN Syarif Hidayatullah, 2014.
- Basyuni, Muhammad Maftuh. "The Policy and Strategy in Fostering Harmony among Religious Groups." Paper presented at the Short Course of Indonesian National Resilience Institute (LEMHANAS) Ministry of Religious Affairs, Office of Research and Development and Training, Jakarta, May 26, 2006.
- Bendix, Reinhard. *Nation-Building and Citizenship: Studies of Our Changing Social Order*. Berkeley: University of California Press, 1997.
- Benhabib, Seyla. "Transformations of Citizenship: The Case of Contemporary Europe." *Government and Opposition* 37, no. 4 (2002): 449–453.
- Bertocchi, Graziella, and Chiara Strozzi. "The Evolution of Citizenship: Economic and Institutional Determinants." *Journal of Law and Economics* 53, no. 1 (February 2010): 95–136.
- Bowen, John. "Muslims and Citizens: France's Headscarf Controversy." *Boston Review* 29 (February/March): 31–35.
- Brubaker, Rogers. *Citizenship and Nationhood in France and Germany*. Cambridge: Harvard University Press, 1992.
- Burhani, Ahmad Najib. "Hating the Ahmadiyya: The Place of 'Heretics' in Contemporary Indonesian Muslim Society." *Contemporary Islam* 8, no. 2 (May 2014): 133–152.
- — —. "Treating Minorities with the Fatwas: A Study of Ahmadiyya Community in Indonesia." *Contemporary Islam* 8, no. 3 (September 2014): 285–301.

- Casanova, Jose. "Immigration and the New Religious Pluralism: A European Union-United States Comparison." In *Secularism, Religion and Multicultural Citizenship*, edited by Geoffrey Brahm Levey and Tariq Modood, 139–163. Cambridge: Cambridge University Press, 2009.
- Howard, Marc Marjo. *The Politics of Citizenship in Europe*. Cambridge: Cambridge University Press, 2009.
- Indonesian Ulama Council's (MUI). *Decree No. 5/kep/Munas II/MUI/1980*, 1980.
- Kuru, Ahmet T. *Secularism and State Policies Toward Religion: The United States, France, and Turkey*. Cambridge: Cambridge University Press, 2009.
- Lieberman, Evan S. *Race and Regionalism in the Politics of Taxation in Brazil and South Africa*. New York: Cambridge University Press, 2003.
- Marshall, T. H. *Citizenship and Social Class and Other Essays*. Cambridge: Cambridge University Press, 1997.
- Meer, Nasar. *Citizenship, Identity and the Politics of Multiculturalism*. Great Britain: Palgrave, 2010.
- Mudzhar, M Atho. "Pengaturan Kebebasan Beragama dan Penodaan Agama di Indonesi dan Berbagai Agama." Paper presented at the the Study of the Decree of Court Constitution no. 140 on 19th April 2010 on judicial review of UU No.1/PNPS/1965, held at the Ministry of Legal and Human Rights Affairs, Hotel Anna Muara, Padang, June 28, 2010.
- Mujiburrahman. *Feeling Threatened Muslim Christian Relations in Indonesia's New Order*. Leiden: Amsterdam University Press, 2006.
- Parolin, Gianluca P. *Citizenship in the Arab World*. Amsterdam: Amsterdam University Press, 2009.
- Praptono, Sugeng. "Proses Naturalisasi Bagi Warga Negara Asing yang Berdomisili di Indonesia (Process Naturalization for Foreign Citizen Domiciled in Indonesia)." *Yustisia* 68 (August 2006): 1–8.
- Ropi, Ismatu. "The Politics of Regulating Religion: State, Civil Society and The Quest for Religious Freedom in Modern Indonesia." Dissertation, Australian National University Melbourne, 2013.



- Soysal, Yasemin Nuhoglu. *Limits of Citizenship Migrants and Post-National Membership in Europe*. Chicago: University of Chicago Press, 1994.
- Suryadinata, Leo. "Chinese Politics in Post-Suharto's Indonesia." *Asian Survey* 41, no. 3 (2000): 504–524.
- — —. "Indonesian Policies toward the Chinese Minority under the New Order." *Asian Survey* 16, no. 8 (1976): 770–787.
- Torpey, John. *The Invention of the Passport: Surveillance, Citizenship and the State*. Cambridge: Cambridge University Press, 2000.
- Yang, Heriyanto. "The History and Legal Position of Confucianism in Post- Independence Indonesia." *Marburg Journal of Religion* 10, no. 1 (2005): 1–8.
- Peraturan Bersama Menteri Agama dan Menteri Dalam Negeri Nomor 9 Tahun 2006/Nomor 8 Tahun 2006 Tentang Pedoman Pelaksanaan Tugas Kepala Daerah/Wakil Kepala Dearah Dalam Pemeliharaan Kerukunan Umat Beragama, Pemberdayaan Forum Kerukunan Umat Beragama, dan Pendirian Rumah Ibadat, 2006*. available at <http://www.depdagri.go.id>, and also <http://www.depag.or.id>.