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Legal Framework Against Case Discrimination Against Religious and Ethnic Minorities in the Reformation Era

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Abstract. *In the era of reform in Indonesia, the protection of the rights of religious and ethnic minorities has become the main focus. The legal framework built post-reform aims to prevent and overcome cases of discrimination against this minority group. By examining the constitution, laws, government regulations and judicial practices, a strong legal basis can be found to protect the rights of religious and ethnic minorities. However, challenges remain in implementing and enforcing these laws. The gap between existing laws and practice in the field remains a problem, and there are often obstacles in accessing justice for victims of discrimination. Study This use method juridical normative use studies References. An analysis of legal documents and literature, this research highlights the protection of human rights in the 1945 Constitution as well as related laws and regulations, such as Law no. 39/1999 concerning Human Rights, Law no. 12/2005 concerning Citizenship, and Law no. 40/2008 concerning the Elimination of Racial and Ethnic Discrimination. Research findings show that there is a strong legal basis for fighting discrimination, but challenges in implementing and enforcing the law remain. Efforts to strengthen law enforcement and increase awareness of human rights are the main recommendations to ensure fair protection for all citizens, independent of minorities religion or ethnicity.*

Keywords: *Discrimination; Framework Law; Religious and Ethnic Minorities.*

1. Introduction

In the recent era of reform, it often involves matters that intersect with religion, which attacks the existence of religious minority groups and often results in many victims. These various acts of violence and discrimination can be seen in the rise of murders, abuse, rape, kidnapping and acts of anarchy in the form of destruction of educational institutions and places of worship, as

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well as various forms of discriminatory and coercive acts from the powerful against the powerless. In Azyumardi Azra's language, sectarianism religion and socio-politics have seen an increase in Indonesia since liberal democracy was implemented in 1999.¹

Several issues that support discussions about minority groups are due to the inhumane treatment received by a group that is included in a group that is vulnerable to having their human rights violated. Various kinds of inhumane treatment are experienced by a group, for example from forms of prejudice, neglect and hatred based on differences in race, ethnicity or skin color or are a consequence of religious teachings or because of language and culture. Of the various differences that give rise to treatment that leads to violence as a follow-up, the forms often seen in the real world, for example, that the follow-up takes the form of war, terror activities, mass destruction, punishment and all forms of discrimination.²

From a human rights perspective, minority groups be at an equal level with other individual rights holders. However, because in fact minority groups are citizens subordinate class, then rights are needed specifically to raise their dignity. Special rights are not privileges, but rights This is given so that minorities can afford it maintaining its identity, distinctive characteristics and traditions. Special rights like these are important to achieve equal treatment without discrimination.³ Universal Declaration of Human Rights 1948 which has been accepted by the Republic Indonesia through the Assembly Decree People's Consultative Assembly of the Republic of Indonesia Number XVII /MPR/1998 concerning Human Rights Man states in Article 2: every people are entitled to all the rights and freedoms set forth in this Declaration with no exceptions whatsoever, such as for example, race, skin color, gender, language, religion, political or other opinion, national or social origin, ethnicity, birth or other position .⁴

Associated with minority groups on religious grounds, several years Lastly, there have been violations of religious freedom in Indonesia. Some of these incidents included attacks on the Jamaah group Ahmadiyah Islamiyah (JAI), a Shia group, including the case of the former Governor DKI Jakarta was sentenced to criminal offenses for blasphemy. Related with religious blasphemy, based on Setara Institute research since from 1965 to 2017 there have been 97

¹Siti Zuliyah, *Enforcement of Human Rights as a Means of Realizing Civil Society* , Journal of Legal Sciences, Vol.3, 1 February 2006, p al . 9 5-96.

²Ruswiati Suryasaputra, 2006, *Protection of Human Rights For Special Groups Against Discrimination and Violence* , Restu Agung, Jakarta, P al. 1-2.

³ Danang Risdianto , *Protection of Minority Groups in Indonesia in Realizing Justice and Equality Before the Law*, Rechts Vinding Journal, Volume 6, Number 1, April 2017, p. 127.

⁴Miki S. Kalengkongan , *Review of Criminal Law for Perpetrators of Crimes Against Minority Groups* , Lex Crimen Vol. IV/No. 3/May/2015, p. 90.

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cases, of which 88 cases occurred after the reform. This shows that there has been an increase quite significant in the prosecution of a person or group of people for acts of religious blasphemy.⁵

Apart from the provisions above, several provisions in the law Indonesian criminal law is also considered discriminatory, because it is considered can limit freedom of religion, belief and expression opinions, among others, can be found in Article 156 of the Criminal Code concerning Defamation Religion and Article 8 of Law Number 26 of 2000 concerning Genocide. The potential for discrimination against minority religious groups is also still found in the Draft Criminal Law Law (RUUHP) which is currently being implemented discussed in the DPR. Up to now, the Draft HP Bill still regulates criminal acts against religion, ⁶criminal acts against religious life and facilities worship which of course still has the potential to discriminate minority religious groups.⁷

Study aim For finding a legal framework for cases of discrimination against religious and ethnic minorities in the reform era involves the complexity of political, social and legal changes. Although the reform era often promises changes towards more democratic and inclusive governance, and respect for human rights, implementation of these principles is often inadequate. Religious and ethnic minorities still face discrimination, whether due to weak legal frameworks, continued discriminatory practices, power imbalances, rapid social and technological change, or differences in policy and legal implementation across regions. Thus, more effective efforts need to be made to ensure the protection of the rights of religious and ethnic minorities amidst the changes in the reform era. In developing a legal framework for cases of discrimination against religious and ethnic minorities in the reform era, namely: How protection right basic group religious and ethnic minorities in Indonesia? and how effective is the existing legal framework in protecting religious and ethnic minorities from discrimination in the reform era?

⁵ Estu Suryowati. 24 May 2017. *SETARA Institute: Religious Blasphemy Cases Strengthen Post-Reformation*. Available on the site: <https://nasional.kompas.com/read/2017/05/24/16354351/setara.institute.kas.penodaan.%20agama.menguat.pasca.rebesar> Accessed May 9, 2024.

⁶See Articles 348 to Article 350 of the 2015 Draft HP Bill, these articles criminalize acts which are classified as criminal acts against religion include insults and incitement to dispel belief .

⁷See Article 351 of the 2015 Draft HP Bill, this article criminalizes actions that can disturbing religious life, including the implementation of worship.

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2. Research Methods

Study This use method juridical normative use studies libraries, esp regulation legislation and covenants Right Asasi Humans and materials law secondary like results study previous, journal scientific, analytical, as well reference other. Method This used for identify framework related laws with protection law to group religious and ethnic minorities in Indonesia. Data collection was carried out with dig information from regulation governing legislation about justice and equality in the eyes law for group religious and ethnic minorities in Indonesia as well regulation other related things. Activity This use technique study literature with objective look for base theoretical from corner look philosophy, law, economics, and various information related framework law for protect group religious and ethnic minorities from discrimination in the reform era. Material law secondary used covers books, literature scientific, and results relevant research with topics discussed.⁸

3. Results and Discussion

3.1. Protection Right Asasi Group Religious and Ethnic Minorities in Indonesia

Given its sensitive position, the ICCPR specifically regulates protection for people belonging to minority groups. This specificity is stated in Article 27, which states:

In countries where there are minority groups based on ethnicity, religion or language, people belonging to these minority groups cannot be denied the right, in community with other members of their group, to enjoy their own culture, to practice and practice their religion. themselves, or to use their own language.

In General Comment Number 23, as quoted by Patra M. Zen, at least it can be seen the scope of minorities that exist in a country (or territorial jurisdiction can be based on: 1) ethnicity; 2) religion or belief, and; 3) minorities in the linguistic sphere. Based on this scope, the state has an obligation to ensure that the existence and implementation of this right is protected from denial or violation. Therefore, positive protective measures are needed not only from the actions of the state itself, whether through legislative, judicial or administrative authority, but also from the actions of other people within the territory of the country concerned.⁹

⁸Jordan Abisha Siregar , Rhido Hedriyanna Widagdo , *Legal Review of Religious Discrimination in Religion-Based Housing in Indonesia* , CALL FOR PAPER Vol. 3 No. 3 (2023), p. 128.

⁹ Yogi Zul Fadhli , *The Position of Minority Groups in the Perspective of Human Rights and Legal Protection in Indonesia* , Constitution Journal, Volume 11, Number 2, June 2014 , p. 364.

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Protect right group religious and ethnic minorities need base law with base philosophy and degree justice that applies universally. Understand need Accordingly, the UN is proposing issue protection to right minority and formulate something guide for member countries to do more Serious notice problem This. Form guide That form about rights group, ethnicity, religion and language minority, as following: State protection against existence and identity, ethnicity, culture and language them (Article 1).¹⁰

- 1). Right enjoy culture they, adhere to and practice religion and use Language they myself, fine in group they nor in society (Article 2 paragraph 1);
- 2). Right participate in life cultural, religious, social, economic and public (Article 2 paragraph 1);
- 3). Right join in as well as in influencing decisions they're on level national and regional (Article 2 paragraph 3);
- 4). Right establish and maintain associations they himself (Article 2 paragraph 3);
- 5). Right notice connection peace with other members in group them and with the people included in group minority else, fine within their country's territory Alone nor exceed national boundaries (Article 2 paragraph 5); And
- 6). Freedom For carry out right they without discrimination, fine in a way individual nor in public with other members in group them (Article 3).¹¹

Meanwhile, the state as an obligation-bearing subject is given the obligation to take the following steps:¹²

- 1). Protect the existence and identity of national, ethnic, cultural, religious and linguistic minorities in its territory and will encourage conditions that promote this identity (Article 1 paragraph (1)).
- 2). Take appropriate legislative and other actions to achieve this (Article 1 paragraph (2)).

¹⁰ Linda Novianti , *Indonesian Legal Politics Relating to the Rome Statute in Enforcing Minority Rights Violations* , Khazanah Hukum, Vol. 3 No. 1: 34 – 46, p. 41.

¹¹ Linda Novianti , *Indonesian Legal Politics Relating to the Rome Statute in Enforcing Minority Rights Violations* , Khazanah Hukum, Vol. 3 No. 1: 34 – 46, p. 42.

¹² Yogi Zul Fadhli , *The Position of Minority Groups in the Perspective of Human Rights and Legal Protection in Indonesia* , Constitution Journal, Volume 11, Number 2, June 2014 , p. 365.

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3). To ensure that people belonging to minorities can exercise their human rights and fundamental freedoms fully and effectively without discrimination, and with complete equality before the law (Article 4 paragraph (1)).

4). Efforts to create favorable conditions so that people belonging to minorities can express their characteristics and develop their culture, nation, religion, traditions and habits (Article 4 paragraph (2)).

5). So that minorities have sufficient opportunities to learn their mother tongue or use their mother tongue (Article 4 paragraph (3)).

6). Efforts in the field of education (Article 4 paragraph (4)).

7). Consider appropriate steps so that people belonging to minorities can participate fully in economic development and development in their country (Article 4 paragraph (5)).

8). To consider the legitimate interests of minorities in developing national policies and programs as well as in planning and implementing cooperation and assistance programs (Article 5).

9). To cooperate with other countries regarding minorities, including the exchange of information and experiences, in order to promote mutual understanding and trust (Article 6).

10). To promote respect for the rights contained in the declaration (Article 7).

11). To fulfill the obligations and pledges of countries as stated in international treaties and agreements to which they are party states (Article 8).¹³

Principle equation ahead law related tightly with principle indiscrimination. Provision This arranged in Article 1 Charter United Nations, whose purpose is for support respect to right basic human and promote freedom basic people without looking race, type gender, language or religion. Form other protection from prohibition discrimination can found in chapter Convention Europe about Right Asasi Human (ECHR). stated that if the State treats it in a way different without objective and valid reasons justified, that is violate principle indiscrimination.¹⁴

¹³Yogi Zul Fadhli , *The Position of Minority Groups in the Perspective of Human Rights and Legal Protection in Indonesia* , Constitution Journal, Volume 11, Number 2, June 2014 , p. 366.

¹⁴ May Rukmini, 2007, *Protection of Human Rights through the Principle of Presumption of Innocence and the Principle of Equal Status*

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The declaration regarding the rights of residents belonging to minority groups based on nationality, ethnicity, religion and language is an instrument that increasingly confirms the existence of Article 27 of the ICCPR. Even though it is declarative in nature and therefore does not have legally binding force (soft law), it has political influence for the state to respect, fulfill and protect the human rights of minority groups. Protection of minority rights is aimed at ensuring the survival and continued development of the cultural, religious and social identity of the minority group concerned.¹⁵

Meanwhile, regarding the protection of the human rights of minority groups, Law Number 39 of 1999 concerning Human Rights does not clearly mention it. It is only stated in Article 5 paragraph (3):

Every person belonging to a vulnerable group of people has the right to receive greater treatment and protection regarding their particularities.

In the explanation of this article, what is meant by vulnerable community groups include the elderly, children, the poor, pregnant women and people with disabilities. Even though minority groups are not recorded, they are development of human rights legal discourse, minority groups are recognized as the main group of subjects of human rights law, together with indigenous people and refugees. Various international human rights agreements, as well as important court decisions, as well as the existence of special mechanisms within the UN in the form of committees, special rapporteurs, working groups and independent experts strengthen the existence of minority groups as subjects of human rights law.¹⁶

3.2. The Effectiveness of the Existing Legal Framework in Protecting Religious and Ethnic Minorities from Discrimination in the Reformation Era

In Indonesia in the reform era, problems related place stay and discrimination Still become challenge big. Many groups society, especially minorities, experience difficulty in obtain place stay worthy. Discrimination in access to housing area often becomes obstacle main, fine in get place adequate stay nor in the selection process desired location. Minority ethnicity, religion and class social certain often experience discrimination in access adequate and frequent housing marginalized from more areas desired. This matter create significant inequality in access to place decent living in various regions in Indonesia, reflects problem Serious related

in *LAW in the Indonesian Criminal Justice System a*, Alumni, Bandung , p al . 50.

¹⁵Yogi Zul Fadhli , *The Position of Minority Groups in the Perspective of Human Rights and Legal Protection in Indonesia* , Constitution Journal, Volume 11, Number 2, June 2014 , p. matter. 366.

¹⁶Rhona KM Smith, et.al., 2008, *Human Rights Law* , Pusham UII, Yogyakarta, p. 58.

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right basic humanity and equality access to facility basic. Efforts For overcome problem This need strong steps from government, institutions self-subsistent society, and society in a way wide for ensure every individual own the same rights in get place a decent and free stay from discrimination.¹⁷

Right For own decent housing is regulated rights in invite Human Rights Law Article 40 (“ Everyone has the right For located stay as well as live a decent life ”) and if candidate residents place stay rejected For get chance rent / buy A residence with reason ethnic /religious minorities No accepted on site stay certain , then matter That is human rights violations according to Article 15 Law 40 of 2008 concerning Removal Racial and Ethnic Discrimination which states “ Everyone who is with on purpose do distinction , exception , limitation , or election based on the resulting race and ethnicity retraction or subtraction recognition , acquisition or implementation right basic humanity and freedom base in something equality in the field civil , political , economic , social and cultural as intended in Article 4 letter a, punishable with criminal imprisonment for a maximum of 1 (one) year and/ or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).” because right decent housing is that ¹⁸right recognized in the existing laws ratified namely the Adult Human Rights Act this , in particular related discrimination with religious is something future behavior become threat for something nation , which one something nation on behavior discrimination the formed in character man Because triggered by factors psychological , sociological , and cultural . That matter can prevented with method increase mark from something prejudiced groups, intertwining communication, binding soul solidarity and so on until to internalisation norm social.¹⁹

As for more Specific chapter about protection freedom listed religions in the UDHR. Following instrument universal declaration of human rights according to UN charter. First, Article 2 states that " everyone has the right on all rights and freedoms with No There is exception anything, like distinction race, color skin, type gender, language, religion, politics or view others, origins nationality or society, rights belonging, birth or position other." It means every individual have equal position and rights without distinction whatever.

¹⁷Jordan Abisha Siregar , Rhido Hedriyanna Widagdo , *Legal Review of Religious Discrimination in Religion-Based Housing in Indonesia* , CALL FOR PAPER Vol. 3 No.3 (2023), p. 127.

¹⁸Jordan Abisha Siregar , Rhido Hedriyanna Widagdo , *Legal Review of Religious Discrimination in Religion-Based Housing in Indonesia* , CALL FOR PAPER Vol. 3 No.3 (2023), p. 130.

¹⁹Jordan Abisha Siregar , Rhido Hedriyanna Widagdo , *Legal Review of Religious Discrimination in Religion-Based Housing in Indonesia* , CALL FOR PAPER Vol. 3 No.3 (2023), p. 131.

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Second, Article 3 states that " Everyone has the right on life, liberty and safety as individual." It means No exists opposite treatment in declaration This.

Third, Article 7 states that " Everyone is equal in the future legal and entitled on protection the same law without discrimination. Everyone has the right on the same protection to every form conflicting discrimination with declaration This." It means everyone has his rights in a way free in choose trust and right get protection If there is actions that don't in accordance.

Fourth, Article 10 states that " Everyone, in full equality, right on a fair and open trial by an independent judiciary or not partial, deep set rights and obligations as well as in every demands the sentence imposed to her."

Then more Specific chapter in SIPOL Convention concerning protection and respect rights. First, Article 2 paragraph 1 " That every country covenants, respects and guarantees rights for each sedentary and obedient individuals to its jurisdiction, without difference whatever Good type gender, race / ethnicity, language, religion, politics or opinion other." It means guarantee right for everyone with without exists distinction. Continued verse 3, that everyone if feel his rights violated then, institutions Justice authorized finish case the.

Second, Article 7 states, " No whoever gets it torture or treated No humane and condescending dignity."

Third, once Again explained in Article 14 that no anyone can meddle problem personal including in matter believe according to the teachings he chose.

Article 16: Everyone who with on purpose show hatred or hatred to others based on discrimination race and ethnicity as intended in Article 4 letter b number 1, number 2, or number 3, punished with criminal imprisonment for a maximum of 5 (five) years and/ or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).²⁰

Fourth, Article 17 paragraphs 1 and 2 states " No no one has the right mix affairs personal every individual including in matter believe. And have right on guarantee law If exists interference affairs the."²¹

²⁰ Miki S. Kalengkongan , *Review of Criminal Law for Perpetrators of Crimes Against Minority Groups*, Lex Crimen Vol. IV/No. 3/May/2015, p. 94.

²¹ Fadilah Dewi Anggun Permatasari , *Protection of Rights for Religious Minority Groups* , p. 192.

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Fifth, freedom in religious matters have regularly clear mentioned in SIPOL Convention. In Article 18 has justified by the government through UU No. 12 Th 2005, respectively clear organize that each individual have rights for choose religion and belief suitable his teachings as well as without exist compulsion until can disturbing his personality.

Constitution Republic of Indonesia Number 40 of 2008 Concerning Removal Racial and Ethnic Discrimination, states in Article 22: At the time Constitution This start applies, all regulation governing legislation or related with race and ethnicity, stated still applies throughout No contradictory with Constitution This.²²

Sixth, Article 26 states that " Everyone has a position same in front legal and entitled on protection the same law without discrimination whatever. "Furthermore in Article 27 is mentioned that No can denied right minority in public. More the specifics are also regulated in ECOSOB Convention. As Article 2 paragraph 2 that ensure rights exercised without exists discrimination in matter whatever. In regulation legislation post reforms have also been arranged namely, first about in a way special about rights basic man in Chapter XA listed as many as 26 points in Article 28 concerning guarantee to protection right basic man.

Second, in the Law. No. 39 of 1999 which is principal whole in guarantee right basic humans who enter various international laws. Also listed in matter guarantee protection expansive rights. Besides That, this Law also regulates about institutional National Human Rights Commission.

Third, Law no. 24 of 2003 concerning Court Constitution. Namely exists decision court constitution as skipper for enforcement, protection, respect and fulfillment of human rights, Fifth, about deletion discrimination race and/ or ethnicity in Law no. 40 of 2008, States that "Discrimination race and ethnicity is A danger for sustainability relationship within aspect life society." Besides decision the laws mentioned, there are also decision law others that load guarantee protection right basic humans, including in Law no. 7 of 1984 concerning deletion to all form discrimination to women, Law no. 9 of 1999 concerning Right Asasi Humans and others.

Freedom in choose confidence as milestone main about connection life society, nation and state so that need reviewed the true and best meaning, both by the authorities or group people. Therefore, the lack in implementation rights and freedoms the to all violation that occurred in the middle public minority. Besides That's why this law is also for guard rights

²² Miki S. Kalengkongan , *Review of Criminal Law for Perpetrators of Crimes Against Minority Groups*, Lex Crimen Vol. IV/No. 3/May/2015, p. 94.

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people to action discrimination and violations in religious matters as well as barrier the integrity of the country so that it does not up to state intervention, also for awaken will owned rights every individual and/ or inhabitant in emit opinion, vote belief, and/ or religion.²³ As a legal state, the state must ensure equation ahead law and protect right basic man. For obtain justice through justice, everyone is treated same in front law, without looking place birth (race, religion, place birth, education, place born). For obtain justice through institution Justice.²⁴

In the reform era penalty the crime that exists within law criminal is one of special suffering because threatened punishment to candidate violators dubious rules earlier, for sure worn to violators or perpetrator possible crime form criminal death, criminal prison and objects or other sanctions that have been determined by rules criminal in accordance with development and growth law. Meaning threat criminal the is For protect insider interests association life. In matter This law criminal use threat punishment and punishment criminal if interests the balanced with sacrifices that must be made borne by the crime victim or violation. Crime to group religious and ethnic minorities is included crimes in violation right basic regulated humans in a way special in regulation applicable laws and regulations the culprit can worn penalty criminal prison and criminal fine. Threat penalty criminal This intended for prevent happen crime to group religious and ethnic minorities and if deed That has happen effort enforcement penalty criminal intended for give effect deterrent for doer and sharer the other party for No do the same action.²⁵

4. Conclusion

Framework law to discrimination against religious and ethnic minorities in the reform era underline protection right basic man. Constitution basic and various regulation legislation give base strong law for oppose discrimination, including Law no. 39/1999 concerning Human Rights, Law no. 12/2005 about Citizenship, and Law no. 40/2008 concerning Removal Racial and Ethnic Discrimination. Effort strengthening enforcement law and consciousness will right basic man in a way comprehensive become focus For ensure fair and equal protection for all citizen, without looking at religion or ethnicity.

²³Fadilah Dewi Anggun Permatasari , *Protection of Rights for Religious Minority Groups* , p. 193.

²⁴Ika Fitriana , *Protection of the Rights of Minority Groups in Indonesia in Realizing Equality Before the Law* , AL YASINI: Islamic, Social, Legal and Educational Journal, Vol. 06 No. 02 November 2021, p. 236.

²⁵ Miki S. Kalengkongan , *Review of Criminal Law for Perpetrators of Crimes Against Minority Groups*, Lex Crimen Vol. IV/No. 3/May/2015, p. 95.

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